HOUSE OF LORDS

Library Note

Anti-social Behaviour, Crime and Policing Bill (HL Bill 52 of 2013–14)

The Anti-social Behaviour, Crime and Policing Bill contains proposals in a range of areas, including anti-social behaviour, dangerous dogs, firearms offences, forced marriage, policing reforms, extradition and criminal justice. This Library Note provides a summary of the debates that took place on the Bill in the House of Commons at report stage and third reading. It identifies amendments made to the Bill at report stage and highlights, where appropriate, the conclusions of the recent report of the Joint Committee on Human Rights with regard to each part of the Bill.

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1. Background to the Bill

1.1 Introduction

The Anti-social Behaviour, Crime and Policing Bill (HL Bill 52 of session 2013–14) was introduced to the House of Lords on 16 October 2013, following its passage through the House of Commons. Second reading of the Bill in the House of Lords is due to take place on 29 October 2013. This Library Note provides background reading in advance of the debate. It provides an overview of the debates held on the Bill at report stage in the House of Commons and identifies how the Bill was amended at this stage. It then summarises the key contributions at third reading. In providing this information, the Note also highlights points raised by the Joint Committee on Human Rights (JCHR) on proposals in the Bill in its recent report, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill* (11 October 2013, HL Paper 56 of session 2013–14).

Parts 1 to 6 of the Bill were subject to pre-legislative scrutiny. The Draft Anti-social Behaviour Bill was published on 13 December 2012 (Cm 8495), and contained clauses to give effect to the Government's Anti-social Behaviour White Paper, *Putting Victims First* (May 2012, Cm 8367). The House of Commons Home Affairs Committee provided the pre-legislative scrutiny, publishing its findings on 19 February 2013 (HC 83 of session 2012–13). The Government responded to this report in April 2013 (Cm 8607).

The Bill currently before Parliament was announced in the Queen's Speech on 8 May 2013. In a press release from the Home Office, the Government stated the Bill would:

> Create new, simpler powers for police to tackle anti-social behaviour, cut crime and continue police reform.
>
> The Bill would tackle the use of illegal firearms by gangs and organised crime groups and provide better protection for victims of forced marriage.
>
> It would also encourage responsible dog ownership by strengthening the law for tackling dogs that are dangerously out of control.
>
> Additionally it would continue the Government's programme of police reform by extending the powers of the Independent Police Complaints Commission.
>
> (GOV.UK, 'Queen's Speech: Immigration and Crime Measures Announced', 8 May 2013)

The Bill was given a first reading in the House of Commons the following day. Theresa May, the Home Secretary, said in a debate on the Queen's Speech that the Bill aimed "to diminish the extent to which honest and hard-working people are preyed on by criminals and by bullies who show no regard for the basic rules of civilised living" (HC *Hansard*, 9 May 2013, col 168).

The Bill, as introduced to the House of Lords, now contains 14 Parts (Part 9 being added to the Bill at report stage in the House of Commons) and nine schedules. The Bill includes the following provisions:

> Part 1 makes provision for a civil injunction to prevent nuisance and annoyance.

Part 2 makes provision for an order on conviction to prevent behaviour which causes harassment, alarm or distress.

Part 3 contains a power for the police to disperse people causing harassment, alarm or distress.

Part 4 covers the new powers to deal with community protection and makes provision for a Community Protection Notice, a public spaces protection order and provisions to close premises associated with nuisance and annoyance.

Part 5 makes provision for the possession of houses on anti-social behaviour grounds.

Part 6 contains provisions on establishing a community remedy document and dealing with responses to complaints of anti-social behaviour.

Part 7 amends the provisions of the Dangerous Dogs Act 1991.

Part 8 introduces a new offence of possession of illegal firearms for sale or supply and increases the maximum penalties for the importation or exportation of illegal firearms.

Part 9 strengthens the arrangements for protecting the public from sexual harm and violence provided for in Part 2 of the Sexual Offences Act 2003 and Part 7 of the Criminal Justice and Immigration Act 2008 respectively.

Part 10 introduces a new offence of forced marriage and criminalises the breach of a forced marriage protection order.

Part 11 contains various measures in respect of policing, including conferring functions on the College of Policing, establishing a Police Remuneration Review Body, conferring additional powers on the Independent Police Complaints Commission of chief constables who have not served as police officers in the UK but have relevant experience abroad and conferring powers on police, immigration and customs officers in respect of the seizure of invalid travel documents.

Part 12 makes various amendments to the Extradition Act 2003.

Part 13 contains a number of criminal justice measures, including revision of the test for determining eligibility for compensation following a miscarriage of justice and measures in respect of the setting of court and tribunal fees.

Part 14 contains minor and consequential amendments to other enactments and general provisions including provisions about the parliamentary procedure to be applied to orders and regulations made under the Bill.

(*HL Bill 052–EN 2013–14, Explanatory Notes to the Bill*, 17 October 2013, paras 5–6)

The House of Commons Library has produced a number of Notes which provide further information about each part of the Bill, in particular, *Anti-social Behaviour, Crime and Policing Bill* (4 June 2013, RP13/34). The Note *Anti-social Behaviour, Crime and Policing Bill 2013–14: Debate in*

Parliament (10 October 2013, SN 06639) provides an overview of proceedings in committee in the House of Commons. In addition to these, there are a number of related briefings by the Libraries of both Houses available on the Parliament website.

1.2 House of Commons: Second Reading

Opening the debate at second reading in the House of Commons, Theresa May, the Home Secretary, set out the context for the introduction of the Bill. She said that the Government had made "significant strides" during its three years in office, noting that crime had fallen by 10 percent over that period. This reduction in crime, she argued, had "been achieved against the backdrop of a difficult financial climate for the police, as for other public services". In spite of this the Home Office, she contended, had "been able to mitigate the impact of diminished resources" because it had "allowed officers to focus on their core task of cutting crime. We have thrown off the straitjacket of national targets and freed up the front line from pointless form-filling and needless bureaucracy. Through the introduction of police and crime commissioners, we have revolutionised the accountability of police forces, and they are now far more responsive to local needs and priorities". However, the Government needed to build on these reforms: "We cannot rest while the crime survey shows that there were 8.9 million crimes against adults last year. We cannot rest while businesses were the victims of more than 9 million crimes, or rest when the police recorded approximately 2.3 million incidents of anti-social behaviour, with many more going unreported". The Bill, she argued, therefore marked "the next stage of our reform programme to deal with the challenges we face" (HC *Hansard*, 10 June 2013, cols 67–8).

Yvette Cooper, the Shadow Home Secretary, responded for the Opposition. She was critical that the Government had introduced "another Home Office Christmas tree Bill". She argued that whereas "last year's Bill had a bit of crime, a bit of judicial reform, a bit of extradition and a bit of drugs", the Bill before the House had "a bit on police standards, a bit on guns and a bit on dogs, but in none of those areas does it go far enough". She added that her party supported some parts of the Bill, in particular some of the reforms to policing and strengthened firearm offences, but was concerned about other aspects. The Bill's measures to address anti-social behaviour were "weak" and Ms Cooper was critical of the changes presented, saying that there was "a lot of changing of names and a lot of tinkering at the margins. Some changes may help and make it simpler; others may make it harder while agencies work out how the new processes are supposed to work". Other parts of the Bill, she asserted, did not go far enough. In particular, she urged the Home Secretary to strengthen the provisions for dangerous dogs and for more to be done to prevent firearm offences. Despite these reservations, Ms Cooper told MPs that her party would "not vote against the Bill's second reading" but her party thought "that it needs to be stronger. People want stronger action against anti-social behaviour, rather than the watering down of powers" (cols 75–81).

Dr Julian Huppert (Liberal Democrat MP for Cambridge) stated that there were "good things in the Bill, such as the changes to the Independent Police Complaints Commission, bringing in private providers, which the Liberal Democrats have wanted for some time; stronger control sanctions against forced marriage; controls on firearms; the introduction of the College of Policing, which will be important for evidence-based policing; controls on dangerous dogs; and particularly protections for guide dogs". He also welcomed the "simplification of the toolkit used to remedy anti-social behaviour, which can blight lives, even at a relatively low level". However, he felt a number of improvements could be made to the Bill's reforms to the anti-social behaviour proposals, particularly in relation to children. He concluded that the Bill was "a good Bill, but it could be tweaked slightly further to make it an excellent Bill" (cols 87–91)

1.3 House of Commons: Committee Stage

Following second reading, the Bill was then received by a Public Bill Committee, where MPs subjected the Bill to 15 days of scrutiny between 18 June and 16 July 2013. The House of Commons Library has produced a Note that summarises the main debates that took place on each part of the Bill during its consideration in committee. The Note provides the following overview of the amendments made to the Bill in committee:

> There were very few substantive amendments to the anti-social behaviour provisions in committee. Two were designed to make sure courts avoided conflicts with caring responsibilities when setting prohibitions and requirements, both for the new Injunctions to Prevent Nuisance and Annoyance (IPNAs) and for Criminal Behaviour Orders (CBOs). The minister had argued against this, but the first amendment went through without division, and the Government did not oppose the second one. A further amendment would allow head teachers and Further Education college principals to apply for IPNAs; this was in the context of debate about how IPNAs might be used to deal with bullying. The Government is seeking to reverse all of these amendments on report. However, on a number of issues where they undertook to consider non-Government amendments in committee, they are introducing amendments on report which take some of the points made on board.
>
> There were a number of points in the debate where Committee members asked about the guidance which the Government would issue on anti-social behaviour provisions. The Government has produced draft guidance in time for report and third reading.
>
> There were some fairly minor or technical Government amendments to the Bill's provisions on the Independent Police Complaints Commission.
>
> In addition, Government new clauses were added which would:
>
> - Allow police and crime commissioners to appoint chief constables from overseas police forces
> - Ensure that biological samples taken for police investigations which might be needed in evidence in court would not have to be destroyed within six months under a provision in the Protection of Freedoms Act 2012
> - Introduce new powers to seize cancelled passports
> - Make changes to the Extradition Act 2003 with respect to the European Arrest Warrant
>
> (House of Commons Library, *The Anti-social Behaviour Crime and Policing Bill: Debate in Parliament*, 10 October 2013, SN06639, p 1)

1.4 House of Commons: Report Stage—Programme Motion

Before the report stage commenced, the Government tabled a revised programme motion. Damian Green, Minister for Policing and Criminal Justice, explained that a revised timetable was required following the tabling of a new child sexual abuse prevention order clause by Nicola Blackwood (Conservative MP for Oxford West and Abingdon). He said that as a consequence the Government had tabled its own amendments on the issue and that the Government now proposed two days, instead of one day, for consideration of the Bill at report. Mr Green added

that given the level of support for Ms Blackwood's clause and the interest across the House in the issue, it was "right that the House should be afforded sufficient time to debate these provisions" (HC *Hansard*, 14 October 2013, cols 455–6).

Jack Dromey (Labour MP for Birmingham Erdington) responded for the Opposition. He urged MPs to reject the motion, stating that passing it would "curtail debate on important measures, such as our proposals on dangerous dogs and measures on protection for public-facing workers, undercover policing and guns and also issues put forward by Members on the Government Benches, like extradition". He observed that that there were 89 pages of amendments and new clauses to consider, and that the time proposed in the programme motion, in reality, amounted to less than two full days for debate. This allocation of time, he asserted, was because the Government were "running scared of losing a vote on dangerous dogs" (col 457).

For the Liberal Democrats, Dr Julian Huppert (Liberal Democrat MP for Cambridge) noted that the motion would enable MPs more time to consider the Bill than the Government had previously offered. Responding to Mr Dromey's argument about the lack of time on offer, he said he understood "the reason for his proposal" but that rejecting the motion "would curtail debate". He agreed that time was required to discuss dangerous dogs and was pleased "that two hours are protected for that purpose. If we voted against this motion, we would risk having no debate on that issue at all". However, Dr Huppert was concerned about the time allocated on day two. He pointed out that, to debate the broad range of issues in parts 9 to 12, MPs would "have available a maximum of two hours, which would be limited even further in the event of any statements or urgent questions" (col 458).

Other MPs also raised their concerns about the time available on day two. For example, Dominic Raab, (Conservative MP for Esher and Walton) said that the Bill's clauses in relation to extradition "risk not being properly scrutinised by the House". He said that it was likely time would run out on day two to consider the amendments and that this, was "not the first time that that has happened". He claimed that the Government's "new forum test for US and EU extradition was tabled during the committee stage of the Crime and Courts Bill earlier this year. The House was again timed out of any consideration on report back in March". Mr Raab added that as the Bill's proposals followed "an independent inquiry by Sir Scott Baker, which was conducted at great public expense", it was "surely vital that we properly consider the case for reform and deliver on the promises that have been made" (ibid col 460).

The motion was passed at division 294 votes to 227 (col 463).

2. Parts 1 to 6: Anti-social Behaviour

2.1 Joint Committee on Human Rights

During the report stage debate, Simon Hughes, Deputy Leader of the Liberal Democrats, spoke to a new clause and a number of amendments, which he tabled jointly with Dr Hywel Francis (Labour MP for Aberavon). Mr Hughes explained that the amendments were intended to embody some of the recommendations of the Joint Committee on Human Rights, of which he is a Member, and which is chaired by Dr Francis, adding that they did not intend to divide the House.

Criminal Behaviour Orders and Injunctions to Prevent Nuisance and Annoyance

The Bill proposes that two new orders should be introduced. The Injunction to Prevent Nuisance and Annoyance (IPNA) would be a civil injunction available in the County Court for adults and in the youth court for those under the age of 18. The injunction would replace a range of current tools including the anti-social behaviour order (ASBO), the anti-social behaviour injunction (ASBI), the drinking banning order, intervention orders and individual support orders.

The Criminal Behaviour Order (CBO) would be an order on conviction, available following a conviction for any criminal offence in the Crown Court, a Magistrates' Court or a Youth Court. This would replace the ASBO on conviction and the drinking banning order on conviction. For further background information on the IPNA, please see the House of Commons Library Note, *Anti-social Behaviour, Crime and Policing Bill*, 6 June 2013, RP13/34).

The Joint Committee raised several points in relation to the two new orders. The Committee expressed concern that the IPNA might not be used in a way which was "proportionate". The definition of anti-social behaviour used in the Bill was broader than that which was used for the ASBO regime. The Bill proposes that an IPNA should be issued in cases where conduct is "capable of causing nuisance or annoyance to any person"; whereas the definition of anti-social behaviour used for an ASBO is "harassment, alarm or distress". In order to issue an IPNA, a court must be convinced that it would be "just and convenient" to do so, whereas an ASBO must be considered "necessary" in order to protect members of the public from anti-social behaviour. The Joint Committee suggested that this may make the new measure incompatible with human rights law as the Bill currently provided: "a lower test than the test of "necessity", as required by human rights law" (Joint Committee on Human Rights, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, 11 October 2013, HL Paper 56 of session 2013–14, p 3).

Simon Hughes and Dr Hywel Francis tabled amendments 163 and 164 to address this issue. Norman Baker, Minister of State at the Home Office, responded to these, suggesting they were unnecessary:

> The test for issuing an injunction has two stages: an applicant must satisfy the court, first, that an individual has engaged or threatened to engage in conduct causing nuisance or annoyance and, secondly, that it is just and convenient to grant the injunction. The test of "just and convenient" is well known to the courts, being the test that currently applies to the granting of an anti-social behaviour injunction. It is, therefore, supported by several years of case law. As part of the test, in deciding whether to issue an injunction the court must, as a public body bound by the Human Rights Act, have regard to the principles of proportionality and reasonableness before granting an application.
>
> (HC *Hansard*, 14 October 2013, cols 542–3)

The Joint Committee also raised concerns about the "standard of proof" which should apply when a Criminal Behaviour Order was issued. It was established, following a judgement by the House of Lords in 2002, that an ASBO could only be granted if the court was satisfied to the criminal standard of proof, which was "beyond reasonable doubt", that the defendant was guilty of anti-social behaviour (Joint Committee on Human Rights, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, 11 October 2013, HL Paper 56 of session 2013–14, pp 21–2). This question had previously been in doubt, since an ASBO was a civil order heard in a Magistrates' Court. Generally, the civil standard of proof was "on the balance of probabilities".

However, because breach of an ASBO may be punishable by imprisonment, it was decided that the criminal standard of proof should apply.

The Bill proposes that the IPNA should be a civil injunction, which is tried in a civil court, and states explicitly that the civil standard of proof should apply. Clause 1(2) provides that a court must grant an IPNA if it is satisfied "on the balance of probabilities" that the defendant has engaged or threatens to engage in anti-social behaviour. The CBO is available on conviction, and breach of the Order is a criminal offence, punishable by up to five years imprisonment. However, the Bill does not comment on the standard of proof which should be required in order to grant a CBO, stating that the court must be "satisfied" that the offender has engaged in "behaviour that caused or was likely to cause harassment, alarm or distress to any person". The Joint Committee suggested that this was unsatisfactory:

> We believe that the Government should make the appropriate standard of proof clear on the face of the Bill, rather than leave the courts to make their own judgment on the applicable standard of proof, particularly as the standard of proof is specified in relation to IPNAs. We recommend that clause 21(3) be amended to specify the criminal standard of proof.
>
> (Joint Committee on Human Rights, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, 11 October 2013, HL Paper 56 of session 2013–14, p 22)

Simon Hughes and Dr Hywel Francis tabled amendment 167 to add the criminal standard of proof to the Bill. In his response, Norman Baker suggested that this was unnecessary:

> The draft guidance to the Bill makes it clear that we expect that the courts will follow existing case law from the House of Lords in relation to anti-social behaviour orders and that they will apply the criminal standard to criminal behaviour orders. The amendments to clause 21 are therefore unnecessary.
>
> (HC *Hansard*, 14 October 2013, col 543)

Rights of the Child

An IPNA may be given to a child as young as 10. IPNAs are civil orders: breach of an IPNA would be treated as contempt of court. The courts may decide to impose either a supervision order (available for 10 to 17 year olds) or a detention order (available for children aged 14 and over). Breach of an IPNA would not result in a criminal record—unlike Anti-social Behaviour Orders. The Joint Committee welcomed this proposal, since it would "carry less risk of the inappropriate criminalisation of children and young people" compared to an ASBO, which carries a criminal sanction.

However, the Committee regretted that "when considering whether to impose a civil injunction on children aged between 10 to17 years old, there is no requirement on the face of the Bill to consider the best interests of the child in accordance with Article 3 of the UN Convention on the Rights of the Child" (Joint Committee on Human Rights, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, 11 October 2013, HL Paper 56 of session 2013–14, p 13).

Simon Hughes and Dr Hywel Francis spoke to new clause 33, and amendments 174 and 175, which sought to ensure that the courts would consider the best interests of the child when

deciding whether to impose an injunction, choosing the terms of an injunction and the sanctions for breaching it, and when determining reporting of a child's case. The Joint Committee had commented in particular on this last point, stating:

> The Bill provides for a power of the courts to decide whether or not to allow the reporting of a child's case in relation to IPNA proceedings. This is a departure from the normal restriction that applies on the reporting of legal proceedings in relation to children under section 49 of the Children and Young Persons Act 1933. The Government has said that the decision to name an individual under the age of 18 should be taken by the courts when it is right to do so for the protection of victims and communities. However, the UN Committee on the Rights of the Child found that 'naming and shaming' children subject to ASBOs is in direct conflict with the UNCRC rights to privacy. We are concerned about the potential impact of reporting on children's privacy rights.
>
> (Joint Committee on Human Rights, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, 11 October 2013, HL Paper 56 of session 2013–14, p 14)

Norman Baker responded to these concerns. He said that the draft guidance which the Government had published for frontline professionals (*Reform of Anti-social Behaviour Powers: Draft Guidance For Frontline Professionals*, October 2013) advised that youth offending teams should be consulted by courts which are considering whether to issue an injunction. On the reporting of a child's case, he said that:

> Publicising orders can provide reassurance to victims and communities that action has and will be taken when they report anti-social behaviour. However, I agree that, when deciding to publicise an order against a young person, agencies must be satisfied that doing so is necessary and proportionate, taking into account the likely effect on the young person in question. We have made it clear in the draft guidance that agencies must carefully decide each case on its own facts. That is already the way the courts have approached these provisions and I expect them to be very careful in their use of this particular power.
>
> (HC *Hansard*, 14 October 2013, col 542)

Offences Connected with Riots

Part 5 of the Bill would introduce a new discretionary ground of possession for riot-related anti-social behaviour to enable landlords in England to apply for possession of a property where a person living in the property had been convicted of a riot related offence. The Joint Committee suggested that this measure was unfair:

> We are concerned about its potential serious implications for family members, and consider that it may disproportionately affect women and children. We also consider that it amounts to a punishment rather than a genuine means of preventing harm to others.
>
> (Joint Committee on Human Rights, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, 11 October 2013, HL Paper 56 of session 2013–14, p 27)

Simon Hughes and Dr Hywel Francis tabled amendment 177 to remove this power from the Bill. Norman Baker responded to the amendment and stated he would reflect further on the matter:

> Amendment 177 would remove the ability of landlords in England to seek to evict tenants when they or members of their household have been convicted of an offence at the scene of a riot anywhere in the United Kingdom. The Government believe that clause 91 sends out the strong and important message that if somebody gets involved in a riot, whether it is near their home or not, there may be consequences for their tenancy. However, Members have asked me to reflect on that matter and I will, of course, listen to the House and reflect on it without prejudice to the outcome of that reflection.
>
> (HC *Hansard*, 14 October 2013, col 544)

Peaceful Assembly

The Bill would introduce a new power of dispersal. During the committee stage some MPs expressed concern that this power could be used to break up protests and therefore limit free speech. Clause 34 of the Bill exempts people who are engaged in peaceful picketing (as defined by the Trade Union and Labour Relations (Consolidation) Act 1992) or taking part in a "public procession" (of the type specified under subsection (1) of section 11 of the Public Order Act 1986) from the dispersal power. In some cases, the Public Order Act 1986 requires that authorities be given written notice that a procession is going to take place (subsections (1) and (2) of section 11 of the Public Order Act 1986).

Simon Hughes and Dr Hywel Francis tabled amendment 176 at report stage that would have explicitly exempted "all peaceful assemblies" from the new dispersal power. Simon Hughes explained:

> There are public assemblies that are not marches or picketing but that are perfectly lawful, and we do not think that they should be interfered with under the powers in the Bill. I hope that my civil libertarian colleagues on both sides of the House will fully support that.
>
> (HC *Hansard*, 14 October 2013, col 516)

John McDonnell (Labour MP for Hayes and Harlington) spoke in support of the amendment, suggesting that the requirement that processions receive prior approval meant that "as the Bill currently stands, any spontaneous act of protest could be designated as anti-social behaviour". He said it was important to "ensure that people have the right to express their views and the right to protest" (col 524).

Norman Baker sought to allay these concerns in his response, saying that:

> The safeguards that we have built into the legislation will ensure that the dispersal power is used proportionately, while maintaining the flexibility to allow the police to act quickly to protect victims and communities from anti-social behaviour. Where

> behaviour is lawful and is not causing harassment, alarm or distress, the test for using the dispersal power will not be met.
>
> (col 543)

2.2 Government Amendments

Power to Exclude a Person from His or Her Home

In the Bill as originally drafted (Part 1, clause 12), social housing providers could apply for an injunction to exclude a person from his or her own home, if they engaged in behaviour which constituted a serious risk of harm to others. The Joint Committee suggested that this was unfair and discriminated against social housing tenants (Joint Committee on Human Rights, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, 11 October 2013, HL Paper 56 of session 2013–14, p 20). Several Members of the Public Bill Committee also raised this point (House of Commons Public Bill Committee, 25 June 2013, cols 195–206). The Government tabled amendments 10 to 15 at report stage which meant that the ability to exclude a person from his or her own home would be available across all tenures. Norman Baker explained:

> During the Committee's consideration of that provision, the hon. Member for Ashfield (Gloria De Piero) and others questioned the distinction between tenants in social housing and those who rent in the private sector or own their homes. The hon. Lady rightly pointed out that, from the victim's point of view, which housing sector the perpetrator lives in is irrelevant, and there was broad support from the Committee for that view. Having sought the views of professionals over the summer recess, we agree. If allowing someone access to their home puts the victim at risk of violence or significant harm, powers must be available to stop that. Amendments 10 to 15 therefore extend the power to exclude a person from their home beyond the social housing sector. Of course, that power should be used only exceptionally, which is why it is subject to a high judicial threshold and, in the case of renters in the private sector and owner-occupiers, applications are restricted to state agencies, meaning the police and the local council.
>
> (HC *Hansard*, 14 October 2013, 537)

Government amendments 10 to 15 were agreed to without a division.

The Community Remedy

Clause 93 of the Bill provides for a restorative tool, the "community remedy", under which Police and Crime Commissioners would develop a list, known as the community remedy document, of community sanctions for low level crime and anti-social behaviour. The Bill's *Explanatory Notes* state that:

> The aim is to help PCCs make community justice more responsive and accountable to victims and the public, with proportionate but meaningful punishments. A consultation on the community remedy ran from December 2012 to March 2013. The results of the consultation were published on 9 May 2013.
>
> (*HL Bill 052–EN 2013–14, Explanatory Notes to the Bill*, 17 October 2013, para 21)

During the Public Bill Committee, Steven Phillips (Conservative MP for Sleaford and North Hykeham) expressed concern that the sanctions introduced by the community remedy list could be overly punitive. He spoke to a new clause which would have placed some limits on what could be set out in a community remedy document. The Government has published draft guidance on the Bill, *Reform Of Anti-Social Behaviour Powers: Draft Guidance For Frontline Professionals* (8 October 2013). This includes a section on the community remedy, providing examples of appropriate community sanctions.

At report stage, the Government tabled amendments 45 to 48 on community remedies. Amendment 45 provided a list of the qualities which would make a community remedy appropriate:

> For the purposes of subsection (2), an action is appropriate to be carried out by a person only if it has one or more of the following objects—
> (a) assisting in the person's rehabilitation;
> (b) ensuring that the person makes reparation for the behaviour or offence in question;
> (c) punishing the person.

Amendment 46 would make it explicit that it is necessary to follow the guidance issued by the Secretary of State on the community remedy document. During the report stage debate, Steven Phillips said that he welcomed the amendments because they would prevent "rogue and inappropriate remedies" (HC *Hansard*, 14 October 2013, col 532). Government amendments 45 to 48 were agreed to without a division.

Criminal Behaviour Orders: Members of the Same Household

In the Bill as originally drafted, clause 21 set out that a Criminal Behaviour Order could only be granted in relation to the offender's behaviour towards persons who were "not of the same household" as the offender. Members of the Public Bill Committee questioned whether this was correct. At report stage, the Government tabled amendment 16 to remove this limitation. Norman Baker, Minister of State at the Home Office explained:

> The first condition that must be met before a criminal behaviour order can be made is that the court is satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the offender. In Committee, the right hon. Member for Delyn (Mr Hanson) tabled an amendment to remove that limitation. My right hon Friend the Minister for Policing and Criminal Justice made it clear at the time that the Criminal Behaviour Order is not intended as a tool for tackling domestic violence, as other more suitable powers are available for that, and that remains the case. However, having considered the matter further, we recognise that there might be cases where anti-social behaviour is inflicted by one member of a multi-occupancy household on another and where the flexibility to apply for such an order could be helpful.
>
> (HC *Hansard*, 14 October 2013, cols 537–8)

Government amendment 16 was agreed to without a division.

Welsh Assembly: Constitutional Issue

At report stage the Government tabled amendment 82 to replace one of the current exceptions relating to the National Assembly for Wales' legislative competence with a new exception relating to ASBOs. This would be replaced with a new exception: "Orders to protect people from behaviour that causes or is likely to cause harassment, alarm or distress". The Welsh Government has indicated that it does not welcome this change; in a written statement, Carwyn Jones, First Minister of Wales, suggested that:

> In my view, the Home Office's replacement exception would have a significant impact on the National Assembly's legislative competence. The effect of the current exception is that anti-social behaviour orders, under the current Crime and Disorder Act 1998 regime, are not within the Assembly's legislative competence. The effect of the proposed replacement exception is that all or any orders to protect people from behaviour that causes or is likely to cause harassment, alarm or distress would fall outside the Assembly's legislative competence. This represents a restriction on the Assembly's powers, as it would prevent it from legislating substantively about any sort of order to protect people from behaviour that causes or is likely to cause harassment, alarm or distress, even in devolved contexts such as the health service, schools or housing.
>
> The UK Government considers that this amendment to Schedule 7 to the Government of Wales Act 201 can be made without a legislative consent motion in the Assembly. I disagree. The amendment would reduce the Assembly's legislative competence, and it should not be taken forward without the Assembly's agreement. The Minister for Local Government and Government Business will be laying a legislative consent memorandum and motion on this issue, and the Welsh Government will not be supporting the motion.
>
> (Wales.gov.uk, 'Written Statement—Anti-social Behaviour, Crime and Policing Bill', 14 October 2013)

In the House of Commons, Steve Reed, Labour Shadow Minister for Home Affairs, asked the Minister to address the issue:

> I understand that the Welsh Government have made it clear that they object to what the Government are doing in watering down powers in Wales to deal with anti-social behaviour. It is clear that such a change will require a legislative consent order in the Welsh Assembly, which they are not willing to give. It is not something that we have the time to debate fully today given the constraints in the programme motion, but I am sure the Minister will want to put his position on record before this controversial change reaches the other place.
>
> (HC *Hansard*, 14 October 2013, col 521)

Norman Baker responded for the Government to say that:

> Provisions on anti-social behaviour orders are among the exceptions to the legislative competence of the National Assembly for Wales in respect of local government matters. Amendment 82 simply updates that exception to recognise the abolition of the ASBO, thus preserving the status quo with regard to the Assembly's competence. The

> UK Government is firmly of the view that amendment 82 is purely consequential upon the abolition of anti-social behaviour orders, so a consent motion is not required.
>
> (col 544)

Government amendment 82 was agreed to without a division.

Measures which were Introduced at Committee Stage but Removed at Report

In two areas, the Government tabled amendments which reversed action taken by the Public Bill Committee. At the committee stage, Tracey Crouch (Conservative MP for Chatham and Aylesford) tabled an amendment to clause 4 to assist schools in addressing bullying by adding head teachers and principals of further education institutions to the list of those who could apply for an IPNA; this amendment was agreed to on a division of the Committee (House of Commons Public Bill Committee, 25 June 2013, col 188). The Government tabled amendment 4 at report stage to reverse this change. Ms Crouch said she supported the reversal:

> In Committee I pressed for head teachers and principals to be given the opportunity to apply for the injunctions. That would have been a permissive power that I thought would be a logical step. Unfortunately, that view is not shared by the teaching unions, all of which I have subsequently consulted, so I am reluctantly resigned to the removal of heads and further education principals from the Bill and I accept Government amendment 4.
>
> (col 523)

At the committee stage another amendment was made to the Bill, this time without a division, after it was introduced by Stephen Phillips (Conservative MP for Sleaford and North Hykeham). Clause 1 sets out that an IPNA must avoid conflicting with religion, work and school. Stephen Phillips' amendment added caring responsibilities to that list. The Government tabled amendments 1 and 17 at report stage to reverse this change. Mr Phillips spoke to say he would support the Government's amendments:

> The draft guidance produced last week in accordance with the undertakings given to the Public Bill Committee contains wording that requires those seeking IPNAs—regard will no doubt be paid to this by courts as well—to take into account caring responsibilities. On that basis, and although the decision has not been easy, I am not minded to oppose the Government's desire to remove my first attempt at legislation in this House
>
> (col 531)

Government amendments 4, 1 and 17 were agreed to without a division.

2.3 Opposition Amendment

Retention of the ASBO

Breach of an ASBO is a criminal offence, and punishable by up to five years imprisonment, whereas a breach of an IPNA would be treated as contempt of court and therefore punishable by up to two years in prison. The Opposition suggested that the new order was "weaker" than the ASBO because it did not carry a criminal sentence (for further information, please see the

House of Commons Library Note, *Anti-social Behaviour, Crime and Policing Bill* (6 June 2013, RP13/34, pp 16–17). During the report stage debate, Steve Reed, Shadow Minister for Home Affairs, spoke to amendment 96, which would retain the ASBO, alongside the new measures introduced by the Bill. He said:

> Amendment 96 seeks not to prevent the Government from introducing injunctions to prevent nuisance and annoyance—they could be a useful alternative for the police to consider using—but to keep ASBOs on the statute book, leaving it to local councils and police forces to decide what best suits their local areas and needs.
>
> In seeking to weaken powers to deal with anti-social behaviour, the Government appear to have gone soft on crime, but tough on the communities suffering from crime. The case for abolishing ASBOs has not been made by the Government, not at Second Reading, not in Committee and not today.
>
> (HC *Hansard*, 14 October 2013, cols 518–521)

Norman Baker, Minister of State at the Home Office resisted the amendment:

> These reforms are about putting the victim first and providing streamlined, effective powers for enforcement agencies to do just that. Amendment 96 seeks to retain a discredited regime that has left people across the country suffering from anti-social behaviour. I therefore hope, perhaps optimistically, that the hon. Gentleman will withdraw his amendment in due course.
>
> (col 540)

Amendment 96 was defeated on a division (Ayes 229; Noes 296).

3. Part 7: Dangerous Dogs

Two clauses in the Bill—98 and 99—relate to the issue of dangerous dogs. Clause 98 would "extend the current offence of having a dog that is dangerously out of control in a public place, or a private place where the dog is not permitted to be, to all places including private property" and provides for an exemption for householder cases, where a dog becomes out of control when a trespasser is in the building. In addition criminal liability for a dangerous dog would be extended to all places and an attack by an out of control dog on an assistance dog would be created. Clause 99 amends the test a court must conduct in considering whether a dog is dangerous and liable to be destroyed (*HL Bill 052–EN 2013–14, Explanatory Notes to the Bill*, 17 October 2013, paras 224–235)

3.1 Joint Committee on Human Rights

In its analysis of the Bill's clauses in relation to dangerous dogs, the Joint Committee said it welcomed the extension of the dangerous dogs offence to private property "as a human rights enhancing measure". This was "because it improves the protection provided by the criminal law for people's life and physical integrity which are protected by Articles 2 and 8 ECHR". However, the Committee was concerned about the Bill's provision to "extend the protection of the criminal law against dangerous dogs but exempt from the scope of that legal protection trespassers, or anyone believed by the householder to be a trespasser". This proposal, the

Committee believed, was "on the face of it incompatible with the UK's positive obligations to protect life and physical integrity under Articles 2 and 8 ECHR, and to ensure the enjoyment of those rights without unjustifiable discrimination under Article 14 ECHR". As a consequence of this the Committee recommended "that further consideration be given to clause 98(2)(b) in order to prevent such incompatibility" (*HL Bill 052–EN 2013–14, Explanatory Notes to the Bill*, 17 October 2013, paras 159–165).

3.2 Opposition Amendments

During the committee stage in the House of Commons the Opposition brought forward amendments that proposed the introduction of dog control notices. At the report stage, Steve Reed (Labour MP for Croydon North) introduced Opposition amendments again on the issue, suggesting the idea for the notices had "widespread cross-party support in the House" and "near unanimous support from outside organisations with an interest in dangerous dogs and animal welfare". He explained that the notices were "not punitive" and provided a "menu of options that local authorities and police can use to act in the interests of their local communities against dangerous dogs and irresponsible owners". These options included:

> ...requiring a potentially dangerous dog to be muzzled whenever it is in a public place; requiring it to be kept on a lead in places to which the public have access; neutering male dogs; and requiring dogs and dog owners to attend training classes to bring potentially dangerous animals back under control. A dog control notice would also require the dog to be microchipped and registered, so that any dogs that were found to be in breach could be identified clearly and unambiguously—something that is absolutely necessary for effective enforcement.
>
> (HC *Hansard*, 15 October 2013, col 662)

Mr Reed said that it was disappointing that in committee the Government had maintained that Community Protection Notices would be a sufficient response to dangerous dogs. These, he asserted, were "slow to serve, can be challenged in the courts" so "causing further delays". He noted that one outside organisation had described them "as a sledgehammer to crack a nut". The use of dog control notices in Scotland, he argued, had shown that dog control notices "work effectively" (col 663).

A number of backbench MPs spoke in support of their own related amendments:

- Mark Spencer (Conservative MP for Sherwood) spoke briefly in support of his two amendments (97 and 99). These sought to "ensure that there is provision for written notices so that not only dog owners but those in charge of a dog at any time have control of that animal and prevent it from causing injury or damage to any person or any other animal". He added though that there was a need for balance so to enable people to protect their home by using a dog (cols 664–5).

- Angela Smith (Labour MP for Penistone and Stocksbridge) spoke to new clause 17. Ms Smith argued that current legislation was "not necessarily best designed and in many ways is inadequate for encouraging responsible dog ownership and improving the welfare of dogs more generally. We need not only consolidation of the legislation but a comprehensive look at what measures we need for dog control". She also thought that Community Protection Notices would be a "blunt and unwieldy measure" and explained

that her new clause 17 proposed a "bespoke Community Protection Notice modelled on the dog control notices recommended by the Environment, Food and Rural Affairs Committee" (cols 665–7).

- Ann Coffey (Labour MP for Stockport) proposed new clause 18 that would require householders who keep a dog to put a wire mesh guard around their letterbox to prevent injuries for those using the post box. An owner who did not comply with this who then had an incident would be liable for action taken against them by the person bitten (col 669).

- Julie Hilling (Labour MP for Bolton West) spoke about the death of a 14 year old girl in her constituency who had been killed by four out of control dogs. She proposed new clause 6, which she said would allow a dog number control notice to be issued where an individual was keeping too many dogs in a domestic setting and there was a risk one or more of the dogs could become dangerously out of control in that property (cols 671–3).

Other MPs also contributed to the debate. Martin Horwood (Liberal Democrat MP for Cheltenham) urged MPs to "recognise the positive steps that are being taken in the Bill, not least in the context of the Government's earlier action in setting a timetable for the introduction of universal microchipping". He added that he understood the Government's position in regard to dog control notices and its preference for the use of the anti-social behaviour measures as set out in the Bill (cols 673–4). John Healey (Labour MP for Wentworth and Dearne) hoped the Government would reconsider dog control notices, which he said had "been legislated for in Scotland for three years" and so represented "a sensible extension of the scope for local authorities, courts and the police to take action against a person in control of a dog whose behaviour is out of control" (cols 678–9). Edward Leigh, (Conservative MP for Gainsborough) urged the Government to resist new clause 3 and said he was "very worried" by the other amendments. With regard to letterboxes and the dangers to canvassers, he said that when he saw a dog behind a door he was "delighted not to put the pamphlet through the letterbox". In this instance he said people needed to "just show some common sense. Dogs are dogs. We cannot change dogs with legislation" (cols 680–1).

Norman Baker, Minister of State for the Home Office, responded for the Government. In response to new clauses 3, 6, 17, 18 and 19, Mr Baker said he understood the intention behind them and agreed there was a "genuine need for an additional tool to address poor dog ownership and to enable early action to prevent dog bites and attacks". However, he reiterated the Government's position that the measures set out in parts 1 to 4 of the Bill would "allow exactly the type of early intervention that the new clauses seek to provide". He stated that Community Protection Notices could be served in cases "where there are too many dogs in one home... where an owner does not have proper control of his or her dog, where a dog strays and in many other scenarios". Community Protection Notices would be "in addition to existing statutory measures, notably offences under the Animal Welfare Act 2006 relating to welfare standards, the law on statutory nuisance and, for commercial dog breeders, any licence requirements". He added that some of requirements proposed in the amendments before the House—for example muzzling, neutering, microchipping, keeping a dog on a lead—could all be required under a Community Protection Notice. This meant that the amendments were therefore "not necessary" as the "powers are already there in the Bill". Responding to the Opposition's charge that Community Protection Notices would be slow and bureaucratic, Mr Baker said that the Department for Environment, Food and Rural Affairs had recently published a draft practitioners' manual *Tackling Irresponsible Dog Ownership* (8 October 2013), which was

clear in how the tool could be used: "if a dog is out of control in a park, a written notice can be issued on the spot by the relevant officer who has control in that situation. The owner would then be given a 'reasonable time', which might be just five minutes, to respond. If the dog is not brought under control in that time, the Community Protection Notice can be issued right away" (cols 680–2).

Following debate, new clause 3 was divided on and was defeated 315 votes to 236 (col 685).

3.3 Other Amendments

Richard Fuller (Conservative MP for Bedford) put forward amendments 140 and 141 that would increase the maximum sentence to 14 years for owners of an out of control dog that killed or injured a person or assistance dog. The proposed sentence, he argued, was equivalent to the maximum penalty for driving dangerously and the change would "send a strong message that owners must now take responsibility" (col 670). Responding, Norman Baker said the Government were "very sympathetic" and agreed that "two years' imprisonment... is not a sufficient penalty for the devastation and damage that a serious dog attack can do". He said that the Government consultation had failed to produce a consensus on "where to set the bar" and therefore the Government were unable to table an amendment on the issue in time for the report stage in the House of Commons. The Government would now be tabling amendments for debate in the House of Lords. This amendment would:

> reflect the high public concern that two years is an insufficient penalty for these offences, and the fact that some 16 adults and children have died in dog attacks since 2005, and some 10 assistance dogs are attacked by other dogs every month. As the consultation made clear, we will be looking to distinguish between attacks on people and attacks on assistance dogs. For attacks on people and where a person is killed or seriously injured, I am attracted—perhaps given my former role as a Transport Minister—by the comparison with penalties for causing death or serious injury by dangerous driving. Where a dog attacks an assistance dog, we will be looking at a lower maximum penalty, but one that is higher than the present one that applies.
>
> (col 681)

Of the other amendments, Angela Smith suggested new clauses 29 and 30 which related "to the need to ensure that a time limit is imposed on the courts regarding how long a banned-breed dog can be held before the issue of whether it should be exempt from the legislation is dealt with, to ensure that animal welfare standards are not compromised" (col 667). Additionally, she explained, the clauses gave "the power to rehome dogs that are fit for exemption but have nowhere to go. The only other choice available to animal welfare charities at the moment is euthanasia, which is not good enough". In response Norman Baker stated the Government would bring forward regulations on this issue next year. These would make it "clear that when the police seize a suspected prohibited dog they will not be required to kennel it, but need do so only where they are satisfied that the situation of dog and owner do not present a risk to public safety". He argued it was "right to give the police this discretion" adding that it would "be a condition of release, if release occurs, that the owner consents to the dog being muzzled and on a lead in public, as well as being microchipped and neutered before it can be released back to the owner. This is to ensure public safety and to prevent breeding from section 1 dogs" (col 684).

Tracey Crouch (MP for Chatham and Aylesford) proposed amendment 133, which returned to the issue she had raised at the committee stage about extending the Bill to include dog attacks on protected animals. She explained that animal welfare charities believed that current legislation was not sufficient to address the issue (cols 667–8). In response, Norman Baker said that existing legislation did "have an effect and can be used in certain circumstances", in particular the Animal Welfare Act 2006, the Animals Act 1971, the Dogs Act 1871, and the Dogs (Protection of Livestock) Act 1953. He acknowledged it was "rather unfortunate that the Criminal Damage Act 1971 classifies animals as goods or property in this respect". He said the Government did not want to see more legislation, but instead its approach was "better education for owners, training for dogs, and increased awareness among the public and the authorities who can use the new anti-social behaviour powers to address these incidents and help to prevent them before they happen" (col 684).

4. Part 8: Firearms Offences

Part 8 of the Bill contains a number of clauses relating to firearms offences. Clauses 100 to 102 would increase the maximum penalty for the illegal importation of firearms to life imprisonment, also creating a new offence of possession with intent to supply with a maximum sentence of life imprisonment. Clause 103 would enable British Transport Police to be armed, without individual officers having to obtain a license as is the current requirement.

4.1 Joint Committee on Human Rights

With regard to the Bill's provisions for firearms offences, the Joint Committee stated that "to the extent that the provisions in the Bill close a gap in the current legal framework in relation to those who possess firearms with the intention of supplying them to another, we welcome them as a positive step taken by the Government pursuant to its responsibility to protect its citizens from gun-related violence" (Joint Committee on Human Rights, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, 11 October 2013, HL Paper 56 of session 2013–14, para 167). On the issue of the proposed increase in the sentence for illegal importation of firearms, the Committee was cautious, stating that "in our view, the Government should have a firmer evidence base when increasing maximum sentences from 10 years to life, especially bearing in mind that the offence would attract the mandatory minimum sentences provided for in the Firearms Act 1968, and reflect on whether an alternative maximum sentence might be appropriate". The Committee also considered the Bill's proposal to allow British Transport Police officers to carry firearms without an individual certificate. Here the Committee welcomed reassurances from the Government "that the relevant human rights standards have been properly respected in the development of an armed capability by the British Transport Police" (paras 166–170)

4.2 Government Amendments

The Government brought forward a new clause and a number of related amendments to the Bill with regard to firearm offences. These amended the Bill to enable the transfer of the appropriate powers in relation to the new firearms offences to Scottish Ministers. Damian Green, the Minister of State for the Home Office, explained to MPs:

> The existing functions of the Secretary of State under section 5 were transferred to Scottish Ministers by order under section 63 of the Scotland Act 1998 on devolution. Additional functions under section 5 need to be transferred to Scottish Ministers in

> relation to new offences created by the Bill. Therefore, new clause 20 revokes the entry in the 1999 order in respect of section 5 of the 1968 Act, and transfers afresh all the Secretary of State's functions under that section to Scottish Ministers. Amendments 100 to 105 are consequential on new clause 20.
>
> (HC *Hansard*, 14 October 2013, col 551)

These amendments were supported by the Opposition and were agreed to without division.

4.3 Other Amendments Debated

The main debate on this part of the Bill focused on opposition amendments regarding licensing requirements, the issue having been debated previously at committee stage and during a Westminster Hall debate in September (HC *Hansard*, 3 September 2013, cols 33–57WH). Diana Johnson, Shadow Home Office Minister, moved new clause 4 for the Opposition. She explained the clause did three things:

> First, it calls for a broader range of better background checks to be included as part of the licensing process. Secondly, it would amend the Firearms Act 1968 to introduce an explicit presumption that anyone with a history of domestic violence, drug or alcohol abuse, or mental illness would be prevented from acquiring a firearms licence unless they could provide exceptional evidence to the contrary. Thirdly, it would introduce full cost recovery to ensure that the cost of a licence reflects the cost to the police of processing it.
>
> (HC *Hansard*, 14 October 2013, col 553)

Ms Johnson referred to a number of high profile firearm cases, such as Derrick Bird and Michael Atherton. In the case of the latter, she said that the purpose of the Opposition's amendments was to ensure that "never again should the police, looking at the file of a violent offender, think, 'I would like to refuse this application but I am not sure whether I can'" (col 554). She added "owning a gun is a privilege and not a right". In terms of the amendment's provision for full cost recovery, Ms Johnson said that the amendment would require the Home Secretary to consult the police before setting the fee so to enable the police to recoup the administration and assessment costs it incurred. She claimed that the taxpayer currently subsidised the licensing system by £18 million a year, and that this was contrary to the standard Treasury guidance that stipulated that charges should cover full costs (cols 553–5).

In response, Damian Green had said that the Government's position on background checks remained the same, and that "the police already have the ability to take those factors into account when assessing the risk to public safety" (col 551). He added he understood particular concerns about domestic violence and abuse, and "in response to those, on 31 July we published specific guidance on that issue, providing greater detail on how the police should handle such cases". He said that the previous week the Home Office had "published a new consolidated guide on firearms licensing law. It is therefore fair to say that the Government have taken on board the many important points that were raised in committee, and we have been quick to act" (cols 551–2). In addition the Government were working with the national policing lead for firearms and explosives licensing to "ensure that police have more detailed awareness and understanding of the Home Office guide". In terms of cost recovery, he asserted that primary legislation was not necessary to achieve that goal, and that it was "true that, in principle, full cost recovery within the Treasury's policy on managing public money does apply

to firearms licensing". He confirmed that the Government were "working towards full cost recovery as our ultimate objective". However, in this period the Government's commitment was to reduce costs and they had piloted an electronic licensing system to this end (col 561).

New clause 4 was put to a division and defeated 298 votes to 215 (col 562).

5. Part 9: Protection from Sexual Harm and Violence

5.1 Government Amendments

Sexual Harm Prevention Orders and Sexual Risk Orders

Damian Green, Minister for Policing and Criminal Justice introduced new clauses 14 and 15 on behalf of the Government, along with a number of consequential amendments (New schedule 1 and amendments 63 and 92 to 94). The Bill's *Explanatory Notes* explain how these clauses would replace several existing orders, which seek to prevent sexual crime, with two new measures:

> The Sexual Offences Act 2003 contains provision for three civil preventative orders:
>
> A Sexual Offences Prevention order (SOPO)—This can be made where an offender has been convicted of a relevant sexual or violent offence and prohibitions are necessary to protect the public from serious sexual harm. A SOPO prohibits the offender from doing anything described in the order;
>
> A Foreign Travel Order (FTO)—This can be made where an offender has been convicted of a sexual offence involving children and there is evidence that the offender intends to commit further sexual offences involving children abroad. A FTO prohibits travel to the country or countries specified in it (or to all foreign countries, if that is what the order says); and
>
> A Risk of Sexual Harm order (RoSHO)—This can be imposed where a person aged 18 or over has done a specified act in relation to a child under 16 on at least two occasions. To seek a RoSHO, it is not necessary for the defendant to have a conviction for a sexual (or any) offence. A RoSHO prohibits the defendant from doing anything described in it.
>
> Schedule 5 amends the Sexual Offences Act to repeal the SOPO, FTO, and RoSHO in England and Wales and replace them with two new orders: the Sexual Harm Prevention Order and the Sexual Risk Order. The new orders have a lower risk requirement than the previous orders, allowing both orders to be used to manage risk against adults and vulnerable adults abroad, as well as children. In addition, their remit will be wider, enabling, for example, foreign travel restrictions to be applied under either order.
>
> (*HL Bill 052–EN 2013–14,* Explanatory Notes to the Bill, 17 October 2013, paras 27–28)

In May 2013, a report was published on the *Civil Prevention Orders Sexual Offences Act 2003*. A panel of experts, chaired by Hugh Davies QC, carried out a review of the existing regime, commissioned by the Association of Chief Police Officers Child Protection and Abuse Investigation Working Group. The report concluded that the "existing statutory regime presents unnecessary and unreasonable obstruction to the objective of preventing sexual abuse

of children" (p 3). The Government stated that the new clauses in the Bill were being introduced in response to the suggestions made in this report and had also been prompted in part by the 'Childhood Lost' campaign led by Nicola Blackwood (Conservative MP for Oxford West and Abingdon) (HC *Hansard,* 14 October 2013, col 472). This campaign was inspired by the 'Operation Bullfinch' case, in which seven men were found guilty of sexual offences against a number of children and young people in Oxford (Crown Prosecution Service, 'Operation Bullfinch Men Sentenced—Oxford', 27 June 2013). At the report stage, Ms Blackwood tabled new clause 5 which aimed to introduce a new Child Sexual Abuse Prevention Order. In a letter to Nicola Blackwood on 8 October 2013, Damian Green, Minister for Policing and Criminal Justice said that the Government welcomed her new clause, but wished to "go further", suggesting that the new clauses and amendments which the Government had tabled would "deliver the improvements you have sought through new clause 5 and more".

During the report stage debate, Damian Green provided details of the two proposed new orders. He explained that the Sexual Harm Prevention Order would:

> ...be available for those with convictions for sexual or violent offences. It may be made by a court on conviction, or by the magistrates' court on application by the police or the National Crime Agency. A court may impose an order for the purposes of protecting the public in the UK and/or children or vulnerable adults abroad from sexual harm.
>
> The Sexual Harm Prevention Order may prohibit the person from doing anything described in it, including preventing travel overseas. Any prohibition must be necessary for protecting the public in the UK from sexual harm or, in relation to foreign travel, protecting children or vulnerable adults from sexual harm. It lasts a minimum of five years and has no maximum duration, with the exception of any foreign travel restrictions which, if applicable, lasts for a maximum of five years but can be renewed.
>
> (HC *Hansard,* 14 October 2013, col 473)

The Sexual Risk Order, he stated, would:

> ...be available for those who have not been convicted of an offence but who none the less pose a risk of sexual harm to the public. It may be made by the magistrates court on application by the police or the new National Crime Agency where an individual has done an act of a sexual nature and poses a risk of harm to the public in the UK or adults or vulnerable children overseas.
>
> Any prohibition in the sexual risk order must be necessary for protecting the public in the UK from sexual harm or, in relation to foreign travel, protecting children or vulnerable adults from sexual harm. Such an order will last a minimum of two years and has no maximum duration, with the exception of any foreign travel restriction which, if applicable, lasts for a maximum of five years, but can be renewed.
>
> (cols 473–4)

Mr Green described the elements which would make the Sexual Harm Prevention Order and the sexual risk order "more robust, more flexible and therefore more effective than previous orders" (cols 474). He highlighted how the new orders would apply to people who posed a risk to adults as well as to children, whereas some of the previous measures applied only to

children. The Sexual Risk Order, he explained, could be applied to a defendant who had "done an act of a sexual nature", whereas the previous "non-conviction" order, the risk of Sexual Harm Order, could be used only where a defendant was believed to have committed "at least two acts" of this kind. He suggested that "the remit of the new orders will be wider", since either order "will allow foreign travel restrictions to be applied". In addition to local police forces, he added that "the National Crime Agency will be able to apply for either of the new orders. This is a reflection of its expertise and access to intelligence on aspects of sexual offending, particularly against children". A further point of difference was that, whereas previously a Sexual Offences Prevention Order could be applied in cases where a defendant posed a risk of "serious sexual harm", the Sexual Harm Prevention Order could be used for defendants who posed a risk of "sexual harm" (HC *Hansard*, 14 October 2013, col 475).

Nicola Blackwood provided her views on why these changes were necessary, expressing her support for the Government's new clauses, which meant, she said that she would not press her own new clause to a division (col 485). She quoted a figure calculated by the Children's Commissioner that 16,500 children were at risk of sexual exploitation. She referred to the 'Operation Bullfinch' case and suggested that:

> Patterns of grooming behaviour are now much better understood. We should be aiming to disrupt the process before it progresses to systematic sexual abuse, because the consequences of failing to intervene are both well documented and appallingly destructive. However, over the past few years case after case has emerged in which child protection agencies in possession of detailed intelligence have seemed unable to intervene.
>
> (cols 481–2)

Ms Blackwood referred to the report which was published this year by the Home Affairs Committee, of which she was a member, on *Child Sexual Exploitation and the Response to Localised Grooming* (10 June 2013, HC 68–I, Second Report of Session 2013–14, She said the Committee found that the civil prevention orders regime was not working; a conclusion which she suggested echoed the review published by Hugh Davies QC. Problems with the existing regime, she suggested, included the necessity to prove that the defendant had committed two sexual acts, producing "the absurd result that an offender who sexually touched a 15-year-old twice would be eligible for an order but an offender who raped a four-year-old once would not be" (col 483).

In the letter to Nicola Blackwood of 8 October 2013, Damian Green explained that, for both the risk of Sexual Harm Order and the Sexual Harm Prevention Order, "as with the existing orders under the 2003 Act, the court will need to be satisfied to the criminal standard of proof that the test for making an order has been met". Several Members expressed views on this issue. Nicola Blackwood suggested that "misleading coverage" in the press had given the impression that she was campaigning for a pre-conviction order, whereas, she pointed out, such an order already exists in the Risk of Sexual Harm Order (col 482). Ms Blackwood explained why she believed it was sometimes necessary to impose an order on somebody who had not been convicted of a crime:

> Criminal prosecution is not always possible. In some situations a prosecution is found not to be in the interests of a child victim, and therefore not in the public interest. In other situations there might be compelling evidence or some technical reason why the evidence is not found to be admissible. In other cases, as we have seen recently, a

> vulnerable witness might simply find the court process too traumatic and so the case collapses. Anyone who follows the progress of policing and the criminal justice system will recognise that uncomfortable reality. That is why this year there were more than 23,000 reported sexual crimes against children but only 4,051 of them were prosecuted.
>
> (col 483)

Diana Johnson, Shadow Minister for Home Affairs, said that the Opposition welcomed the new clauses but questioned whether it was correct that a criminal standard of proof should continue to be applied:

> One reason it is hard to impose a Risk of Sexual harm Order is that such orders demand a criminal standard of proof, even though they are civil orders, and that difficulty may remain in respect of the future orders.
>
> (col 479)

Ms Johnson said it was necessary to ask "why so few orders had been taken through the courts and whether we need to consider the whole issue of the standard of proof that is required" (col 479). Dr Julian Huppert (Liberal Democrat MP for Cambridge), responded: "I presume that [the honourable Lady] is not suggesting that someone should be jailed for five years without requiring a criminal standard of proof" (col 480). Ms Johnson said:

> I find it extremely annoying that when Liberal Democrats get to their feet on child protection issues, when we are making sure that our children have the protection that we all want to see, this is the issue that is pursued. I am asking how best we can protect our children. There is genuinely a question to be asked about the standard that is used in the orders.
>
> (col 480)

Dr Huppert responded that it was "an important principle that people do not get jailed based on anything less than the criminal standard of proof", and mentioned the case of Simon Walsh, in which a man was tried, and found not guilty, for possession of images of a sexual nature (*Guardian*, 'Former Boris Johnson Aide Cleared of Possession of 'Extreme Pornography'', 8 August 2012). Dr Huppert expressed concern that, if introduced, a Sexual Risk Order could be applied to people such as Simon Walsh, "who have been found explicitly not guilty" (HC *Hansard*, 14 October 2013, col 490).

Mr Green responded to this discussion by saying that:

> We have had a vigorous debate about the use of the criminal standard of proof. If I may try to reconcile what has been the only scratchy part of this debate, there is a balance to be struck. We could apply the civil standard to the new order, but one consequence would be that a breach of the order would not be a criminal offence punishable by up to five years in prison. I hope that those who are doubtful about the level of proof will accept that what we are proposing strikes the right balance, given the risk of harm to children and vulnerable adults.
>
> (col 493)

Ann Coffey (Labour MP for Stockport), asked the Minister for clarification on which age group the new orders would apply to:

> The risk of Sexual Harm Orders, which the new Sexual Risk Orders would replace, can be given only to offenders aged 18 and over. Will the new Sexual Harm Prevention Orders also only apply to offenders over 18? If they will apply to offenders under 18, what consideration has he given to introducing accompanying rehabilitative provisions for child sex offenders?
>
> (col 473)

Mr Green answered that "the two new orders will apply to both over-18s and under-18s" (col 473). He also clarified the situation in relation to the sex offenders register:

> In line with the old order, the new Sexual Harm Prevention Order will make the offender subject to the notification requirements for registered sex offenders—it will put them on the sex offenders register. For both new orders, in line with the existing position, breach is a criminal offence punishable by a maximum of five years' imprisonment. Conviction for a breach of a Sexual Risk Order would also make that individual subject to the sex offender notification requirements.
>
> (col 475)

New clauses 14 and 15 and the consequential amendments were added to the Bill without a division.

Violent Offender Orders

During the first day of the report stage in the House of Commons, Damian Green introduced new clause 8 on behalf of the Government. He explained that "new clause 8 adds murder committed overseas to the list of offences that may form the basis for making a violent offender order" (HC *Hansard*, 14 October 2013, col 476). The Bill's *Explanatory Notes* provide background information to this clause:

> Part 7 of the Criminal Justice and Immigration Act 2008 provides for Violent Offender Orders (VOO), which are civil preventative orders that can be made by the courts on application from the police to impose restrictions on offenders convicted of specified violent offences... The offences on the basis of which a VOO may be sought does not currently include murder committed overseas. Murder was not originally included on the list of specified offences, because an individual convicted in the UK would be subject to licence conditions for life, making a VOO unnecessary.
>
> (*HL Bill 052-EN 2013–14, Explanatory Notes to the Bill*, 17 October 2013, para 29)

The *Explanatory Notes* suggest that the necessity for better supervision of offenders convicted overseas was identified by the Independent Police Complaints Commission report into the circumstances of the death of Maria Stubbings, who was murdered by her ex-partner, Marc Chivers (*Maria Stubbings (Deceased) Investigation Concerning the Actions of Essex Police in 2008*, IPCC, 20 May 2013). Marc Chivers had served a prison sentence for murdering a previous partner in Germany before he met Maria Stubbings (BBC News, 'Maria Stubbings Murder: IPCC Report Prompts Inquiry Call', 21 May 2013).

Damian Green also explained that:

> New clause 8 will enable additions to be made to the list of specified offences through secondary legislation, subject to the affirmative procedure. Offenders and offending change over time, and it is right that the legislative powers for managing such behaviour can also change, while retaining appropriate parliamentary oversight.
>
> (HC *Hansard*, 14 October 2013, col 476)

Diana Johnson (Labour MP for Kingston upon Hull North) said that the Opposition were "pleased to support this sensible new clause" (col 477). New clause 8 was passed without a division.

5.2 Other Amendments

Possession of Prohibited Written Material about Children

New clause 7, which was tabled by Sir Paul Beresford (Conservative MP for Mole Valley) and Paul Goggins (Labour MP for Wythenshawe and Sale East), sought to add written material to the list of "prohibited images of children" which a person may be prosecuted for possession of under subsection 62 of the Coroners and Justice Act 2009. Sir Paul Beresford explained that the list of images currently prohibited include photographs, drawings and computer-generated images. He suggested it was "ludicrous" that written materials were not included (HC *Hansard*, 14 October 2013, col 486).

For the Opposition, Diana Johnson said that the clause was "worth looking at" but expressed concern that "we need to be careful, because we do not want genuine literature that describes abuse in a totally acceptable way to be captured" (col 481). Sir Paul Beresford referred Ms Johnson to section 5 of his new clause which covered the context in which the written material occurs, and stated that written materials which were "not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal—may—be found not to be pornographic". This meant, he suggested, that "*Lolita*, for example, would be all right".

The Minister said that, because the new clause "touches on a number of sensitive issues" he could not commend it to the House. However, he sought to assure Sir Paul Beresford that the Government, assisted by the Child Exploitation and Online Protection Centre, would continue to seek evidence on this issue. Sir Paul Beresford did not press the new clause to a division.

6. Part 10: Forced Marriages

Clauses 107 to 109 in the Bill relate to the issue of forced marriages. Clause 107 would make the breach of a Forced Marriage Protection Order (FMPO) a criminal, rather than a civil, offence. Clause 107 would ensure the police always had a power to arrest those in breach of a FMPO, and would not have to rely on the victim applying to the civil court or the court having applied a power of arrest to the order. Subsection 5 of the clause would make the offence punishable by a maximum sentence of five years imprisonment. Clauses 108 and 109 would create a new criminal offence of "using violence, threats or any other form of coercion" to force a person into marriage without their "free and full consent" (*HL Bill 052–EN 2013–14, Explanatory Notes to the Bill*, 17 October 2013, para 283). It would also create a new criminal

offence of deceiving someone to leave the United Kingdom and travel to another country with the intention of subjecting the person to a forced marriage. Clause 108 of the Bill would introduce these offences within England and Wales. Clause 109 would extend this to Scotland.

6.1 Joint Committee on Human Rights

The Joint Committee on Human Rights said it "cautiously" accepted the clauses in the Bill, but believed the criminalisation of forced marriage should be backed by "careful implementation and monitoring". It also recommended that the Crown Prosecution Service develop a strategy for prosecution of forced marriage, and that the Government produce annual reports on the effectiveness of the changes proposed in the Bill (Joint Committee on Human Rights, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, 11 October 2013, HL Paper 56 of session 2013–14, para 89).

6.2 Government Amendments

Clause 109 was moved by the Government as an amendment to the Bill at report stage. Speaking to the new clause, and discussing the proposals in general, Norman Baker, Minister of State at the Home Office, explained:

> The new offence is an important part of our efforts to stamp out that appalling practice, and will send a clear message that it will not be tolerated. I am pleased the Scottish Government has also decided that forced marriage should be a criminal offence, and new clause 9 introduces a similar provision for Scotland. Breach of a forced marriage protection order is already a criminal offence in Scotland, so there is no need for a similar amendment to mirror clause 103 [now clause 107], which makes that the case in England and Wales.
>
> (HC *Hansard*, 15 October 2013, col 603)

Responding for the Opposition, Helen Jones noted that: "no forced marriage protection orders have been issued in Scotland since its current legislation came into force, and yet no one would seriously argue that there were no forced marriages last year" (col 603). She welcomed the proposals in the Bill, but also called for further work to be done to fully tackle the issue of forced marriages:

> ...legislation by itself is not enough. We need to put in place a system that allows people to report when they are at risk of forced marriage, that encourages them to report, and that offers them the support they need. Currently, that is sadly lacking. For example, much more work needs to be done in schools, so that teachers are alert to the signs that a pupil might be being forced into marriage. Young people need to be educated so that, if they or one of their friends are at risk, they know where to seek help.
>
> I therefore ask the Minister to say what the Government are doing to raise awareness of forced marriage. Where is the money to fund such a campaign? In 2012, the forced marriage unit said that many agencies, whether those dealing with children or with vulnerable adults, still did not recognise forced marriage as a safeguarding issue. That is totally unacceptable. There is evidence that police throughout the UK recognise the need to deal with forced marriage proactively, but other agencies—not just schools, but colleges and health organisations—still have a long way to go. I hope Ministers discuss

the measures needed with the Scottish Government, so that we can develop a common approach throughout these islands.

(col 603–04)

7. Part 11: Policing Reforms

7.1 Joint Committee on Human Rights

Port and Border Controls

Clause 132 and Schedule 8 of the Bill would make a number of changes to Schedule 7 of the Terrorism Act 2000, which would give powers to police, immigration officers and designated custom officers to stop and question travellers at ports and airports to ascertain whether they are involved in terrorism. The powers under Schedule 7 do not require prior authorisation and there is no requirement for an officer to have reasonable suspicion of the person's involvement in terrorism. Further information on recent developments relating to Schedule 7 can be found in the House of Commons Library Note, *Schedule 7 of the Terrorism Act 2000* (11 October 2013, SN/HA/6742).

The Government has published a factsheet, *Anti-social Behaviour, Crime and Policing Bill: Port and Border Controls* (GOV.UK, October 2013), setting out their proposed changes to Schedule 7. In summary, the proposals would:

- Reduce the maximum period of examination from nine to six hours;
- Extend the right to have a person informed of detention and to consult a solicitor, with all examinations lasting longer than an hour deemed "formal detentions" for this purpose;
- Introduce a review process (to be set out in a statutory Code of Practice) so that detention under Schedule 7 must be periodically reviewed by a review officer;
- Amend the legislation so that "a police officer will need reasonable grounds to suspect that an individual is concealing something connected to the commission, preparation or instigation of terrorism and seek authority from a more senior officer before undertaking a strip search" (para 17);
- Repeal the power to seek "intimate samples" (eg blood or semen);
- Make "express provision for making and retaining copies of anything obtained in an examination. The copy may be retained for as long as is necessary for the purpose of determining whether a person is involved in the commission, instigation or preparation of terrorism, or for use as evidence in criminal proceedings or in connection with deportation proceedings" (para 19);

The Bill would also require the Government to publish a revised Code of Practice setting out guidance for the use of the powers and to make provision for any training to be undertaken by officers involved in the process.

The Joint Committee on Human Rights welcomed a number of the Government proposals contained within the Bill, which it viewed as an improvement to the powers in Schedule 7. The Committee stated that some of the changes would "narrow the very wide scope of the powers and so reduce the potential for the powers to be found incompatible with Convention rights" (Joint Committee on Human Rights, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing*

Bill, 11 October 2013, HL Paper 56 of session 2013–14, para 103). However, despite this, the Committee expressed ongoing reservations regarding the operation of many aspects of Schedule 7, and suggested that a number of further amendments should be made to the Bill.

One of the concerns raised was in relation to the absence of the need for "reasonable suspicion" when utilising many of the powers under the Schedule. The Committee stated:

> The examining officer will be required to have "reasonable grounds to suspect" that the person is concealing something which may evidence that they are a terrorist before a strip search can be carried out. However, this is just one of a number of highly intrusive powers which will continue to be available under the broadly worded powers in the reformed Schedule 7. In addition to the power to stop, question and search the luggage of travellers, examining officers will still have the power, without reasonable suspicion, to:
>
> - detain for up to 6 hours;
> - access, search, seize, copy and retain all the information on personal electronic devices such as mobile phones, laptops and tablets;
> - take and retain DNA samples and fingerprints without consent.
>
> We have considered carefully whether the Government has demonstrated the necessity for these more intrusive powers being exercisable without reasonable suspicion, and we are not persuaded that they have. In our view, the legal framework should distinguish between powers which can be exercised without reasonable suspicion, such as the power to stop, question, request documentation, and physically search persons and property, and more intrusive powers such as detention, strip searching, searching the contents of personal electronic devices, the taking of biometric samples, seizure and retention of property, including personal information on personal electronic devices. In our view, the latter set of more intrusive powers should be exercisable only if the examining officer reasonably suspects that the person is or has been involved in terrorism.
>
> (p 36)

The Committee recommended that the Bill be amended so that a reasonable suspicion threshold was introduced at the point where a person was "formally detained". It recommended similar provisions be applied when accessing information from electronic devices.

The Committee also recommended that the Government's proposals to set intervals for the periodic review of detention should form part of the Bill, rather than being implemented through the proposed Code of Practice (p 42). It suggested amending the Bill to ensure the first review of detention be held "as soon as is reasonably practicable after the time of the person's detention and not more than one hour from that time", with further reviews taking place within two hour intervals (p 42). The Committee also recommended the Bill be amended to require all Schedule 7 examinations at ports to be subject to audio and video recording (p 41). Currently, only those interviews taking place at a police station would need to be recorded.

Amendments Debated

The amendments suggested by the Joint Committee were tabled at the report stage by Simon Hughes (Liberal Democrat MP for Bermondsey and Old Southwark). As a member of the Committee, he stated that he did so not just on his own behalf, but also on behalf of the Committee. He reminded MPs that the Committee believed it was "very important that legislation distinguishes between the conventional powers to stop, to search, and to question, which can be exercised without reasonable suspicion, and more intrusive powers, such as those of detaining and taking biometric samples" (HC *Hansard*, 15 October 2013, col 632). Consequently the Joint Committee had recommended "introducing a reasonable suspicion requirement for the more intrusive powers under schedule 7". He added, "I know that some argue that schedule 7 should go altogether. That is not the position of the Joint Committee nor, coincidentally, is it the position of my party, which debated this at our conference in Glasgow a few weeks ago and took a view that there should be amendment broadly along the lines set out by the Joint Committee" (col 632).

Speaking to a set of additional amendments and clauses (including the repeal of Schedule 7 altogether, annual reviews, a five year sunset clause and changes to some of the Schedule 7 powers), Dr Julian Huppert (Liberal Democrat MP for Cambridge), stated that there were "many concerns about schedule 7" and there were a number of options available to remedy them:

> One option would be to get rid of it. There are alternative powers in section 47A. I hope the Minister will comment on what that is. There are other options that we have looked at. I would like to see us committed to David Anderson QC's proposals to limit the scope of schedule 7. The Government should introduce provisions to that effect in the other place.
>
> I have also proposed implementing proposals that my party made at our conference. They include getting rid of the principle that authorities can stop people without any suspicion at all, restoring the right to silence for those who are detained, and questioning to be recorded from start to finish. Restoring confidence and the basic principles of the rule of law to that process and making sure that data collected are not used inappropriately should be important in the case of David Miranda. I also propose a statutory principle of annual review and a sunset clause. The Government should look at these proposals and I hope they will take advantage of the process to make sure that that happens. I am glad that that is supported by the Joint Committee on Human Rights.
>
> (col 633)

Responding for the Government, Damian Green, Minister of State for the Home Office, stated that any calls to change the legislation should first await the results of an investigation into the exercise of these powers following the case of David Miranda by David Anderson QC, the Independent Reviewer of Terrorism Legislation (col 634). Mr Green continued: "the Government, sensibly, will want to examine carefully any recommendations he makes in his report, and I am sure that the Joint Committee on Human Rights and my right hon Friend the Member for Bermondsey and Old Southwark will want to do likewise. It would be wrong to pre-empt that report or commit now to implementing its recommendations. It is for the independent reviewer to make recommendations, but it is for the Government and Parliament to decide what legislative changes should flow from them". The Minister also stated

that any proposed changes would be made through primary legislation.

The amendments were not called to a vote.

7.2 Government Amendments

Police Community Support Officer Powers

During committee stage proceedings, Stephen Barclay (Conservative MP for North East Cambridgeshire) introduced a new clause to extend the powers of Police Community Support Officers (PCSOs) (House of Commons Public Bill Committee, 16 July 2013, col 525). This would have allowed PCSOs to stop cyclists who were not using cycle lights, and would have given them limited powers to search for drugs.

Although the clause was subsequently withdrawn, in his response, Damian Green agreed that before report stage he would look into the possibility of extending the powers to PCSOs (col 525). New clause 11 (now clause 135 of the Bill), tabled by the Government, would provide PCSOs the power to issue a fixed penalty notice for a cycle light offence. However, Damian Green explained that the Government would not, at this time, be extending PCSOs powers to allow for drug searches: "the power to search for controlled dugs is more complicated. We do need to keep a clear distinction between the role of a PCSO and that of a constable. We need to be mindful of the risk that new powers could increase the element of confrontation in the role of PCSOs and detract from their presence on the streets. It is vital that we get this right and, accordingly, we are still considering whether such an expansion of powers is appropriate" (HC *Hansard*, 15 October 2013, col 626).

The clause was also supported by Dr Julian Huppert MP, and was added to the Bill without division.

Volunteers

Another new clause tabled by the Government at the report stage related to the setting of fees for criminal record certificates, recommending cross-subsidisation to take into account the lack of fees charged to volunteers. This proposal was further explained by Damian Green:

> New clause 10 concerns fees charged by the Disclosure and Barring Service. It is Government policy—I imagine and hope that this is supported by hon. Members on both sides of the House—to encourage volunteering in our communities. To that end, it has long been the case that criminal record checks, where needed, such as in respect of work with children, are provided free of charge to volunteers. The new clause puts on a clear statutory basis the ability of the Home Secretary to take into account the cost of providing criminal record certificates and other services covered by part V of the Police Act 1997 when determining the fees charged for those services.
>
> (HC *Hansard,* 15 October 2013, cols 605–6)

The proposal was agreed to without division, and now forms clause 134 of the Bill.

7.3 Opposition Amendments

Jack Dromey, Shadow Home Office Minister, spoke to a potential new clause to ensure all long-term undercover police operations would require independent authorisation. Referencing the cases of Stephen Lawrence and of the infiltration of environmental protest groups performed by the police officer, Mark Kennedy, Mr Dromey stated:

> We have tabled new clause 27 to ensure that all long-term undercover operations would be signed off by a relevant independent body, to ensure that this important tool is used proportionately, sensitively and only when necessary, and with clear and improved accountability arrangements...
>
> On other kinds of police operation a sign-off is necessary, but the oversight of the existing arrangements in this regard is inadequate. That cannot be right, so our new clause would help to ensure that unacceptable operations such as the alleged smear campaign against the Lawrence family cannot take place and that each operation undertaken is accountable, justifiable and in the wider public interest.
>
> (HC *Hansard*, 15 October 2013, col 628)

Responding to the proposal, Damian Green said that he had "announced to the Home Affairs Committee in June our intention to legislate to enhance oversight of undercover law enforcement officer deployments. This can be done through secondary legislation and I will lay the appropriate order before the House shortly" (col 634). He then set out some of the changes that would be forthcoming: "law enforcement agencies will need to notify the Surveillance Commissioners, all retired senior judges, at the outset of undercover operations and get their prior approval for every deployment that lasts longer than 12 months". In addition, he explained, the rank of the authorising officer would be increased and "deployments of undercover law enforcement officers will be authorised at assistant chief constable level or equivalent. Deployments lasting longer than 12 months will be authorised by a chief constable or equivalent. The rank of an authorising officer for emergency deployments will increase from inspector to superintendent level or equivalent". The potential new clause was not called to a vote and therefore does not stand part of the Bill.

Ann Coffey (Labour MP for Stockport), tabled new clause 34 to make "the use of racist or other abusive language in a dwelling house an offence when it was directed at a policeman". Ms Coffey stated that "under section 4A of the Public Order Act 1986, no offence is committed if the 'harassment, alarm or distress' takes place inside a dwelling house—that is, somebody's house or flat. I was surprised by that because, like many people, I was under the impression that racist abuse was an offence wherever it was committed. However, this is not the case. I was shocked to hear that somebody could not be charged with the offence because it took place in a dwelling against a police officer pursuing his duty" (col 631). The potential new clause was not called to a vote and therefore does not stand part of the Bill.

7.4 Other Issues: Joint Committee on Human Rights

Clause 130 of the Bill seeks to amend the Police and Criminal Evidence Act 1984 (PACE) so that samples taken from individuals (such as cheek swabs for DNA, blood, hair and urine) which may be needed in court proceedings will be governed by the Criminal Procedure and

Investigations Act 1996 (CPIA) in the same way as other types of evidence. Without this change this type of evidence would currently have to be destroyed within six months

The Joint Committee on Human Rights expressed some misgivings regarding the clause, but also stated that "we understand the importance of ensuring effective criminal proceedings, and we note the practical considerations that there may be some situations where samples are required to be retained for longer than six months" (Joint Committee on Human Rights, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, 11 October 2013, HL Paper 56 of session 2013–14, 11 October 2013, para 183). The Committee, taking into account the safeguards contained within the clause (eg samples can only be used in regards to the offence for which they were taken and must be destroyed when the relevant proceedings are concluded), still believed the potential application could be broad, with a risk that "all samples collected may be retained pending an investigation as a precautionary measure" (para 186). Therefore, it recommended the addition of two further safeguards: first, that a "robust process is established to ensure that each sample is considered and a determination is made as to whether or not it is required for the purposes of the CPIA. If it is not required, it should be destroyed within the PACE time limits" (para 188); and second, that an independent audit regime be administered to monitor the retention of samples under CPIA.

8. Part 12: Extradition

Clauses 136 to 150 of the Bill would make a series of amendments to the Extradition Act 2003. The Government has produced a factsheet detailing their proposals (GOV.UK, *Anti-social Behaviour, Crime and Policing Bill: Fact Sheet: Extradition*, October 2013). The proposed changes were welcomed by the Joint Committee on Human Rights:

> We welcome as human rights enhancing measures the Government's introduction of an express "proportionality" requirement into the Extradition Act in order to ensure that extradition only happens when the offence is serious enough to justify it, and the bar on extradition if there is no prosecution decision in the requesting state, which should help to prevent people from spending long periods in pre-trial detention following their extradition.
>
> (*Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, 11 October 2013, HL Paper 56 of session 2013–14, para 191)

In brief, they include:

- A removal of the obligation to abide by a fixed time limit when setting a date for an extradition hearing in certain circumstances;
- When a person is wanted to stand trial, extradition to be barred unless a state is ready to charge the individual and stage the trial (eg to avoid long periods of pre-trial detention following extradition);
- A new proportionately test to "ensure that extradition only occurs where the judge considers extradition would be proportionate";
- Changes to the right of appeal;
- An option for "a requested person in EAW cases and the issuing State to contact each other, if they both consent, before extradition takes place. In particular, it will allow for the temporary transfer of the person to the issuing State and also

> for the person to speak with the authorities in that State whilst he or she remains in the UK (for example, by video link)".

(GOV.UK, *Anti-social Behaviour, Crime and Policing Bill: Fact sheet: Extradition*, October 2013)

These clauses were not debated or amended at report stage in the House of Commons.

9. Part 13: Criminal Justice and Court Reform

9.1 Joint Committee on Human Rights

Compensation for Miscarriages of Justice

The clause from Part 13 that attracted the most discussion during the report stage of this Bill was clause 143 (now clause 151). This clause would insert a new subsection into the Criminal Justice Act 1988 defining what constitutes a "miscarriage of justice". Currently, the Criminal Justice Act 1988 "requires the Secretary of State to pay compensation where a person's conviction for a criminal offence has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice" (*HL Bill 052–EN 2013–14, Explanatory Notes to the Bill*, 17 October 2013, para 441). The definition proposed in the new clause for what may constitute a miscarriage of justice is "if and only if the new or newly discovered fact shows beyond reasonable doubt that the person was innocent of the offence" (clause 151 (1)).

In their report on the Bill, the Joint Committee on Human Rights stated that "in our view, requiring proof of innocence beyond reasonable doubt as a condition of obtaining compensation for wrongful conviction is incompatible with the presumption of innocence, which is protected by both the common law and Article 6(2) European Convention on Human Rights" The Committee stated it recommended "that clause 143 be deleted from the Bill because it is on its face incompatible with the Convention". In support of this view, the Joint Committee referred to the definition of "miscarriage of justice" developed by the cases of *Adams* and *Ali* (*R v Adams [2011] UKSC 18* and *R (Ali and others) v Secretary of State for Justice [2013] EWHC 72 (Admin)*). It stated that, following these cases, compensation for miscarriages of justice were understood to be awarded where a new (or newly discovered) fact showed:

a. the applicant to be "clearly innocent"; or
b. where claimants "established, beyond reasonable doubt, that no reasonable jury (or magistrates) properly directed as to the law, could convict on the evidence now to be considered"

> (Joint Committee on Human Rights, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, 11 October 2013, HL Paper 56 of session 2013–14, pp 43–44)

The Committee stated that the proposed definition in the Bill would reverse these decisions. This was acknowledged by the Damian Green, Minister of State for the Home Office, during Public Bill Committee:

> Since 1988, there has been no settled meaning of what constitutes a miscarriage of justice for these purposes. Between 2008 and May 2011, the test applied was that of clear innocence. That was based on the judgment of Lord Steyn in the case of Mullen.

> The test was comprehensible to applicants and straightforward for the Secretary of State to apply. However, recent decisions by the courts—most notably by the Supreme Court in Adams, in May 2011—have exposed conflicting interpretations of the term "miscarriage of justice". Therefore... the clause will restore the definition of a miscarriage of justice to the pre-Adams position. It will go back to the position between 2008 and 2011, which was comprehensible for defendants and straightforward for Secretaries of State to apply. We hope that the clause provides greater clarity and certainty about eligibility for state-funded compensation.
>
> (House of Commons Public Bill Committee, 11 July 2013, col 463)

The Committee's report also discussed the Government's view that the proposal would not interfere with the presumption of innocence right provided by Article 6(2) ECHR. The Committee outlined the Government's reasoning as:

> Article 6(2) does not apply to an application for compensation for a miscarriage of justice. In the Government's view, Article 6(2) applies to criminal proceedings, or to proceedings closely linked to them, and it is unlikely that a court would hold that the Secretary of State's determination of an application for compensation for a miscarriage of justice would be sufficiently closely linked to the original criminal proceedings for Article 6(2) to apply. Indeed, the Government contended that the Supreme Court has already so held, citing those parts of the judgments in Adams in which the Supreme Court held that the presumption of innocence is not infringed by the statutory scheme in s 133 Criminal Justice Act 1988.
>
> (Joint Committee on Human Rights, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill*, 11 October 2013, HL Paper 56 of session 2013–14, para 151).

The Committee again sought the Government's view on the matter following a judgment in the European Court of Human Rights case, *Allen v UK*, which it claimed "considered and rejected" the Government's argument. In its response, which the Committee received on 7 October 2013 and referred to in its report, Damian Green wrote that the Government disagreed with the Committee's interpretation on a number of grounds:

> The Government argues that the Court cannot be taken to have determined the compatibility of the proposed new test with the presumption of innocence in Article 6(2) because that was not the exact issue that was before the Court. It argues that the test of which the Court clearly disapproved in Allen, that the applicant for compensation must be able to demonstrate their innocence, is not the same as the test proposed by the amendment in clause 143 of the Bill: the effect of the provision in the Bill, it says, is not that the applicant has to "demonstrate [their] innocence", but that the Secretary of State has to be satisfied that the new fact on which the conviction was quashed shows clearly that the applicant did not commit the offence for which he or she had been convicted.
>
> (para 155)

In further support of their recommendation for the clause to be removed, the Committee claimed that it was not expected that the Government would make "significant" savings under the new proposal (para 158).

Amendments Debated

Two proposed amendments were discussed at report stage in connection with clause 151. One, supported by the Chairman of the Joint Committee on Human Rights, Dr Hywel Francis (Labour MP for Aberavon), and by Simon Hughes (Liberal Democrat MP for Bermondsey and Old Southwark), proposed to remove the clause from the Bill entirely. The other, tabled by Emily Thornberry, the Shadow Attorney General, Jeremy Corbyn (Labour MP for Islington North) and Mark Durkan (Social Democratic and Labour Party MP for Foyle), proposed that the definition for miscarriage of justice in the clause instead read: "if and only if the new or newly discovered fact shows beyond reasonable doubt that no reasonable court properly directed as to the law, could convict on the evidence now to be considered" (amendment 95).

In his speech opposing the Bill's proposed new definition, Jack Dromey, Shadow Home Office Minister, expressed concern that it would narrow the field for those eligible for compensation. He welcomed the proposed amendment from Mr Corbyn to change the wording of the clause:

> At the heart of our legal system lies the principle of innocent until proved guilty, and rightly so. However, Government changes to redefine the compensation test, limiting it to, "if and only if the new or newly discovered fact shows beyond reasonable doubt that the person was innocent of the offence", seem to fly in the face of this age-old principle. Under the Government's new narrowed compensation tests, none of the Birmingham Six or Guildford Four would have been entitled to payments. Billy Power, one of the six men wrongly convicted in the 1970s for the Birmingham pub bombings, has warned that the changes would mean that "the standard presumption of innocence would be abolished".
>
> (HC *Hansard*, 15 October 2013, col 608)

Speaking for the Liberal Democrats, Dr Julian Huppert believed the clause to be an issue worthy of further consideration, particularly during the Bill's proceedings in the House of Lords:

> I am not a lawyer, but my assessment is that the Joint Committee on Human Rights approach is probably a cleaner one, but both amendments aim to achieve exactly the same thing. I agree with the shadow Minister that we should flag this up as a big issue, but leave it to the other place to find the right answer. By then, I hope that the Government will have reflected on it and accepted the principle that it is incredibly hard for anybody absolutely to prove their innocence. That is a really tough threshold. I hope that the Minister will reflect on that and that we can strike a better balance in the other place.
>
> (col 610)

Speaking to his amendment (to modify the wording of the clause), Jeremy Corbyn asked the Minister to "provide us with good reasons why he is introducing a provision that we, along with Liberty and many others, believe will fundamentally undermine much of what has been achieved through the Criminal Cases Review Commission and by the ability to overturn miscarriages of justice" (col 611). He also agreed that the matter may be of close interest to the House of Lords during their consideration of the Bill.

Speaking to the amendment based on the recommendations of the Joint Committee on Human Rights, Simon Hughes addressed the differences between the two amendments, and outlined his reasons for preferring the clause to be omitted entirely:

> The Joint Committee's collective view was that we would do better to remove clause 143 as a whole—I have been here long enough to remember and to have supported numerous campaigns to deal with miscarriages of justice, many of them very unpopular for the reasons we have all identified. Having looked at the issue again, I honestly believe that the removal of the clause would be the better way to deal with the problem.
>
> (cols 612–3)

Although, confirming that he would not be pressing the issue to a vote, Mr Hughes, called on the Minister to "be helpful and confirm that the principle of the Government's proposal—that the provision should apply 'if and only if the new or newly discovered fact shows beyond reasonable doubt that the person was innocent'—will be changed because that is not the test that should be applied to deal with miscarriages of justice" (col 613). Following Simon Hughes, Mark Durkan expressed concerns over the operation of the Government's proposed definition, and the ideological message it could invoke:

> Clause 143 is pernicious. It seeks completely to reload the basic, long-standing presumption of innocence until proven guilty. It basically provides qualification of the notion of a miscarriage of justice, suggesting that when someone has suffered what most people would call a miscarriage of justice and when their conviction has, on subsequent judicial appraisal of relevant evidence, been overturned, they should still not be able to proclaim their innocence. There is an insinuation that if they were previously convicted, they are innocent and entitled to compensation as innocent only where they can prove that they are innocent "beyond reasonable doubt".
>
> For the people affected, many of their convictions will have taken place many years previously and they will be in no position to marshal all the evidence that could necessarily prove their innocence beyond what someone would call a reasonable doubt. Nobody has to meet that criterion at their proper and due initial trial, so why should anybody have to do that to receive compensation after a conviction has been overturned? Compensation is not the only issue here because it is not the monetary value that motivates the fundamental objections to this proposal.
>
> (cols 613–4)

The clause was also opposed by Hywel Williams (Plaid Cymru MP for Arfon), who suggested he would support either amendment tabled against it, and by Emily Thornberry, who highlighted the lack of support for the clause during the debate, she claimed the recent judgments surrounding the subject demonstrated that the law was already "clear". Thornberry also referred to the anticipated savings outlined in the Government's Impact Assessment:

> The Bill's own impact assessment reveals the expected savings to be negligible. According to that MOJ assessment—the Minister looks puzzled; it is on page 4—the effect of the clause will be to reduce by two per annum the number of judicial reviews of Secretary of State decisions, which it estimates will save around £100,000 per annum. Therefore, for the sake of saving £100,000 per annum, we will be trading in the centuries-old principle of the presumption of innocence. The courts have rejected an

> innocence test not out of some quibbling legalistic technicality. They have rejected it because it is a cornerstone of a fair justice system. We have a fair justice system and a free society where it is for the state to prove guilt, not for the individual to prove innocence.
>
> (cols 617–8)

Responding for the Government, Damian Green reiterated the Government's desire to provide a clearer definition of the term "miscarriage of justice". Mr Green claimed that "many disappointed applicants seek judicial review of the Secretary of State's decision, because they do not fully understand its basis or because the case law is unclear. In practice, very few such claims succeed, and they place a significant burden on the applicant involved and on the taxpayers who have to fund them. Therefore, the purpose of clause 143 is to restore the law to the pre-2011 position and to make the definition of a miscarriage of justice more consistent, clearer and easier for the public and potential applicants to understand" (col 619). He went on to defend the proposed clause against accusations that it is incompatible with the presumption of innocence, or with the European Convention on Human Rights:

> Of course the Government recognise the fundamental constitutional importance of the presumption of innocence and we would not introduce legislation that cuts across that. We consider that article 14.6 of the International Covenant on Civil and Political Rights, to which section 133 of the Criminal Justice Act 1988 gives effect, provides only for compensation to be paid to those persons whose convictions have been overturned because a new fact shows that they did not commit the offence. In the Government's view, that is the proper definition of a miscarriage of justice. Compensation should not be payable where the basis for the conviction being overturned does not demonstrate the applicant's innocence...
>
> Under clause 143, there is no requirement for a person applying for compensation for a miscarriage of justice to "prove" their innocence. What is determinative is the fact on which the conviction was overturned. So, for example, if a person's conviction is overturned because DNA evidence comes to light showing they could not have committed the offence, it is only right that they should be compensated. Following the coming into force of clause 143, they will, as now, be eligible for compensation.
>
> The proposed new test for determining eligibility for compensation does not require the applicant to demonstrate his or her innocence; it focuses on the new fact. When the Grand Chamber of the European Court of Human Rights recently ruled in the case of Allen that the presumption of innocence is engaged when deciding whether to pay compensation for a miscarriage of justice, the Court made it clear that states were entitled to conclude that more than an acquittal was required. This clause will enable us to say, for the first time in statute, what beyond an acquittal is necessary for there to have been a miscarriage of justice. It introduces for the first time some certainty in the process...
>
> We are returning the law to where it was in 2008 under the previous Government, where following the decision of the House of Lords in Mullen, compensation was held to be payable only where a person could be shown not to have committed, or to have been demonstrably innocent of, the offence for which he was convicted.
>
> (cols 619–621)

The amendments were not pressed to a vote and the Government's original clause 143 (now clause 151) remains unamended.

9.2 Government Amendments

Court Fees

In a letter to Jack Dromey the Shadow Home Minister dated 10 October 2013, Damian Green Minister for Policing and Criminal Justice, outlined the Government's intentions to replace a placeholder clause in the Bill with full details of a new clause related to the setting of fees for courts, tribunals and the Public Guardian. This new clause would allow the Lord Chancellor to set fees that exceed the costs of the service, with the amount raised being put towards the financing of the courts and tribunals service. The letter also stated that "in exercising his powers under this provision in relation to the courts, the Lord Chancellor is required to have regard to the principle that access to the courts must not be denied, and to maintaining the attractiveness of the legal services sector when compared with competitors".

Speaking to the new clause during the report stage, Damian Green stated that:

> As new clause 28 makes clear, the purpose of enhanced fees is to finance an efficient and effective court system. This change to the way that fees are set will help to ensure that courts are properly resourced to deliver modern, efficient services so that access to justice is protected. The proposed legislation provides a general power; specific fees would be increased through secondary legislation. When a specific fee or fees are set at an enhanced level for the first time, the order will be subject to the affirmative resolution procedure—there will be full debate in both Houses. Any subsequent changes to those fees will be subject to the negative procedure.
>
> We will shortly be consulting on proposals to achieve full cost recovery, less remissions, in the civil and family courts. However, even on this basis the running of the court system in England and Wales costs more than £1 billion a year, so we need to go further in reducing the burden on taxpayers. We believe it is fair and proportionate that those who use the courts and can afford to do so should make a greater contribution to their overall funding. That is why we are bringing forward this provision to allow fees to be set above cost in some circumstances.
>
> (HC *Hansard*, 15 October 2013, cols 606–607)

Responding for the Opposition, Jack Dromey, the Shadow Home Office Minister, explained that he did not oppose the principle of the proposals, but would "scrutinise carefully any orders brought forward under the proposed legislation to ensure that any charges are reasonable, and that the interests of the administration of justice are best served" (col 608).

Julian Huppert, welcomed the proposals, although he also emphasised the importance of continuing to ensure proper access to justice for all: "we need to ensure, however, that people not in a position to pay are not hit. It should still be possible for people without money to access the courts, and in that, the fees system could help, because by taking more money from those who have lots of it, we could subsidise those who do not. I note that there is broad support for the idea that any money made should be reinvested in improving our court system

and ensuring that it works well. Broadly, therefore, I am pleased to see the new clause" (col 610).
The new clause was agreed to without division and now forms clause 155 of the Bill.

Other Amendments Passed to Clauses Forming Part 13

Part 13 also contains clauses that would:

- Amend the Serious Organised Crime and Police Act 2003 to extend the possibility of protection arrangements for anyone potentially at risk of a person's possible or actual criminal conduct (clause 153);
- Make changes to the treatment of Victim Surcharges (clause 154);
- Enable minor offences of shoplifting (eg those where the value of goods is below £200); to be triable as summary only (clause 152);

In regards to the latter of these clauses, the Government moved some additional amendments to the proposals during report stage. Explaining the Government amendments, Damian Green stated that:

> On low-value shop theft, clause 144 is intended to improve the management through the courts of the high volume of shop thefts involving goods to the value of £200 or less by enabling them to benefit from procedures applying to summary only cases. In particular, offenders will be able to plead guilty by post and, in turn, the police will be able to prosecute suitable cases directly as "specified proceedings", without the need to involve the Crown Prosecution Service. That will simplify procedures and enable swifter justice in such cases. Although clause 144 makes low-value shop theft "summary only", it preserves the defendant's right to be tried at the Crown Court, through subsection (2) of new section 22A of the Magistrates' Courts Act 1980.
>
> ...Government amendments 61, 69 and 73 are consequential on those changes. Amendment 61 will ensure that a range of powers in the Police and Criminal Evidence Act 1984 available to the police and others to deal with indictable offences, which currently includes all theft from shops, will remain available to deal with the theft of goods of a value of £200 or less. That means that magistrates will still be able to issue search warrants, the police will be able to enter premises to search for evidence or arrest suspects, and store detectives will still be able to arrest suspects. I hope that that provides some reassurance to some retailers that I know have been anxious about this.
>
> (HC *Hansard*, 15 October 2013, col 627)

Mr Green rejected a proposed amendment to remove a defendant's right to be tried at a Crown Court trial. This was tabled by Philip Davies (Conservative MP for Shipley), to which the Minister responded:

> The Government have been clear that they will defend the right to trial by jury; it is an historic freedom that is rightly protected by the coalition's programme for government. Although the statistics suggest that the right is not often exercised in cases of shop theft—last year, only 700 out of 77,000 cases went to the Crown Court—we see no

> reason to depart from that general principle. In this instance, I urge my hon Friend to reconsider his amendment.
>
> (col 627)

The Government amendments were agreed without division.

9.3 Opposition Amendments

Jack Dromey, the Shadow Home Office Minister, moved new clause 26 to create a new offence of assaulting a worker in a public facing role. Speaking to the clause, Mr Dromey stated that:

> Last year alone, 4 percent of retail staff were attacked at work and 34 percent were threatened with violence. Our new clause seeks to address a discrepancy in sentencing policy regarding people who suffer serious assaults during the course of their daily employment. At present, sentencing guidelines are explicit that an aggravating factor in determining a sentence for common assault on a public-facing worker should be whether the offence was committed against an individual working in the public sector or providing a service to the public. Whereas assaulting a police constable while they are discharging their duty is a separate offence that carries an additional sentence, an attack on those in public sector employment, such as nurses, is an aggravated offence. However, that consideration does not apply in respect of the millions of hard-working people in our shops, petrol stations and restaurants. That leaves the judge to decide under which of the three categories of harm and culpability, the 19 aggravating factors and the 11 factors reducing the seriousness, assaulting a staff member falls. That is why there is real concern, particularly but not exclusively in the retail sector, about the level of attacks on employees and the sentencing guidelines—or lack thereof.
>
> (cols 628–9)

David Davies (Conservative MP for Monmouth) spoke to support the proposals: "I absolutely agree with the new clause and told my Whips that I would support it and vote for it, if it came to a vote" (col 630).

Responding for the Government, Damian Green acknowledged the sentiment behind the proposals, but believed that the problem was already adequately covered by current legislation and sentencing guidelines:

> The work of a great number of people, whether within the public or the private sector, brings them into face-to-face contact with members of the public, and we know that some of these people suffer violence in the course of their jobs. It is essential that we are satisfied that the law adequately addresses this issue. However, I do not think the new clause is necessary to achieve that. There is already a range of offences that have general application and that criminalise violent behaviour and they would already apply in the context envisaged by the clause. Sentencing guidelines specify that where an assault is committed against someone providing a service to the public, whether in the public or private sector, this is an aggravating factor and so could well result in a higher sentence within the current maximum.
>
> (col 634)

The clause was put to a division and was defeated by 286 votes to 224 (col 636).

Jack Dromey, the Shadow Home Office Minister, also spoke to new clause 16 in relation to the control of new psychoactive substances (commonly referred to as legal highs). The clause proposed to introduce a new order to prohibit the supply of synthetic psychoactive substances, and a new offence for breach of the order. He explained that:

> We need to ensure that anyone who uses a legal high knows the effect and that there is proper regulation to ensure that we do not have legal highs that lead to a high number of deaths. There were 29 such deaths in 2011 and 52 in 2012. All the indications suggest that that figure is growing.
>
> We have proposed the new clause because the number of new psychoactive substances is on the rise. It is estimated that more than 500,000 people, predominantly young people, use them and there is profoundly worrying research, including from the European Monitoring Centre for Drugs and Drug Addiction, on their impact. Our country is almost at the top of the league in the European Union and it is the second biggest market in the world, not just because of the online operators but because of the hundreds of high-street legal high sellers.
>
> (cols 629–30)

The clause was not called to a vote, and was not spoken to by other Members during the debate. However, the issue had also been raised during the committee proceedings (see p 22 of the House of Commons Library Note, *Anti-social Behaviour, Crime and Policing Bill 2013–14: Debate in Parliament*, 10 October 2013, SN06639).

10. Third Reading

Following completion of the report stage, Damian Green Minister for Policing and Criminal Justice moved that the Bill be read a third time. He told MPs that the Bill had been improved by the scrutiny it had received in the House of Commons. In particular he singled out the new clause added to the Bill with regard to child sexual exploitation, which he said followed the work done by Nicola Blackwood, which would "simplify and strengthen the current powers available to the police, rebalancing the scales of justice in favour of children and vulnerable adults" (HC *Hansard*, 15 October 2013, cols 689). The Bill's anti-social behaviour provisions did away with "the complex and bureaucratic array of powers that put unnecessary obstacles in the way of front-line professionals taking fast and effective action to protect vulnerable people and communities". The Bill put "the victim at the heart of the response to anti-social behaviour" through out-of-court disposals and the availability of the community trigger, which would "give victims the power to demand a case review". The Minister told MPs that he hoped that following its rejection at report stage, MPs would no longer pursue the issue of dog control orders and urged all stakeholders to now work together to deliver the "outcomes we all want" (col 691). The David Miranda case had, he continued, restated the need for the changes the Government were making to Schedule 7 of the Terrorism Act 2000. It was right, he explained, that "the independent reviewer of terrorism legislation, David Anderson QC, has decided to investigate and report on the exercise of the powers in Mr Miranda's case. The Government will carefully consider his report when it is received". The changes the Government sought were "in line with the Government's continuing commitment to ensure that respect for individual freedoms is balanced appropriately and carefully against the need to reduce the threat of terrorism to

the British public and British interests overseas". In terms of extradition, Mr Green said that the new proportionality bar would "prevent people being extradited for trivial offences" and introduced "a new bar to extradition where the prosecuting authorities in the requesting state have not yet taken a decision to charge and try the accused. That will stop extradited persons languishing in a foreign jail while an investigation takes place". He added that the Government would "amend the Extradition Act 2003 so that a British citizen cannot be extradited for conduct that is not a crime in this country". Closing his remarks, Mr Green stated:

> This is a significant piece of legislation, one much enhanced as it has made its way through the House. It will help us to cut crime further, to protect the public and to extend the modernisation of the police.
>
> (cols 693)

David Hanson (Labour MP for Delyn) spoke for the Opposition. He said that the third reading was about "what is in the Bill, not what might have been" and so reminded MPs of the aspects of the Bill his party supported. He said that the Opposition supported the "instigation of the College of Policing", the measures with regard to firearms, the extension of the role of the Independent Police Complaints Commission and the "measures on terrorism and on terrorists travelling abroad and the long-overdue measures on forced marriage, which, in my view and that of the Committee, will strengthen the legal basis for tackling this immensely challenging problem" (col 694). He said he welcomed the new clause on sexual harm prevention measures, the provisions for witness protection and the policing pay review body. The measures for dangerous dogs though could have gone further, he added. There were also elements in the Bill that the Opposition broadly supported, but still thought required improvements. He remained concerned about the new low-value theft threshold the Bill would introduce. Although the Opposition would not oppose the Bill receiving its third reading he said he hoped that the House of Lords would look again "at bringing forward measures to tackle covert policing, to protect people from assaults at work and further to reduce and stop the potential for gun use, for domestic violence and for legal highs" (cols 695).

From the Liberal Democrat benches, Dr Julian Huppert said he welcomed the pre-legislative scrutiny the Bill had received and the improvements since made (col 697). Nonetheless he also hoped the House of Lords would consider some of issues he remained concerned about. The breadth of Injunctions to Prevent Nuisance and Disorder meant that the guidance would be very important to ensure their correct usage and implementation. Similarly he remained uneasy about the issue of "naming and shaming" young people given injunctions and wanted the guidance to ensure judges only did so in exceptional circumstances. Dr Huppert also raised the issue of Schedule 7 to the Terrorism Act 2000, which he said still needed further scrutiny and improvement (cols 698).