Anti-social Behaviour Crime and Policing Bill: Lords Amendments

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Author: Pat Strickland, Jacqui Beard and Joanna Dawson
Section Home Affairs Section

This note gives background on Lords Amendments to the *Anti-social Behaviour Crime and Policing Bill*. Parts 1-6 of the Bill would reform the tools available to deal with anti-social behaviour. There have been some concerns about the breadth of a number of these new powers, and the adequacy of safeguards. Other parts of the Bill cover a wide range of other criminal justice and policing matters. The Government has produced Explanatory Notes to the Lords Amendments.

There were a lot of Government amendments agreed to in the Lords, many on Report or Third Reading in response to arguments made in Committee. They include changes to:

- the definition of anti-social behaviour used for the new Injunctions to Prevent Nuisance and Annoyance (which is now similar to that used in existing legislation)
- powers to exclude people from their homes (which now only apply to adults)
- the standard of proof to be used for Criminal Behaviour Orders
- the forced marriage offence to cover situations where the victim lacks mental capacity
- the firearms provisions, to subject those on suspended sentences to the same prohibitions as those whose sentences had not been suspended, and to prevent prohibited persons from possessing antique firearms
- the new Sexual Harm Prevention Orders and Sexual Risk Orders to provide for all applications concerning under 18s to be heard in the youth court
- the provisions on port and border controls to clarify the rights of a detained person to consult a solicitor and specify the process for reviewing detention.
- the *Extradition Act 2003*, building in additional safeguards and dealing with technical

flaws with the operation of the Act.

Other changes would introduce:

- New powers for Chief Constables to confer on Police Community Support Officers
- A new civil penalty for registered keepers of vehicles where a littering offence has been committed from that vehicle.
- Longer maximum sentences for aggravated offences where a dog is dangerously out of control and injures a person or assistance dog
- Powers to allow the police to obtain information about guests staying at hotels, guest houses and B&Bs where they suspect sexual exploitation could be taking place.
- Powers to take further fingerprints or non-intimate samples if a criminal investigation is restarted, and to retain a DNA profile where someone has a previous conviction or caution that allows retention, irrespective of whether the arrest for which the profile was obtained was itself followed by a conviction
- An extension of existing powers to temporarily close premises used for prostitution and child pornography offences, to allow for temporary closure of premises used for a wider range of child sex offences.

In addition, **Lords amendment 113** would abolish the defence of marital coercion.

Clause 151 is concerned with the test used to determine whether there has been a miscarriage of justice for which a person should receive compensation. The Bill as originally introduced provided for the test to be whether a new or newly discovered fact shows beyond reasonable doubt that the person was innocent of the offence. Lords Pannick's amendment, which was agreed on division at Report Stage (**Lords amendment 112**), would provide for the test to be whether a new or newly discovered fact shows conclusively that the evidence against the person at trial is so undermined that no conviction could possibly be based on it. The Government is seeking to replace Lords Amendment 112 with its own amendment

The other main non-Government amendment (which the Minister said was a matter for Parliament) concerned protests around Parliament. This would extend the area in which controls apply.

Contents

1 Introduction

This note gives background on the *Lords Amendments to the Anti-social Behaviour Crime and Policing Bill*, which are due to be considered in the Commons on 4 February 2014.

Detailed background on the Bill was provided in in Library Research Paper 13/34, *Anti-social Behaviour, Crime and Policing Bill*, which was prepared for the Bill's second reading in the Commons. Library Standard Note 6639 provided a briefing on the Commons committee stage. The Commons report stage and additional background was provided in Lords Library Note 2013/029.

The Government has produced Explanatory Notes to the Lords Amendments.

Unless otherwise stated, clause numbers in this paper refer to HL Bill 52, the Bill as introduced in the Lords on 16 October 2013. This is consistent with the Lords Amendments paper itself, HL Bill 163.

2 Injunctions to Prevent Nuisance and Annoyance

2.1 Definition of anti-social behaviour: restricting the "nuisance and annoyance" test

The most significant Lords amendment to Part 1 of the Bill was a Government concession following a defeat on Report.

Part 1 would introduce a new Injunction to Prevent Nuisance and Disorder (IPNA) will replace the current "stand alone" Anti-social Behaviour Order (ASBO). The IPNA will also replace other orders including the Anti social Behaviour Injunction (ASBI), which social housing providers can currently apply for in relation to their housing management functions. The Bill as introduced in the Commons used a wide definition on anti-social behaviour, based on the current Anti-social Behaviour Injunction used in relation to social housing. This is conduct "capable of causing nuisance or annoyance to any person" rather than the definition used for ASBOs, which is conduct causing (or likely to cause) "harassment, alarm or distress". Background on this issue is given on pages 9-10 and 18 of Library Research Paper 13/34, *Anti-social Behaviour, Crime and Policing Bill.*

On the first day of Report in the Lord Dear moved an amendment to substitute the current definition used in relation to ASBOs (except where social housing providers are applying for it in relation to their housing functions). Lord Dear argued that "nuisance and annoyance" should not be applied outside the housing context because it risked being used against "any of us and against anyone in society" including peaceful protestors, noisy children, carol singers, canvassers and nudists. This was agreed to by 306 votes to 178 in a defeat for the Government).[1] Home Office ministers later indicated that they would accept the substance of Lord Dear's amendment.[2] Accordingly, at Third Reading moved two amendments to remove the definition in clause 1 and substitute the one set out in **Lords amendment 5**. Home Office minister Lord Taylor of Holbeach said that the Government believed that fears that IPNAs would be applied to curtail freedom of expression or normal everyday activities were unfounded, but that for pragmatic reasons, given the strength of feeling in the Lords, the Government were content that the general test for an injunction should be that the conduct had caused, or was likely to cause, harassment alarm or distress.

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1 HL Deb 8 January 2014 c1543

2 "'Nuisance and annoyance' injunctions abandoned after Lords defeat", *Guardian*, 23 January 2014

The definition for housing-related anti-social behaviour (ASB) is tenure neutral, so it could apply to owner occupiers and private tenants as well as social tenants. Here the definition would be:

- conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or
- conduct capable of causing housing-related nuisance or annoyance to any person.

However, to ensure that "rogue private landlords" would not be able to use the power, only a social landlord, a local authority or the police would be able to apply for an injunction using the "nuisance and annoyance" test.

2.2 Prohibitions and requirements: conflict with religious beliefs

Under the Bill, both IPNAs and Criminal Behaviour Orders would be able to impose both prohibitions and positive requirements. In Clause 1(5) of the Bill as originally introduced expressly required that these must not, so far as practicable, conflict with religious beliefs (as well as school, work or court orders).

The Joint Committee on Human Rights published to reports on the Bill, one in October 2013[3] and another in January 2014.[4] The Committee stated that Parts 1-6 of the Bill, on anti-social behaviour, raised "a number of significant human rights issues" and one of these was the fact that prohibitions and requirements in injunctions expressly have to avoid conflict with religious beliefs, whilst other Convention rights such as respect for private life or free association are not expressly provided for.[5]

In Committee, Lord Greaves moved an amendment to add "ethical" to "religious" beliefs, and Baroness Berridge referred to the Joint Committee's reservations.[6] On Report, Government spokesperson Lord Ahmad of Wimbledon moved an amendment to leave out the paragraph referring to religious beliefs "for the avoidance of doubt" and "on the basis that the courts would in any event, by virtue of the operation of the Human Rights Act" have to consider whether prohibitions or requirements were compatible with convention rights.[7]

2.3 Cases involving both juveniles and adults

Lords amendment 3 was a Government amendment moved on Report to deal with situations where anti-social behaviour involved a group including both over 18s and under 18s. It would allow applications against the adults in the group to be heard in the Youth Court along with those against the juveniles, rather than the County Court which would usually hear adults' cases. However, Lord Ahmad confirmed that applications against under 18s would not be transferred to the County Courts.[8] The amendment was agreed to. Lords amendments 6, 7, 9 and 18 are consequential.

2.4 Power to exclude people from their homes and injunctions for social tenants

Lords amendments 10 and 11 deal with IPNAs for housing-related anti-social behaviour.

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3 Joint Committee on Human Rights *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill* HL Paper 56/HC 713 2013/14,11 October 2013

4 Joint Committee on Human Rights, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill (second Report)* HL Paper 108/HC 951, 6 January 2014

5 JCHR first Report on the Bill, paras 38-40 and 57.

6 HL Deb 18 November 2013 c794

7 HL Deb 8 January 2014 c1547

8 HL Deb 8 January 2014 c1552

Clause 12 would allow an IPNA to exclude an occupier from their usual home where the (threatened or actual) anti-social behaviour involves violence or there is a significant risk of harm to other persons. On Report in the Commons, the provision was extended to make it tenure neutral, i.e. covering owner occupiers and private tenants as well as social tenants. [9]

In Committee in the Lords, Liberal Democrat Baroness Hamwee sought to restrict this exclusion power to adult respondents, calling it a "very severe sanction" and asking what obligations a local authority might have if a child was suddenly made homeless.[10] On Report, Lord Ahmad said he was "content" to restrict this power to adults, and moved a Government amendment, which was agreed[11] and is now listed as **Lords amendment 10**.

Lords amendment 11 would remove Clause 13 of the Bill. This clause reproduced the effect of existing powers for social landlords to obtain injunctions against tenants who are in breach of their tenancy agreements as a result of committing or threatening anti-social behaviour. The power extends to tenants who have allowed or encouraged others to behave anti-socially. In Committee in the Lords, Opposition spokesperson Lord Rosser argued that powers to deal with anti-social behaviour should be tenure neutral, and that in the light of the changes to clause 12, this power should not be needed.[12] On Report, Lord Ahmad said that the Government had been considering this and consulting with social landlords, and had decided to remove the clause "to ensure the injunction is completely tenure neutral".[13]

2.5 Statutory guidance

Before Report in the Commons, the Government published draft guidance on the new powers.[14] On Report in the Lords, Lord Ahmad said he saw merit in making this guidance statutory, and his amendment (now **Lords amendment 13**) was agreed without division.[15]

3 Criminal Behaviour Orders

Criminal behaviour orders (CBOs) would replace the current ASBO on conviction (CRASBO) and also the drink banning order on conviction.

3.1 Standard of proof

Lords amendment 18 would make it explicit that the, when deciding to impose a CBO, the court would have to be satisfied "beyond reasonable doubt" that the offender had engaged in anti-social behaviour.

The legislation which introduced ASBOs was silent on which standard of proof should be applied when deciding if the respondent had actually behaved anti-socially. However, the courts decided that, although ASBOs are civil orders, this should have to be established according to the criminal standard (i.e. "beyond reasonable doubt" rather than on the balance of probabilities).[16]

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9 HC Deb 14 October 2013 c537
10 HL Deb 20 November 2013 c971
11 HL Deb 8 January 2014 c1562
12 HL Deb 20 November 2013 c977
13 HL Deb 8 January 2014 c1563
14 Home Office, *Reform of anti-social behaviour powers Draft guidance for frontline professionals*, October 2013
15 HL Deb 8 January 2014 c1590
16 See Library Research Paper 13/34, *Anti-social Behaviour, Crime and Policing Bill*, pp25-6 for further detail

The Bill makes it explicit that for IPNAs, anti-social behaviour has to be proved on the balance of probabilities.[17] However, for criminal behaviour orders the Bill only required the court to be "satisfied" that the offender had engaged in anti-social behaviour.[18] However, the draft guidance said that the Government expected that the courts would apply the criminal standard of proof for CBOs.[19]

In Committee, Baroness Hamwee argued that this criminal standard of proof should be made explicit for CBOs. Lord Taylor of Holbeach argued that this was not necessary. However, on Report, Lord Ahmad of Wimbledon said that the Government now accepted that, in view of the express provision for IPNAs, there might be some doubt that the criminal standard would apply. The Government amendment was agreed.[20]

3.2 Prohibitions and requirements: conflict with religious beliefs

Lords amendment 19 (agreed to on Report[21]) would remove the reference to the need to avoid conflict with religious beliefs, in line with the changes made to prohibitions and requirements under IPNAs (see section 2.2 above).

3.3 Special measures for witnesses

Lords amendment 25 is a new clause allowing for statutory guidance on the treatment of vulnerable and intimidated witnesses in CBO proceedings. It was a Government amendment agreed to without debate on Report.[22]

4 Dispersal powers

Part 3 of the Bill would create a new police dispersal power. This would replace two existing police powers to tell people to leave an area in order to prevent or deal with anti-social behaviour.

There have been concerns about whether these powers would be used to restrict peaceful protest and freedom of assembly. The Joint Committee on Human Rights was concerned that the protections set out in the Bill for lawful picketing and processions were too narrow.[23] Baroness Hamwee moved amendments to require the duration of a dispersal order to be "proportionate", and to ensure that the locality they applied to would be clearly identified. Labour's Lord Harris of Haringey and Baroness Smith of Basildon argued that there should be a duty to consult local authorities. However, Lord Taylor of Holbeach maintained the provisions balanced safeguards with the necessary flexibility to deal with anti-social amendments, and these amendments were withdrawn.[24] On Report, Lord Taylor moved a Government amendment to make it explicit that, before authorising the power, the senior officer concerned would have to have due regard to "the rights of freedom of assembly and expression" as set out in the European Convention on Human Rights.[25] This is now listed as **Lords amendment 23**. Two further Government amendments made it explicit that

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17 Clause 1(2)
18 Clause 21 (of the Bill as first introduced, and as introduced in the Lords)
19 Home Office, *Reform of anti-social behaviour powers Draft guidance for frontline professionals*, October 2013, p31
20 HL Deb 8 January 2014 c1590
21 HL Deb 8 January 2014 c1591
22 HL Deb 8 January 2014 c1593
23 Joint Committee on Human Rights *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill* HL Paper 56/HC 713 2013/14,11 October 2013 , paras 66-70
24 HL Deb 20 November 2013 c1026
25 HL Deb 8 January 2014 cc1594-1601

constables must have particular regard to these convention rights when deciding whether to give a direction (**Lords amendment 24**) and provided for statutory guidance to police on exercising the power (**Lords amendment 25**).[26]

5 Environmental anti-social behaviour

Part 4 of the Bill would introduce Community Protection Notes, Public Spaces Protection Orders and Closure Orders to replace a range of powers to deal with environmental anti-social behaviour.

5.1 Community Protection Notices

Lords amendments 26 to 28 are some fairly minor or technical Government amendments to the offence of failing to comply with a Community Protection Notice which were agreed on Report.[27] **Lords amendments 29-34** would extend a number of police powers to seize, and dispose of, items used in the commission of the offence of failure to comply so that local authority personnel could also exercise these. These were Government amendments introduced on Report in response to amendments tabled at Committee stage by Baroness Hamwee.[28] **Lords amendment 35** would, once again, provide for statutory guidance, in this case both to police and local authorities on the exercise of these powers.

5.2 Public Spaces Protection Orders

The Government moved a number of amendments in Committee to clauses 55-57 to replace the requirements to consult with the police and community representatives with a requirement to publish the text of a proposed order..[29] The Delegated Powers and Regulatory Reform Committee had commented that clause 55[30] conferred "very wide ranging and significant powers on local authorities to control the way in which public spaces may be used." The Committee continued:

> In the absence of a requirement to publicise the notice before it is made, we do not believe this to be an appropriate delegation of powers.[31]

Further Government amendments were made on Report.[32] The resulting **Lords amendments 36-38** would remove the consultation requirements, whilst **Lords amendment 42** would introduce a new clause making it clear that local authorities must have "particular regard" to rights of freedom of expression and freedom of assembly set out in the European Convention on Human Rights, and must carry out the necessary consultation, publicity and notification. The consultation and notification requirements now cover the owner and occupier of the land. Once again, under **Lords amendment 43** there would be statutory guidance.

Lords amendment 41 was also a government amendment agreed to on Report which would allowed certain designated bodies or people, such as the City of London Corporation, to

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26 Ibid, c1602
27 HL Deb 8 January 2014 cc1603-4
28 HL Deb 8 January 2014 c1604
29 HL Deb 25 November 2013 cc1226
30 Clause 58 of most recent version of the Bill, HL Bill 78
31 *Delegated Powers and Regulatory Reform Committee - Twelfth Report* , HL 72 2013-14, 1 November 2013
32 HL Deb 8 January 2014 cc1617-19

make byelaws in relation to land they are responsible for managing, but only where the relevant local authority does not wish to act. [33]

5.3 Closure orders

Lords amendments 48 to 55 were Government amendments agreed to on Report which would allow local authorities to contract out the service of a closure orders (although not the decision to impose one).[34] These were also in response to amendments tabled in Committee by Baroness Hamwee.[35]

6 Recovery of possession on anti-social behaviour grounds

Part 5 of the Bill is designed to expedite the eviction of landlords' most anti-social tenants and to give landlords more flexibility to tackle tenants' anti-social behaviour when it takes place away from the locality of the home. Background is on pages 40-47 of Library Research Paper 13/34. Clauses 86 and 89 of the Bill gives a new "absolute" ground for possession for use against secure tenants and assured tenants in social housing. One of the situations in which this would apply is where the tenant, or a person living in or visiting the dwelling has been convicted of a "serious offence". What counts as a serious offence is defined in a new schedule 2A of the Housing Act 1985 (which would be introduced by clause 93 and schedule 3 of the Bill). The Bill as introduced in the Commons (and the Lords) would have allowed the Secretary of State to amend this list by order subject to the negative procedure. The Delegated Powers and Regulatory Reform Committee recommended in its November 2013 report that such orders should be subject to the affirmative procedure.[36]

Lords amendments 57 and 58 were Government amendments agreed to in Committee to comply with this recommendation.[37]

Clause 91 of the Bill 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.

The Joint Committee on Human Rights raised concerns about this, arguing that this was "unnecessary and disproportionate", and recommended it be removed, particularly because of its potentially disproportionate effect on women and children. In Committee, a number of peers raised strong concerns, including Lord Rosser who made the point that children could be evicted.[38]

On Report, the Government tabled a series of amendments (now listed as **Lords amendments 59-64**) which provide that landlords would be able to seek possession under this clause only where the tenant or an adult member of the household has been convicted of an offence at the scene of a riot.[39] An amendment to leave out the clause was negatived on division by 248 votes to 215.[40]

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33 HL Deb 8 January 2014 c1614
34 HL Deb 14 January 2014 c119
35 HL Deb 8 January 2014 c1604
36 *Delegated Powers and Regulatory Reform Committee - Twelfth Report* , HL 72 2013-14, 1 November 2013
37 HL Deb 2 December 2013 c40
38 HL Deb 2 December 2014 c62
39 HL Deb 14 January 2014 cc120-131
40 Ibid, c132

7 The Community Remedy

Part 6 of the Bill would introduce a new "Community Remedy" which uses a restorative justice approach to deal with low level crime and anti-social behaviour. Police and Crime Commissioners will consult the public about a range of possible sanctions to draw up a "community remedy document" containing a menu of these sanctions. When doing this, they must consult with the chief officer of police for the area, must consult whatever community representatives are considered appropriate and must carry out whatever public consultation is considered appropriate (clause 93). **Lords amendments 65 and 67**, which were agreed to on Report,[41] would require the Police and Crime Commissioner to consult also with the local authorities in their force area.

8 Dangerous Dogs

Following debate in Committee in the Commons, and a Government consultation which ran from 6 August 2013 to 1 September 2013 [DEFRA, *Maximum Prison Sentences for Dog Attacks Causing Injury or Death*] the Government introduced what is now **Lords amendment 69** in Committee to increase the maximum penalty for the aggravated offence where an out-of-control dog kills or injures a person or an assistance dog.[42]

The maximum custodial sentence for the aggravated offence (that is, where a dog is dangerously out of control and injures a person or an assistance dog) would be as follows:

- 14 years' imprisonment if a person dies as a result of the attack;
- 5 years' imprisonment if a person is injured by the attack; and
- 3 years' imprisonment if an assistance dog is either killed or injured

9 Firearms

9.1 Background checks and fees

Debate in the Lords on Part 8 of the Bill, as in the Commons, focussed on the issues of background checks included as part of the licensing process and the fees for licences. At Committee Stage Baroness Smith of Basildon moved an amendment on these issues which was withdrawn.[43] The new clause (slightly amended) was returned to on Report. Baroness Smith explained the purpose of the amendment with regard to background checks:

> Our amendment calls for greater effectiveness in background checks when considering applications for firearms licences. The specific reference and concern we have relates to cases of domestic violence. The amendment seeks to amend the Firearms Act 1968, so that where there is substantiated evidence of a history of, "violent conduct, domestic violence, or drug or alcohol abuse", it would provide a presumption against being awarded a licence unless evidence could be provided that there were grounds for exemption.[44]

The Minister, Lord Taylor, outlined how the current regime operates, stating that the police already have the ability, under the *Firearms Act 1968*, to take these factors into account

41 HL Deb 14 January 2014 c136
42 HL Deb 2 December 2013 c116
43 HL Deb 4 December 2013 c243
44 HL Deb 14 January 2014 c152

when assessing the risk to public safety. He also drew attention to the firearms guidance, which states that although each case must be considered on its merits, evidence of domestic violence will generally indicate that the application should be refused.

Lord Taylor said that he understood the argument being made, but did not consider that the proposed new clause would be the right approach. He said that the Government had sought to foster decision making at a local level and he would not wish to undermine this. However, he said, national action can still have a role and can support local decision making. Accordingly, he said, the Government is working with the national policing lead for firearms licensing to ensure that the police have a more detailed awareness and understanding of the Home Office guidance.[45] The amendment was disagreed on division, 172 to 227.[46]

9.2 Possession of firearms by persons previously convicted of crime

At Committee Stage the Government moved an amendment to insert a new clause (**Lords Amendment 70**) which Lord Ahmad said sought to address two identified two loopholes in the *Firearms Act 1968*. Firstly, the clause would subject persons who receive suspended sentences to the same prohibitions from possessing firearms as those persons whose sentence had not been suspended.[47] Under section 21 of the *Firearms Act 1968* a person who is sentenced to a term of imprisonment of three years or more is never allowed to possess firearms or ammunition and a person who is sentenced to a term of imprisonment of three months or more, but less than three years, is prohibited from possessing a firearm or ammunition until five years have passed since the date of release. The extension of this prohibition to those who have been sentenced to a term of three months or more but have had their sentence suspended would implement a recommendation made by the Home Affairs Select Committee in 2010.[48]

Secondly, the new clause would ensure that prohibited persons are prevented from possessing antique firearms. Lord Ahmad said:

> Currently a person with any criminal conviction would be able to possess an antique firearm. Intelligence indicates that there is a growing interest in antique firearms from criminal groups. This amendment will ensure that persons convicted of a criminal offence and sentenced to at least three months' imprisonment, including a suspended sentence, will be prohibited from possessing antique firearms in the UK.[49]

The new clause would extend to England, Wales and Scotland.[50] The amendment was agreed.

The Home Office published a supplementary ECHR memorandum regarding the new clause.[51] In it the Government gives its view that the new clause is compatible with Article 1 Protocol 1 of the ECHR which provides that no one shall be deprived of his possessions except in the public interest and subject to conditions provided for by law.

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45 HL Deb 14 January 2014 c159
46 HL Deb 14 January 2014 c163
47 HL Deb 4 December 2013 c249
48 Home Affairs Committee, *Firearms Control*, HC 447-I, December 2010, para 72
49 HL Deb 4 December 2013 c249
50 Lords Amendment 126
51 *Explanatory notes on Lords Amendments*, 27 January 2014, Annex B

10 Power to issue closure notices in respects of premises used for child exploitation

At Lords' Report Stage Baroness Smith of Basildon moved an amendment which sought to add a new ground for the issuing of a closure notice (under Part 4 of the Bill) that would allow premises to be closed in cases of sexual offences against a child.[52]

The Minister undertook to give the matter sympathetic and urgent consideration, the amendment was withdrawn and on Third Reading the Government moved an amendment to address the issue.

Lords amendments 76, 127 and 157 would extend existing powers in Part 2A of the *Sexual Offences Act 2003* which currently allows for the temporary closure of premises used for prostitution and child pornography offences. The new provisions would extend the powers to cover the temporary closure of premises used for a wider range of child sex offences, including, for example, rape of a child under 13 and making indecent images of a child.

The police would be able to issue a closure notice where they had reasonable grounds for believing that in the past three months the premises were used for activities related to a specified child sex offence, or where the premises are likely to be used for such an activity. The existing safeguards in Part 2A of the *Sexual Offences Act 2003* would be retained, including the requirement that a court must decide whether or not to make a closure order within 48 hours of the police closure notice being served. The Minister explained how the new provisions would work in practice:

> This would mean, for example, that if the police received evidence on a Friday night that premises were to be used as a venue for abusing children that weekend, they could, in addition to their existing safeguarding powers and actions, temporarily close the premises. This could provide the police with a powerful tool to disrupt and tackle child sexual exploitation. These amendments will enhance the ability of the police to protect the public from sexual harm and will complement the steps that we have taken elsewhere in the Bill to strengthen the system of civil orders used to manage the risk of sexual offences, and to give the police additional powers to tackle child sexual exploitation taking place in hotels and similar establishments.[53]

The amendment was agreed. The provisions would extend to England, Wales and Northern Ireland but the new closure powers would operate in England and Wales only.[54]

11 Information about guests at hotels believed to be used for child sexual exploitation

At Lords' Committee Stage amendments to insert new clauses regarding information about guests at hotels believed to be used for child sexual exploitation were moved by the Government and agreed (**Lords amendments 77 to 79**). Lord Ahmad explained that the new clause inserted by **Lords amendment 77** would allow the police to obtain information about guests staying at hotels, guest houses and B&Bs where they suspect sexual exploitation could be taking place. He said:

> If there is a reasonable suspicion that premises are being used for child exploitation, a police officer of at least inspector rank may issue a notice to the owner, operator or

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52 HL Deb 14 January 2014 c113
53 HL Deb 27 January 2014 c987
54 *Explanatory notes on Lords Amendments*, 27 January 2014, para 40

> manager. That person would then be required to provide the police with information over a specified period of up to six months about guests who check in on and after the date on which the notice takes effect. This could include information such as the name, age, address and relationship of guests, which would be used for vital intelligence and evidence-gathering. Where there is information that a child is potentially at risk, police would use existing powers to protect the child and pursue offenders in the normal investigative process.
>
> It is essential that this new power is taken seriously and can be enforced. That is why it will be an offence for a person served with a notice to fail to comply, and they will be subject to a maximum penalty of a level 4 fine, currently £2,500. However, clearly there should be safeguards. An offence will not have been committed if the person has a reasonable excuse for failing to comply or if reasonable steps were taken to obtain or verify the required information, and an appeal against the notice can be made in a magistrates' court.[55]

These provisions would extend to England and Wales.[56]

12 Forced Marriage

On Report, Baroness Thornton tabled an amendment to make it an offence to cause a person lacking capacity to consent to enter into marriage.[57] The concern was that for the offence of forced marriage to take place, the Bill required violence threats or other forms of coercion. At Third Reading, the Government moved the amendments which are now listed as **Lords Amendments 80–82**.[58]. They would ensure that, where a person lacks the capacity to consent, the new offence of forced marriage is capable of being committed by any conduct carried out for the purpose of causing the victim to enter into a marriage, whether or not the conduct amounts to violence, threats or any other form of coercion.

The Government moved **Lords amendments 83 to 86**, also at Third Reading, at the request of the Scottish Government. They would bring in similar provisions concerning situations where a person lacks capacity to consent to the marriage, and would increase the maximum sentence from two years to seven years in Scotland bringing it in line with the provision for England and Wales.

13 The College of Policing

13.1 Regulations

Clause 110 would amend the powers in sections 50 and 51 of the *Police Act 1996* to make regulations on policing matters such as rank, qualifications and training. Under the Bill, the College of Policing would prepare draft regulations, and the Home Secretary would have to make them in the terms of the draft unless certain exceptions apply. The Delegated Powers and Regulatory Reform Committee said that this was an inappropriate delegation of power in so far as it prevented the Home Secretary from making regulations without the College's agreement. [59] The Committee also said that the regulations should be subject to the affirmative procedure. The Government tabled amendments in Committee to ensure that some of the regulations and the statutory Codes of Practice would be subject to affirmative

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55 HL Deb 4 December 2013 c322
56 Lords amendment 120
57 HL Deb 14 January 2014 c202
58 HL Deb 27 January 2014 c989
59 Delegated Powers and Regulatory Reform Committee , *12th Report of Session 13-14,* HL 72 2013-14, 1 November 2013, paras 21-22

procedure, but argued that the negative procedure should apply to others.[60] Also the prohibition on the Secretary of State making regulations without the approval of the Secretary of State remained. These Government amendments were agreed to and are now listed as **Lords amendments 87-88**

The Delegated Powers and Regulatory Reform Committee remained unsatisfied with the Government's amendments.[61] In its response to the Committee, the Government said that the College needed to be able to responded to unforeseen emergencies, such as sustained outbreaks of civil disorder, and that the regulation making powers subject to negative procedure were essentially administrative matters akin to others under the 1996 Act which were also subject to negative procedure.[62]

13.2 Charging fees

Also in Committee, an amendent (now listed as **Lords amendment 89** was agreed which would regulate the College of Policing's ability to sell products and public services such as, police promotion examinations and assessments. The new clause provides that it may charge for these services only to the extent specified by the Home Secretary in secondary legislation, subject to the negative resolution procedure.[63]

13.3 Appointment of chief officers

Lords amendments 90 to 97, agreed to in Committee,[64] would implement another recommendation of the Delegated Powers and Regulatory Reform Committee,[65]] this time in relation to the eligibility criteria for appointment of chief officers. The Bill allows this to include service at a designated rank in designated countries. The Bill as introduced in the Lords had the College of Policing making the designations, albeit with the Home Secretary's approval; the amendments would require the Home Secretary to designate through regulations subject to negative procedure, although the College of Policing would still recommend the designations.

14 DNA and fingerprints

The Government moved amendments to insert new clauses at Lords' Committee Stage which the Minister said were designed to improve the use of DNA and fingerprints in criminal investigations.[66] The *Explanatory Notes on Lords Amendments* state that these clauses address two issues identified during work to implement the new regime for retention of DNA under the *Police and Criminal Evidence Act 1984* (PACE) as amended by the *Protection of Freedoms Act 2012*.[67]

The new clause that would be inserted by **Lords amendment 98**, would provide for the power to take further fingerprints or non-intimate samples if an investigation is restarted. The

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60 HL Deb 4 December 2013 cc281-2

61 *Delegated Powers and Regulatory Reform Committee - Fourteenth Report : Anti-social Behaviour, Crime and Policing Bill: Government Amendments*, HL 89 2013-14, 4 December 2013 paras 3-5

62 Delegated Powers and Regulatory Reform Committee, *Anti-social Behaviour, Crime and Policing Bill: Government Response*, HL 115 2013-14, 20 January 2014-02-02

63 HL Deb 4 December 2013 c285

64 HL Deb 4 December 2013 c318

65 Delegated Powers and Regulatory Reform Committee , *12th Report of Session 13-14,* HL 72 2013-14, 1 November 2013, paras 21-22

66 HL Deb 4 December 2013 c334

67 *Explanatory notes on Lords Amendments*, 27 January 2014, para 51
For background see Library Standard Note *Retention of fingerprints and DNA data* (SN4049)

Explanatory Notes on Lords Amendments set out the current position and the issue that can arise:

> PACE currently allows DNA sampling only once in an investigation. If the Crown Prosecution Service ("CPS") decides not to proceed with a case where the accused person has not previously been convicted or charged with a qualifying offence, that person's DNA must be deleted. However the CPS has now introduced a new procedure, *Victims' Right to Review*, under which an investigation may be restarted. If this is done, there is no power to retake DNA as it has already been taken during the investigation. A successful review of a decision not to prosecute will thus allow no way to retake DNA as it has already been taken during the investigation. The same considerations apply to fingerprinting as to DNA sampling. [68]

The new clause that would be inserted by **Lords amendment 99** would provide that a DNA profile can be retained where someone has a previous conviction or caution that allows retention, irrespective of whether the arrest for which the profile was obtained was itself followed by a conviction. The *Explanatory Notes on Lords Amendments* state:

> It would make clear that the question as to whether a person should have their DNA retained should be determined by considering their entire criminal history. It would mean that if a conviction in that history allows retention, then DNA may be retained regardless of whether the arrest for which the profile was obtained was itself followed by a conviction. This affects DNA sampling as normally only one DNA sample would be taken from a first arrest and none from any subsequent arrests because that would incur unnecessary costs to obtain the same profile. At present, language in the primary legislation does not clearly achieve this.[69]

The amendments were agreed.[70]

The Home Office published a supplementary ECHR memorandum regarding the new clauses, giving the Government view that the new clauses are proportionate and compatible with a person's right to a private life under Article 8 of the ECHR.[71]

15 Police Community Support Officer Powers

In Committee the Commons, Steve Barclay moved an amendment designed to draw attention to what he saw as illogical inconsistencies in the powers of Police Community Support Officers. In Committee, the Government moved the amendments which are now listed as **Lords amendments 103, 122, 167 and 171**.[72] These include a new schedule and would add to the powers that a chief constable may confer on a police community support officer. According to the summary in the Explanatory Notes, this would include the power to issue a fixed penalty notice for the following:

- the cycling-related offences of cycling through a red light, failing to comply with a red light and carrying a passenger;
- contravening road regulations by failing to stop, driving the wrong way down a one-way street, contravening cycle lanes, contravening a bus lane, contravening a

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68 *Explanatory notes on Lords Amendments*, 27 January 2014, para 52
69 *Explanatory notes on Lords Amendments*, 27 January 2014, para 54
70 HL Deb 4 December 2013 c337
71 *Explanatory notes on Lords Amendments*, 27 January 2014, Annex C
72 HL Deb 11 December 2013 816

route for buses/cycles only sign, sounding the horn while stationary or at night, not stopping the engine when stationary, causing unnecessary noise and opening a door to cause injury/danger;

- parking in a restricted area outside a school; and
- unlicensed street vending.

62.The new Schedule also includes the power to require house-to-house charitable collectors to confirm their identity and proof of licence.

63.Finally, the new Schedule would allow chief constables to confer on community support officers powers to seize and retain materials relevant to the investigation of a crime.

16 Use of amplified noise equipment in vicinity of Palace of Westminster

There are special controls on protests around Parliament. The Government reformed these in the *Police Reform and Social Responsibility Act 2011* which applied restrictions in a much smaller "controlled area" than the previous regime. The main focus of the controls is preventing amplified noise equipment and the use of tents and sleeping equipment. Conservative Lord Deben moved an amendment in Committee which would have extended the "controlled area" beyond the central garden of Parliament Square and the footways immediately adjoining it to other areas in the vicinity of the Palace of Westminster. This was to deal particularly with the problem of amplified noise.[73] For the Government, Lord Taylor of Holbeach said that there was a need to work with others to arrive at a solution.[74]

On Report, Lord Deben moved the amendment which is now listed as **Lords amendment 104**, again to extend this controlled area. He explained that in his discussions with interested parties he had tried to ensure a balance between the rights of protestors and the needs of those working in Parliament[75] Lord Taylor of Holbeach said that Home Office officials had worked with the Metropolitan Police, Westminster City Council and the Royal Parks to develop a robust enforcement plan for the current legislation. A joint protocol had been developed to deal with noise-related nuisance in the vicinity of Parliament. However, the amendments were a matter for the House, and the Government would neither support nor oppose the amendment. It was agreed to without division.[76]

17 Littering from vehicles

In Committee, Lord Marlesford (Conservative) moved an amendment to introduce a specific civil penalty for littering from vehicles. The amendment would have meant that the registered keeper of the vehicle could be held liable, even if they were not the person who had littered from it, and Lord Taylor of Holbeach resisted it because " under the amendment an innocent party might be punished for the crime of another."[77] Lord Marlesford moved a further amendment on Report arguing:

> The purpose of my amendment is to close a loophole. Although littering from vehicles is a criminal offence, nothing can be done under the present law unless it is possible to

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73 HL Deb 25 November 2013 cc1208-1219
74 c1218
75 HL Deb 27 January 2014 c511
76 Ibid c518
77 HL Deb 20 November 2013 c996

> identify exactly who threw the litter out of the vehicle. I am trying to supplement that arrangement—not replace it—by saying that if litter is thrown from a vehicle, then the keeper of that vehicle should be subject to a civil penalty on rather the same basis as a keeper of an unwisely parked vehicle is subject to a fine of £80 or so and it is up to them whether they recover it from the person who was driving the vehicle. It is a civil offence intended as a deterrent.[78]

This time Lord Taylor undertook to bring forward a Government amendment at Third Reading, and he did so.[79] The amendments are now listed as **Lords amendments 105 and 123.** They would give the Secretary of State a power to make regulations providing for registered keeper of a vehicle to pay a civil fixed penalty where a littering offence has been committed from that vehicle.

18 Part 12: Extradition

Amendments 106-111 relate to Part 12 of the Bill, which amends the *Extradition Act 2003* ("the 2003 Act").

Provisions to amend the 2003 Act, which sought to give effect to some of the recommendations of the Sir Scott Baker's review of the operation of the Act,[80] were included as Part 11 of the original Bill.

On the 9 July 2013, the Home Secretary made a statement in Parliament regarding the Government's decision on whether to opt into or out of 130 EU police and criminal justice measures.[81] In this statement she set out plans to further reform the operation of the European Arrest Warrant in order to address longstanding concerns. Several of these amendments were agreed in Public Bill Committee and at Commons Report stage. [82] The Lords amendments should therefore be understood in this context.

Clause 138 deals with proportionality. **Amendment 106** would confer a power on the Lord Chief Justice for England and Wales, with the concurrence of the Lord Justice General of Scotland and the Lord Chief Justice of Northern Ireland, to issue guidance to the National Crime Agency ("NCA") on the operation of an administrative proportionality check when deciding whether to issue a certificate under section 2 of the 2003 Act.[83] According to the explanatory notes, this is intended to facilitate the operation of an administrative filter prior to extradition cases reaching court.[84]

Introducing the amendment in Committee the Minister, Lord Taylor, said:

> This seeks to build on the proportionality bar operated by the courts by ensuring that robust, pre-court, administrative procedures are also in place. Amendment 81A amends Section 2 to stipulate that the National Crime Agency must not issue a certificate if it is clear to the NCA that a judge would be required to order the person's discharge on the basis that extradition would be disproportionate. To facilitate this, the

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78 HL Deb 20 January 2014 cc489-90

79 HL Deb 27 January 2014 c993

80 Sir Scott Baker, David Perry QC and Anand Doobay *A Review of the United Kingdom's Extradition Arrangements* September 2011. For further detail please see *Library Research Paper 13/34 Anti-social Behaviour, Crime and Policing Bill.*

81 HC Deb 9 July 2013 cc177-180

82 For further detail please see *Library Standard Note 06639 The Anti-social Behaviour Crime and Policing Bill: Debate in Parliament*

83 A certificate is issued to certify that an authority in a Part 1 territory which issued an arrest warrant is a judicial authority in that territory with the function of issuing arrest warrants.

84 *Anti-social Behaviour, Crime and Policing Bill: Explanatory Notes on Lords Amendments*

> amendment will enable the Lord Chief Justice of England and Wales, with the agreement of the Lord Justice General of Scotland and the Lord Chief Justice of Northern Ireland, to issue guidance in relation to the proportionality bar to the NCA, which it must apply in deciding whether to issue a certificate under Section 2 of the Extradition Act 2003. The content of any such guidance will, as noble Lords will understand, be a matter for the judiciary.[85]

The amendment was agreed.

Clause 162 (in HL Bill 78, as amended on Report) deals with extradition to the United Kingdom to be sentenced or to serve a sentence. **Amendment 107** would replace section 142(2A) of the 2003 Act to make clear that the fact that a person, who is wanted to be sentenced or to serve a sentence in the UK, is already in prison in the requested State, is no barrier to the issue of a European Arrest Warrant ("EAW"). This follows case in which a justice of the peace refused to issue a EAW because the subject was in prison in the requested State and could not therefore be considered to be "unlawfully at large".

Lord Taylor introduced the amendment at Report stage:

> Amendment 94DH replaces section 142(2A) of the 2003 Act. Section 142 deals with the issue of European arrest warrants in the UK; that is, in cases where the UK is requesting the extradition of a person from another member state. In the case of people who have already been convicted of an offence and whose extradition is requested in order to be sentenced or to serve a sentence, one of the conditions for the issue of an EAW by a UK judge is that the person is "unlawfully at large". In a recent case a judge refused to issue an EAW in respect of a person who was in prison in another member state on the basis that the person could not be said to be "unlawfully at large". Following that, we have decided to amend the 2003 Act to make clear that it is no barrier to the issue of an EAW that the person is in prison in the requested state. Amendment 94DH will achieve that. [86]

The amendment was agreed.

Clause 163 (in HL Bill 78, as amended on Report) deals with the detention of extradited persons for trial in England and Wales for other offences. **Amendment 108** would insert a new section 151B into the 2003 Act to give effect to Article 3 of the Fourth Additional Protocol to the European Convention on Extradition ("ECE"), which the United Kingdom intends to ratify. Article 3 deals with the rule of speciality (the bar on a person being proceeded against for offences other than those listed on the extradition request) and provides an optional mechanism whereby States can detain a person whilst a request to waive the rule against speciality is being considered by the State that originally extradited the person.

Lord Taylor introduced the amendment at Report stage:

> Amendment 94DG implements an optional provision in the Fourth Additional Protocol to the European Convention on Extradition—the ECE—which the Government intend to ratify shortly. The ECE governs extradition between the UK and members of the Council of Europe—other than EU member states—plus Israel, South Africa and the Republic of Korea. This provision concerns the issue of speciality, which is the bar on a person being proceeded against for offences committed prior to extradition other than those listed in the extradition request.

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[85] HL Deb 11 December 2013 c 840-841-841
[86] HL Deb 20 January 2014 cc 535-539

> Among other things, the Fourth Additional Protocol provides an optional mechanism whereby states can restrict the personal freedom of a person while a request to waive the rule of speciality is being considered by the state that originally extradited the person. This is not something that is currently catered for in Sections 150 and 151A of the Extradition Act 2003, which deal with the speciality rule in these cases. Accordingly, Amendment 94DG makes the appropriate changes to the 2003 Act. A person may only be detained under this new provision where both states have made the relevant declaration under the ECE and that declaration is still in force, and certain specified conditions, as set out in the new clause, are met.
>
> Perhaps I may elaborate on that point. Those conditions are as follows. First, the Home Secretary requests the state that extradited the person to waive the speciality rule. Such requests are predicated on the prosecuting authorities being satisfied that there is a case to answer and that prosecution for other offences would be in the public interest. Secondly, the requested state must be notified by the Secretary of State that she would wish the person to be detained while they consider the request to waive specialty. Thirdly, the requested state must explicitly acknowledge the notification. If the requested state objects to the detention request then that person may not be detained; or if detained, must be released. Finally, and assuming these criteria are met, any application to detain the person will be made by the prosecuting authorities to the courts in line with general criminal law procedures. The new provision allows for detention in these circumstances for a maximum period of 90 days.
>
> We believe there will be only rare cases which fall into this category. However, in those rare cases, the ability of the prosecuting authorities to apply for the person to be remanded in custody could be crucial to safeguarding the public and effecting a successful prosecution. [87]

The amendment was agreed.

Clause 167 (in HL Bill 78, as amended on Report) deals with the electronic transmission of European arrest warrants. **Amendment 109** would make changes to section 204 of the 2003 Act to make provision for a summary the information contained in a EAW to be transmitted to the UK electronically for the purpose of enabling the National Crime Agency to determine whether to issue a certificate under section 2 of the 2003 Act.

Introducing the amendments the Minister, Lord Ahmad of Wimbledon, explained:

> [The amendments] make minor amendments to Section 204 of the Extradition Act 2003. That section makes provision for cases where the information contained in a European arrest warrant is transmitted to the United Kingdom electronically.
>
> The amendments to Section 204 are needed to support the implementation of the second generation Schengen information system, otherwise known as SIS II. Under SIS II, the NCA will be required to certify requests entered by other member states for,
>
> "arrest for surrender or extradition purposes",
>
> from the information received electronically under the SIS II process. This information will be an English language summary of the information contained within the EAW, together with the original language version of the EAW. Section 204 therefore requires

[87] HL Deb 20 January 2014 cc535-539

> amendment so that certification can take place on the basis of this English language summary, rather than a translation of the full contents of the EAW. [88]

The amendment was agreed.

19 Compensation for miscarriages of justice

Clause 151 concerns the test used to determine whether there has been a miscarriage of justice for which a person should receive compensation.[89] The Government proposed, in the Bill as originally introduced, that the test should be whether a new or newly discovered fact shows beyond reasonable doubt that the person was innocent of the offence.

At Lords' Committee Stage, Lord Beecham moved an amendment to the clause which sought to embody the formulation of the test given by the Divisional Court in the case of *Ali*.[90] He proposed that the test should be whether a 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".[91] Lord Beecham said that the provision in the Bill, as it stood, undermined "the basic principle of English Law that guilt has to be proved beyond a reasonable doubt, not that innocence has to be proved". After a debate which included Baroness Kennedy, Lord Pannick and Baroness Hamwee speaking in favour of the amendment and Lord Brown and Lord Hope speaking against, Lord Beecham withdrew the amendment with the hope of further productive debate at Report Stage.

At Lords' Report Stage, Lord Pannick moved an amendment to the clause (**Lords amendment 112**). Lord Pannick argued that the test should be whether a new or newly discovered fact shows conclusively that the evidence against the person at trial is so undermined that no conviction could possibly be based on it. His amendment sought to enact the test of Lord Phillips as set out in the judgment for the majority of the Supreme Court in the case of *Adams*.[92]

Lord Pannick said that his concern with the Government's approach was that:

> It has never been the role of Ministers or courts in our system of criminal jurisprudence to pronounce on the innocence of those accused of crime. If the state cannot prove guilt, the defendant is not guilty, irrespective of whether he or she is in fact innocent.[93]

Lord Pannick said that a difficulty with the Government's approach was that the European Court of Human Rights has stated in a number of recent cases that applying a test of innocence would breach the European Convention on Human Rights. He noted that the Joint Committee on Human Rights, in its second report on the Bill, was persuaded that his amendment would be an appropriate amendment to the Bill.[94]

Baroness Kennedy noted that ordinarily, people who are acquitted of crime do not receive compensation for being prosecuted. However, she said, the debate was concerned with miscarriages of justice – situations in which people are convicted and at a later date, sometimes years later, their conviction is quashed. She said:

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88 HL Deb 11 December 2013 cc858-859
89 For background see Library Standard Note *Miscarriages of justice: compensation schemes* (SN/HA/2131)
90 *R (Ali and others) v Secretary of State for Justice [2013] EWHC 72 (Admin)*
91 HL Deb 12 November 2013 c688
92 *R (Adams) v Secretary of State for Justice [2011] UKSC 18*
93 HL Deb 22 January 2014 c672
94 Joint Committee on Human Rights, *Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill (Second Report)*, HC 951, 6 January 2014

> I emphasise that this is not about people getting off on technicalities; the test usually comes into play when something has gone badly wrong. To ask people to prove their innocence beyond reasonable doubt is an affront to our system of law—the common-law system, so beloved of this House and indeed beloved of me. It flies in the face of one of our key legal principles, which acknowledges that it is very difficult for people to prove their innocence.[95]

Lord Philips supported Lord Pannick's amendment saying:

> I suggest, as I did in Adams, that Section 133 [of the Criminal Justice Act 1988], and Article 14.6 of the international covenant to which it gives effect, has two implicit objectives. The primary objective is that an applicant who has been convicted when he was in fact innocent should be compensated for the consequences of the wrongful conviction. The second, and subsidiary, objective is that an applicant whose conviction has been quashed but who in fact committed the offence charged should not be compensated. No test will achieve both these objects in every case, but to require an applicant who has succeeded by fresh evidence in demolishing the case upon which he was convicted to go further and prove his innocence beyond reasonable doubt is surely to stack the cards too heavily against him. This amendment strikes the right balance and it is for that reason that I support it.[96]

Other members spoke in favour of the amendment, including Lord Hope, Lord Cormack, Lord Wigley and Baroness Hamwee.

Lord Brown, who was one of the judges in the minority in the Supreme Court in the *Adams* case, spoke in support of the Government's efforts to give effect to the minority judgment. He said that he could not accept that the test proposed in clause 151[97] is incompatible with the presumption of innocence. He said that the test proposed by the amendment was a 'fudge' and that it had all the uncertainties and disadvantages of a fudge. He questioned whether restoring the test of the majority in *Adams*, which had been modified in the later case of *Ali*, would produce certainty and be more workable than the Government's test.[98]

The Minister, Lord Faulks, set out the Government's belief that the definition it proposed would be "a better, clearer and fairer way of ensuring that those who have truly suffered a miscarriage of justice are identified and compensated". The definition developed by the Supreme Court in *Adams* is, he said, is still open to a range of interpretations.[99]

He said there was no question of applicants for compensation having to prove their innocence and stressed that the Government remained firmly of the view that the provision in clause 151[100] is compatible with the presumption of innocence in Article 6(2) of the European Convention on Human Rights. He referred to the Government's response to the Joint Committee on Human Rights' second report on the Bill.[101] He said:

> This clause is about the Government's responsibility to pay financial compensation to those who have not committed the crime for which they were unjustly convicted and have suffered a true miscarriage of justice, and to do so in a straightforward manner

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95 HL Deb 22 January 2014 c673
96 HL Deb 22 January 2014 c679
97 Then clause 161
98 HL Deb 22 January 2014 c685
99 HL Deb 22 January 2014 c692
100 Then clause 161
101 *Letter from Damian Green to Hywel Francis*, 16 January 2014

> that provides clarity to applicants and seeks to avoid unnecessary and costly litigation.[102]

Lord Faulks said that the Government considered that Lord Pannick's amendment would provide for further protracted and expensive litigation. Lord Pannick stated that:

> To require the Secretary of State to decide not only whether there has been a new or newly discovered fact, but whether, in truth, the defendant is innocent, will inevitably lead to protracted litigation which will simply prolong the pain and suffering caused by the miscarriage of justice which led to the quashing of the conviction.

Lord Pannick said that his amendment raised an important issue of principle and he wished to test the opinion of the House. On division the amendment was agreed, 245 to 222.

20 Marital coercion

At Lords' Committee Stage Lord Pannick moved an amendment to abolish the defence of marital coercion.[103]

Currently, section 47 of the *Criminal Justice Act 1925* provides that:

> ...on a charge against a wife for any offence other than treason or murder it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.

The Law Commission has previously concluded that the defence should be abolished.[104]

Lord Pannick withdrew his amendment and Lord McNally said that he hoped to return to the issue on report.

At Report Stage the Government moved a new clause (**Lords amendment 113**) which would repeal section 47 and abolish the defence of marital coercion. The Minister, Lord Faulks, said that the circumstances in which this defence made sense no longer pertain and it is now an anachronism which the Government agrees should be consigned to history.[105] The amendment was agreed.

21 Sexual Harm Prevention Orders and Sexual Risk Orders

Clauses 104 and 105 and Schedule 5 provide for two new orders, Sexual Harm Prevention Orders and Sexual Risk Orders.

At Lords' Committee Stage Baroness Thornton moved an amendment probing the arrangements for those under 18s subject to the orders.[106] The amendment was withdrawn.

At Report Stage the Government made a number of technical and drafting amendments, and substantive amendments on three matters: applications in respect of persons aged under 18, the power of courts in Northern Ireland to vary the orders and consequential amendments to

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102 HL Deb 22 January 2014 c693
103 HL Deb 12 November 2013 c719
104 *Criminal Law: Report on Defences of General Application* , Law Com. No. 83, July 1977 para 3.9 and *Legislating the Criminal Code: Offences against the Person and General Principles* , Law Com. No. 218, November 1993, para 32.6
105 HL Deb 22 January 2014 c699
106 HL Deb 12 November 2013 c620

armed forces legislation in respect of the operation of the new sexual harm prevention order by the service courts.[107]

Amendments to Schedule 5[108] would provide for all applications for sexual harm prevention orders and sexual risk orders in respect of persons under 18 to be heard in the youth court (including those in linked applications involving respondents aged under 18 and others aged 18 or over, and those in relation to individuals who turn 18 after proceedings for an application for an order have begun).

Lords amendment 155 would confer powers on the courts in Northern Ireland to vary a Sexual Harm Prevention Order or Sexual Risk Order made in respect of a person who, following the making of the order in England or Wales, either resided in or intended to go to Northern Ireland.

These amendments were agreed without debate.

22 Port & Border Controls

Amendments 158 to 166[109] relate to clause 132 and Schedule 8 of the Bill, which amend Schedules 8 and 14 to the *Terrorism Act 2000* (the "2000 Act").

Schedule 8 of the 2000 Act deals with the treatment of people detained under Schedule 7, which provides a power to stop, question and detain a person at a port or border area in order to determine whether he or she appears to be a person defined as a terrorist for the purposes of that Act.[110] Schedule 14 governs the exercise of officers' powers under the 2000 Act.

Provisions to reform the operation of Schedule 7 were included in the original Bill[111] following a Government consultation,[112] and recommendations of the Government's Independent Reviewer of Terrorism Legislation, David Anderson QC.[113] Further amendments were agreed in Public Bill Committee.[114]

Government amendments moved at Report stage in the House of Lords followed further interim recommendations of David Anderson QC, in relation to the David Miranda case.[115] The Minister Lord Taylor of Holbeach, explained that the amendments, relating to the right to

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[107] HL Deb 14 January 2014 c196

[108] Lords Amendments 141,143 to 145, 147, 149,150 and 152 to 154

[109] Clause numbers refer to HL Bill 78. Amendment numbers refer to *Lords Amendments to the Anti-social Behaviour, Crime and Policing Bill [28.01.14].* Direct quotes may refer to previous amendment papers or versions of the Bill.

[110] Section 40

[111] For further detail please see *Library Research Paper 13/34 Anti-social Behaviour, Crime and Policing Bill.*

[112] Home Office *Review of the Operation of Schedule 7* 13 September 2012

[113] David Anderson QC *Report on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006* 2011 and 2012

[114] For further detail please see *Library Research Paper 13/34 Anti-social Behaviour, Crime and Policing Bill.*

[115] On 20th November 2013 the Home Affairs Select Committee published written evidence submitted by Mr Anderson following his appearance before the Committee on 12 November 2013. He explained that, following his announcement in August of a review of the Miranda case, it soon became clear that much of the relevant ground would be authoritatively covered in the judicial review proceedings. Therefore, and in light of the fact that amendments to Schedule 7 would soon be reached in the *Anti-social Behaviour, Crime and Policing Bill* in the House of Lords, he made a number of recommendations as to the changes to the port powers contained in Schedule 7 that would be desirable, and committed to deciding what more he could usefully add once judgment is handed down: David Anderson QC *Recommendations of the Independent Reviewer on Schedule 7 to the Terrorism Act 2000* 2013. The background to these issues is set out in more detail in *Library Standard Note 06742: Schedule 7 of the Terrorism Act 2000*

consult a solicitor and to review of detention, reflect the Government's ongoing commitment to ensure that respect for individual freedoms is balanced against reducing the threat of terrorism to the public here and to British subjects overseas.[116]

The Government did not accept amendments tabled by Lord Pannick, Lord Lester, Baroness Kennedy, and Lord Hope, which would have made the threshold for exercising the power to detain people at ports and airports and to copy and retain their personal data "reasonable suspicion" on the part of the examining officer, as recommended by the Joint Committee on Human Rights.[117]

In his response, Lord Taylor stated that:

> [T]he Government maintain the view that introducing a reasonable suspicion test for the exercise of powers under Schedule 7, both to detain individuals and to search electronic devices, would undermine the capability of the police to determine whether individuals passing through ports, airports and international rail stations appear to be involved in terrorism.[118]

He also suggested that, in light of the pending legal proceedings in the Miranda case, and the expectation of a further report from David Anderson, the debate on Schedule 7 would continue beyond the lifetime of the Bill. The amendments were consequently withdrawn.

Amendments 159 and 160 would clarify the right of a detained person to consult a solicitor in England, Wales and Northern Ireland and in Scotland respectively.

Currently, paragraph 7 of Schedule 8 provides that a detained person is entitled to consult a solicitor as soon as is reasonably practicable, if he so requests, privately and at any time.

Under the new provisions, where a person detained for examination requests to consult a solicitor privately, he or she may not be questioned until he or she has done so or no longer wishes to do so, except where the examining officer reasonably believes that postponing questioning would prejudice the purpose of the examination. The detained person is entitled to consult a solicitor privately in person (as opposed to by telephone), unless the examining officer reasonably believes that the time it would take for that consultation would prejudice the purpose of the examination.

The amendments were agreed.[119]

Amendments 162 and 165 would insert new requirements into Schedule 8 of the 2000 Act relating to review of detention.

A statutory review of detention was one of the key changes to the 2000 Act included in the original Bill. However, it had been the Government's intention to address the details of the review periods in a new code of practice for examining officers. In Committee Lord Taylor committed to give further consideration to an amendment tabled by Lord Lester which sought to set out the new periods for review in the legislation.[120]

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[116] HL Debate 20 January 2014 cc 496-510
[117] Joint Committee on Human Rights *Anti-social Behaviour, Crime and Policing Bill (second Report)* 6 January 2014, HL Paper 108, HC 951 2013-14, paras 37-40.
[118] C506
[119] HL Deb 20 January 2014 cc496-510
[120] HL Deb 11 December 2013 c 814

Amendments 162 and 165 were introduced on Report accordingly,[121] with the effect that detention must be reviewed no later than one hour after the start of detention and at intervals of no more than two hours. The review officer would also be required to: give a detained person or their solicitor an opportunity to make representations about their detention; ensure that they are informed of their rights; make a written record of the review; and inform the detained person if continued detention is authorised.

Amendments 164 and 166 would make provision for the Secretary of State to issue codes of practice for the conduct of reviews and functions of reviewing officers.

The amendments were agreed.[122]

Clauses 169 and **170** (in HL Bill 78, as amended on Report) deal with discounts on sentence for time spent in custody awaiting extradition in respect of Scotland and Northern Ireland. **Amendments 110 and 111** would make changes to the *Criminal Procedure (Scotland) Act 1995* and the *Prison Act (Northern Ireland) 1953* respectively, to provide that, where a person is extradited to the UK from another EU Member State to serve a sentence of imprisonment, time served in custody in that other State with a view to extradition must be counted as time served toward the UK sentence. Clause 168, added at Commons Report, makes equivalent provision for England and Wales.

Lord Ahmad explained these amendments in Committee:

> Amendments 95ZC and 95ZD relate to Clause 149. That clause amends the Prison Act 1952 to ensure that, in all cases where a person spends time in custody in another member state awaiting extradition to the UK, that time is counted as time served towards the UK sentence. As it stands, Clause 149 provides only for cases in England and Wales. Therefore, following discussions with the Scottish Government, we have agreed that analogous provision for Scotland can be made through administrative means. However, with the agreement of the Scottish Government, we are taking the opportunity to update relevant provisions in Scots law in relation to cases where a person is extradited to the UK to be sentenced. Section 210 of the Criminal Procedure (Scotland) Act 1995 makes provision for taking into account time spent in custody awaiting extradition to the UK in cases where a person is extradited to be sentenced. It is out of date in that it refers to the Extradition Act 1989 which is no longer in force. Amendment 95ZC amends this provision to update it in respect of extradition.
>
> In respect of Northern Ireland, Section 38 of the Prison Act (Northern Ireland) 1953 makes equivalent provision to Section 49 of the Prison Act 1952 in cases where a person is sentenced before extradition to the UK. Amendment 95ZD, and the consequential Amendment 98A to Schedule 9, ensures that time spent in custody awaiting extradition to the UK from another member state is always credited. There is currently no legislative provision in Northern Ireland for taking into account time spent in custody awaiting extradition to the UK from another member state where a person is sentenced after extradition. Amendment 95ZD also amends the relevant law in Northern Ireland to ensure that such credit is given. [123]

The amendments were agreed.

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[121] HL Deb 20 January 2014 c497
[122] HL Deb 20 January 2014 cc496-510
[123] HL Deb 11 December 2013 cc858-859