



## Anti-social Behaviour, Crime and Policing Bill 2013-14: Debate in Parliament

Standard Note: 06639

Last updated: 10 October 2013

Author: Pat Strickland, Jacqui Beard, Joanna Dawson, Wendy Wilson, Doug Pyper, Elena Ares, Sarah Barber

Section Home Affairs Section

### Stop Press

The Joint Committee on Human Rights on 11 October 2013 published a report entitled [Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill](#) (HL Paper 56 / HC 713 2013-14).

This note follows the progress of the [Anti-social Behaviour, Crime and Policing Bill](#) through Parliament. A companion paper, Library Research Paper 13/34, [Anti-social Behaviour, Crime and Policing Bill](#), provides more detailed background and analysis of the Bill's provisions. This paper is designed to highlight the main areas of debate.

The Bill is a wide ranging one. Parts 1-6 cover anti-social behaviour, whilst the remaining parts would bring in changes to the law on a number of different areas including dangerous dogs; firearms; forced marriage; the police; extradition; terrorism; prosecutions for low-level shoplifting; and compensation for miscarriages of justice.

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

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

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

The Government has tabled a number of New Clauses and amendments to be considered on report and [published a letter](#) to the shadow Home Office minister David Hanson giving details.

## **Contents**

<b>1</b>	<b>Introduction</b>	<b>5</b>
<b>2</b>	<b>Anti-social behaviour – reforming the powers</b>	<b>5</b>
2.1	The new injunctions	6
	Amendments made: caring responsibilities and head teachers dealing with bullying	6
	Exclusion powers	7
	Other debate	7
2.2	Criminal Behaviour Orders	8
	Amendment made – Caring responsibilities	8
	Other debate	8
2.3	Dispersal powers	9
2.4	Environmental Anti-social Behaviour Measures	9
	Community Protection Notices	9
	Public Spaces Protection Orders	10
	Closure Notices	11
<b>3</b>	<b>Housing</b>	<b>11</b>
3.1	A new mandatory ground for eviction	11
3.2	Amending the discretionary grounds for eviction	13
3.3	A new discretionary ground for eviction	13
<b>4</b>	<b>The Community Remedy Document</b>	<b>14</b>
<b>5</b>	<b>Dangerous Dogs</b>	<b>14</b>
<b>6</b>	<b>Firearms</b>	<b>15</b>
<b>7</b>	<b>Forced Marriage</b>	<b>16</b>
<b>8</b>	<b>Police</b>	<b>17</b>
	College of policing	17
	The Police Negotiating Board	17
	The Independent Police Complaints Commission	17
	Police and Crime Commissioners commissioning services	18
<b>9</b>	<b>Compensation for miscarriage of justice</b>	<b>18</b>
<b>10</b>	<b>Low value shoplifting</b>	<b>19</b>
<b>11</b>	<b>Port and Border Controls</b>	<b>19</b>

<b>12</b>	<b>Government new clauses which were added to the Bill</b>	<b>19</b>
	12.1 Appointment of chief police officers from overseas	19
	12.2 Retention of DNA and other personal samples	20
	12.3 Powers to seize invalid passports	20
	12.4 Extradition	21
<b>13</b>	<b>Other new clauses debated but not added</b>	<b>22</b>
	13.1 Legal highs	22
	13.2 Female Genital Mutilation	22
	13.3 Powers of Community Support Officers	23
	13.4 Assault of workers	23
	13.5 Irregular rendition	23
<b>14</b>	<b>Child Sexual Abuse Prevention Orders (New clauses for debate on Report)</b>	<b>23</b>
	<b>Membership of the Public Bill Committee</b>	<b>27</b>

## 1 Introduction

The *Anti-social Behaviour, Crime and Policing Bill* had its second reading in the Commons on 10 June 2013<sup>1</sup> and its committee stage in 15 sittings between 18 June and 16 July 2013. The Home Affairs Committee had previously scrutinised a draft of Bill containing the anti-social behaviour provisions. Background on the Bill and analysis of its provisions is provided in Library Research Paper 13/34, [Anti-social Behaviour Crime and Policing Bill](#) which was prepared for the Bill's second reading.

In brief:

- Parts 1-4 reforms some of the remedies for dealing with anti-social behaviour, replacing nineteen existing powers with six new ones
- Part 5 strengthens the powers of landlords to evict anti-social tenants.
- Part 6 provides for a new “community remedy” and “community trigger” to deal with anti-social behaviour locally.
- Part 7 amends the law on dangerous dogs
- Part 8 introduces new firearms offences
- Part 9 criminalises forced marriage
- Part 10 covers policing reforms
- Part 11 deals with extradition and the European Arrest Warrant
- Part 12 covers a number of criminal justice matters including prosecutions for low-level shoplifting; and compensation for miscarriages of justice

The progress of the Bill can be viewed at the [Anti-social Behaviour Crime and Policing Bill](#) pages of the Parliament website, together with relevant documentation, including the various versions of the Bill, debates and lists of amendments.

Please note that clause numbers refer to the [Bill as amended in Committee](#). Where these differ from the [Bill as introduced in the Commons](#), the original clause numbers are given in the footnotes.

The Government has tabled a number of New Clauses and amendments to be considered on Report. Because of time constraints, these are not all discussed in this note. However, the Government has [published a letter](#) to the shadow Home Office minister David Hanson MP giving details.<sup>2</sup>

## 2 Anti-social behaviour – reforming the powers

**Parts 1-6** of the Bill contain the Government's reforms to a number of the powers to deal with anti-social behaviour. Background is given on pages 6-56 of [Library Research Paper 13/34](#).

---

<sup>1</sup> [HC Deb 10 June 2013 cc66-127](#)

<sup>2</sup> Home Office, [Anti-social Behaviour Crime and Policing Bill: Government amendments for Commons Report Stage](#), 7 October 2013

In the second reading debate, the Home Secretary Theresa May said that the changes would “ensure that the police, local authorities and others have a comprehensive set of fast, flexible and responsive powers to tackle the scourge of anti-social behaviour”.<sup>3</sup> Shadow Home Secretary Yvette Cooper disputed this, characterising the Bill as “a lot of changing of names and a lot of tinkering at the margins”.<sup>4</sup> She said that Labour would not vote against second reading, but that the Bill needed to be “stronger”.<sup>5</sup> The chair of the Home Affairs Committee, Keith Vaz raised concerns about stigmatising young people and the Committee’s call to “end the arms race” on anti-social behaviour powers.<sup>6</sup> Liberal Democrat Julian Huppert (also a member of the Committee) praised the new power to attach positive requirements to the powers replacing Anti-Social Behaviour Orders (ASBOs), but said there was not enough in the Bill to strengthen early intervention or full health or social assessments of young people.<sup>7</sup>

## 2.1 The new injunctions

**Part 1** of the Bill covers the new Injunction to Prevent Nuisance and Annoyance (IPNA), to replace “stand alone” ASBOS.

### ***Amendments made: caring responsibilities and head teachers dealing with bullying***

In committee, one amendment, moved by Conservative Stephen Phillips was made to **clause 1** without division, despite the fact that the then Crime Prevention Minister, Jeremy Browne, had spoken against it. The Bill as introduced already set out that prohibitions and requirements in an IPNA must (as far as practicable) avoid conflicting with religion, work and school. The amendment added caring responsibilities to that list.<sup>8</sup> Mr Browne had pointed out that courts could consider other factors, and would have to consider the respondent’s rights to a family life under article 8 of the European Convention on Human Rights. He hoped that Mr Phillips would withdraw his amendment. However, the Committee agreed to it without division. There is an amendment in the name of the Home Secretary to reverse this on report.<sup>9</sup>

An amendment to **clause 4** was agreed to on division in a defeat for the Government. This was one of a series of amendments which Conservative Members had tabled to specify **bullying** as an example of anti-social behaviour on the face of the Bill. Tracey Crouch had drawn attention at second reading that the fact that injunctions will not result in a criminal record if breached. This, she said, would provide an opportunity to make it clear that bullying could have legal consequences whilst still allowing the bully to change their behaviour.<sup>10</sup> Moving the lead amendment (to **clause 1**), Ms Crouch described serious harmful effects of bullying, and said her proposals would give extra support to teachers.<sup>11</sup> Jeremy Browne said the Government was sympathetic, but that the IPNA would already cover bullying and defining certain types of behaviour would impair its flexibility.<sup>12</sup> Guidance would include a reference to bullying and outline how the new powers could be used to deal with it. Ms Crouch called on the Government to publish guidance before the Bill’s report stage (it has

---

<sup>3</sup> *ibid* c67

<sup>4</sup> *Ibid* c78

<sup>5</sup> *Ibid* c81

<sup>6</sup> *ibid* c85

<sup>7</sup> *ibid* c88

<sup>8</sup> [PBC Deb 25 June 2013 c149](#)

<sup>9</sup> Amendment 1, House of Commons, [Notices of Amendments given up to and including 9 October 2013](#)

<sup>10</sup> [HC Deb 10 June 2013 c108](#)

<sup>11</sup> [PBC Deb 25 June 2013 c132](#)

<sup>12</sup> *ibid* c139

been, see below) and withdrew her amendment.<sup>13</sup> However, her later amendment to **clause 4** which would head teachers or principals of FE institutions to the list of those who would be able to apply for an IPNA was agreed to on division.<sup>14</sup> Once again, there is an amendment in the name of the Home Secretary to reverse this on report.<sup>15</sup>

### **Exclusion powers**

Another Opposition amendment to **clause 12** would have given local authorities the power to seek an injunction to exclude private tenants and certain licensees from their homes in cases involving violence, threats of violence, or significant risk of harm.<sup>16</sup> The current ASBI provisions give social landlords the power to seek such an exclusion order against private tenants and owner occupiers in certain defined circumstances.<sup>17</sup>

Jeremy Browne said that the Government “remained to be convinced” that the power to exclude individuals living in privately rented homes should be exercised by, or on behalf of, the state. However, he did say that the Government was willing to consider the issue further “if a strong enough case could be made”. The amendment was negated on division.<sup>18</sup>

The Government has tabled amendments for consideration on Report following consultation. These would apply the exclusion powers without regard to tenure. The Government says it expects this power to be “rarely used”.<sup>19</sup>

### **Other debate**

Gloria De Piero (then Shadow Home Office Minister) opposed the motion that **clause 1** stand part because Labour objected to the replacement of ASBOs with a “weaker power” which would allow “yobs to be let off the hook”.<sup>20</sup> However, the motion was agreed to by 11 votes to 7.<sup>21</sup> An Opposition amendment to **clause 3** would have required, rather than allowing, the court to attach a power of arrest to an IPNA where a person has engaged in or threatened violence, but this was negated on division by 11 votes to 7.<sup>22</sup>

Labour moved a probing amendment to **clause 2** on how councils would be able to fund IPNAs’ new positive requirements, although Gloria De Piero said the Opposition had no problem with the principle. Jeremy Browne said local councils had to think about how to use funding intelligently on behalf of the taxpayer.<sup>23</sup> The amendment was withdrawn.

Gloria De Piero moved a probing amendment to **clause 8** (powers of arrest without warrant on breach) to include the High Court as well as the county court in the provision. Mr Browne said he would consider this before Report.<sup>24</sup>

Other Labour amendments on **clauses 7-9** and **clause 14** which were withdrawn involved debate on the costs for organisations which would be able to apply for IPNAs;<sup>25</sup> allowing

---

<sup>13</sup> *ibid* c145

<sup>14</sup> [PBC Deb 25 June 2013 c188](#)

<sup>15</sup> [Amendment 4, House of Commons Notice of Amendments given up to and including Tuesday 7 October 2013](#)

<sup>16</sup> [PBC Deb 25 June 2013 c195](#)

<sup>17</sup> Section 153C of the *Housing Act 1996*

<sup>18</sup> [PBC Deb 25 June 2013 c197](#)

<sup>19</sup> Home Office, *Anti-social Behaviour Crime and Policing Bill: Government amendments for Commons Report Stage*, 7 October 2013

<sup>20</sup> *ibid* c150

<sup>21</sup> *ibid* c168

<sup>22</sup> *ibid* c181

<sup>23</sup> *ibid* c175

<sup>24</sup> *ibid* c191

multi-agency partners to apply to vary the injunction;<sup>26</sup> potential court delays<sup>27</sup> and consultation requirements.<sup>28</sup>

## 2.2 Criminal Behaviour Orders

Part 2 of the Bill would introduce Criminal Behaviour Orders (CBOs) which would replace some orders available where a person has been convicted of a criminal offence, including ASBOs on conviction (“CRASBOs”). Unlike CRASBOs but like the new IPNAs, these orders would be able to impose positive requirements as well as prohibitions.

### ***Amendment made – Caring responsibilities***

In committee, Stephen Phillips moved the only amendment which was made to the clauses covering Criminal Behaviour Orders. This mirrored the amendment he had moved to **clause 1** by requiring courts to consider possible conflicts with caring responsibilities before making CBOs, and it was agreed to without division or much debate.<sup>29</sup> Mr Phillips said that this would be consistent with the Government’s broader agenda of ensuring that anti-social behaviour is not perpetuated from generation to generation.<sup>30</sup> The Criminal Justice and Policing Minister, Damien Green, reiterated that the list of factors courts will have to consider was not exhaustive. However, since the Committee had agreed to the previous amendment, against the advice of the Minister, he would not now oppose this amendment.<sup>31</sup> Once again, there is an amendment in the name of the Home Secretary to reverse this on report.<sup>32</sup>

### ***Other debate***

A probing amendment moved by David Hanson questioned whether anti-social behaviour against members of the same household as the perpetrator should still be excluded. Whilst this mirrored existing legislation, he queried whether developments such as social media had changed the position, and he gave example of a homeless grandson moving in with grandparents and harassing them. Damien Green said that there was other legislation which could be used in such cases, but Mr Hanson pointed out that courts could not use this to impose positive requirements. Mr Green undertook to “look at some of the detail” and the amendment was withdrawn.<sup>33</sup> The Government has now tabled an amendment to remove this limitation.<sup>34</sup>

Other areas of debate included the admissibility of hearsay evidence;<sup>35</sup> whether the Government would be producing guidance on positive requirements (Mr Green confirmed that they would),<sup>36</sup> and the circumstances in which an offender might apply to have the CBO varied or discharged.<sup>37</sup>

---

<sup>25</sup> *ibid* cc181-188

<sup>26</sup> *ibid* cc188-189

<sup>27</sup> *ibid* cc192-195

<sup>28</sup> *ibid* c207

<sup>29</sup> [PBC Deb 27 June 2013 c225](#)

<sup>30</sup> *ibid* c220

<sup>31</sup> *ibid* c225

<sup>32</sup> Amendment 17, House of Commons, [Notices of Amendments given up to and including 9 October 2013](#)

<sup>33</sup> *ibid* c225

<sup>34</sup> Amendment 16, House of Commons, [Notices of Amendments given up to and including 9 October 2013](#)

<sup>35</sup> *ibid* cc225-7

<sup>36</sup> *ibid* c228

<sup>37</sup> *ibid* cc230-2

## 2.3 Dispersal powers

**Part 3** would merge two existing police dispersal powers into one. These powers were not amended in committee.

The Committee divided on a Labour amendment to require the police to consult the relevant local authority. Introducing this, Gloria De Piero emphasised that, as Labour had introduced the current powers, it was not opposed to them in principle. However, she cited a number of commentators who argued that councils should still be involved, including the Home Affairs Committee in their report on the draft Bill. Damian Green pointed out that the power had to be approved in advance by an officer of at least the rank of inspector. Compulsory consultation would, he said, “severely reduce the usefulness of the power”.<sup>38</sup> The amendment was negatived by 8 votes to 6.

Other points included:

- why the direction should be given in writing (Stephen Philips argued that this might be unduly bureaucratic);<sup>39</sup>
- whether a direction should be able to exclude a person from their home, for example in cases of domestic abuse.<sup>40</sup>
- the sanction for the criminal offence for non-compliance with a direction – Damien Green said it was important for these powers to be backed up with a sanction. Gloria De Piero agreed, but said that the same applied to IPNAs, where the Government was not using a criminal sanction.<sup>41</sup>

## 2.4 Environmental Anti-social Behaviour Measures

Part 4 of the Bill covers the new Community Protection Notices (CPNs), Community Protection Orders (CPOs) and other measures to deal with environmental anti-social behaviour. There were no amendments made, and no divisions during the debate on these clauses.

### ***Community Protection Notices***

An Opposition amendment would have removed the exclusion of statutory nuisance from the scope of a CPN; some groups had expressed concerns that practitioners would hesitate to take action in case it turned out the nuisance fell into this category. The Minister said that a technical working group would help draft clear guidance to make sure the concerns were addressed.<sup>42</sup>

Another Opposition amendment would have meant that a CPN would have effect whilst an appeal was being considered. Gloria De Piero withdrew this in view of Damian Green's assurance that he would "take it away and have a look at it."<sup>43</sup> The Government has now tabled an amendment which would mean that a requirement to stop doing specified things

---

<sup>38</sup> ibid c241

<sup>39</sup> ibid cc 242-4

<sup>40</sup> ibid cc244-246

<sup>41</sup> ibid c249

<sup>42</sup> [PBC Deb 2 July 2013](#) c256

<sup>43</sup> ibid c261

would remain in effect pending appeal, but other requirements (such as positive requirements) would not.<sup>44</sup>

Other areas of debate included whether CPNs should be able to require people to take "reasonable steps to achieve specified results"; the extent to which one person's conduct could be held to be the responsibility of another (for example litter around fast food outlets);<sup>45</sup> constables' discretion to seize items being used in an offence<sup>46</sup> and alcohol (for example on picnics);<sup>47</sup> consultation processes;<sup>48</sup> and the period covered by CPNs.<sup>49</sup>

### **Public Spaces Protection Orders**

Gloria De Piero MP moved a number of amendments<sup>50</sup> to **clauses 60-62** which allow certain access restrictions to public highways. The amendments dealt with specific concerns raised by the [Ramblers Association](#) around: ensuring that a Public Spaces Protection Order (PSPO) (in respect of a highway) was only used as a last resort;<sup>51</sup> that local authorities consulted each other adequately when wanting to exercise a PSPO on a highway;<sup>52</sup> limiting the type of highway that could be subject to a PSPO;<sup>53</sup> and widening the scope of who could challenge an order to allow for representations by third party organisations.<sup>54</sup>

Damien Green agreed that it was "only right" that the local authority considered alternative means of dealing with an anti-social behaviour, crime or disorder situation before restricting a public right of way. He confirmed that the Government intended to make that clear in associated guidance and said that he would also consider whether it was appropriate to put such a safeguard in the Bill.<sup>55</sup> He also agreed to consider the principle of ensuring that neighbouring local authorities were consulted before restrictions were put in place "not least because of any unintended consequences from simply displacing the anti-social behaviour in question."<sup>56</sup> The Government has now tabled a New Clause on Report which would require this.<sup>57</sup>

However, the Minister did not accept that the types roads exempted from restriction by a PSPO in clause 61 should include paths, bridleways and byways open to all traffic. Clause 61 currently exempts roads such as principal and trunk roads, already identified in the *Highways Act 1980* as roads where the consequences of restricting access would be disproportionate compared with any anti-social behaviour being committed. The Minister did not feel that other rights of way carried the same "strategic value" to be included in this exemption but highlighted that Clause 61 (e) (f) makes provision for Ministers to prescribe further restrictions or regulations.<sup>58</sup>

---

<sup>44</sup> Amendment 21, House of Commons, [Notices of Amendments given up to and including 9 October 2013](#)

<sup>45</sup> *ibid* c258

<sup>46</sup> *ibid* cc261-262

<sup>47</sup> *ibid* c276

<sup>48</sup> *ibid* cc263-268

<sup>49</sup> *ibid* cc272-273

<sup>50</sup> Nos 89 -92

<sup>51</sup> No. 89

<sup>52</sup> No. 90

<sup>53</sup> No.91

<sup>54</sup> No.92

<sup>55</sup> [PBC Deb 2 July 2013](#) c278

<sup>56</sup> *Ibid*

<sup>57</sup> Amendment 25, House of Commons, [Notices of Amendments given up to and including 9 October 2013](#)

<sup>58</sup> *Ibid*

The Minister also rejected the call to broaden the scope of “interested persons” able to challenge an order as it would allow those not directly affected to challenge an order that local people may have supported. Campaigning organisations were still free to offer advice to affected people and support legal action in their name.<sup>59</sup>

There was further debate under **clause 67**, which covers interpretation. Gloria De Piero asked why parish councils (and community councils in Wales) will not be able to issue a PSPO (whereas they are currently able to apply for dog control orders. Damien Green said this was because the new order will be “much more powerful” than the orders it replaces.<sup>60</sup> Ms De Piero also moved an amendment to exclude access land such as commons and village greens from the definition of “public space”; Damien Green said that the Government would “ensure that the guidance makes clear the importance of protection access to public spaces”.<sup>61</sup>

### **Closure Notices**

**Clauses 69 to 85** would merge four separate powers to close premises associated with anti-social behaviour into one power. David Hanson said that the Opposition supported the premises closure powers, but moved a probing amendment to **clause 69** to test why the Bill requires the police to have “reasonable grounds” on top of the other requirements. Damien Green pointed out this mirrored existing legislation, and would be a matter for courts. The Committee also debated consultation requirements;<sup>62</sup> the regulation making power to exclude certain premises from the power;<sup>63</sup> and whether the maximum periods for notices should be doubled to give courts longer to issue closure orders.<sup>64</sup>

Damien Green said that the Government would consider amendments moved by Stephen Phillips to allow the courts to consider making an order for the reimbursement of costs incurred by the police or local authority against the occupier of the premises rather than the owner.<sup>65</sup> He also said he would consider another of Mr Phillips’ amendments on exemption from liability so that this would not apply in cases of gross negligence.<sup>66</sup>

## **3 Housing**

The following notes provide background on existing remedies to tackle anti-social behaviour in residential premises:

[Anti-social behaviour in social housing](#) (SN00264)

[Anti-social neighbours in private housing](#) (SN01012)

### **3.1 A new mandatory ground for eviction**

**Clause 86**<sup>67</sup> in Part 5 of the Bill will insert a new section 84A into the *1985 Housing Act* to provide a new “absolute” ground for possession for use against secure tenants in social

---

<sup>59</sup> *ibid* c280

<sup>60</sup> *ibid* c282

<sup>61</sup> *ibid* c284

<sup>62</sup> *ibid* cc288-292

<sup>63</sup> *ibid* cc 293-294

<sup>64</sup> *ibid* cc 294-295

<sup>65</sup> *ibid* c307

<sup>66</sup> *ibid* c309

<sup>67</sup> Note that clause numbers may change as the Bill progresses through Parliament.

housing.<sup>68</sup> Where a social landlord decides to use this ground the court will have to grant an order for eviction if the notice requirements have been fulfilled and, where relevant, review procedures have been followed, and any one of the following five conditions is met:

1. the tenant, a member of the tenant's household or a person visiting the property has been convicted of a serious offence (defined in new Schedule 2A to the 1985 Act as inserted by subsection (2) of clause 86 and Schedule 3 to the Bill); or
2. the tenant, a member of the tenant's household or a person visiting the property has been found by a court to have breached an injunction to prevent nuisance and annoyance obtained under clause 1 of the Bill; or
3. the tenant, a member of the tenant's household or a person visiting the property has been convicted for breach of a criminal behaviour order obtained under clause 21 of the Bill; or
4. the tenant's property has been closed under a closure order obtained under clause 73 of the Bill and the total period of closure was more than 48 hours; or
5. the tenant, a member of the tenant's household or a person visiting the property has been convicted of a breach of a notice or order to abate noise in relation to the tenants' property under the *Environmental Protection Act 1990*.

**Clause 89** will introduce a corresponding mandatory ground for possession and associated notice requirements in respect of assured tenants of private registered providers of social housing (RSLs in Wales) and private sector landlords by amending the *1988 Housing Act*.

The new mandatory ground for eviction was considered during the tenth sitting of the Public Bill Committee.<sup>69</sup> Gloria De Piero asked about the mechanism through which local authorities might become aware of the convictions/breaches referred to above. Jeremy Browne responded for the Government:

We would expect there to be a sufficiently clear understanding between the police and social landlords about the antisocial behaviour problems in a neighbourhood. We are talking about a small number of people who manifest the most persistent and extreme forms of antisocial behaviour, and the power is not being used widely. We expect that the police will be familiar with the cases as a matter of course; for example, if tenants cause large amounts of disturbance due to persistent problems around drug dealing, that would come to the attention of the police. On that basis, we are confident the power will work in practice.<sup>70</sup>

The Minister acknowledged that there is no central database that will bring an offence committed in one part of the country to the attention of a social landlord in another area.<sup>71</sup>

Gloria De Piero also questioned whether the proposed review procedure (set out in **clause 88**) would be sufficient to prevent human rights challenges to eviction orders granted

---

<sup>68</sup> Most council tenants are secure tenants but some housing associations may have secure tenants if they entered into their tenancy on or before 15 January 1989 (the date on which Part 1 of the *1988 Housing Act* came into force).

<sup>69</sup> [PBC 4 July 2013](#) cc310-15

<sup>70</sup> *ibid* c313

<sup>71</sup> *ibid* c314

under clause 86.<sup>72</sup> If this were to happen it would introduce delays when the intention is to shorten the possession process. Jeremy Browne said:

Our belief, without which we would not recommend that the Committee approve the clause, is—this answers the hon. Lady’s question—that it is proportionate, workable and legal. As I say, it has a protective, safeguarding role for people who find themselves in the circumstances set out in it. Given the point raised a few clauses ago by my hon. Friend the Member for Blackpool North and Cleveleys, that is appropriate. The particular circumstances in a case may make repossession inappropriate, and it is right that a review could consider that, where that was thought to be the right course of action. On that basis, I hope the Committee will see fit to approve the clause.<sup>73</sup>

### 3.2 Amending the discretionary grounds for eviction

**Clause 90** inserts new provisions into the 1985 and 1988 Acts to enable a landlord to seek possession where a tenant (or a person living in or visiting the tenant’s home) is guilty of conduct likely to cause nuisance or annoyance to the landlord, or someone employed in connection with the landlord’s housing management functions, where the conduct relates to or affects those housing management functions. There is no requirement for this conduct to have taken place within the locality of the tenant’s home.

In Public Bill Committee this clause was ordered to stand part with no debate.<sup>74</sup>

### 3.3 A new discretionary ground for eviction

**Clause 91** will add a new discretionary ground for possession to the 1985 and 1988 Acts to enable a landlord to seek possession of a secure or assured tenant’s property where the tenant or a person living with them has been convicted of an offence committed at the scene of a riot anywhere in the UK. This clause will only apply to dwellings within England.

Gloria De Piero moved an amendment in committee seeking a review of the use of this new ground for eviction one year after it comes into force.<sup>75</sup> Jeremy Browne referred to a commitment made during public consultation on the new eviction powers “to monitor how the number of convictions for antisocial behaviour changes over time and to review the policy in the light of the data.”<sup>76</sup> He rejected the need for a statutory review. The amendment was withdrawn. Stephen Mosley drew attention to the implications of the Welsh Government’s decision not to apply this provision to Wales – the Minister responded:

Only an English landlord can use the new power, but it would be available to use wherever the riot happened in the UK. If the tenant rioted in Cardiff, an English landlord would be able to take action against the tenant, but because it applies only to landlords in England, the hon. Lady and my hon. Friend are right to say that if it were the other way round, the powers would not apply. That is a consequence of the devolution settlement, which in this case means that the power to make such a decision, which the Welsh Assembly Government may choose to exercise, rests with them, not here in the Palace of Westminster.

---

<sup>72</sup> *ibid* c314

<sup>73</sup> *ibid* c315

<sup>74</sup> *ibid* c315

<sup>75</sup> [PBC 4 July 2013](#) c315

<sup>76</sup> *ibid* c315

We consulted the Welsh Government and they indicated that they did not want the provision to apply to Wales, and as the matter is devolved, that is a decision for the Welsh Government.<sup>77</sup>

## 4 The Community Remedy Document

Clause 93 provides for a restorative tool, the “Community Remedy”, under which Police and Crime Commissioners would sponsor a “menu” of community sanctions for low level crime and anti-social behaviour.

Steven Phillip spoke to a New Clause which would have placed some limits on what could be set out in a Community Remedy Document. Gloria De Piero agreed that there should be some guidance in the legislation. Damian Green said that, whilst the Government would provide guidance, he did not think it necessary to put this in the Bill.<sup>78</sup> He undertook to produce draft guidance so that it could “be considered before Report”<sup>79</sup> This is included in the [draft guidance](#) published on 8 October 2013 on the gov.uk website.<sup>80</sup>

### The “Community Trigger”

Clause 96 provides for a mechanism for victims of persistent anti-social behaviour to request that relevant bodies undertake a case review. The Committee divided on an Opposition amendment designed to deal with vulnerable victims. This would have meant that the review threshold would be met where the person had notified relevant bodies “that he or she has been a victim of anti-social behaviour or (was) vulnerable due to ill health, mental capacity, race, sexuality or religion.” Jeremy Browne argued for the Bill’s broader approach to the concept of harm to the victim. Under clause 96(5) the threshold may be set with reference to the persistence of the behaviour, the potential for harm to the victim, and the adequacy of response from agencies. Chris Skidmore pointed out that the Labour amendment did not cover physical disability. It was negated on division by 11 votes to 8.<sup>81</sup>

## 5 Dangerous Dogs

**Clauses 98 and 99** of the Bill, covering dangerous dogs, would extend criminal liability for dog attacks to all places and create an aggravated offence for an attack on an assistance dog. This was the subject of much debate at second reading.<sup>82</sup>

Neither clause was amended in committee. A New Clause 4, which aimed to introduce a dog specific control order, was tabled by David Hanson:

- (1) Where an authorised officer has reasonable cause to believe that a dog is not under sufficient control and requires greater control in any place, as a preventative measure to protect the public, the dog itself, or another protected animal, he or she may serve on the owner, and if different, person for the time being in charge of the dog a written control notice.<sup>83</sup>

During the debate Mr Hanson explained how the proposal would work and the level of support for it:

---

<sup>77</sup> [ibid c316](#)

<sup>78</sup> [Ibid c321](#)

<sup>79</sup> [Ibic c322](#)

<sup>80</sup> Home Office, [Reform of anti-social behaviour powers Draft guidance for frontline professionals](#), October 2013

<sup>81</sup> [ibid c330](#)

<sup>82</sup> [HC Deb 10 June 2013](#) cc67-8, cc71-73, c81, cc91-94, cc99-102, cc109-118, cc121-126

<sup>83</sup> [PBC Deb 4 July 2013](#) c353

The notices would include a range of measures that are sensible, proportionate and preventive, and which could reduce the deaths and injuries that I referred to. Those measures include the power to have dogs microchipped—at the moment, the Government are considering microchipping—muzzled, kept on a lead, given appropriate behaviour training, neutered or kept away from particular places. Those measures would prevent some of the horrific incidents that we heard about in the debate on the previous set amendments and at other times today.<sup>84</sup>

And

My bottom line is that everybody that I mentioned today—all the animal welfare organisations, the Welsh Assembly Government, the police and the EFRA Committee—believes that a new clause 4 provision should be added to the Bill to ensure that we have dog control notices. I think that deep down the Minister knows that at some point in the next 11 months or so, when the Bill goes through the Commons and another place, he will have to move his position. He would save himself an awful lot of time if he committed to move now, accepted either the new clause or its principle and revised the Bill on Report.<sup>85</sup>

In response, the Minister gave the Government's reasons for not supporting the amendment:

To introduce bespoke dog control notices and dog number control notices simply goes over the ground that we are seeking to get away from in the Bill. Legislating with a new tool to tackle each and every manifestation of antisocial behaviour is not what practitioners need and does not provide greater protection for the public. It simply creates greater complication and inflexibility for practitioners, to use the jargon, the police, local authorities and others seeking to protect the public from antisocial behaviour.<sup>86</sup>

The clause was withdrawn at the time. It was put to a vote on the last day of committee but was negated on division by 10 votes to 9.<sup>87</sup>

A **new clause 11** was also tabled, which would have provided powers for limiting the number of dogs in a property if there was reasonable cause to believe that the number of dogs created a risk of them becoming out of control.<sup>88</sup> The amendment was withdrawn.

## 6 Firearms

**Part 8** of the Bill relates to firearms. New clauses concerning firearms licensing were tabled by the opposition at committee stage.<sup>89</sup> The first (**new clause 5**) would have created a presumption that if background checks of an applicant for a firearms licence uncovered substantiated evidence of violent conduct, domestic violence, mental illness or drug or alcohol abuse, the police should not grant a licence unless there was exceptional evidence to demonstrate the suitability of the applicant. The Minister, Damian Green, stated that the police already have the ability to take factors such as domestic violence and drug and alcohol abuse into account when assessing the risk to public safety.<sup>90</sup> He drew attention to the forthcoming new [firearms guidance](#) (since published) which would provide for the interview of partners where judged appropriate in a particular case and make it clear that the

---

<sup>84</sup> [ibid c355](#)

<sup>85</sup> [ibid c360](#)

<sup>86</sup> [ibid c370](#)

<sup>87</sup> [PBC Deb 16 July 2013 c516](#)

<sup>88</sup> [PBC Deb 4 July 2013 c353](#)

<sup>89</sup> [PBC Deb 9 July 2013 c377](#)

<sup>90</sup> [PBC Deb 9 July 2013 c388](#)

police can interview widely if they deem that necessary.<sup>91</sup> Having a fixed statutory presumption against the grant of a certificate would, he said, fetter the discretion of the decision maker.

The second new clause (**new clause 6**) would have required the Secretary of State to consult with ACPO regarding the level of fees for the licence. David Hanson stated that the principle of the new clause was to ask for the Minister's view on whether gun licences should pay for themselves.<sup>92</sup> The Minister stated that the Home Office was currently in the process of revising the fees and was updating the firearms licensing system with the aim of reducing the cost.<sup>93</sup> He said it was hoped that all forces would be using the new online system by 2015 and it would be at that point that the Government would consider whether to move to full cost recovery.

Both clauses were negated on division.<sup>94</sup> The issues were discussed again in a Westminster Hall debate on firearms control on 3 September 2013.<sup>95</sup> A clause covering both issues has been tabled for report stage (**new clause 4**).<sup>96</sup>

## 7 Forced Marriage

**Clause 103** creates a criminal offence of breaching a Forced Marriage Protection Order.

The Committee divided on a Labour amendment which would have imposed a duty on the Secretary of State to publish guidance before the provision comes into force, and on "persons exercising public functions" to have regard to that guidance. Moving the amendment, Bridget Phillipson said that the Government should review its statutory guidance on forced marriage because of the Bill and in the light of recommendations made in a 2010 review by the Forced Marriage Unit. Criminalisation was important, but not a "panacea".<sup>97</sup> Damian Green said that the Secretary of State already had a power (although not a duty) to publish guidance, and that persons exercising public functions already had a duty to have regard to it under the *Family Law Act 1996*. He said that the existing statutory guidance would be revised to take account of the new criminal offences in the Bill.<sup>98</sup> The amendment was negated by 11 votes to 7.

**Clause 104** creates the new offence of forced marriage itself. Richard Fuller moved an amendment to include deception as well as coercion in the definition of forced marriage, which was discussed alongside his new clause which would introduce an offence of using a sham marriage to avoid immigration requirements. Paul Maynard raised the issue of forced marriage involving victims with learning disabilities.

Responding, Damian Green said that marriage involving deception could already be annulled under the existing law, but he agreed to "go away and look at the practicalities of what actually happens in this field."<sup>99</sup> Victims with learning disabilities would, he argued, already be protected under clause 104. The Government was not persuaded that the proposed new

---

<sup>91</sup> Home Office, *Guide on Firearms Licensing Law, Chapter 12: Assessing suitability*, August 2013

<sup>92</sup> PBC Deb 9 July 2013 c384

<sup>93</sup> PBC Deb 9 July 2013 c390

<sup>94</sup> PBC Deb 16 July 2013 c 517

<sup>95</sup> HC Deb 3 September 2013 35WH

<sup>96</sup> House of Commons, *Notices of Amendments given up to and including Tuesday 10 September 2013, NC4*

<sup>97</sup> PBC Deb 9 July 2013 c396

<sup>98</sup> c399

<sup>99</sup> c406

clause on sham marriages would lead to any increase in the numbers of convictions or cautions for the new offence. Mr Fuller withdrew the main amendment.<sup>100</sup>

## 8 Police

### *College of policing*

Clause 105 allows the Government's new College of Policing to prepare or approve regulations. David Hanson raised a number of questions about the breadth of the Home Secretary's power of veto, but Damian Green defended this as being necessary.(c411) The Committee divided on a Labour amendment to allow the College to produce guidance on the use of civilian or contracted staff by the police. David Hanson highlighted "the continuing growth in civilian and contracted staff" and said he got "little sense from the Home Office that any guidance is given on how, when and in what circumstances the private sector should interface with the public sector on the delivery of policing". Damian Green said such matters were outside the scope of the College's expertise, and that its remit should not be extended in this way. The proposed power "would constrain the ability of chief constables and police and crime commissioners to think imaginatively about the structure of their work force".<sup>101</sup> The amendment was negated on division by 10 votes to 8.

### *The Police Negotiating Board*

**Clauses 112 and 113** would abolish the Police Negotiating Board and replace this with a Police Remuneration Review Body. The Shadow Minister, David Hanson, drew attention to the Police Federation's and Police Superintendents Association's opposition to the clauses, and asked the Minister to indicate how the Government intends to secure confidence in the new pay body.<sup>102</sup> Damian Green argued that "there is a fundamental lack of strategic foresight in the current system" which resulted in the Winsor Review's recommendation to replace the Negotiating Board with a Pay Review Body.<sup>103</sup> He said that the Government would work closely with policing partners during and after the passage of the legislation to ensure that the design of the body would secure confidence of all sides.<sup>104</sup>

Both clauses were agreed to without division.

### *The Independent Police Complaints Commission*

Clause 116 extends the oversight of the Independent Police Complaints Commission (IPCC) to cover employees of private sector organisations contracted by the police, who are increasingly delivering services for police forces. The Government moved a number of technical amendments to make it clear that the complaints framework covers private sector contractors whether it is set out in primary or in secondary legislation and these were agreed to.<sup>105</sup> It also moved a series of amendments to the non-disclosure provisions in **clause 118** which, Damien Green said, would "build on and refine" the safeguards preventing inadvertent disclosure of material from security agencies.<sup>106</sup> These were all agreed to.

David Hanson raised the possibility of two new clauses to "examine possible extensions of the role of the IPCC". **New clause 12** would have allowed police staff who were not on duty and who had a grievance against their police force to raise this with the IPCC. Damien

---

<sup>100</sup> c408

<sup>101</sup> c420

<sup>102</sup> [PBC Deb 9 July 2013 cc424-433](#)

<sup>103</sup> Ibid, c425

<sup>104</sup> Ibid, c427

<sup>105</sup> Ibid c435

<sup>106</sup> Ibid c442

Green said he had “some sympathy”, but did not think the change would be in the best interest of the police because it would blur the lines between complaints about behaviour which began off duty and ran into on-duty hours.<sup>107</sup> Mr Hanson agreed not to move the New Clause, but asked the Minister to “reflect on its substance”, saying he might return to the issue on Report.<sup>108</sup>

**New clause 13** would have extended the IPCC’s remit to police support volunteers (the police staff equivalents of special constables). Damien Green said that “to subject police support volunteers to the IPCC complaints and conduct regime, without recourse to formal disciplinary procedures, would raise serious issues of proportionality”.<sup>109</sup> Mr Hanson again said he would not move the new clause in committee but reserved the right to return to it later.<sup>110</sup>

### ***Police and Crime Commissioners commissioning services***

Clause 123 would provide “local policing bodies” (Police and Crime Commissioners (PCCs) and the Mayor’s Office for Policing and Crime in London) with the power to commission services, particularly for victims and witnesses. David Hanson moved two amendments which were both negatived on division.<sup>111</sup> The first would have given local policing bodies a duty rather than a power to make grants in connection with arrangements for services (by replacing the word “may” with “shall”). The second would have required the Secretary of State to issue guidance about the quality standard of service to be expected. Damien Green said that victims and witnesses were key priorities for PCCs, and that it was the Government’s intention to provide PCCs with “specific and protected funding” for victims’ services. The Government did not wish to “restrict local flexibility” however.<sup>112</sup>

## **9 Compensation for miscarriage of justice**

David Hanson noted the concern raised by Liberty,<sup>113</sup> amongst others, that **clause 143**<sup>114</sup> would go further than simply clarifying the test for eligibility for compensation where a miscarriage of justice had occurred, and instead would potentially significantly limit eligibility. He said:

The current test asks them to show that a jury could not rightly find beyond reasonable doubt that they were guilty; the new test would ask them to go further and to prove positively beyond reasonable doubt that they were innocent. That is a real shift.<sup>115</sup>

Damian Green stated that he had seen Liberty’s doubts about whether the provision was a way of restricting compensation. He stated that it is not designed to do that and it need not, because it would return the position to that which existed between 2008 and 2011 and there was not, during that time, any sign that people who had suffered a miscarriage of justice, as it was then defined, were unnecessarily restricted as to what they could do. He stated that

---

<sup>107</sup> Ibid c438

<sup>108</sup> Ibid c441

<sup>109</sup> Ibid c440

<sup>110</sup> Ibid

<sup>111</sup> Ibid c450

<sup>112</sup> Ibid c452

<sup>113</sup> Liberty, *Committee Stage Briefing on the Anti-social Behaviour, Crime and Policing Bill in the House of Commons*, June 2013, pp38-41

<sup>114</sup> Clause 132 in the Bill as originally introduced

<sup>115</sup> [PBC Deb 11 July 2013 c 462](#)

the intention of the provision is not to restrict genuine claimants' ability to get their claim heard successfully.<sup>116</sup>

## 10 Low value shoplifting

**Clause 144**<sup>117</sup> would enable minor offences of shoplifting to be treated as summary only (i.e. dealt with in the magistrates' court). The Bill defines "low value shoplifting" as being where the value is less than £200. The clause caused some controversy. At second reading, Conservative Priti Patel, whilst welcoming the broad thrust of the Bill, urged the Government to look again at this provision.<sup>118</sup> In Committee, David Hanson moved an amendment to halve this limit; he had tabled another to double it in order to probe the Government's rationale. Damian Green said that the change would mean that more shop thieves would go to court, and that justice would be swifter. The level had been set in the light of research by the Sentencing Advisory Panel.<sup>119</sup> The amendment was negatived by 8 votes to 6.<sup>120</sup> A further Labour amendment to exempt cases where the person had not already received a caution or penalty notice for shoplifting was also negatived on division by 9 votes to 6.<sup>121</sup>

## 11 Port and Border Controls

**Clause 127 and Schedule 7** of the Bill insert a new paragraph 11A into Schedule 7 of the *Terrorism Act 2000*. The new paragraph would give an examining officer who is a constable the power to make and retain copies of any property obtained under Schedule 7 for as long as is necessary for the purpose of determining whether a person has been involved in terrorism, or for use in criminal proceedings, or in connection with a decision to make a deportation order under the *Immigration Act 1971*.

Damian Green explained that this new power is necessary to enable the police to examine the contents of mobile devices, without which they would be severely curtailed in their ability to determine whether or not a person has been involved in terrorism.<sup>122</sup>

In committee these provisions were agreed to without debate and clause 127 was ordered to stand part of the Bill.<sup>123</sup>

## 12 Government new clauses which were added to the Bill

### 12.1 Appointment of chief police officers from overseas

A Government new clause (New Clause 9, now **clause 121**) was agreed to on the last day of report which would allow a person to be appointed as chief constable if they are, or have been, "a police officer in an approved overseas police force". This was a recommendation from the second Winsor Report into police terms and conditions published in March 2012.<sup>124</sup>

---

<sup>116</sup> [PBC Deb 11 July 2013 c463](#)

<sup>117</sup> Clause 133 in the Bill as originally introduced

<sup>118</sup> [HC Deb 10 June 2013 c97](#)

<sup>119</sup> [PBC Deb 9 July 2013 c472](#)

<sup>120</sup> c473

<sup>121</sup> c477

<sup>122</sup> PBC 9 July 2013 c 454

<sup>123</sup> PBC 9 July 2013 cc 454-456

<sup>124</sup> [Independent Review of Police Officer and Staff Remuneration and Conditions – Final Report](#), – Volume 1, CM 8325-I, March 2012, p69

The Home Office issued a consultation document in January 2013, not on the principle of direct entry, but on how it should be implemented.<sup>125</sup> The consultation closed on 28 March 2013. Home Office Minister, Lord Taylor of Holbeach, said in June 2013 that the Government was considering responses to the consultation and would be responding later in the summer.<sup>126</sup>

Moving the New Clause, Damien Green said that “allowing police and crime commissioners to choose chief constables not only from senior ranks in the United Kingdom, but from other countries with a similar legal framework and policing model to ours, will mean that they can choose the very best person for the job”.<sup>127</sup> David Hanson complained that the Government had yet to publish its response to the consultation, and that there were no details of what the criteria or training requirements would be.<sup>128</sup> He asked if the consultation response could be published before Report. The Minister said that the response would be published in September. At the time of writing, it has not yet been published.<sup>129</sup> The New Clause was added to the Bill.

## 12.2 Retention of DNA and other personal samples

Library Standard Note 4049, [Retention of fingerprints and DNA data](#) gives background to the changes made by the *Protection of Freedoms Act 2012*, which, when it comes into force, will introduce a new regime for retention and destruction of personal samples. Section 14 will require biological samples taken for police investigations to be destroyed after six months. Damien Green explained that work on the implementation of the Act has shown “that the wording of the Act has caused practical difficulties in some cases” because it extends not only to samples used for adding DNA to the database, but to other samples which might become relevant to disputed issues in court proceedings. He continued:

Other types of evidence, such as DNA profiles and fingerprints, are protected by the Criminal Procedure and Investigations Act 1996 as long as they are needed for investigation and prosecution. The new clause extends that protection to samples, whether taken under the Police and Criminal Evidence Act 1984 or the Terrorism Act 2000. It provides safeguards against wider use by requiring that samples protected under this measure are destroyed as soon as the CPIA no longer applies to them, and requiring that they be used only in relation to the particular offence for which disclosure as part of court proceedings might apply.<sup>130</sup>

The New Clause was added to the Bill and is now **clause 125**.

## 12.3 Powers to seize invalid passports

A new clause (now **clause 126**) and schedule (now **schedule 6**) were added to the Bill which would introduce new powers of search and seizure in relation to travel documents.<sup>131</sup> Damien Green explained that the Government had been updating its approach to the exercise of royal prerogative powers in relation to passports, redefining the criteria for refusing or cancelling a passport on public interest grounds. However there were no explicit

---

<sup>125</sup> See the [consultation page on the Gov.UK website](#), and Home Office, *Consultation on the Implementation of Direct Entry in the Police*, 30 January 2013

<sup>126</sup> Letter to Baroness Harris of Richmond, 10 June 2013, Deposited Paper No. [2013-0954](#)

<sup>127</sup> [PBC Deb 16 July 2013 c485](#)

<sup>128</sup> [Ibid c486](#)

<sup>129</sup> The [consultation page on the Gov.UK website](#) (accessed 9 October 2013), still has a box saying “We are analysing your feedback”

<sup>130</sup> [PBC Deb 16 July 2013 c488](#)

<sup>131</sup> [Ibid c491](#)

enforcement powers to require the return of a cancelled passport, or to seize one. The new powers and schedule seek to resolve that position.

## 12.4 Extradition

Several new clauses were added to Part 11 of the Bill with respect to the European Arrest Warrant (EAW), which make further changes to the *Extradition Act 2003* (“the 2003 Act”). Damian Green explained<sup>132</sup> that the clauses are a direct corollary of the statement made by the Home Secretary on 9 July 2013, on the 2014 opt-out of those EU police and criminal justice measures adopted before the Lisbon treaty came into force.<sup>133</sup> The new clauses were supported by the Opposition and were added to the Bill without debate.

### *Extradition barred if no prosecution decision in requesting territory*

**Clause 130** inserts a new section 12A into the 2003 Act to deal with pre-trial detention. Section 12A will enable the UK courts to bar surrender of the subject of an EAW where the issuing state has not taken both a decision to charge and a decision to try the person, unless the person’s presence in that country is required in order to do so.

### *Proportionality*

**Clause 131** inserts a new section 21A into the 2003 Act. Section 21A will require the judge at the extradition hearing to consider whether extradition would be disproportionate. The judge will have to take account of the seriousness of the conduct, the likely penalty, and the possibility of the issuing state taking less coercive measures than extradition. Damian Green explained that the new provision would ensure that extradition happens only when the offence is serious enough to justify it.<sup>134</sup>

### *Hostage taking considerations*

**Clause 132** is a technical amendment. It will remove the hostage-taking bar from Part 1 of the 2003 Act. At present a person’s extradition is barred if the requesting state is party to the international convention against the taking of hostages and certain conditions are met. This change will bring the law fully into line with the EAW framework decision, under which there is no equivalent ground for refusal.

### *Request for temporary transfer etc*

**Clause 133** inserts a new section 21B into the 2003 Act. Section 21B will enable the requested person to speak with the authorities in the issuing state before the extradition takes place, if they both consent. This will be made possible by either the temporary transfer of the person to the issuing state, or allowing the person to speak with the authorities in that state while he or she remains in the UK, for example by video link. This may mean that where extradition goes ahead, the person spends less time in pre-trial detention, and in some cases the EAW may be withdrawn altogether where the issue is resolved through these preliminary processes.

### *Judge informed after extradition hearing or order that person charged with offence or serving sentence in United Kingdom*

**Clause 135** amends the 2003 Act to ensure that where the judge is informed after the end of the extradition hearing that the person has been charged with an offence in the UK, the extradition must be postponed until the conclusion of the UK proceedings.

---

<sup>132</sup> [PBC 16 July 2013 c495](#)

<sup>133</sup> HC Deb 9 July 2013 cc177-180

<sup>134</sup> [PBC 16 July 2013 c 495](#)

*Consent to extradition not to be taken as waiver of speciality rights*

**Clause 137** amends the 2003 Act to ensure that speciality protection, which prevents a person from being tried for offences other than those set out in the EAW, will be retained in cases where the requested person consents to his or her extradition.

*Definition of “extradition offence”*

**Clause 138** amends the 2003 Act in order to clarify that where part of the conduct for which extradition is sought took place in the UK, and that conduct is not criminalised here, the judge must refuse extradition.

**Clause 142** is a technical amendment. It will make appeals to the High Court in extradition cases subject to the criminal, rather than the civil procedure rules. This will ensure consistency with the main extradition hearing, which is currently governed by the criminal procedure rules.

## **13 Other new clauses debated but not added**

### **13.1 Legal highs**

New clauses 2 and 3 were tabled by David Hanson and new clause 21 was tabled by Labour MP John Woodcock.<sup>135</sup> They related to tackling the problems surrounding the sale and use of legal highs. New clause 2 aimed to make it illegal for traders to sell substances that can be used as legal highs, if they believed they would be used for the purpose of intoxication. New clause 3 called for the Secretary of State to complete a review of the use of legal highs across the UK and their burden on anti-social behaviour offending rates, the National Health Service, Police and local authorities. New clause 21 called for a consultation on reducing the evidential burden on prosecutors when showing that a substance has been supplied for the purpose of intoxication. Those introducing the new clauses drew attention to the growing health and economic burden of new legal highs.

Jeremy Browne echoed the concerns of those tabling the clauses that legal highs represented a growing social problem and welcomed the contribution to the debate on the policy framework to tackle legal highs. He did however defend the current legislative approach in tackling this problem, through scientific review by the Advisory Council on the Misuse of Drugs, the use of temporary drug orders and the ongoing implementation of the action plan on psychoactive substances. He also advised that a study of drugs policy in other countries was due to be completed and published by the end of the year.

The clauses were withdrawn but David Hanson advised the Minister that they would return to the matter during the later stages of the Bill and looked forward to new government policy solutions before the completion of the Bill's passage.

### **13.2 Female Genital Mutilation**

New clause 14<sup>136</sup>, tabled by Conservative MP, Stephen Phillips called for the review within 12 months of the Female Genital Mutilation Act 2003. This was in response to the fact that there have been no prosecutions under this legislation since its introduction. Speaking on behalf of the opposition, the Shadow Minister for the Home Office expressed support for the new clause.

---

<sup>135</sup> [PBC Deb 16 July 2013 c505-515](#)

<sup>136</sup> [PBC Deb 16 July 2013 cc 518-524](#)

The Minister of State for Crime Prevention took the opportunity to clarify the difficulties in prosecuting these cases, and explain the current policies on these issues. These included the Department of International Development providing £35million to support work to end female genital mutilation internationally and the introduction of a 2012 Crown Prosecution Service action plan in order to bring about successful prosecutions. He also drew attention to a new NSPCC helpline aimed at those suspecting cases of female genital mutilation.

The Minister said he was happy to update the House on the progress in this policy area but did not feel a 12 month formal review would add to the ongoing work in this area. The clause was withdrawn.

### 13.3 Powers of Community Support Officers

Stephen Barclay moved a new clause to introduce two additional powers which Chief Constables could confer on Police Community Support Officers (PCSOs): the power to stop a cyclist and issue them with a fixed penalty notice for riding without lights, and a power to search individuals and vehicles for controlled drugs. Damien Green undertook to look into a possible revision of PCSO powers over the summer, and on that basis, the new clause was withdrawn.<sup>137</sup> The Government has tabled a new clause on this for report stage.<sup>138</sup>

### 13.4 Assault of workers

David Hanson moved a new clause which would create an offence where a member of the public assaulted a worker in the course of, or because of, that worker's employment. He hoped this would provoke the Government to respond by reviewing the aggravating factors when people are assaulted in the course of their work. He was particularly concerned about those in the retail sector, on public transport and other jobs which brought workers into contact with the public, but were not covered by existing sentencing guidelines. Damien Green said that existing sentencing guidelines already provided for more severe sentences where violent offences were committed against those working in the public sector or providing a service to the public. The new clause was withdrawn.<sup>139</sup>

### 13.5 Irregular rendition

Stephen Philips moved a new clause which would create a new offence of transferring detainees between jurisdictions in the absence of judicial authorisation. Damien Green said that a police investigation was currently under way into allegations that the UK was unlawfully involved in the rendition of Libyan nationals in 2004. The new clause was withdrawn.<sup>140</sup>

## 14 Child Sexual Abuse Prevention Orders (New clauses for debate on Report)

At the end of August 2013, following the conclusion of the committee stage, Nicola Blackwood stated in the media that she intended to table an amendment to the Bill at report stage to introduce Child Sexual Abuse Prevention Orders.<sup>141</sup> The new clause (**new clause 5**) would substitute sections 123 to 129 of the *Sexual Offences Act 2003*, that provide for

---

<sup>137</sup> Ibid c526

<sup>138</sup> New Clause 11, House of Commons, *Notices of Amendments given up to and including 9 October 2013*

<sup>139</sup> [PBC Deb 16 July 2013 c531](#)

<sup>140</sup> C532

<sup>141</sup> See, for example, "[Tougher sex offender restrictions sought by campaigners](#)", *BBC News*, 27 August 2013 "[Meet Nicola Blackwood, the MP vowing to tighten sex offenders law](#)", *The Telegraph*, 27 August 2013 and "[MP calls for crack down on suspected sex offenders' travel](#)", *Channel 4 News*, 26 August 2013

Risk of Sexual Harm Orders, with new sections 123 to 129 that would provide for Child Sexual Abuse Prevention Orders (CSAPOs).<sup>142</sup>

According to the website of the campaign led by Nicola Blackwood, [Childhood Lost](#), the proposals for a new CSAPO have arisen from an [ACPO commissioned review](#) on the current orders used to manage sex offenders: Sexual Offences Prevention Orders (SOPOs); Foreign Travel Orders (FTOs) and Risk of Sexual Harm Orders (ROSHOs). The review concluded that they are “not fit for purpose” in terms of preventing known sex offenders from putting children at risk.<sup>143</sup> The campaign website states:

The review discovered that police were not using the court orders and concluded that part of the reason was that the legislation was too prescriptive and did not work in real life situations. This meant even when police knew of an offender who was putting children at risk, they often could not get a court order. The laws which are supposed to protect these children are failing.

That is why we need to replace the current, ineffective court orders with one new, easy to use court order that really will help police protect vulnerable children and stop them becoming victims of child sexual exploitation in the first place.<sup>144</sup>

A copy of the report is available through the Childhood Lost website.<sup>145</sup> It proposes the creation of “a single and straightforward, evidence-led test justifying a prevention order without other pre-conditions”.<sup>146</sup> The report states:

The proposed simplification in relation to orders protecting children (we repeat that we do not advocate reform so far as the orders apply to adult victims) is that the existing three forms of civil prevention orders (Sexual Offences Prevention Orders [“SOPOs”]; Foreign Travel Orders [“FTOs”]; and Risk of Sexual Harm Orders [“ROSHOs”]) be abolished and replaced with a single “[Child] Sexual Offences Prevention Order”.<sup>147</sup>

Background information on the current orders can be found in the Library Standard Note [Registration and management of sex offenders under the Sexual Offences Act 2003](#) (SN05267) (see sections 4, 5, and 6). Section 2 of the Home Office [Guidance on Part 2 of the Sexual Offences Act 2003](#) (August 2012) provides further details of the current civil prevention orders.<sup>148</sup>

The ACPO commissioned review makes a number of criticisms of the current orders. For example, it highlights the necessity of a qualifying conviction before a SOPO or FTO may be obtained and the fact that unless a SOPO is obtained at the date of conviction, it may only be obtained if the defendant's behaviour *since the appropriate date* (being the first date on which he was convicted, found or cautioned) makes it necessary.<sup>149</sup> Regarding both FTOs and RoSHOs, the review states that the specific pre-requisites to obtaining each of these

---

<sup>142</sup> House of Commons, [Notices of Amendments given up to and including Tuesday 10 September 2013](#), NC5

<sup>143</sup> Childhoodlost.co.uk, [Prevention](#) [accessed 12 September 2013]

<sup>144</sup> *Ibid*

<sup>145</sup> [Civil Prevention Orders: Sexual Offences Act 2003: ACPO commissioned review of the existing statutory scheme and recommendations for reform](#), 15 May 2013

<sup>146</sup> *Ibid*, para 2.4

<sup>147</sup> *Ibid*, para 2.5

<sup>148</sup> Home Office, [Guidance on Part 2 of the Sexual Offences Act 2003](#), August 2012; part 3 covers SOPOs, part 4 FTOs and part 5 RoSHOs

<sup>149</sup> *Ibid*, section 6

orders means that they have only rarely been either sought or imposed since they were introduced.<sup>150</sup>

A *BBC News* article explains how the new CSAPOs would operate:

... police chiefs could seek an order using hearsay evidence and other intelligence about a suspected offender, even if the apparent victim is too afraid to co-operate. The court could then ban a suspect from any activity linked to abuse - such as having children in their cars, or entering areas where they are known to target them. Individuals would face up to five years in jail if they break the order.<sup>151</sup>

The same *BBC News* article included this response to the proposals from a Home Office spokesperson:

"Whilst we have some of the toughest powers in the world to deal with sex offenders, we keep them under constant review and will consider proposals like this.

"We are already looking to improve the use and effectiveness of Foreign Travel Orders and other measures to put further protections in place."

A comment piece from the *Law Society Gazette* highlights some criticisms of the proposed new CSAPOs.<sup>152</sup> It states that the proposed change "promises to undermine the civil liberties of innocent people by imposing punitive restrictions upon them". The article quotes the Law Society Criminal Law Committee Chair Richard Atkinson, who said:

It is a dangerous move to take away the requirement for a conviction to make a restrictive order, not least because the order will be interpreted as proof that you committed the offence and that you are indeed a paedophile.

Also, if you resort to litigation to resist the restrictions, you are effectively telling the prosecution in advance how you intend to conduct your defence – giving the prosecution two bites of the cherry.

Addressing the issue of human rights considerations, the ACPO commissioned review states:

...we perceive no fundamental human rights objection to the primary reform we propose, namely the removal of the requirements of a qualifying conviction and, when applicable, conduct since the appropriate date. As already observed, if either was a human rights pre-requisite the ROSHO regime itself would be non-compliant, and this has never been suggested in practice.<sup>153</sup>

The Home Office has published a [supplementary European Convention on Human Rights memorandum](#) which addresses the issues arising from this new provision.<sup>154</sup>

The Government has now tabled provisions, which build on Nicola Blackwood MP's amendment to the Bill (NC14 and NS1).<sup>155</sup>

---

<sup>150</sup> *Civil Prevention Orders: Sexual Offences Act 2003: ACPO commissioned review of the existing statutory scheme and recommendations for reform*, 15 May 2013, para 8.1.1

<sup>151</sup> "Tougher sex offender restrictions sought by campaigners", *BBC News*, 27 August 2013

<sup>152</sup> "Guilty until proved innocent", *The Law Society Gazette*, 28 August 2013

<sup>153</sup> *Civil Prevention Orders: Sexual Offences Act 2003: ACPO commissioned review of the existing statutory scheme and recommendations for reform*, 15 May 2013, para 9.1.2

<sup>154</sup> Home Office, *Anti Social Behaviour, Crime and Policing Bill, European Convention on Human Rights, Supplementary Memorandum by the Home Office*, 28 June 2013

They would introduce two new orders, Sexual Harm Prevention Orders and Sexual Risk Orders, that would replace existing powers and the threshold for risk would be lowered to cover any case of sexual harm, not just cases of serious sexual harm. A Home Office explains the two new orders and notes the current orders they would replace:

#### Overseas offences

Sexual Harm Prevention Orders can be applied to anyone convicted or cautioned for a sexual or violent [offence](#), including where offences are committed overseas. They will replace Sexual Offences Prevention Orders and Foreign Travel Orders; and

Sexual Risk Orders can be applied to any individual who poses a risk of sexual harm in the UK or abroad, even if they have never been convicted. They will replace the Risk of Sexual Harm Order.

#### Range of restrictions

Both powers can place a range of restrictions on individuals depending on the nature of the case, such as limiting their internet use, preventing them from being alone with a child under 16, or preventing travel abroad.

The Sexual Harm Prevention Order can be made by a court on conviction, or if the police or National Crime Agency (NCA) apply to a magistrates' court. The order lasts a minimum of five years and has no maximum duration.

The Sexual Risk Order can be made if the police or NCA apply to a magistrates' court regarding a person who poses a risk of sexual harm. It lasts a minimum of two years and has no maximum duration.<sup>156</sup>

---

<sup>155</sup> New Clauses 14 and 15 (and subsequent amendments), House of Commons, [Notices of Amendments given up to and including 9 October 2013](#)

<sup>156</sup> Gov.uk news story, [New powers for tighter restrictions on sex offenders](#), 9 October 2013

## **Membership of the Public Bill Committee**

*Chairs:* Jim Dobbin ,Sir Roger Gale

Stephen Barclay (*North East Cambridgeshire*)(Con)

Jeremy Browne (*Minister of State, Home Department*)

Sarah Champion (*Rotherham*)(Lab)

Rosie Cooper (*West Lancashire*)(Lab)

Tracey Crouch (*Chatham and Aylesford*)(Con)

Simon Danczuk (*Rochdale*)(Lab)

Gloria De Piero (*Ashfield*)(Lab)

Richard Fuller (*Bedford*)(Con)

Damian Green (*Minister for Policing and Criminal Justice*)

David Hanson, (*Delyn*)(Lab)

Emma Lewell-Buck (*South Shields*)(Lab)

Paul Maynard (*Blackpool North and Cleveleys*)(Con)

Stephen Mosley (*City of Chester*)(Con)

Ian Paisley (*North Antrim*)(DUP)

Stephen Phillips (*Sleaford and North Hykeham*)(Con)

Bridget Phillipson (*Houghton and Sunderland South*)(Lab)

David Rutley (*Macclesfield*)(Con)

Chris Skidmore (*Kingswood*)(Con)

Robert Syms (*Poole*)(Con)

Stephen Wilson (*Sedgefield*)(Lab)

Simon Wright (*Norwich South*)(LD)