Public Bill Committee

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL

WRITTEN EVIDENCE

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EXECUTIVE SUMMARY

1. Naturism is practised by a substantial portion of the population, often in family groups with members of all ages. The number of naturists has almost quadrupled in ten years to nearly four million. Naturism is, and always has been, legal. Naturism is uncontroversial to 87% of the population, with only 9% opposed (Ipsos MORI 2011), yet it could be prohibited under any one of this bill's anti-social behaviour provisions. It would be entirely wrong to enact this bill in its current vague form, with thresholds set so low that almost any activity could be prohibited. This is compounded by inadequate consultation requirements and unjustifiable restrictions on challenge. This can only lead to a grossly over regulated, repressed, and far from free society. We believe that without additional safeguards these powers will be abused, and that, combined with the extreme difficulty in challenging such abuses, will lead to increased alienation and disaffection of minority groups. The bill as presently worded will result in Human Rights abuses. We respectfully request that this bill be amended so that harmless practises such as Naturism cannot be prohibited as an unintended consequence. We would like to commend to the committee, the dictum of Roy Jenkins when home secretary:

“If you want to stop people doing something which they enjoy doing, which they believe is within their liberty of action, then you’ve got to have an overwhelming social case. If you’re going to stop them, you shouldn’t do it out of prejudice, or out of habit, but only because you can show that definite social evil results”.

GENERAL SUBMISSION

2. British Naturism is the nationally and internationally recognised representative body for Naturism in the UK.

3. According to a GfK NOP survey in 2001, there were just over a million people in the UK who described themselves as naturists. An Ipsos Mori survey in 2011 found that had increased to 6% of the population (around 3.7 million people), and many more practised some aspect of Naturism, for example, 10% of the population (about 6.2 million people) have swum naked. The survey also showed that 82% of the population considered that naturists are harmless, 5% thought them sensible, 9% thought Naturism disgusting, and 1% wrongly thought it illegal. Public acceptance of nudity is now such that there are annual “World Naked Bike Rides” in some of our major cities and towns, with enthusiastic crowds lining the streets in places. The atmosphere is overwhelmingly positive but even so one senior police officer has made it clear that if he had his way the event would be prohibited in his area. (The WNBR is a protest movement, not a naturist event). If committee members would like to see this acceptance for themselves, there are many videos of the WNBR on YouTube.

4. Naturism has been practised in this country since time immemorial. Parliament has been careful in the past to protect the interests of naturists. When attention was drawn to the threat posed to Naturism by s.66 of the sexual offences act 2003, the government brought in amendments to resolve the problem. In 2007, at the request of British Naturism, Parliament repealed powers to make bye-laws to regulate the costume required for bathing.

5. We know from bitter experience that if a power can be abused against naturists then it will be. Despite the careful wording of s.66 SOA, there have been many prosecutions under it for simple nudity, with naturists having to endure long stressful delays before being cleared, sometimes only on appeal.

6. We understand the government’s desire to strengthen local democracy by giving councils increased powers. Nonetheless we are very worried by councils having powers to prohibit Naturism. Councils receive complaints about Naturism from a smallish but vocal minority of residents in some places where there is a naturist beach nearby. Some councils react without regard to the general attitude of the public towards Naturism, as illustrated in (2) above. They react to complaints in isolation, as if they represented general or majority opinion, by seeking to impose bans without any consultation and without any consideration of alternatives.

7. Example. Gwynedd council, reacting to complaints from villagers, sought a bye-law to prohibit nudity on the whole of a beach. This was despite the beach being a mile from the village and the part used by naturists in a little used area a mile from an access point. The home office declined a bye-law. The council ignored this and put up signs purporting to restrict Naturism to a smaller portion of the beach, prohibiting “sun bathing in the dunes”; and stating that disobedience would result in prosecution. This was accompanied by the institution of highly intrusive patrolling of the naturist area by council vehicles, with staff armed with megaphones ordering people out of the dunes, and even on one occasion breaking up a cricket game. The police co-operated in this harassment by instituting vehicular patrols which paid attention only to the naturist part of the beach, and by diverting the police helicopter to fly at very low altitude up and down the naturist area. From a haven of tranquillity, the beach became a very edgy and unsettled place. Peak season naturist use of the beach fell from an (estimated) 1,000 plus, to 350 (counted). Thankfully this harassment has ceased, but numbers have not recovered. The existence of this “official” beach has also been used as an excuse to order naturists off other
traditional clothes optional beaches in the county. Has anyone stopped to consider the loss to local economies in camp and caravan site fees, shop takings, and the like?

8. We believe that extra-legal and anti-social behaviour such as that of Gwynedd council gives us good reason to oppose local authorities having the powers in this bill, without additional safeguards. Sadly, Gwynedd’s attitude is not unique. Whilst some councils do seek constructive solutions, others have refused to even discuss how best to manage beach Naturism, and the result has been continuing disaffection between objectors and councils, or naturists and councils, or both.

9. There is considerable prejudice and myth concerning nudity. We strongly advocate evidence based policy making, not evidence of prejudice, but objective evidence of harm and benefit. It is extremely difficult to counter prejudice, and to present the evidence, if local authorities will not enter into a meaningful dialogue. There must be a requirement in this bill to consult with the appropriate representative organisations, locally and nationally, both to prevent problems arising and if they do occur to deal with them effectively. However, we stress that consultation can in no way remove the need to provide strong safeguards in the bill. Beaches are national assets and their management is not purely a local matter. The failure to require consultation with appropriate user groups is incomprehensible. Where co-operation has been possible problems have largely been eliminated. For example earlier this year the National Trust announced that due to the success of the cooperative approach at Studland beach the naturist area is being extended.

10. As defra wrote in their 2003 publication “Managing coastal activities: a guide for local authorities”:

The benefits of consulting widely include:

— improving the... [list omitted for brevity]

Local knowledge should be used to identify people and groups who are likely to be affected by a scheme. It is sensible to anticipate from where interest is likely to come, during this stage and to include the appropriate people, organisations or groups of stake holders so that they can raise concerns at the earliest stages of plan preparation. This should help to avoid undue delay in later stages and increase the likelihood of success.

That advice remains just as valid today but in our experience few local authorities pay it any heed.

11. If harm is caused by a misapprehension then that should be dealt with by reassurance and education, not by criminalising the object of the misapprehension. Any other approach condones and encourages prejudice.

12. Every one of the bill’s anti-social behaviour provisions could be used against naturists. Naturists could be subjected to injunctions, or the various notices/orders used to prohibit Naturism in the places where Naturism is commonly practised—beaches, areas of open access land such as moorland or forests; and even naturists own gardens in some circumstances.

13. We do not believe, in view of the facts set out in (2) & (3) above that Parliament would suddenly set its face against Naturism. We feel sure that the threat to Naturism is an unintended consequence of the very low thresholds of behaviour upon which the injunction, notices, and orders in the bill can be brought into effect.

Taking injunctions for prevention of nuisance or annoyance (IPNAs) as an example, the definition of anti-social behaviour as “conduct capable of causing nuisance or annoyance to any person” is hardly a threshold at all. Somewhere in the country there will be a person who is annoyed by almost any piece of conduct one can think of, or considers it a nuisance. There are definitely some people who consider Naturism annoying. Our members encounter them occasionally. Such a low threshold invites inappropriate use of the power.

14. We fully appreciate that there is a need to protect people, especially the vulnerable, from low level anti-social behaviour. However, faced with the apparent conflict between the need to have low thresholds to protect the vulnerable, and the need to expect reasonably robust and tolerant attitudes from people in general, without which an open and free society cannot function; they have opted for the former at the expense of the latter. In this respect the bill is a failure.

15. We submit that it is entirely possible to resolve such conflicts. Taking the example of IPNAs again, if the definition had two elements, one with a low threshold for conduct directed at a vulnerable person, and another with a much higher threshold for conduct affecting the public in general, we would have fewer concerns.

16. Police dispersal powers are clearly essential, but there must be a sensible threshold and there must be a sensible definition of locality. It is unacceptable that a person whose mere presence is contributing to a risk of disorder can be directed to leave. It invites inappropriate use, such as directing a victim of harassment to leave a scene because that is more convenient than issuing directions to multiple perpetrators. We can foresee the victim being a naturist on a beach, in which case the constable might think it expedient to direct the naturist to leave, lest another person come along who is one of the 1% who believes Naturism is unlawful, and the problem recur. But what happens to the naturists weekend at the seaside? It is punishment without charge or trial and unless the victim is wealthy enough to afford a high court action, and can show that the police officer was so unreasonable that no responsible police officer would take that action, there is no redress. “Locality” is not an appropriate term. Words like area and locality have been abused under previous legislation to refer to vast areas, the whole of Greater Manchester for example. The bill must include much improved safeguards.
17. **Public space protection orders** are to be made on the basis that a council “believes that activities carried on within a public space have had or are likely to have a detrimental effect on the quality of life of people in the locality, and the conduct is unreasonable”. This is again a very low, and extremely vague, threshold. It could be applied for example to the noise from a local league football match. We believe that it is essential that there be an additional safeguard to protect Naturism and other legitimate pursuits. We suggest that there should be a requirement that the specified activities, (and anything which is prohibited from being done) are inherently and demonstrably harmful. The severe limitations to the grounds on which an order may be challenged are unacceptable and an affront to a free society. It should at least be possible to argue before a Court that particular activities are not inherently and demonstrably harmful. A court should be able to decide on the facts, not be bound by a councils “beliefs”, which may be mistaken. The restriction on challenge to orders to within 6 weeks of being made is unreasonable and totally unnecessary. There should be no time limit. Another unsatisfactory aspect of this provision is the power to apply prohibitions or requirements to “categories of persons”. This invites inappropriate discrimination.

18. A closure notice/order applied annually from April to September and framed to close premises to “all persons except persons clothed so that their genitals/breasts, are covered” could also be used to effectively prohibit Naturism. Notices are issued on exactly the same weak grounds as public space protection orders, but by individuals. This raises the possibility of notices being issued on the basis of personal prejudice. Again, there is a need for an additional safeguard, such as a requirement that closure could only be ordered if the behaviour or nuisance is inherently and demonstrably harmful.

19. A community protection notice could be used to prohibit Naturism by requiring a person to take reasonable steps to keep their genitals and breasts covered at all times. The same weak grounds apply. An additional safeguard such as that the conduct is inherently and demonstrably harmful is necessary.

**Human Rights Considerations**

20. There is a fundamental problem with Annex C to the draft Anti-Social Behaviour Bill. It is very obvious that the impact on minority groups such as Naturists was not considered and we know from bitter experience that even relatively clear and well defined laws are abused. In recent years we have supported every defence request for assistance in defending a prosecution for Naturism and every defence has succeeded. There is growing evidence of institutional clothism from both police and CPS.

— The police all too often just assume that all public Naturism must be criminal and serious mistakes result. Of the cases that we have dealt with in recent years over a third of complainants were off-duty police officers.
— The CPS all too often just assumes that all public Naturism must be criminal and serious mistakes result. Some of the charges have been absurd. For example in one case it required the instigation of proceedings for judicial review before the CPS would think seriously about what the law actually is.
— Councils all too often just assume that all public Naturism must be criminal and again mistakes result.

21. The repetitive “self justification” that the bill is compatible with Human Rights legislation is formulaic: “anyone against whom this bill is used must be doing something wrong therefore their human rights are not being ignored.” This is incompatible with the operation of a civilised democracy and betrays a very worrying naivety concerning how law of this nature can be, and is, abused. A person is not doing wrong simply because those in authority think that they are doing wrong.

22. The Bill falls into the same trap as the notorious s.5 Public Order Act 1986; it is even more vague and ill defined and lacks even the inadequate safeguards of that Act. It will be subject to the same downward creep of thresholds.

23. There have been numerous court rulings emphasising the importance of balance between competing rights but this bill largely negates those safeguards.

24. If the bill is enacted as currently worded then it will require substantial reference to case law to establish what it means, a clear indication that it has failed to meet the requirement of clarity and precision.

25. The threshold is so low, “anything ... which might cause nuisance or annoyance ... to any person”, and level of proof required so inadequate that it could apply to most human behaviour. This is incompatible with Article 7, “no punishment without law”. See, for example, Brumarescu v Romania (2001) 33 EHRR 35 at para 61 and Kokkinakis v Greece (1993) 17 EHRR 397 at para 52.

26. There is a general principle that “dog law”, judge made law, is an injustice. With this bill it won’t even be judges, it will be police officers, councils, and others making law retrospectively. Pretending that many of the orders will not amount to punishment is sophistry.

27. The powers in this bill enable punishment to be imposed for something that is not a crime. Pretending that there is a distinction to be made between civil and criminal penalties, and between restrictions on conduct, or requirements to do things, and a criminal penalty is sophistry. It is a distinction without a difference.

28. Requiring somebody to leave an area, which may be very large (similarly worded law has been applied to whole cities), and for a substantial period is punishment. Recording on the PNC is punishment as it can
bliet a career for life. There is, for most people, no effective means of appeal. Even the Independent Police Complaints Commission agreed with the Select Committee that they were not fit for purpose due to a lack of powers and resources. The courts are prohibitively expensive and hazardous for most people. Few people can afford to risk a year’s pay on a case when the burden of proof is so heavily biased in favour of the police and councils.

29. We in this country continue to owe a debt to the jury which in 1670 refused to convict the Quakers William Penn and William Mead for preaching ideas which offended against state orthodoxy. From the condemnation of Socrates to the persecution of modern writers and journalists, our world has seen too many examples of state control of unofficial ideas.

30. How one dresses is in general a means of self expression and more specifically nudity is recognised as a means of expression. However police and councils too often fail to give that any consideration.

31. Naturism is for many naturists a matter of belief. The Human Rights Act and the Equality Act provide protection not just for deist religions but also for belief. Moreover it provides a right to manifest the religion or belief. It is apparent that many police officers and councils do not even consider the possibility that it is applicable.

32. In our view all of the anti-social behaviour provisions of this bill as presently drafted are incompatible with the Human Rights Act and extensive amendments will be required to remedy the defects.

June 2013

Written evidence from John Randall the Independent Chair, Police Negotiating Board and Police Advisory Board for England and Wales (ASB 02)

INTRODUCTION

1. The Anti-social Behaviour, Crime and Policing Bill proposes the abolition of the Police Negotiating Board and its replacement by a Police Remuneration Review Body; and the ending of the requirement to consult the Police Advisory Board for England and Wales on the making of certain Police Regulations, consequent on the transfer of responsibility for those Regulations from the Home Secretary to the College of Policing.

2. In the first part of this note I set out the background to these proposals, and in the second part I comment on the clauses of the Bill dealing with these changes.

PART ONE: THE BACKGROUND TO THE PROPOSED CHANGES

The Origins of the Current Negotiating and Consultative Machinery

3. The origins of the negotiating and consultative machinery for the police service go back to the Police Act 1919 and the final report of the Desborough Committee in 1920. The Act made it a criminal offence for a police officer to strike or to be a member of a trade union. The Desborough Committee proposed the establishment of a Police Council as a consultative body. The history of the development of the Police Council over some six decades is summarised in Chapter 10 of Tom Winsor’s Final Report on police officer and staff remuneration and conditions.

4. The Edmund-Davies inquiry, appointed in 1978, recommended the establishment of the Police Negotiating Board as an independently chaired, statutory body. PNB was established by the Police Negotiating Board Act 1980, with a UK-wide remit and an independent chair appointed by the Prime Minister. The Staff Side comprises representatives of the staff associations representing all ranks of police officers, and the Official Side is made up of representatives of the bodies maintaining police forces, officials representing the Ministers with responsibility for policing, and representatives of chief police officers. The Independent Chair is supported by a Deputy Chair and an Independent Secretary, and each Side maintains its own secretariat.

5. The Police Advisory Board is a consultative body which inherited the consultative and advisory role of the original Police Council. Like the Police Council, it was chaired by the Home Secretary. The Board dealt with matters at a level of detail which was not really appropriate to a senior minister and in 2000 the then Independent Chair of PNB was invited to chair PABEW also, an arrangement which has continued to this day.

Strengths and Weaknesses of Negotiating Machinery and Pay Review Bodies

6. Negotiating bodies and pay review bodies each have strengths and weaknesses.

7. The main strength of negotiating machinery is that it engages directly with those who will have to live with the outcomes of the pay determination process. Whilst those outcomes will often represent a compromise
between the opening positions of the two Sides, it will be a compromise which each is willing to accept. There is consent to and ownership of the outcome.

8. The main weakness of negotiating machinery is that it may be perceived as cumbersome, partly as a result of the process of securing the consent of all parties. Negotiating machinery tends to be better at managing incremental change and less good at handling radical alterations to conditions of service. I discuss these points more fully below, in relation to the experience of PNB.

9. The main strength of a pay review body is that it is evidence based, with decisions being taken by disinterested, independent members. It may thus find it easier to deal with major alterations to conditions.

10. The main weakness of a pay review body is that those directly affected are not parties, through their representatives, to the decisions reached. They are limited to the submission of evidence. This can make it harder for a matter to be resolved directly between representatives of management and staff, and there may not be the same ownership of outcomes.

11. Neither mechanism is perfect; there are examples of success and failure of each. There is not a single right way of determining pay and conditions. Professional negotiators should be able to work effectively with either mechanism.

The Recent History of PNB

12. For most of its existence, PNB has not negotiated, in any meaningful sense, the most significant conditions of service, namely basic pay and allowances. The Edmund Davies Report sought to de-politicise police pay by ensuring that it moved broadly in line with pay elsewhere in the economy. Police pay was linked to movements in an agreed index. Whilst the structure of the index, and in particular the extent to which it reflected the public and private sectors of the economy, changed slightly over time, the principle of indexation remained largely intact until relatively recently. Rather than having to negotiate rates of pay, in most years PNB merely presided over the annual application of an agreed index to all pay points and all allowances. Negotiations were mainly on ancillary matters.

13. Inevitably, with the available budget being spent largely on uprating a current structure, major reform was difficult. The main attempts to undertake more radical reforms came in 1994 (the Sheehy Report) and through negotiations in 2002 (which introduced Competency Related Threshold Payments, Special Priority Payments and some pay scale restructuring).

14. In 2006 the Official Side first proposed a move away from indexation. Following an arbitration award which supported the index-based claim made by the Staff Side, the Government appointed Sir Clive Booth to review pay arrangements. In his first report he recommended an altered approach to indexation in the short term, and in his second report he recommended a move to a pay review body. The latter proposal was not proceeded with, following a settlement in which the Staff Side accepted a three year pay deal, the latter stages of which were honoured by the current Government.

15. It is only with the ending of indexation that the Sides have had to conduct negotiations, in any meaningful sense, on basic pay, on a regular basis. This has required a major change in culture, and a development of new expertise, particularly on the part of the staff associations whose experience of conventional pay bargaining had been limited. In other circumstances, the progress of the Staff Side up a steep learning curve, from a sense of entitlement to receive the proceeds of an index, to the give and take of negotiation, might have been seen as commendable. However, the movement they felt able to offer in negotiations did not match the expectations of an Official Side with a strong reform agenda, underpinned by the Winsor recommendations.

Perceptions of PNB

16. PNB is sometimes perceived as a cumbersome body, and this may have influenced the decision to propose its replacement by a Police Remuneration Review Body. It is worth reflecting on the factors which may have contributed to that perception, not least because, in my view, the status quo of a negotiating body as presently constituted is not a sensible option. The Scottish Government proposes to maintain negotiating machinery for the determination of police officer pay, and it would be sensible for lessons to be learned from the recent experience of PNB when establishing that machinery. Those lessons concern the size of the negotiating body, and the terms on which arbitration may be available.

17. The size of PNB contributes to the perception of a cumbersome body. It has 22 members on each Side, plus the independent element (Chair, Deputy Chair and Secretary), a total of 47 people. With advisers in attendance, it is common for 60 people to be present. The meetings combine, and to an extent confuse, two separate functions.

18. The first function is negotiation. In practice, this is carried out in smaller, so-called “behind the chair” meetings, typically involving no more than a dozen people in total. The second is the process of consultation with stakeholders, and securing a negotiating mandate from them. This is achieved by each Side having present, in its team of 22 people, representatives of their main stakeholders.

19. The confusion of the negotiating and consultation processes hampers negotiation. It is not possible for 22 people from each Side to take part in meaningful negotiation. Nevertheless, their presence on the day of the
meeting creates an expectation of engagement. That slows down the process on the day, as even minor changes of position have to be reported back and agreed. The expectation of engagement extends beyond the meeting itself, with a need to involve a relatively large number of people in the formulation of detailed negotiating positions, simply because they form a part of the team of 22 people who make up each Side. This slows down the process of developing and exchanging “without prejudice” positions between meetings.

20. This may be more of a problem for the Official Side than the Staff Side, as the Official Side has to coordinate a wider range of interests. Reconciliation of those interests is made much harder by the sheer number of people whose consent is required, not to the outcome of negotiations, but to the minutiae of the process.

21. In most negotiating structures, negotiating teams are relatively small, and there is a separation between the processes of negotiation and consultation. A negotiating team is given a broad mandate by its stakeholders, possibly including limits beyond which it cannot go without referring back, and the outcome is then put to stakeholders for acceptance or rejection. In my report to the Home Secretary in 2006 I recommended a substantial reduction in the size of PNB, such that it comprised only those now engaged in the “behind the chair” negotiations. Consultation with stakeholders, and the question whether a group of stakeholders should be available for consultation on the day of negotiating meetings, would be matters entirely for each Side. My recommendation did not find favour with the Sides at the time, and no reduction was made in the size of the Board.

22. The terms on which arbitration is available has become a significant issue. The length of time taken, from first reference of a matter to PNB, to arbitration if no agreement is reached, and then to eventual decision by the Home Secretary, contributes significantly to the perception that the machinery is cumbersome. In recent years this total process has taken 9 months, although the PNB negotiations have occupied only 3 months.

23. I have taken the view that the three elements of the ‘social contract’ underpinning the prohibition on police officers taking industrial action are the entrenchment of the negotiating machinery in primary legislation, the involvement of an independent element in the negotiating process, and unilateral access to arbitration. In the light of experience, I am no longer convinced that the current arrangements for unilateral access to arbitration, or for automatic referral of a matter subject to a Direction from the Home Secretary to arbitration in the event of a failure to agree, are appropriate.

24. If a system of collective bargaining has built in to it automatic access to arbitration, such access can have a chilling effect on the negotiating process. The Sides may be reluctant to move from their opening positions, or to make concessions, for fear that their movement will not be matched by movement from the other side, and to preserve an opening position so as to be able to argue for it at arbitration. For their part, arbitrators can be frustrated by open-ended terms of reference which do not clearly define the differences between the Sides, and which place them in the position of conducting a fundamental review of a condition of service, rather than resolving a clearly defined point of difference.

25. The chilling effect has been observable in the most recent negotiations on the recommendations of Tom Winsor’s report. It appeared to me that, to different degrees, both Sides were sometimes conducting themselves with a view to defining or preserving positions they would wish to advance at arbitration, as much as with a view to reaching a settlement.

26. Given that progression to arbitration is, in effect, automatic in the event of failure to reach agreement, such positioning is understandable, and perhaps inevitable. Recourse to arbitration has been a regular feature of PNB negotiations throughout the thirty odd years for which the Board has existed, in its present form. Whilst there have seen some years in which there have been no references to arbitration, in about half of all years since 1979 there have been one or more references to the Police Arbitration Tribunal (PAT).

27. In recent years, with the ending of indexation, references to arbitration have become more substantial, in that they have dealt with the main annual pay review, rather than with ancillary matters. In the last two years, where there have been failures to agree on the reforms recommended by Tom Winsor, the matters referred to arbitration have been very substantial indeed. This has added significantly to the time required by the PAT to make an award.

28. The status of PAT awards was the subject of a judicial review in 2008, following the decision of the then Home Secretary not to accept in full an arbitration award. The High Court held that there was no legitimate expectation that an arbitration award (or a PNB recommendation) would be implemented, only a legitimate expectation that the Home Secretary will not lightly set aside a PNB recommendation or PAT award, and will only set aside for good reasons. The Court found that, in the case before it, the Home Secretary had reasons which she was entitled to regard as being of greater weight than the PAT award, and she had explained those reasons with sufficient clarity.

29. A perceived value of arbitration is that it can bring finality to a dispute. In the case of a PAT award, this is not necessarily the case.

30. The chilling effect of automatic reference to arbitration is now so pronounced that I believe it would be sensible for those determining the procedures for the new Scottish negotiating body to consider omitting any unilateral or automatic reference to arbitration.

31. It is instructive to compare progress on matters of police conditions of service which are not subject to arbitration with progress on matters which are so subject. There is no recourse to arbitration from the Police Advisory Board for England and Wales (PABEW), and it is known that Ministers attach significantly greater weight to unanimous recommendations than majority recommendations. PABEW has a good track record in reaching agreements, often on complex and sometimes controversial matters. The absence of the ‘chilling effect’ is very obvious, with momentum towards agreement usually being established at an early stage. Similarly, discussions between the PNB Sides on pensions have been constructive, notwithstanding the difficulty of the subject matter, and a measure of agreement has been achieved. Pensions matters are not arbitrable, and the absence of the facility of arbitration appears to have made agreement more likely, rather than less likely.

32. Arbitration still has a role to play, if only, in the phrase of my predecessor Sir Laurie Hunter, as “an agreed constitutional method of getting the parties off the hook”. However, it should not be automatic, nor should there be unilateral access to it. To end the chilling effect, it should be available only if the two Sides agree that a reference to arbitration is the most appropriate way forward.

The Police Advisory Board for England and Wales

33. Whilst there have been criticisms of PNB, PABEW has been widely regarded as a successful advisory and consultative body. When chaired by Ministers it had become moribund, but since becoming independently chaired it has developed in to an effective and efficient body. Its membership is drawn from the same organisations as PNB, but for England and Wales only, with the addition of the unions representing police staff. It is smaller than PNB and is one of the few bodies representing all of the interests which make up the so-called ‘policing family’. PABEW does not operate through opposing Sides; each organisation contributes its views directly. It has a tradition of operating by consensus.

34. The Board operates through two standing sub-committees, one dealing with matters concerning recruitment, progression and deployment and the other dealing with matters of conduct and discipline. In broad terms, it is the business of the former sub-committee which will transfer to the College of Policing. PABEW will remain to deal with its other business, and it will acquire from PNB the consultative role in relation to pensions. As the Police Remuneration Review Body will not be, by definition, a body representative of all those who contribute to and are members of the police officer pension schemes, it is proper that the consultative function should transfer to PABEW, which is so representative.

PART TWO: THE CHANGES PROPOSED IN THE BILL

Clauses 112 and 113: Replacing the Police Negotiating Board with the Police Remuneration Pay Review Body

35. As noted above in paragraphs 6–11 both negotiating bodies and pay review bodies have their strengths and weaknesses. Whether a pay review body for police officers should be introduced has been debated at length, with both the previous government (following the Booth Report) and the current government (following the Winsor Report) favouring such a change. Given the reforms I believe to be necessary, and which I discussed in the first part of this note, I do not regard the status quo as a satisfactory option. The real choice is between a considerably reformed negotiating machinery and a pay review body. Police officer pay is the major element of the budget of all police forces, and is a significant element of overall public expenditure. The government is entitled to take a view on the pay determination mechanism it considers best serves the public interest.

36. PNB itself cannot properly take a corporate view on its own future. Its members include officials who must reflect the views of the elected government. On matters such as this, it has always been accepted that the other constituents of PNB will express their views individually. My own impression is that many constituents would prefer to retain negotiating machinery but, as professional negotiators, will now prepare to work effectively with the new arrangements.

37. In my view, the most significant change brought about by Clauses 112 and 113 of the Bill is that they mark the end of UK-wide determination of police pay and conditions of service. Since responsibility for policing and related justice matters was devolved to Scotland some fifteen years ago, and more recently to Northern Ireland, there has always been the potential for governments in the three policing jurisdictions to pursue different policies on conditions of service matters. Significant divergence resulted from the establishment of the Winsor Review on an England and Wales basis only, and the decision of Scottish Government that it did not wish to implement the Winsor recommendations in Scotland.

38. PNB recognised that this development required changes to its own procedures and, since last year, it has delegated responsibility for all matters relating to pay and conditions of service in Scotland to a Scotland Standing Committee, with membership drawn from the Scottish constituents of PNB. The Independent Chair of PNB chairs the Scotland Standing Committee, and PNB as a whole is able to take an overview of conditions of service across the UK, where it thinks it necessary to do so.

4 Police Review, 10 March 2000, p.21
5 Separate consultative machineries exist in Scotland and Northern Ireland
39. Once PNB is abolished there will be no single body able to take an overview of conditions of service across the United Kingdom. Nevertheless, there is a strong case for retaining a degree of commonality in certain conditions of service applying to police officers throughout the UK, so as to facilitate inter-operability and career movements between forces in all parts of the UK. Chief Officer posts are often filled from outside the jurisdiction in which the vacancy arises, and mutual aid is frequently provided on a cross-border basis. Specialist experience, in counter-terrorism and some other fields, may be developed more readily in some forces than others, so specialist posts may be filled by recruitment from other forces, rather than promotion from within.

40. Mutual aid arrangements often involve large numbers of police officers working across jurisdictional boundaries. The Olympic Games in 2012 provide a recent example, and the G8 conference, held this month in Northern Ireland, involves some 3,500 officers from elsewhere in the United Kingdom serving temporarily in Northern Ireland. There has already been some divergence in arrangements for payments of overtime and allowances to officers held away from home on duty, and this can add complexity to already challenging policing operations.

41. Consideration should be given to whether a duty should be placed upon both the Police Remuneration Review Body and the new Scottish negotiating body to have regard to facilitating inter-operability and career movement on a UK wide basis and, in pursuance of that, to liaise, as appropriate, with each other.

42. For the Police Remuneration Review Body, any such duty might be best included within the annual remit letter sent by the responsible Minister to the chair of the Body under new section 64B(5)(b) which would be inserted in the Police Act 1996 by Clause 113 of the Bill. Such a duty would not mean that conditions of service should be identical in all parts of the United Kingdom. However, to the extent that they diverged, care should be taken to guard against creating unnecessary impediments to career movement or inter-operability, with due weight being given to the benefits of shared experience and the ease of provision of mutual aid.

Clause 114 (1): Senior Salaries Review Body to be responsible for the pay and conditions of Chief Officer ranks

43. Clause 114 provides that the pay and conditions of service of members of police forces above the rank of Chief Superintendent shall be subject to recommendations from the Senior Salaries Review Body. I welcome this proposal; which endorses a recommendation I made some seven and a half years ago that consideration should be given to the pay of the chief officer ranks being determined by, or on the advice of, the Senior Salaries Review Body. There is merit in considering the remuneration of senior police officers alongside that of the holders of comparable senior posts elsewhere in the public service. The reserve power for the Secretary of State to refer a matter affecting both chief officer and other ranks to the Police Remuneration Review Body is sensible.

Clause 105 (4): Police Advisory Board for England and Wales no longer to be consulted on certain Police Regulations

44. Clause 105(1) gives to the College of Policing the power to draft certain Police Regulations, and places a duty on the Secretary of State to make such Regulations in the terms of the draft unless it would be wrong to do so. The Regulations concerned are those mentioned in section 50 (1) (a), (b), (c) and (g) of the Police Act 1996, which cover the ranks to be held by members of police forces, qualifications for appointment and promotion, probationary service and the maintenance of personal records. All of these matters, with the exception of promotion (currently dealt with by the Police Promotions and Examinations Board) now fall within the remit of PABEW, in that before making such Regulations (or Determinations under them) the Home Secretary must consult PABEW. These matters make up most, if not all, of the business of the Board’s Recruitment Sub-Committee.

45. A consequence of these matters passing to the College of Policing is that responsibility for providing advice on them will be removed from the terms of reference of PABEW. Inevitably, there is a sadness at this reduction in the scope of the remit of PABEW, not least because I believe that PABEW has been effective in its consultative and advisory role in relation to these matters.

46. Nevertheless, it is right that the responsibility to consult on these matters should pass to the College of Policing. Those who will be affected by Police Regulations have a reasonable expectation that they will be consulted, through an open consultation process and via representative bodies, before new regulations are made. Much of the consultation which the College will need to carry out to meet that reasonable expectation will be with the bodies now represented on PABEW, all of whom will be represented within the governance structure of the College of Policing. There is an obvious risk of duplication, and a danger that PABEW could come to be seen as a bureaucratic hurdle added to the decision making process. PABEW will retain important responsibilities in relation to matters of conduct and discipline, and will acquire (from PNB) a new responsibility.

\* The current and former Chief Constables of the Police Service of Northern Ireland came from Leicestershire Constabulary and the Metropolitan Police Service respectively; the current Chief Constable of Police Scotland held a senior command post in the Metropolitan Police before becoming Chief Constable of Strathclyde Police; and North Yorkshire Police has just appointed as Chief Constable a member of the senior command team of the Police Service of Northern Ireland.

\* The Commissioner and Deputy Commissioner of the Metropolitan Police Service, Chief Constable, Deputy Chief Constable and Assistant Chief Constable, and the equivalent ranks in the Metropolitan Police.

\* “Collective Bargaining for a Modernised Workforce”, Report by John Randall to the Home Secretary, January 2006.
as the consultative body on pensions matters. Effective discharge of its remaining and new responsibilities could be hampered by any perception that, in relation to matters which are now passing to the College, it was adding burden rather than benefit. It is better that the entire responsibility for these matters has a single home.

47. It will be important that the success of PABEW as a consultative and advisory body is carried in to the processes of the College of Policing. PABEW operates in a consensual matter, it does not have “sides” in the way that a negotiating body does, and it is constantly aware that its advice carries greatest weight when it is unanimous and is thus seen as representative of the entire policing family. I hope these characteristics will continue to be found in the consultative processes of the College.

48. There are two aspects of the PABEW process which the College may wish to reflect upon. The first is that it provides continuity in consultative machinery. A few years ago there was a plethora of short-life working groups, established by the Home Office to consult on a range of issues, whose life turned out to be anything but short. Such groups had a tendency to keep themselves in existence ‘just in case’, often on the basis that having completed their task, they should remain in being so as to be able to review implementation. All of those groups were closed down, with PABEW taking over such functions as needed to continue. A standing consultative machinery is able to be consulted on implementation matters, should that be necessary, and can deal with a range of issues.

49. The second issue is the nature of consultation. Consultation only at the point at which draft Regulations have been prepared is rarely effective. The experience of PABEW is that consultation works best when it takes place on the substantive issues of policy and practice before they are translated in to Regulations, Determinations, Codes of Practice or formal guidance. This ensures that issues are resolved before, rather than after work is put in to drafting the regulations or other instruments themselves. Also, it avoids a situation in which issues of policy or practice are raised for the first time after regulations or other instruments have been drafted, leading to delay if re-drafting is then needed to accommodate them.

50. The Recruitment Sub-committee of PABEW now deals with the matters which will pass to the College of Policing. The Sub-committee has a significant overlap of membership with the Police Promotions and Examinations Board, and I welcome the decision to unite these two closely related functions within the College. The Sub-committee meets three times each year, and is already used extensively as a consultative forum by those parts of the College concerned with recruitment. Specifically, the Sub-committee has an extensive involvement with policy developments relating to the SEARCH assessment centres which are used for the recruitment of police officers.

51. The College may wish to consider maintaining a body constituted similarly to the Recruitment Sub-committee of PABEW, with a comparable frequency of meetings, to act as a part of its own consultative machinery, chaired by an appropriate individual from the College’s Board or senior management. Whether the College wishes to proceed in this way, or differently, is a matter for it to determine. In any event, I look forward to working with the College to ensure a smooth transition from the existing role of PABEW to the new arrangements.

Clause 114 (3), (4) and (5): Consultation on pensions matters to pass to the Police Advisory Board for England and Wales

52. In general, the terms of reference of the Police Remuneration Review Body will be those which currently apply to the Police Negotiating Board. Pensions matters are consultative, rather than negotiable (in that there is no access to arbitration) but are within the terms of reference of PNB. It would not be appropriate for the Police Remuneration Review Body to succeed to this consultative role as it will not be, by definition, a body representative of those who contribute to and are members of the police officer pension schemes.

53. PABEW is representative of those interests, and it is entirely appropriate that the consultative role, with respect to pensions, should pass to it. Clause 114 (3), (4) and (5) provides for this.

54. The Secretary of State is obliged also to consult Northern Ireland interests on pensions matters. PABEW has often invited colleagues from Scotland and Northern Ireland to attend its meetings when matters of interest to them are under consideration. I have no doubt that PABEW will be happy to facilitate the consultation with Northern Ireland interests envisaged in these sub-clauses by inviting the representative bodies concerned to attend relevant meetings, and to participate directly in any working groups dealing with pensions matters.

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* The Bill provides for Northern Ireland to be covered by the Police Remuneration Review Body. A consultation on this matter by the Northern Ireland Minister of Justice is due to conclude in July 2013; thereafter a final decision will be taken on whether Northern Ireland comes within scope of the Police Remuneration Review Body. These comments are made on the assumption that Northern Ireland will be so included.
The RSPCA is the world’s oldest and UK’s largest animal welfare charity and has been investigating and prosecuting animal abuse since 1824. We rescue, rehabilitate and rehome hundreds of thousands of animals each year. We also offer advice on caring for animals and campaign to change laws to better protect them, which we then enforce in pursuit of our charitable objectives.

The RSPCA works closely on an operational and policy perspective with our enforcement partners in the police and local authorities in tackling dog control and welfare problems. This may be through joint operations involving investigations and prosecutions or providing advice and information about enforcement bodies’ responsibilities for animal welfare once they seize animals.

Defra and the Home Office claim that Community Protection Notices (CPNs) are intended to address the concerns of individuals about the behaviour of individual dogs eg dogs which growl or display aggressive behaviour to visitors, or dogs which are not under sufficient control in a park. It is in these sorts of cases where genuine intervention and preventative measures are most needed and have the potential to be the most beneficial, however we remain unconvinced that CPNs can deliver this. For example, the issuing of a CPN appears less swift than a Dog Control Notice (DCN) and CPNs appear more focussed on low level, less complex community issues rather than individual issues, that may not always impact on the wider community.

The RSPCA remains of the opinion that dog control should be dealt with holistically through education and enforcement and that bespoke DCNs are key to this. DCNs, as proposed by a number of different organisations (from the enforcement, animal welfare and union sectors), would allow people to escalate and enforce in pursuit of our charitable objectives.

For this reason, the RSPCA remains concerned that without a bespoke DCN to cover this large, likely most common area of complaint, enforcers may have to resort to more disproportionate and draconian measures set out elsewhere in the Bill. This appears to strike a very unfair balance on dogs and dog owners. The RSPCA believes there is a need for bespoke DCNs and we disagree that the powers under this Bill provide for DCNs in form. We have drafted an amendment to the Bill to address this.

We are also concerned about the apparent lack of consideration and provision of training for enforcers in dog welfare and behaviour. We believe that to effectively tackle dog related issues and to protect dog welfare, it is necessary to have a scientifically sound and current understanding and demonstrable competencies in dog law, behaviour and welfare. Given that the issues which this Bill covers are so vast, and the funding available for training limited (if any), it is difficult to see how an in depth, up to date, consistent and standardised knowledge of dog related issues will be possible. We are extremely concerned that the Government appears to be relying on non-statutory guidance to clarify this point.

We fear that in the absence of knowledge and expertise, practitioners could unwittingly compromise animal welfare or put public safety at risk when trying to tackle behaviour problems. For example, in the case of a barking dog for which a CPN could be served, an owner could be required to attend training classes to improve behaviour. However, to ensure the welfare of the dog was protected, the authorised person would need

Paragraph 42, Draft Dangerous Dogs (Amendment) Bill, First report of Session 2013-14, EFRA Select Committee, May 2013, HC 95
to select a suitable training class. The EFRA Select Committee has also noted that “those advising the Courts must be required to have appropriate training in dog behaviour.”

2.6 This is one of the reasons why the RSPCA believes that this Bill should not be used to address dog-related issues and instead the Government should seek to consolidate and update all dog control legislation so that there is a greater chance of ensuring only suitably trained and appropriate people enforce the law in this area.

2.7 In principle, we welcome the approach to extend current legislation to cover private property (as does the EFRA Select Committee) as we believe an owner has a duty to ensure their dog does not pose a threat to people and animals regardless of where it is. Whilst extending the law on its own is unlikely to protect the public any further or achieve a reduction in bites, it does provide the mechanisms for prosecution of owners of dogs which have bitten.

2.8 With regards to the householder case, we believe that a provision for this shows a lack of understanding with regards to dog behaviour. When a dog is using aggression it is almost invariably because he thinks he is undergoing some form of threat. This threat could be from a trespasser eg someone breaking into someone’s home or a visiting child of whom the dog is scared of. Is it fair to expect the dog to know in which situation it is right to use aggression and in which it is wrong and for dog owners to be penalised in some situations but not others? Is it not also confusing for the dog owning public suggesting that aggression acceptable in some situations but not others? Furthermore, in extending the scope of section 3 of the DDA to cover private property, a dog merely jumping up at someone may be sufficient for an offence to be committed and this seems unfair on the average dog owner.

2.9 It is for this reason that we believe it would have been best not to provide a householder exemption but instead extend the scope of the law to cover all places but strengthen the defences so that genuine responsible dog owners need not fear prosecution. This would provide balance between potential victims, and dogs and dog owners fairly and for responsible dog owners who take reasonable steps to prevent dog bite incidents but which nonetheless occur. We have drafted an amendment to reflect this.

2.10 We welcome the principle of this clause 98(5) in extending the scope of s3 of the DDA to include attacks on assistance dogs but feel it should go further to address the trauma inflicted on farmers, horse and pet owners when their animals are attacked, injured or even killed. The acceptance by Government of assistance dogs appears largely due to the impact of the attack on the person as well as the dog but we feel the same is true for those who are not reliant on their animals in the same way as as owners of assistance dogs, but for which the financial, ethical and personal impact of loss can be just as significant. For example, the elderly lady whose only companion—her pet cat—is savaged and killed by a dog, or the struggling farmer whose livestock are maimed and killed by a dog, etc. The RSPCA has drafted an amendment to provide protection for all ‘protected animals’ as defined by section 2 of the AWA and only make it an aggravated offence for assistance dogs.

2.11 While the RSPCA supports the principle of requiring Courts to consider whether an owner is a ‘fit and proper person’ and the ‘temperament and previous behaviour’ of the animal we feel the approach set out is unbalanced and unfair. We believe that Courts should recognise there are two different reasons why a dog (and its owner) may be brought before them, for prohibited types of dogs (eg pit bull terriers, etc) and dogs seized as a result of an offence under section 3 of the DDA. Prohibited types of dogs can be seized even though their temperament is sound and their previous behaviour has caused no risk to public safety; it is solely because of their appearance. We would be concerned that previous minor misdemeanours, by a prohibited dog might prevent it from being returned to its owner when that was not the reason why it came to Court. Dogs seized under section 3 offences are seized because their behaviour is believed to be, or has been, dangerously out of control and so the odds may already be considered to be stacked against them.

2.12 For this reason, Courts must be required to consider all the circumstances and not just have discretion to consider other factors. Although clause 99 provides for the Courts to ‘consider any other relevant circumstances’ this is not mandatory and we are concerned that without this, the balance is tipped unfairly against some dogs and owners, especially those concerning section 3 DDA offences. Due to the complexity of the circumstances of such cases it is essential that Courts are required to consider these very relevant points (not just have discretion) and we have drafted amendments to reflect this.

2.13 We do, however, feel an objective assessment looking at the owner’s suitability and dog’s behaviour for both groups of dogs is a welcome step forward, rather than the reliance on breed specific legislation for prohibited types of dogs which is unfair and unscientific.

2.14 We remain disappointed that the Government has not included any legislative proposals that improve dog welfare in this area, especially those dogs which are seized by enforcement bodies as a result of potential offences. Very often these dogs, themselves, are victims. The RSPCA has long called for time limits to be placed on the defence and prosecution teams to examine seized dogs so that dogs do not spend unnecessarily

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11 Paragraph 29, Draft Dangerous Dogs (Amendment) Bill, First report of Session 2013-14, EFRA Select Committee, May 2013, HC 95
12 Paragraph 7, Draft Dangerous Dogs (Amendment) Bill, First report of Session 2013-14, EFRA Select Committee, May 2013, HC 95
time in kennels. This not only would improve dog welfare but also reduce the costs to enforcement bodies. We have drafted an amendment to address this.

2.15 The RSPCA along with a number of other rehoming organisations have called for the ability to rehome prohibited types of dogs that come into their centres if they are suitable and safe. At present such dogs, even if they are friendly and well socialised must be euthanased as it is illegal to do this and we believe it would be more equitable if there was an ability to transfer ownership (and rehome) prohibited types from our centres if the dogs are deemed safe by the Courts, we would be happy to use the exemption process set out in section 4B of the DDA. We have drafted an amendment to address this.

3. Further information

3.1 For further information on any of these points please see the RSPCA’s briefing produced for Second Reading of the Bill. Please contact Claire Robinson at the RSPCA for the full list of amendments to the Bill.

June 2013

Written evidence from Alcohol Concern (ASB 04)

1. About Alcohol Concern

1.1 Alcohol Concern is the leading national charity in England and Wales working on alcohol issues. Our goal is to improve people’s lives through reducing the harm caused by alcohol. We have an ambitious long-term aim to change the drinking culture in this country. We want to live in a world where people can manage the risks and make sense of alcohol.

1.2 In our evidence to the Anti Social Behaviour Bill Committee, we are highlighting the issue of anti social behaviour (ASB) and its association with cheap alcohol.

2. Summary

“From a policing point of view, sadly, a huge percentage of the work we’re involved in is a result of alcohol-related incidents.”

Chief Constable Adrian Lee, Northamptonshire

2.1 It is well-established that alcohol increases incidences of crime and ASB. Despite measures introduced via the Police Reform and Social Responsibility Act 2011 that have provided police and licensing authorities with additional powers to tackle irresponsible premises and crack down on sales to minors, both of which are known to fuel incidents of crime and disorder in local communities, alcohol-related ASB and crime remain a key concern for communities across in England and Wales.

2.2 Alcohol Concern is of the view that the Bill is unlikely to be fully effective in reducing ASB and crime unless measures are adopted at a national level that reduce the affordability of alcohol, in particular the implementation of a minimum unit price for alcohol.

3. Alcohol and ASB

3.1 It is well-established that alcohol is a key driver in rates of crime and ASB in England and Wales. In recent decades there has grown a culture of ‘drinking to get drunk’. Recent qualitative research conducted on behalf of Alcohol Concern, for example, found that heavy drinking is typically regarded by drinkers as an essential part of ‘a good night out’, with drunkenness seen by some as not only acceptable, but as something to look forward to, even though it often led to regrettable incidents, including causing nuisance and harm to others. Moreover, nearly half of all violent crime is believed to have been carried out by individuals under the influence of alcohol.

2 Measures introduced via the Police Reform and Social Responsibility Act 2011 have provided police and licensing authorities in England and Wales with additional powers to tackle irresponsible premises and crack down on sales to minors, both of which are known to fuel incidents of crime and disorder in local communities. The UK Government is also exploring giving NHS Protect (the body that works to identify and tackle crime across the health service) the power to apply ASB injunctions on individuals who persistently cause problems in hospitals, for example being disruptive and abusive as a result of drinking too much.

3.3 Nevertheless, alcohol-related ASB and crime remain a key concern in communities across England and Wales. A YouGov survey of over 2,000 adults found that a third (33%) of respondents regarded their town and city centres as no-go areas after dark for this reason. Likewise, a survey conducted on behalf of Tesco in 2010 found that 61% of its customers were concerned about ASB as a result of drinking.

13 http://www.politicalanimal.org.uk/RSPCA/2R%20brief%20for%20ASBCP%20Bill.pdf (accessed 12.06.13)
4. **Cheap Alcohol**

“Making alcohol less affordable is the most effective way of reducing the harm it causes among a population.”

National Institute for Health and Clinical Excellence

4.1 The Government’s Alcohol Strategy rightly recognises the need to reduce the availability of cheap alcohol, highlighting the fact that alcohol has been so heavily discounted that it is now possible to buy a can of lager for as little as 20p or a two litre bottle of cider for £1.69. Alcohol is 45% more affordable than it was in 1980.

4.2 An increasing body of evidence shows that reducing the affordability of alcohol is a key factor in driving down rates of crime and ASB. A meta-analysis of the effects of alcohol prices and taxes on drinking, by Wagenaar et al, concluded that “price affects drinking of all types of beverages, and across the population of drinkers from light drinkers to heavy drinkers. We know of no other preventative intervention to reduce drinking that has the numbers of studies and consistency of effects seen in the literature on alcohol taxes and prices” (p187).

4.3 Alcohol Concern has been campaigning for a minimum unit pricing (MUP) for a number of years, and we were consequently very pleased with the Government’s decision last year to adopt this measure. Subsequent media reports suggesting that plans for MUP in England and Wales have been dropped are therefore disappointing.

4.4 We continue, along with numerous other health bodies, to back the implementation of a 50p per unit minimum price, with the best available evidence showing that it will cut crime and disorder, and save lives. A Sheffield University study in 2009 calculated that a minimum unit price of 50p would see a 7.2% reduction in alcohol consumption, resulting in 8,900 fewer hospital admissions and 4,200 less crimes per year.

4.5 A positive effect of MUP might also be to encourage alcohol producers to reduce the alcoholic content of their products. Wine usually has an alcohol content of 12%, meaning that a standard bottle contains 9 units of alcohol. A bottle selling at a price for 3 bottles for £10 would cost £3.33 and a MUP of 50p would increase this to £4.50; however, by reducing the alcohol content to 9%, the price could still be £3.38, thus facilitating a reduction in alcohol content. This is important as strong alcohol is associated with high levels of ASB. A recent initiative in Ipswich which facilitated the removal of high-strength alcoholic beverages from sale in the off-trade resulted in the number of reported “street drinker events” in the town, including crimes and ASB, falling by 49% in six months.

**References**


3. 44% of all violent crimes as perceived by victims, constituting 928,000 violent crimes. Source: British Crime Survey 2010–11.


12. *ibid.*
Written evidence from the Association of Chief Police Officers of England, Wales and Northern Ireland (ASB 05)

1. The police service continues to recognise that all individuals and communities have a right to live their lives free from intimidation and harassment that affects their quality of life. One of the core purposes of policing is to keep people safe and this includes dealing effectively with anti social behaviour (ASB). ACPO believes that the critical determining feature of the police service’s response to crime and anti social behaviour should be the risk of harm to the victim or community. ACPO sustains a culture that treats the harm caused by crime and anti social behaviour as a strategic priority for all our forces, the service as a whole and encourages appropriate partner agency involvement.

2. We believe the ‘spectrum of harm’ concept should be at the heart of our policing model. By adopting this approach we avoid the dangers of ‘policing by categories’ whereby a predetermined response is provided by officers, staff and partners. We prioritise our response to the most vulnerable or those suffering the greatest harms. Practitioners approach incidents with an open and an enquiring mind to establish what has happened, who has been harmed or who is at risk of harm, and how they can respond in a way that prevents further harm. Comprehensive care plans are in place to support community members who require elevated levels of support. We deliver a bespoke, differentiated service which meets individual victim’s needs.

3. In framing our response to the Anti-Social Behaviour, Crime and Policing Bill, the police service acknowledges the need to take the issues surrounding ASB seriously, to deliver efficient local policing services with a multi agency approach to help and protect all members of our communities but particularly the vulnerable, and it aspires to prevent and stop issues which affect people so that they feel safe in their homes.

4. The ACPO Anti-Social Behaviour Portfolio welcomes the opportunity to comment on the proposed changes to legislation before the Scrutiny Panel. Throughout the past three years the portfolio has consulted a number of times with the wider police service on anti social behaviour issues including tools and powers.

5. In broad terms the proposals contained within the bill are practical, positive, reasonable and balanced. It proposes a simplified and consolidated process for dealing with anti social behaviour (ASB) taking into account the shortcomings of the existing tools currently available and recommending more streamlined and seemingly less bureaucratic methods of tackling these issues with the emphasis on localisation. In short the de-cluttering of the intervention landscape will increase the likelihood of positive outcomes, using a reduced number of powers, with potential gains in terms of efficiency and effectiveness.

6. Specific feedback and observations on the proposed changes:

Injunctions to Prevent Nuisance and Annoyance

7. The proposed measure appears significantly quicker and more cost effective than the current ASBO processes with the ‘balance of probability’ level of proof and the ‘threaten to engage’ a key factor which will assist. It can be obtained in the County Court for adults and in the Youth Court for 10 to 17-year-olds but the question has been raised whether it could possibly be heard in the Magistrates Court also, with the correct level of training, which would alleviate any court availability issues but still leave the most appropriate application at the most appropriate court.

8. The new injunction, it seems will be based on the ASBI but replaces the ASBO and will expand the range of agencies that can use it, and increase the range of circumstances in which it can be used, all of which are seen as positives. A power of arrest could be attached to the injunction if the individual had used or threatened violence or if there was a risk of significant harm to the victim. The attached power of arrest creates an obligation on the police to take positive action: in that sense we would have a duty to arrest once a breach occurs. This is a significant difference from current powers which (because a breach of an ASBO is an offence) provide a power of arrest for a breach but not a duty. We recognise, and fully respect, that a breach of an injunction is a contempt of court and not an offence, but we feel that retention of the discretion to arrest would allow us and our partners to decide upon the best course of action according to the circumstances. This may mean we do not arrest for every breach, particularly when there is a ‘minor’ breach, but it would give us the power to arrest which is an effective tool in the right circumstances.

9. There would be no minimum or maximum length for the injunction and a breach would be punishable as contempt of court in the case of an adult, which might include being punished by up to two years in prison. For a child between 10 and 17 the penalty for a breach would be a curfew, activity or supervision requirement, with repeated breaches causing serious harm, resulting in custody for up to three months. Interim orders could be obtained without notice and in the absence of the defendant, we see these proposals as positive. Breaches of a positive mandatory condition may be more problematic to prosecute with associated bureaucratic issues. The stipulation that the ‘Chief of Police’ should be informed when either conditions have been complied with...
or breached should be removed as the police may not have any direct involvement with the perpetrator and this again would create unnecessary bureaucratic issues in how and why we would have a need to record.

10. There is a lower threshold of ‘nuisance or annoyance’ in comparison to the ASBO which required ‘harassment, alarm and distress.’ This would enable injunctions to be sought in the most typical scenario of ASB by youths in residential areas, when a higher test may be more difficult to prove. Accepting that the courts would be the safeguard, there is a need to consider the potential for the power to be used inappropriately, thus stigmatising and possibly criminalising young people unnecessarily. In addition the expectations of the public need to be managed and having this low threshold could result in people expecting action that simply would not be possible or appropriate which would affect satisfaction and put unsustainable pressure on resources. ACPO’s view would be to retain the ‘harassment, alarm and distress’ test. Similarly with the terminology ‘just and convenient’ where it was thought that this could be misinterpreted or misused, ACPO would advocate ‘necessary’ to replace this.

11. Experience has indicated that the effectiveness of ASBOs are maximised when supported with other elements such as support packages or an individual action plan that addresses the causes of offending behaviour and meets the varied needs of a perpetrator. Indeed the bill recognises this feature by including both prohibitions on behaviour and positive requirements to change behaviour in the longer term. However concern about agencies capacity and capability to deliver this support in difficult economic times has to be considered.

12. Even with a renewed simplified interventions landscape a threat remains that underlying cultural and partnership issues may still frustrate the practical implementation of these measures. The ‘Anti Social Behaviour Case Management trials’ provided tangible evidence of the benefits of closer working practices to improve the interpretation of data protection law. The new proposals and future working practice may further benefit from an overt positive requirement for Community Safety Partners to pro-actively share information.

THE CRIMINAL BEHAVIOUR ORDER—(CBO)

13. This order is available on conviction and is intended to be given, on application by the prosecution, in addition to a court sentence. This proposal has been favourably viewed with many practitioners seeing it as a revamped CRASBO with mandatory positive as well as prohibitive conditions. The powers are simple and flexible and feedback is also very positive over the fact that the CBO is available to other partners and not just the police and CPS. It is interesting that the threshold for the CBO is causing or likely to cause ‘harassment, alarm or distress’ as opposed to the lower threshold test suggested in injunctions. This seems to be an inconsistent approach and ACPO would advocate the higher test in both.

14. There is concern about how potential breaches will be effectively managed. A systematic approach and set of guidelines may be needed to ensure the prohibitions are appropriate and relevant to the defendant’s circumstances. If there is no direct responsibility then some agencies may be reluctant about submitting or supporting an application.

15. Whilst it is a legitimate expectation that the positive requirements will reduce the breach rate, one should not get overly concerned regarding high breach rates. Individuals subject to anti social behaviour interventions who require parameters put on their behaviour, are the more problematic members of our communities. It is seen favourably that the police and other partners will be given flexibility to determine the seriousness of any first breach and how it should be dealt with. The monitoring and compliance of requirements will need some thought to ensure its effectiveness and to avoid varying bureaucratic processes.

DISPERAL POWER

16. These proposals have received significant support as it strengthens police powers to remove people from areas for poor public place behaviour in general and not overly focusing on alcohol related disorder as it is at present. Both Section 30 Anti Social Behaviour Act 2003 and Section 27 Violent Crime Reduction Act 2006 Dispersal orders have proved to be very effective tools and combining these orders will simplify their administration and reduce costs.

17. The use of dispersal powers can be highly controversial. The current dispersal power is instigated by police and is risk assessed as part of its inception. This at present designates areas after consultation and agreement of the local authority which helps facilitate a problem solving approach for a period of time up to 6 months. It involves an exit strategy, community involvement and the responsibility not to displace the problem elsewhere. In these new proposals, although PCC’s would be expected to provide democratic oversight this is after the event and not through a process which engages the community before the powers are used. This could result in disproportionate use of the powers and greater tensions in some communities or sections of communities.

18. The terminology ‘likely to’ contribute to one of the two conditions used in the new proposals has caused some concern as this is very subjective. It can simply arise from a fear of what someone might do rather than where ASB or crime has occurred and that person is responsible. The power also appears to be exercisable when any ‘crime or disorder’ has occurred or is likely to. In theory without proper stipulation this could mean that a crime totally unrelated to ASB may have been occurring in a location, for example car crime, and people could be dispersed simply because they are suspected of being likely to commit this offence. This again could
unfairly impact on certain groups such as youths, who very often are doing no more than ‘hanging out’ together. There would need to be clear guidance in relation to what is trying to be achieved by this part of the bill.

**Community Protection Notices**

19. A Community Protection Notice would deal with environmental ASB with councils and the being able to issue the notices. They would be issued to an individual or a responsible person within a business or organisation to deal with a problem affecting the community and are intended to deal with a range of issues such as graffiti, littering, and dog-fouling of a persistent nature rather than single incidents. They could also be used to tackle neighbourhood noise issues. Breach of the notice would be a criminal offence punishable by a fine of up to £2,500 or £20,000 for businesses. Where there was a requirement under the notice to ‘make good’ but this was not done, councils could complete the works and charge the individual responsible. This is all seen as a positive from an ACPO perspective with the positive requirement to do or stop doing behaviour, and forfeiture of items seen as useful powers.

**Community Protection Orders**

20. Although there is a minor danger that the differing tiers within the Community Protection Order may prove confusing to practitioners and the public, these proposals have been well received. The proposals will be useful as they increase the number of people who can action and deal with nuisance caused by ASB and includes consultation with amongst others, residents. The emphasis is taken away from the police to deal and thereby problem orientated partnership approaches are supported in order to improve community safety.

**Recovery of Possession of Dwelling Houses: Anti Social Behaviour Grounds**

21. We will work with housing agencies to support the use of powers of Recovery of Possession of Dwelling Houses and welcome an amendment to the Draft Bill which now makes it clear an offence committed against a landlord or their agent anywhere rather than solely in the locality of the premises will provide an absolute ground for repossession.

**Community Remedies**

22. The use of restorative approaches and informal tools is welcomed by ACPO and can play a significant part when dealing with anti social behaviour, putting the victim at the heart of any decisions that are made, thus helping to heal situations, some of which have been ongoing for some considerable time.

23. Concerns have been raised however, around operational practicalities surrounding this part of the bill and the bureaucracy it may introduce. The police service has gradually and carefully been reintroducing discretion for officers in order to allow them to deal with individual situations as required having consideration to the needs of the victim and situation. This has worked to good effect in relation to ASB and it is feared that by introducing a pre mandated ‘list’ or menu of sanctions that outlines how low level crime and ASB will be dealt with outside of court in a particular area, will stifle this discretion and force police officers and partners in to pre determined courses of actions that will not necessarily benefit either the victim or police.

24. It is accepted that this list contained in the community remedy document will be agreed by the Chief Constable and PCC for a particular area following consultation with the local community and that the victim will be able to choose from the list. ACPO believe that the menu should be kept as broad as possible, strengthening the caveats around an officer’s freedom to use something more suitable even though it isn’t on the menu (perhaps an Inspector could authorise that) might be good practical ways to make the idea work. A concern is how robust this process will be to ensure fair representation of the whole community when compiling the list and deciding a chosen sanction offered to an offender is proportionate to the offence. It seems that there will be significant added bureaucratic processes required to administer this remedy.

**Responses to Complaints about Anti Social Behaviour**

25. ACPO supports any intervention which assists to identify and support any individual whose life is being affected as a result of anti social behaviour. We recognise, and support, measures that improve accountability and help to sustain public confidence. ASB is however often a complicated matter, with complexities that the public do not always understand, have an appreciation of what agencies are actually empowered to deliver for them, or the affordability of their proposals. The implementation of this process would need to take in to consideration that there may be difficulties ensuring that the harm and vulnerability element of ASB is not overlooked by the sheer quantity of incidents, malicious, vexatious or indeed prejudicial reporting or inappropriate intolerance or perceptions of people.

26. Whilst the bill proposes a threshold for the activation of the trigger of three complaints of ASB in a six-month period, there remains the flexibility for that threshold to be determined locally. Inherent in this is a risk of varying practices developing across areas and therefore very different interpretations and services.

**General Feedback**

27. Although not perfect the current tools and powers have enjoyed a sustained period of time to be tested and developed within court and subject to judicial reviews. A settled position has been reached in many aspects
of tackling perpetrators and the implementation of new powers will need to consider how best to mitigate the potential for fresh legal challenges.

28. Any new tools and powers will do little to deal with inadequacies in case management skills, application/enforcement processes, lack of information sharing or failing to take a joined up approach. To make behaviour orders successful requires multi agency involvement support and buy in, engagement with families, victims and offenders, ownership and effective enforcement when necessary.

29. Anecdotal evidence suggests a dis-satisfaction from communities and practitioners that courts do not deal with anti social behaviour related breaches seriously enough, which has the potential to encourage a lack of confidence, although data on sentencing (in relation to breaches of ASBOs) suggests that this dissatisfaction is based more on perception than reality. Similarly consideration of appropriate steps to minimise adjournments or assessments, which can easily damage community confidence, should also be considered.

CONCLUSION

30. Providing effective responses to incidents of anti social behaviour and risk of harm is not simply a matter for the police alone and there is a clear need for a partnership approach. We build on excellent foundations where the police service and its partners have long recognised this fact and our staff are engaged in first class work, preventing and intervening in issues, and making a difference to people’s lives. The ability to enhance partnership working will be immeasurably helped by joint case management tools, procedures and protocols that would ensure ‘joined up’ thinking in improving community safety.

31. Equally harm in our neighbourhoods cannot be ‘solved’ by public services alone. Society requires confident and resilient communities, demonstrating a culture of mutual respect between people. We and our partners support communities to develop their own capacity and capabilities.

32. Interventions in the bill, with some considerations, are consistent with the police service’s ambition to allow people to live their lives without fear of intimidation and harassment and we look forward to working with both the Government and partners in making our communities even safer places to live, visit or work.

June 2013

Written evidence from Nacro (ASB 06)

I am writing in response to your call for written evidence ahead of the Committee stage of the Anti-social Behaviour, Crime and Policing Bill. Nacro, the crime reduction charity, would like to draw Honourable Members’ attention to Part 1 of the Bill, and the negative impact which elements of this legislation could have on reducing crime and reoffending in communities.

Under Part 1 of the new Bill, a new civil order, the Injunction to Prevent Nuisance and Annoyance (IPNA), will replace the current stand-alone Anti-social Behaviour Order, and expand the definition of anti-social behaviour to include “conduct capable of causing nuisance or annoyance”. The number of possible activities that could fall under this more nebulous definition causes Nacro—an organisation which works directly with young offenders—great concern. Worryingly, this broader definition would be assessed on the basis of a civil burden of proof unlike an ASBO which requires a criminal burden of proof. In addition, given that the injunction can apply to those as young as 10, these measures risk the unnecessary criminalisation of young children. The evidence shows that the earlier someone is introduced to the criminal justice system, the more difficult it is to change their situation. The worse someone does at school, the less work experience they are likely to have; the more time they spend associating with those from the criminal world, the more likely they are to commit crime.

Nacro welcomes the opportunity to re-evaluate ASBOs. They were often misused and ineffective at tackling the problems to which they were applied. In addition, Nacro welcomes the new provision to enable courts to place positive sanctions on IPNAs and Criminal Behaviour Orders (CBOs) rather than simply negative and punitive requirements.

However, the Bill is in danger of introducing a limited and ineffective tool; making court orders more commonplace and less successful than previous sanctions; and issuing an unlimited suite of requirements that will be ineffective and unrealistic. The Bill focuses too heavily on non-serious behaviour, which is likely to waste police and court time and other precious resources. Instead, the Bill should be dedicated to tackling and preventing criminal activity and providing the police, local government and community organisations with the appropriate tools to tackle pernicious, complex and criminal anti-social behaviour in our communities.

Anti-social behaviour is a multi-faceted problem which requires a smart and effective response. It blights lives and communities, and if left unchallenged can all too often lead to an individual entering a destructive cycle of crime.

Nacro welcomes a renewed focus on measures to tackle anti-social behaviour. But sounding tough is not the same as being effective and blanket approaches rarely work.
We need to tackle anti-social behaviour in an intelligent way: getting in early with those most likely to commit acts of anti-social behaviour and steering them towards playing a more positive and constructive role in their communities. The most effective ways to do this do not include early entry into the justice system.

We should be investing in proven and effective interventions and implementing these interventions sufficiently early to stop the problem before it escalates from nuisance to harm. We must adopt measures which change attitudes and behaviour, address drug and alcohol problems, and ensure young people take responsibility for their actions and repair any damage that they have caused to their local communities.

We need to address these issues, rather than take steps to introduce new orders that fail to address the causes of an individual’s anti-social behaviour.

June 2013

Written evidence by David Tucker (ASB 07)

SUBMISSION RELATING TO PART 7: DANGEROUS DOGS

BIOGRAPHICAL NOTE

1. I was a Solicitor from 1973, a Crown Prosecutor and Senior Crown Prosecutor from 1988 to until retiring in 2008. In CPS I was also an accredited trainer and worked on the in-house guidance for various Acts. My specialisations included dangerous dogs and I have delivered training and published a number of articles on this including in the Criminal Law Review. I have previously submitted written evidence to the Commons Select Committee on the Environment, Food and Rural Affairs on Cm 8601 proposed amendments to Section 3 of the Dangerous Dogs Act 1991.

SUMMARY

1. Amending section 3 of the Dangerous Dogs Act 1991 (DDA) by simply extending it to incidents in private is not the best solution to the problem of dog incidents on private land. The language appropriate to events in public will not work well in a private context because “control” or lack of it is not the right test for criminal liability.

2. The “householder” defence is flawed, complicated and in particular will work badly when a child is the victim in an incident.

3. The section 3 offence is one of strict liability and the existing very limited defence should be replaced by a defence of due diligence, ideally linked to a code akin to the Highway Code, setting out clearly what is expected of a dog owner or handler.

4. Rather than the concept of “out of control” and “under control”, a better approach is language focussing on the impact of a dog’s behaviour coupled with a Code setting out the responsibilities of the owner and handler and a defence of due diligence to exonerate those who meet the Code’s standards.

5. The maximum penalty for an aggravated offence under section 3 is 2 years’ prison and that is insufficient. By comparison with the penalties for causing death by careless or dangerous driving a maximum penalty of 10 years is appropriate.

6. Consolidation of the law relating to the welfare and control of dogs is preferable to piece-meal and rapidly constructed changes to scattered legislation.

THE PROPOSED WORDING OF SECTION 3 DDA

Keeping dogs under proper control

(1) If a dog is dangerously out of control in any place in England or Wales (whether or not a public place)—

(a) the owner; and

(b) if different, the person for the time being in charge of the dog, is guilty of an offence, or, if the dog while so out of control injures any person or assistance dog, an aggravated offence, under this subsection.

(1A) A person (“D”) is not guilty of an offence under subsection (1) in a case which is a householder case.

(1B) For the purposes of subsection (1A) “a householder case” is a case where—

(a) the dog is dangerously out of control while D is in or partly in a building or part of a building, that is a dwelling or is forces accommodation (or is both), and

(b) At that time—

(i) the person in relation to whom the dog is dangerously out of control (“V”) is in, or is entering, the building or part as a trespasser, or

(ii) D (if present at that time) believed V to be in, or entering, the building or part as a trespasser.
Section 76(8B) to (8F) of the Criminal Justice and Immigration Act 2008 (use of force at place of residence) apply for the purposes of this subsection as they apply for the purposes of subsection (8A) of that section (and for those purposes the reference in section 76(8D) to subsection (8A)(d) is to be read as if it were a reference to paragraph (c)(ii) of this subsection.

(2) In proceedings for an offence under subsection (1) above against a person who is the owner of a dog but was not at the material time in charge of it, it shall be a defence for the accused to prove that the dog was at the material time in the charge of a person whom he reasonably believed to be a fit and proper person to be in charge of it.

(4) A person guilty of an offence under subsection (1) or (3) above other than an aggravated offence is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both; and a person guilty of an aggravated offence under either of those subsections is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

THE PROBLEM OF “OUT OF CONTROL” IN A PRIVATE PLACE

2. Under the proposed amendment, Section 3 becomes a tangled and confusing section, but is basically the original section 3 as enacted in the 1991 Act with the restriction to public places removed and the addition of a householder defence related to other provisions designed to exempt from criminal liability a householder who protects himself and his family from an intruder.

3. The core concept in section 3 therefore remains that of a dog which is “dangerously out of control.” It follows that the law contemplates that a dog is either “under control” or “out of control.”

4. In a public place, a dog in the charge of a responsible person is “under control” at all times. Control is achieved by having the dog adequately held on a lead or subject to voice or similar commands which ensure that the dog will go or not go, move or stay, as the owner or handler directs. That concept does not transfer happily to what happens in a private place such as a house or a garden, when the degree of direct and visible control over the dog will be much more relaxed or even non-existent, so that the dog will for significant periods of time therefore be “out of control” even though the owner is doing nothing unusual or reckless and is not acting in an irresponsible way—the mischief the law wishes to criminalise and thereby prevent.

5. Lawyers sometimes use language and see things differently from lay people. I have been asking dog owners about the concept of being “in control of” a dog in a private place. The consistent response is that when the dog is in its box or kennel and the owner is either in the house elsewhere or even out of the house, to describe the owner as “in control of” the dog is not the right language, albeit the owner remains at all times responsible for the dog and its actions.

6. If a dog owner leaves his dog safely at home and goes out, it is stretching language too far to say that the dog is under the control of the owner, and it follows that that dog is “out of control” because no one is at that time “controlling” it. It would follow that whenever the owner is away from a dog that is not on a lead or tether or contained in a secure cage, the dog is out of control. A dog asleep in a garden is “out of control”. As the section 3 offence is one of strict liability, requiring no specific mens rea, that puts the owner at risk if unexpected events occur. It follows that testing whether a dog is “under control” or “out of control” is not the appropriate test for incidents taking place in private. A better approach for incidents in both public and private can be formulated.

DUE DILIGENCE AND A CODE FOR THE WELFARE AND CONTROL OF DOGS

7. It is remarkable that section 3 creates an offence of strict liability and yet the only defence available to the owner is to pass the buck to another person by showing that another person believed to be fit for the task was in charge of the dog. Such a narrow defence creates the prospect of injustice where an owner technically commits an offence but is morally blameless.

8. One dog owner told me of an incident where he had left the dog secure in the garden, but the gardener, despite instructions, had left the gate open and the dog got out. Had the dog attacked someone the owner would be guilty of an offence. It is not sufficient, in my submission, for the justice of the matter to be in the realms of a CPS decision that a prosecution was not required in the public interest. Rather, there should be a wider form of defence available to both a dog owner and a person in charge of a dog, namely a defence of due diligence.

9. That would work most effectively if accompanied by clear guidance on the standards to be expected of a dog owner or handler. There is a Defra publication, but it would not be sufficient for this purpose. I have in mind a document analogous to the Highway Code, with the same statutory status, which would be readily available and would be the touchstone for an investigating police officer, a reviewing prosecutor or court to determine if a suspect or defendant had done all that could reasonably be expected of him in a particular case. It would be a document specifically designed to give clear guidance to owners and handlers, and to be used in
the course of an investigation, in deciding whether to prosecute and in court. An extract from my draft Code is in the Schedule to this submission.

THE “HOUSEHOLDER” DEFENCE

10. The original draft of this provision in Cm 8601 contemplated only the situation where the owner of the dog was present on the premises when the dog was dangerously out of control. That was quickly seen as too narrow and the words “if present at that time” were added.

11. A serious flaw in this drafting relates to the child who enters premises without permission and is in law a trespasser. Such a child will be treated in the same way as a burglar, even though below the age of criminal responsibility and in law incapable of crime. That would be unjust if the child had entered premises innocently, for instance opening an insecure door to look for a friend.

12. A further flaw relates to the limitation of the defence to trespass or perceived trespass in a dwelling. If I store valuable items outside a building but on private land—farmer keeps tractor in farmyard for example, or boat owner keeps it on a trailer in the garden—should I as the owner of a dog be at risk of prosecution after an incident with an intruder in the farmyard, although if the item had been in a dwelling, for instance in an integral garage, I would not? It seems an illogical distinction and the wrong point at which to “draw the line”.

AN ALTERNATIVE PROPOSAL

13. I respectfully submit that there is a better and simpler way of dealing with the issue.

14. After reading the recent report of the Commons Select Committee on Cm 8601, I set to drafting a consolidated Dogs Bill as recommended by the Committee. Starting with a fresh mind, in formulating an offence which applies to dogs in private places as well as public, I have abandoned the concept of “dangerously out of control” in the DDA 1991, itself a throwback to the wording of the 1871 Act. I have focussed the offence on the impact on others of the behaviour of the dog as that will more readily make sense in a private place than “out of control”. This formulation works equally well for incidents in public, and also addresses the deliberate use of a dog, while fully under the control of an owner or handler, to behave aggressively.

15. I have also taken a simpler approach to the question of the trespasser issue. The aim is clearly that a person of criminal intent takes the risk of there being a dog at premises he targets. Exempting the owner from liability whatever the reason for the trespass, eg error, and whatever the age of the trespasser, eg 6 years old, is in my view too wide and likely to lead to continuing public displeasure with the operation of the law relating to dogs and safety.

16. The maximum penalty for an aggravated offence under section 3 DDA is 2 years’ prison. For causing death by careless driving it is 5 years, and for causing death by dangerous driving it is 14 years. In my draft I have provided for a maximum penalty of 10 years’ prison for a section 3 aggravated offence. That would only be appropriate in a case where there had been both severe neglect of responsibility by the owner and serious consequences such as death or severe life-long disfigurement or disablement. The Sentencing Council would issue suitable guidance for courts. It is not be sufficient to say that there are already offences of causing grievous bodily harm and manslaughter, because the elements of those offences might not be made out, and victims or their families would remain without the access to justice which the public clearly want in dangerous dog cases, as evidenced by the public reaction to cases of severe injury and death where no prosecution is possible.

17. I have tried to create law which is clear to understand and can be effectively enforced. However there is no doubt in my mind that a consolidation of the existing scattered, out of date and poorly known law is a better way forward. The gains would be

— Increased public confidence in the law as a tool for providing an adequate framework for the welfare and control of dogs;
— The ability to take effective preventive action when the welfare of a dog is at risk or the dog presents a risk to other people or animals;
— The ability of the law to provide an adequate penalty and remedy after an incident, especially one involving serious injury or loss;
— Discouragement of the use of dogs as trophy animals; and
— Monitoring through an expected decrease in the number of incidents of dog attacks and admissions to hospital.

EXTRACT FROM DRAFT DOGS BILL—SECTION TO REPLACE (INTER ALIA) SECTION 3 DDA

Dog behaving in a dangerous or threatening manner or causing injury

18. (1) If a dog behaves in a manner that is dangerous or threatening towards a person, including a person in or on a vehicle or riding an animal, the owner and any other person in charge of the dog at that time is guilty of an offence, or, if the dog injures a person, an aggravated offence.
(2) If a dog behaves in a manner that is dangerous or threatening towards an animal the owner and any other person in charge of the dog at that time is guilty of an offence, or, if the dog injures an animal of a type usually kept for commerce or an assistance dog, an aggravated offence.

(3) It shall be a defence for any person charged under this section to prove on a balance of probabilities that he used all due diligence to prevent the commission of an offence of the type alleged.

(4) The owner of a dog and any person in charge of the dog is not guilty of an offence under this section in respect of a person if that person is or was immediately beforehand a trespasser being of the age of criminal responsibility and being on private land or in a building for the purpose of a crime of dishonesty or violence.

(5) A person guilty of an offence under this sub-section (1) or (2) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale, or, in the case of an aggravated offence, a fine not exceeding level 5 on the standard scale or on indictment to imprisonment for a term not exceeding ten years or a fine or both.

(6) For the purposes of this section an assistance dog is a dog that has been accredited to assist a disabled person by a charity or organisation approved for this purpose by the Secretary of State.

(7) If a dog appears to an authorised officer to be behaving or to have behaved in a manner prohibited by subsection (1) or (2) above, he may take control of the dog and arrange for it to be taken to a suitable place for its welfare, and it shall remain the responsibility of the authorised officer unless and until it is returned to its owner or placed with an organisation for rehoming or destroyed.

(8) A person who was the owner of the dog or was in charge of it at the time it was taken by an authorised officer shall be liable to pay for the costs of the kennelling and welfare of the dog for so long as it remains the responsibility of the authorised officer.

18. NB: authorised officer is elsewhere defined as a dog warden, police constable or RSPCA officer.

19. If this proposal is considered too wide, a narrower exemption would be achieved by removing “on private land or in a building” and substituting “in a dwelling”, but beware anomalies—for instance dog’s kennel and valuable property are in an outbuilding which is separate from the dwelling-house, compared with dog’s kennel and valuable property are in a garage which is integral to the dwelling-house.

Schedule

**Extract from draft Code for the Welfare and Control of Dogs**

**The dog at home**

31. Where you keep your dog must be sufficiently secure to prevent it from escaping. A garden or yard must be sufficiently fenced and gated. The security of the perimeter must be regularly checked and maintained in good repair.

32. Entrances must be gated. Put a sign on or by each gate asking users to shut the gate to prevent the dog from straying. Consider putting a delivery box by an entrance for post, newspapers etc, so that deliveries can be made without someone opening the gate.

33. Ensure that the dog cannot stray out while gates are open for a vehicle to drive in or out.

**Control**

40. It is vital for the safety of a dog and of people and other animals that you and anyone that you place in charge of the dog should be able to control it adequately.

41. A dog that is not adequately controlled may cause an accident or harass or attack people or other animals.

42. You must be able to keep your dog under control when at home and elsewhere.

43. You and anyone in charge of the dog must be able to:
   - Make it come to heel on a signal of command, or keep the dog on a lead
   - Make it sit or lie down
   - Make it wait
   - Attach a lead to its collar
   - Make it walk to heel on a signal of command
   - Control barking
   - Make it defecate in a controlled way and not on pavements.

44. When you go out with a dog, always take a suitable lead, so that you can control the dog under any circumstances that may arise.

45. When you take a dog out in public, always keep it on a lead unless it has been sufficiently trained for you to be able to control it whilst off the lead and conditions make it suitable for it to be off its lead. In particular make sure that there is no requirement where you are to keep it on a lead.
46. Use a suitable muzzle on your dog if it is required or if a vet advises that you should do so.

**A dog and other people**

47. You should respect the needs and expectations of other people. Some people are frightened of dogs. Respect the reaction of people if they do not like the presence of a dog.

**A dog and babies and children**

48. Never leave a dog unattended with a baby or child.

49. You must ensure that a dog is suitably controlled or restrained if there is a baby or child nearby. Ensure that the person in charge of the baby recognises the need to keep the baby or child safe, in particular by not letting the baby or child come too close to the dog.

50. A dog may mistake a baby for a small animal and think that it should be caught and killed.

51. A child may see a dog as a toy and treat it in a way that angers or harms the dog and provokes a reaction. A child may not be aware of its ability to injure a dog or of a dog’s ability to injure it if alarmed or hurt.

52. If you are in charge of a dog, you must closely supervise any play between a child and a dog. Do not assume that whoever is looking after the child will necessarily be aware of the risk.

**Letting someone else have charge of a dog**

56. The primary responsibility for the welfare and control of a dog always lies with the owner. Someone else who takes charge of a dog also assumes that responsibility.

57. If you let someone else take charge of a dog, you should make sure that that person understands those responsibilities and understands what is expected and required of him or her.

58. Before you let someone else take charge of a dog, ensure that he or she knows how to control the dog safely, and is physically able to do so.

59. Be particularly wary of letting a child or young person take charge of a dog. Children may see a dog as a playmate and source of fun without realising either the dog’s own limitations or the risk to others of inadequate control and restraint. A child or young person may also lack the physical ability to restrain a dog. Two or more children in charge of a dog are no substitute for one adult.

60. Remember that if a dog is in public and therefore required to be on a lead, the person holding the lead must be at least 16 years of age.

61. If any special conditions apply to the welfare or control of a dog you own, such as conditions in a Dog Welfare and Control Direction, ensure that anyone you place in charge of the dog knows and understands the conditions and will comply with them.

62. Before you take charge of a dog, ensure that you know about its character and temperament.

*June 2013*

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**Written evidence from Cats Protection (ASB 08)**

**EVIDENCE TO THE SCRUTINY COMMITTEE EXAMINING THE ANTI-SOCIAL BEHAVIOUR CRIME AND POLICING BILL REGARDING DANGEROUS DOGS (PART 7).**

**Summary:** Reports of dog attacks on cats appear in the press weekly and evidence at least two attacks on cats per week—all fatal. The current criminal law under the Animal Welfare Act (2006) is inadequate. Cats Protection asks the Committee to support an extension of the Anti-Social Behaviour Crime and Policing Bill (ASBCPB) to include attacks by dogs on “protected animals” (as defined in Section 2 of the Animal Welfare Act 2006). We are proposing an amendment to Section 3 of the Dangerous Dogs Act 1991. We are also supportive of measures within the ASBCPB that will help prevent attacks on protected animals (in line with measures to prevent attacks on people and assistance dogs).

1. **Cats Protection**

Cats Protection (CP) is the UK’s leading feline welfare charity. We have approximately 7,000 cats in our care at any one time across the UK. We have over 8,700 volunteers and supporters. There are over 10.3 million owned cats in the UK and 26% of households own more than one cat.
2. Dog attacks on cats

There is no centrally held data evidencing the number of attacks by dogs on protected animals. The scale of the problem is therefore hard to establish but CP has been logging press reports of attacks on cats for the last four months. Our log shows that 32 cats have been reported killed since March 2013. All dog attacks on cats were fatal with cats either being mauled to death on the spot or dying later as a result of their injuries. Reports therefore evidence at least two fatal attacks by dogs on cats per week. This is likely to be an under-reporting of the problem. Additionally:

- Every incidence of a serious, often fatal, attack on a cat is a tragedy for the cat and its owner and is very traumatic for all witnessing it
- Press reports indicate that where the family pet is attacked a person(s) was too. An attack on a cat may be the precursor to an attack by a particular dog on a person, particularly on a small child
- Reported attacks show instances of dogs being deliberately set upon cats.

3. Recent reported attacks 2013

We list below some examples of reported dog attacks on cats:

- 12 year old cat mauled to death on doorstep by dogs—73 year old owner “heartbroken” (June)
- Pet cat mauled to death in the street—motionless in the road—elderly owners “devastated” (June)
- Owner of 15 year old cat witnessed its being savaged by a Lurcher off the lead—the cat later died. The owner was extremely distressed as the cat “had lived with me all her life” (June)
- Cat savaged on bridge witnessed by lady walking with two children—eldest son now too afraid to walk down the same road (May)
- Terrier forced its way into garden, cornered and attacked cat and bit the owner “attack was horrendous” (May)
- Local men allegedly training their dogs to attack cats—eight cats gone missing, Kingsley area (May)
- Cat attacked (later died) attacked by two dogs in the street—witnesses feared for the “kids on the street who could have been the first to be attacked” (May)
- 11 year old cat found covered in blood on owner’s drive—cat rushed to vets but later put down. Dog owners appeared on the scene “holding the lead” and reported as saying “I didn’t know you had a cat” (May)
- 3 cats killed in the Walsall area “savagely set upon” dog described as a Lurcher (April)
- 2 cats savaged in the Lancashire area, dog was a French Mastiff (April)
- 2 cats killed in the Middleborough area by a Staffordshire Bull Terrier (April)
- Kitten savaged to death, Birmingham area—2 Rottweilers (a spokesperson for west mid police was reported as saying he “had supported moves earlier this year to make an attack on protected animals by dogs, to include cats a criminal offence” (March)
- Fatal attack on a 13 year old cat owned by a pensioner in Basingstoke—dog described as a “pit-bull type” (March)

4. The current criminal law is ineffective

The Animal Welfare Act (2006) requires proof not only that the suffering was unnecessary (as determined in the Act) but also that the dog owner knew or ought reasonably to have known that his/her act or failure to act was likely to cause unnecessary suffering. This gives too much latitude to dog owners to claim that they were not responsible for the actions of their dogs even when they were clearly not under control at the time of the attack. This is not acceptable given the horrific nature of many attacks on cats and the enormous distress to their owners.

5. Amendment needed to the Dangerous Dogs Act 1991 under Part 7 of the ASBCPB

The ASBCPB presents an opportunity to strengthen preventative measures and reduce the number of dog attacks on cats. It is also an opportunity to strengthen the law and make an attack on cats and other protected animals a criminal offence under the DDA (1991). CP seeks an amendment to section 3 of the Dangerous Dogs Act 1991 within the ASBCPB (part 7) in line with the model of the Northern Ireland offence which appears to remove the need to prove that someone knew or ought reasonably to have known that their actions or omissions would cause unnecessary suffering. The Dogs Amendment Act (Northern Ireland) 2011 contains two relevant offences: it is an offence to set a dog on “any other animal owned by another person”. It is also an offence if a dog “attacks and injures any other animal owned by another person”.

6. We believe that similar provision should be included in section 3 of the Dangerous Dogs Act 1991 with specific reference to attacks on protected animals. The current law is proving ineffective in its stated aims of preventing harm, injury and death to cats and other protected animals.

7. We urge the Government to support the following EFRA committee recommendation:
“We recommend that Defra, in commissioning work from the Law Commission on consolidation as recommended in our previous report, request that the Commission examine the potential to extend the law to an attack which causes injury to any protected animal. Defra should also liaise with the Sentencing Council to consider what level of penalty it would be appropriate to impose upon anyone convicted of such an offence.”

(Efra first report—Draft Dangerous Dogs Amendment Bill May 2013).

8. We have set out suggested specific amendments within the ASBCPB (Part 7) to section 3 and related provisions of the Dangerous Dogs Act (1991) in the Annex to this evidence. We hope the Committee will feel able to support these amendments.

9. Finally: CP is not seeking to demonise any breed of dog. Many of our supporters are also dog owners or love dogs as well as own cats. Most dog owners are responsible and keep their dogs under control. We are supportive of any measures within the new ASBCPB that will strengthen prevention of attacks on people, assistance dogs, other dogs, cats and other protected animals including livestock. Clearly prevention is the priority to avoid injury (usually fatal) to pet cats and other protected animals. Failure to control a dog which results in a cat being seriously injured or killed by a dog is unacceptable.

10. Our suggested amendments to the ASBCPB/Dangerous Dogs Act seek to strengthen current criminal legislation (AWA 2006) to reflect the severity of the offence. It would also give a clear message to irresponsible dog owners.

Annex to the evidence submitted by Cats Protection to the Scrutiny Committee examining the Anti-social behaviour crime and policing bill—June 18 2013

Four suggested amendments (highlighted) to the Anti-social behaviour crime and policing bill

DANGEROUS DOGS—Part 7

98 Keeping dogs under proper control

(1) The Dangerous Dogs Act 1991 is amended as follows.

(2) In section 3 (keeping dogs under proper control)—

(a) in subsection (1)—

(i) for “a public place” there is substituted “any place in England or Wales (whether or not a public place)”;

(ii) after “injures any person” there is inserted “or assistance dog”;

Amendment 1.

After “or assistance dog,” insert “or protected animal”

(6) In section 10 (interpretation)—

(a) in subsection (2), after the definition of “advertisement” there is inserted—

“assistance dog” has the meaning given by section 173(1) of the Equality Act 2010;”

Amendment 2.—after “Equality Act 2010” insert “protected animal” has the meaning given by section 2 of the Animal Welfare Act (2006)?

(b) in subsection (3)—

(i) after “injure any person” there is inserted “or assistance dog”;

Amendment 3.—after “or assistance dog” insert “or protected animal”

(ii) after “injuring a person” there is inserted “or assistance dog”.

Amendment 4.—insert after “or assistance dog” “or protected animal”

June 2013

Written evidence from Baroness Newlove of Warrington, Victims Commissioner for England and Wales

PARTS 1-6: ANTI-SOCIAL BEHAVIOUR

Injunctions to prevent nuisance and annoyance (Part 1) and criminal behaviour orders (Part 2)

I welcome the general aims of the Bill to focus the response to anti-social behaviour on the needs of victims.

I also support the proposals to streamline the anti-social behaviour toolkit and replace the current nineteen powers available to frontline professionals to six. As the first point of contact for most victims of anti-social behaviour, it is important that police officers have the skills to support and protect them quickly and effectively. This includes having access to tools they are familiar with and find easy to use. I am confident that the criminal behaviour order will be used by the police to good effect.
However, I am concerned that the injunction to prevent nuisance and annoyance could potentially add to the workload of front line officers because of their lack of knowledge of civil law. I do recognise the benefits in that the burden of proof will be lower and it is likely to be an effective tool for local agencies (including the police) in low level offending cases to prevent further offending or an escalation in offending and thus will protect victims and other vulnerable people. But I am concerned that, in the case of the police, officers will tend to avoid using it as they are not familiar with civil law. Thus in order to get the best from this provision, I would recommend that police officers are properly trained in its use.

Community remedies (Part 6, Clause 93)

I welcome this provision as an effective means of involving and empowering communities to develop effective solutions for anti-social behaviour. It will help bring communities together and will help the police and local authorities to understand what is important to their local communities.

However, I am concerned that the current proposals on consultation might raise community expectations too much, given that the Chief of Police and the PCCs will have the final say on what is included in the community remedy document and individual officers will have the final say on what remedy is used in any individual case. I am also concerned that it could lead to significant force-by-force differences in the treatment of offenders of anti-social behaviour, and the remedies available to victims.

I would recommend instead that the government consult with the police, local authorities and other agencies to develop a list of nationally agreed and appropriate out of court disposals for anti-social behaviour. Local people could then be given the opportunity to decide which disposals on this list they would like to see operating within their community, so they can tailor it to the needs of that community, and included in their community remedy document.

Response to complaints about anti-social behaviour (Part 6, Clause 96)

I fully support the idea of a review of responses to complaints of anti-social behaviour. The fact that any individual can call for a review means that the anonymity of witnesses can be preserved. The first point of call for vulnerable victims when seeking help is likely to be support workers, friends, neighbours or their family, rather than the police or statutory agencies. This provides such individuals with a mechanism for securing action or assistance on the victim’s behalf.

My only concern with this provision is the requirement for a minimum number of qualifying complaints before an application for a review can be made. This is potentially problematic because it implies that a certain number of incidents are acceptable before any action needs to be taken by the authorities. For this reason the term “community trigger” should be avoided. Alternatives might include “community review” or “community alert”.

For this provision to be effective, a great deal of work will need to be done with local communities to ensure that they are aware of the provision, how it works, how it should be used and what the benefits are. Police and Crime Commissioners will play a key role in this respect. PCCs will also be able to use the provision as an effective means of encouraging police forces and local agencies to identify repeat victims and other vulnerable community members and promote good practice in ensuring that they provide proper feedback to individuals and communities suffering anti social behaviour.

PART 10: POLICING

Powers of local policing bodies to provide or commission services (clause 123)

I fully support this provision which would mean that Police and Crime Commissioners are responsible for commissioning the bulk of victims’ services. I believe that they are best placed to understand their community, the nature of crimes victims suffer and the support and help they might need. They are also best placed to provide the depth and breadth of services required to meet the individual needs and circumstances of victims. That variety and quality of support is missing from current service provision and cannot be provided at a national level. It is time to move away from the one-size-fits-all approach which simply does not work.

Police and Crime Commissioners are in the best position to ensure that the help victims and witnesses get matches up to what they need and have a right to expect. They will be able to identify the effective services currently operating in their area, including the small grass roots organisations working to support particular groups of people which have sprung up in response to specific needs within the community. Many of these organisations provide outstanding services to victims and witnesses which should be recognised and properly funded.

This is an excellent opportunity to engage with local people and assess what works for their community and what further resources are needed. It is a chance to define standards of care more clearly in partnership with victims and themselves and to work with the community to address gaps in provision and ensure that all services—from the biggest statutory agencies to the smallest specialist charities—work together to provide the best possible support.
PART 12: CRIMINAL JUSTICE AND COURT FEES

Protection arrangements for persons at risk (Clause 134)

The type of protection arrangements provided to vulnerable victims should not be dependent on their willingness to be involved in criminal proceedings; it should be entirely dependent on the risk to their safety. I fully support these changes to current legislation which will help ensure that statutory based protection is available to all those who may need it.

Surcharges: imprisonment in default and remission of fines (Clause 135)

I support these amendments which will help ensure that more offenders take responsibility for their actions through payment of the Victims Surcharge. I believe that offenders given the most serious sentences should make the greatest contribution to victim support services.

June 2013

Written evidence from Criminal Justice Alliance (ASB 10)

ABOUT THE CRIMINAL JUSTICE ALLIANCE

The Criminal Justice Alliance (CJA) is a coalition of 72 organisations—including campaigning charities, voluntary sector service providers, research institutions, staff associations and trade unions—involved in policy and practice across the criminal justice system.14 The CJA works to establish a fairer and more effective criminal justice system.

INTRODUCTION

1. The CJA welcomes some measures in the Bill, in particular the intention to simplify the current range of orders, and the introduction of more options for restorative justice and reparative approaches through the Community Remedy. We also believe that the introduction of positive requirements could, if implemented carefully, make civil orders more effective in addressing antisocial behaviour (ASB).

2. However, we nevertheless firmly believe that the complex, deeply-rooted problems that lie at the heart of ASB can be often addressed more effectively and earlier by ensuring the availability of support services in local communities, including youth services, family support and health services, as well as through projects that offer intensive support.

3. The CJA has particularly strong concerns regarding the introduction through Clause 1 of the ‘Injunction to prevent nuisance and annoyance’ with its wide application, low burden of proof and definition of ASB as “conduct capable of causing nuisance or annoyance”. Clearly, the list of potential activities that could fall within this definition is limitless; what some may find to be innocent fun can annoy others. These concerns are shared by more than 20 organisations who have signed a joint letter asking the government to rethink these proposals.

4. We also raise concerns regarding the mandatory evictions as introduced through Clause 86 which require courts make an order for eviction in a range of ASB cases. This limits discretion of the court and could have wide ranging negative impacts on vulnerable people and families.

5. This briefing focuses on the impact the Bill will have on adults. We have worked in conjunction with the Standing Committee on Youth Justice around this Bill and fully support the views expressed in their briefing in relation to those aged under 18.

PART 1—INJUNCTIONS TO PREVENT NUISANCE AND ANNOYANCE

Clause 1: The power to grant injunctions

Definition of ASB for Injunctions

6. The Government has decided to persist with applying the extremely broad definition for ASB as it applies to granting injunctions where someone has “engaged or threatens to engage in conduct capable of causing nuisance or annoyance to any person”. This unhelpfully broad definition was criticised by the cross-party Affairs Select Committee.

7. It is our opinion that the use of this wide definition will sweep up innocent, non-harmful behaviour into the sanctions. The justification put forward by the Government that “case law has developed an understanding amongst practitioners to use it”, is not in our view sufficient and doesn’t account for the more widespread application of IPNAs in comparison to previous injunctions which were only available to housing providers.

14 Although the CJA works closely with its members, this briefing should not be seen to represent the views or policy positions of each individual member organisation. For a full list of the CJA’s members, please see http://www.criminaljusticealliance.org/organisations.htm
8. The potential list of activities that could fall under the definitions of behaviour capable of causing nuisance or annoyance to any person is almost limitless. What is ‘annoying’ to one person may be harmless fun to another. The implications of receiving an injunction are serious: an individual will be required to adhere to positive requirements, prohibitions, or both, and there will be sanctions as a consequence of breach. There is therefore a substantial risk that the injunction as it is set out under the Bill allows disproportionate responses to very minor behaviour.

Inadequate safeguards

9. Unfortunately, the safeguards in place intended to prevent this are inadequate. The legislation only provides that a court must consider it “just and convenient” to grant the injunction rather than needing to demonstrate necessity or proportionality. The Government believes the “court is best placed to decide on the proportionality and necessity of both an injunction and any prohibitions and positive requirements that it includes, and will do so as a matter of course”. The CJA agrees in principle, but this is no barrier to placing an express proportionality safeguard as is the case routinely in other sentencing guidance.15

10. The Government should replace “causing nuisance or annoyance to any person” with “likely to cause harassment, alarm or distress” to reduce the risk of unjustified restrictions being placed on individual for innocuous behaviour. In addition, a requirement of intent or at a minimum recklessness would ensure frivolous applications for injunctions aren’t made before a court. The Government’s justification for failing to introduce such proposals, based on jeopardising clarity and slowing the injunction process down, does not outweigh the need to guarantee proportionality.

Low burden of proof

11. The CJA is also concerned that the test for determining whether an individual has engaged in ASB and is liable to receive an injunction will be based on the balance of probabilities. That a breach of an injunction as a result will be viewed as a civil offence, therefore preventing the individual from being criminalised, is positive. However, that civil breach can still lead to a sanction of imprisonment of up to two years. In such an instance the legal test should be based on the criminal threshold, beyond a reasonable doubt.16

12. Of the ASBOs issued 1 June 2000 to 31 December 2011, 57.3% had been breached. Of the ASBOs breached, 52.7% of individuals were given an immediate custodial sentence with an average custodial sentence length of 5.1 months. Therefore 30% of individuals receiving an ASBO ended up with a custodial sentence. We are concerned we could see similar numbers for those receiving an injunction based on the civil balance of probabilities.17

Indefinite length of time

13. As the Bill stands, there is no maximum time period for an IPNA for adults. A maximum period of two years for an injunction with the possibility of review within the time period is more than sufficient and the CJA would like to see 2 years as the maximum time limit. The possibility of indefinite injunctions has the potentially of creating disproportionate sentences and acting as a disincentive to individuals to comply, something which we discuss in greater detail below in relation to criminal behaviour orders.

Clause 4: Applications for injunctions

14. Under existing legislation only housing bodies can apply for an ASB injunction which has such a low threshold under the Housing Act 1996. The Bill has extended this to seven bodies, further demonstrating the need for tighter implementation and safeguards.

PART 2—CRIMINAL BEHAVIOUR ORDERS

Clause 23: Requirements included in orders

15. The Criminal Justice Alliance believes that the inclusion of positive requirements within both the injunctions and Criminal Behaviour Orders (CBOs) has the potential to be a positive development. However, we believe this will only be the case where individuals agree to them voluntarily and the services necessary to get to the root of the problematic behaviour are available locally. Without proper services in place the risk of individuals breaching will increase substantially (which between 2000 and 2011 already stood at 57%) while the chance of beneficial engagement will be greatly reduced. Forcing individuals to engage in certain treatment, programmes or classes can often be unproductive as they may not be in a position in which they can fully engage, for example it may impact too much on caring responsibilities.

15 It should be noted that over 95% of ASBOs that were sought in the past were accepted this there seems little need to limit court discretion.

16 In McCann, the House of Lords ruled in 2002 that, whilst ASBOs are civil orders, the criminal standard of proof should be applied in deciding whether an individual had acted in an antisocial manner. According to Lord Hope, “the condition in section 1(1)(a) [of the Crime and Disorder Act 1998] that the defendant has acted in an antisocial manner raises serious questions of fact, and the implications for him of proving that he has acted in this way are also serious.”

16. As the list of potential inclusions within the positive requirement is exceptionally broad, there is a concern that the court could issue requirements that are aspirational, with little possibility of the individuals complying. A safeguard has been put in place that the individual responsible for supervising compliance must give evidence to the court on the suitability and enforceability of a requirement. A more robust safeguard, that better guarantees effectiveness and reducing wasted expenditure on failed requirements, would be that any positive requirement should be proportionate to the behaviour leading to the injunction or CBO. In general, greater clarity on how decisions over requirements will be made should be given.

Clause 24: Duration of order etc

17. The minimum term of a CBO is two years and the maximum period indefinite. The CBO can contain numerous positive requirements and restraints which can substantially impact on the individual’s life. The CJA believes this approach could be disproportionate and that there should be a maximum of five years for a CBO.

18. Additionally, we advocate for changes to the Bill that allows for some degree of periodic review of any requirements to ensure they are still addressing an issue that could lead to anti-social behaviour and not simply disproportionately infringing upon an individual’s life. We believe that the review period as set out under clause 27 for those under the age of 18, every 12 months, should be similarly adopted for adults.

Clause 24: Breach of order

19. At present, sanctions for the breach of an ASBO are primarily imposed according to the harassment, alarm or distress involved in the breach of the order; that a court order has been breached is a secondary consideration. We believe that this is the right approach, and are concerned by its noticeable absence from this Bill.

PART 3—DISTRIBUTION POWERS

Clause 32: Authorisations to use powers under section 33

20. We are concerned that the proposals relating to a dispersal power have the potential to overly restrict individuals without adequate justification. At present dispersal powers may only be used in defined areas that have been authorised as such by senior police and the local authority, following a consultation process. Areas can be designated if there is believed to be persistent ASB and for a maximum duration of 6 months. Within dispersal areas, police can tell people to leave the area and not return for up to 24 hours.

21. Under this Bill an officer of the rank of inspector will be able to impose the power to a specific area without the need for a consultation process or local authority. As we understand it, they will simply need to think that it may be necessary to reduce the likelihood of the public being harassed, alarmed or distressed. Again, this is a much lower threshold than persistent ASB. Once the area has been specified by an Inspector, a police officer or PCSO will be able to direct someone to leave the locality for up to 48 hours (24 hours longer than at present) if they have reasonable grounds to suspect someone is likely to contribute to the public being harassed or distressed.

22. Research has shown that prior designation of a dispersal area, informed by thorough engagement and consultation with the local community, helps ensure dispersal powers are an appropriate, proportionate and planned response to repeated problems within an area. The authorisation process was found to be a crucial element on which well-considered dispersal orders are founded, affording the opportunity to enhance police–community relations and providing openness and accountability. Many of the benefits that derive from dispersal orders were seen to stem from the process of authorisation and the associated activities that are triggered, rather than the powers per se.

23. We appreciate the safeguards the Government has proposed such as publishing the use of the power locally and using it to help determine where further measures need to be put in place. However, we feel that greater community consultation is important. The CJA realises communities are often blighted by ASB and there is the need to bring in mechanisms that can alleviate the problem swiftly and surely. However, in its present form the dispersal may restrict liberties due to a lack of adequate safeguards.

18. Research conducted for the Youth Offending Teams found that many ASBOs are breached because their length means that young people cannot envisage the end of their orders, and there is, therefore, little incentive to obey their restrictions. Youth Justice Board (2005) Antisocial Behaviour Orders: An assessment of current management information systems and the scale of Antisocial Behaviour Order breaches resulting in custody; London: Youth Justice Board. http://www.justice.gov.uk/downloads/youth-justice/prevention/anti-social-behaviour/AntiSocialBehaviourOrdersfullreport.pdf


Clause 37: Offences

24. The sanctions for failure to comply with a dispersal notice include a possible penalty of £2,500 and/or three months imprisonment. We believe that there should be no recourse to imprisonment for breach. It seriously runs the risk of allowing disproportionate responses to extremely minor behaviour. It must be remembered that an individual may not have committed any illegal or anti-social behaviour to receive an order, there need only be a reasonable suspicion that an individual is likely to cause harm or distress.

25. As with breach of an injunction, we believe breach of this dispersal power should be dealt with under the civil law, and therefore a breach is not a criminal offence which could have a long lasting impact on individuals’ lives.

PART 5—RECOVERY OF POSSESSION OF DWELLING-HOUSES: ANTI-SOCIAL BEHAVIOUR GROUNDS

Clause 86: New ground for serious offences or breach of requirements etc

26. Currently if a tenant is subject to a secure tenancy the county court may only make an order for possession if it considers it reasonable to do so and/or suitable alternative accommodation is available.

27. As we understand it, under the Bill the court will now be required to grant possession if one of any five conditions is met. These 5 possible conditions include breach of an injunction in the locality of the dwelling house. Therefore an individual who threatens nuisance or annoyance behavior and receives an injunction must be evicted for breach of such if a landlord seeks such and complies with procedures. A judge will have no say over this as they will have no discretion. This could have huge impact on children and families—either those young people who may be being evicted, or the children of parents who are being evicted where the children have not committed any offence or ASB.

28. The Government has claimed they do not have to put in express requirements for proportionality within the Bill as judges and magistrates will do so as a normal function of their duty. This clause does not even allow for this safeguard. The potential and risk of disproportionate sanctions for exceptionally minor behavior is extremely high given this and the fact that the majority of individuals receiving ASBOs breached their orders. They would almost all be liable to eviction under this Bill.

June 2013

Written evidence from the Communication Workers Union (ASB 11)

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL—COMMITTEE STAGE—PART 7, SECTIONS 98 AND 99 DANGEROUS DOGS—ORAL EVIDENCE

This is to inform you that the CWU is prepared to give oral evidence to the House of Commons Committee on the Anti-Social Behaviour, Crime and Policing Bill.

As the organisation that represents the largest number of Dog Attack victims in the UK, the CWU is the number 1 stakeholder as far as Part 7 of the Bill is concerned and the HoC Committee will no doubt wish to hear from the CWU as we have such a special interest and expertise which we would like the Committee to be aware.

17 People have been killed in Dog Attacks in the UK, 10 Children and 7 Adults. Fatal attacks are increasing and happening more frequently. 2 this year already. 250,000 people are attacked by dogs every year in the UK. 5,000 Postal Workers are attacked every year. 70% of those attacks are on Private Property and the owners got off ‘scot-free’ because the Law doesn’t apply on private property. With Parcel traffic rapidly increasing, the risk of attacks will increase. The cost to the NHS and Taxpayer of Dog Attacks is £9.5 Million a year. This demonstrates the growing and ‘out of control’ problem with dog control in the UK.

As you will probably know the CWU has been actively engaged in campaigning, lobbying and in discussions with all governments of the UK since 2008 and is keen to see England and Wales introduce revised Dangerous Dogs Legislation. The CWU has already convinced the Scottish and Northern Ireland governments to make such changes. CWU also convinced the Wales Government to introduce the Control of Dogs (Wales) Bill which has been suspended pending the outcome of the Anti-Social Behaviour, Crime and Policing Bill which extends to Wales. We are keen to see England and Wales introduce new Dangerous Dogs Legislation at the earliest opportunity.

The very reason that the new Dangerous Dogs Legislation is before the Houses of Parliament is due largely to the Communication Workers Union’s “Bite-Back” Campaign. The CWU have spearheaded a broad coalition of organisations (including RSPCA, Dogs Trust, Blue Cross, Battersea Dogs Home, PDSA, BVA, ACPO, Police Fed, RCN, Royal Mail, BT, TUC and many others) calling for Dog Control Law changed.

June 2013
Appendix). \(\text{less than 1\%}\) resulted in a detention. Although no information has been provided on the number of people Fewer than 12\% of stops over an hour were of whites. 14\% were of blacks, 3\% were of people from mixed backgrounds and 24\% were of “other” ethnic groups. consider the most intensive Schedule 7 stops. Of those stops which lasted \text{population}). The targeting of black and minority ethnic groups continues to be even more marked when we from other ethnic groups (including Chinese and “other”) accounted for 18\% of stops (but only 1\% of the \text{population}), people from mixed backgrounds accounted for 3\% of stops (2.2\% of the \text{population}) and people stops in 2011–12 (and 7.5\% of the national \text{population}), Blacks accounted for 8\% of stops (and 3.3\% of the \text{population}). Asians accounted for 27\% of Schedule 7 among travellers, most of whom were not suspected of any wrongdoing. As has been reported by a number \text{effects.} 23 A number of communities in the UK are affected by the use of Schedule 7 although most research and media reports highlight the impact of these powers on people from Muslim backgrounds. For example, the \text{Equality and Human Rights Commission (EHRC) found that Schedule 7 was having “the single most negative impact” on Muslim communities and also reported that:} 

"[f]or some Muslims, these stops have become a routine part of their travel experience” and that “— this power is silently eroding Muslim communities’ trust and confidence in policing.” 24

6. Another set of studies conducted with British Muslims in Scotland revealed that respondents had a strong British identity and that encounters with officers at ports, on both sides of the border, were places where they felt that this identity was undermined by counter-terrorism officers and damaged their perceptions of fairness and faith in counter-terrorism measures. 66, 67

7. In particular, the taking of people’s DNA and fingerprint information has caused the greatest discontent amongst travellers, most of whom were not suspected of any wrongdoing. As has been reported by a number

21 A full outline of the power is outlined here: http://www.legislation.gov.uk/ukpga/2000/11/schedule/7
22 This figure includes convictions for multiple charges of individuals convicted of direct terrorism-related offences arising from a Schedule 7 encounter. Therefore it does not represent the \text{number of people} convicted.
23 Based upon 2011 census data produced by the Office of National Statistics.
24 Choudhury, T. & Fenwick, H. (2011) \text{The Impact of Counter-Terrorism Measures on Muslim Communities.} London: The \text{Equalities and Human Rights Commission.}
of media outlets, not only has this made people feel criminalised but it has significantly undermined faith in counter-terrorism and perceptions of fairness. 28, 29

8. Meanwhile, politicians such as David Lammy MP, Lord Nazir Ahmed and Humza Yousaf MSP and civic groups like StopWatch have a long history of raising concerns on the use and impact of this power which remain unaddressed by the Bill. The United Nation’s Human Rights Committee also expressed “grave concerns” over the use of counter-terrorist measures in the UK, with particular concern over what they judged to be religious and ethnic profiling in the use of those powers. 30 In a review of the utility of the Schedule 7, David Anderson QC, the UK’s terrorism watchdog, concluded that:

“It is fair to say that the majority of examinations which have led to convictions were intelligence-led rather than based simply on risk factors, intuition or the ‘copper’s nose’. Indeed, despite having made the necessary enquiries, I have not been able to identify from the police any case of a Schedule 7 examination leading directly to arrest followed by conviction in which the initial stop was not prompted by intelligence of some kind.” 31

9. Despite this, official statistics on the use of this power illustrates that it has not been used in an intelligence-led approach and that people from ethnic minority backgrounds are more likely to be subjected to the more extreme aspects of the power, particularly those from Asian backgrounds. This can be seen in the table provided in the Appendix.


10. After a recent review of Schedule 7 by the Home Office, the first since it was enacted in 2000, the government proposed some changes to the use of the power under Section 124 and Schedule 6 to the Anti-Social Behaviour, Crime and Police Bill. These changes are outlined below alongside current provisions to provide a comparison.

<table>
<thead>
<tr>
<th>Current provisions</th>
<th>Proposed changes</th>
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<tbody>
<tr>
<td>A maximum period of examination and/or detention of nine hours.</td>
<td>A Reduction of the maximum period down to six hours.</td>
</tr>
<tr>
<td>The power to take DNA and fingerprint samples regardless of the outcome of the encounter.</td>
<td>Unchanged.</td>
</tr>
<tr>
<td>Intimate biometric data (blood, semen, etc) may be taken from individuals examined or detained.</td>
<td>To be repealed.</td>
</tr>
<tr>
<td>Ability to subject the examined or detained individual to a strip search without reasonable suspicion.</td>
<td>Strip searches may only be conducted if the person is detained and they are reasonably suspected of concealing an item.</td>
</tr>
<tr>
<td>Only people detained at ports but transferred to a local police station may consult a solicitor, although this right can be delayed by a senior officer until the person has already been questioned and searched.</td>
<td>Extends this right to any person detained, whether at ports or at a police station, to consult a solicitor although this right can still be delayed until the person has already been questioned and searched.</td>
</tr>
<tr>
<td>No training is currently required for the use of Schedule 7.</td>
<td>The Home Secretary must set out guidance for the training of officers.</td>
</tr>
</tbody>
</table>

StopWatch’s position:

11. StopWatch welcomes the proposed reforms under the Bill and we believe that it can go much further towards ensuring that this power will be used proportionately, fairly and with greater transparency. Our proposals have been developed from regular contact and discussions with people who have been stopped or detained under Schedule 7 and these include:

— The legal maximum period of detention should be reduced to one hour at which point the person should either be released or arrested. 97.2% of examinations take less than an hour which proves that this is, in fact, practical.

28 Verkaik, R. (2010) They asked me where Bin Laden was, then they took my DNA’. The Independent Newspaper. [21 Sept 2010]. Available at: http://www.independent.co.uk/news/uk/home-news/they-asked-me-where-bin-laden-was-then-they-took-my-dna-2084743.html
30 See: http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights24May2012am.aspx
The power to take non-intimate biometric data, including DNA and fingerprints, should be repealed in light of the huge concerns and impact that this provision is causing. The government has proposed only to repeal intimate samples but will still allow non-intimate samples to be taken.

Officer training to use Schedule 7 should be developed in consultation with a range of legal, academic and equality and community groups and also subject to independent and public evaluation.

Advice and assistance should be provided to people who miss their flights or other transportation as a result of an examination or detention.

There should be a minimum threshold of suspicion upon which individuals can be stopped. This should be based upon objective facts, information, and/or intelligence, so as to minimize the risk of arbitrary or discriminatory application of stop and search powers.

The PACE Codes, which govern other stop powers, should be extended to cover stop and searches conducted under Schedule 7 of the Terrorism Act 2000. This would require that Schedule 7 stops to be monitored under the same recording framework as all other stop and search powers and that data should be shared with community and monitoring groups.

Annex

EXAMINATIONS MADE UNDER SCHEDULE 7 OF THE TERRORISM ACT 2000¹

<table>
<thead>
<tr>
<th>Year and ethnicity</th>
<th>Under the hour examinations</th>
<th>Over the hour examinations²</th>
<th>Total Schedule 7 examinations³</th>
<th>Number of detentions⁴</th>
<th>Number of DNA &amp; fingerprints taken</th>
<th>Number of convictions⁵</th>
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<td>246</td>
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</table>

Source: ACPO(TAM) National Coordinator’s Office Protect & Prepare.

1. All data, unless otherwise stated, covers the period of April to March of each of the stated years.
2. Does not include examinations of unaccompanied freight.
3. In 2009–10 reliable data on those detained were not recorded separately; estimated data are included in the total of over the hour examinations.
4. This is not the number of people convicted—which remains unknown—but the number of successful convictions including from multiple charges of the same individual. Data covers January-December of the first stated year.

June 2013

Written evidence from Battersea Dogs and Cats Home (ASB 13)

1. Executive Summary

Battersea welcomes the Government’s decision to tackle irresponsible dog ownership by extending legislation to cover keeping dogs under proper control to private places.

We remain concerned about the use of breed specific legislation. The measures set out in the Bill do not offer the necessary solutions.

We are also concerned about the replacement of Dog Control Orders with Public Spaces Protection Orders.
— We would like a renewed focus on preventative measures in the Bill and have called on the Government to introduce Dog Control Notices which will do more to provide for effective early intervention and prevention.

— Battersea still believes that a consolidated piece of dog legislation is needed going forward. Consolidation of existing legislation has a broad support throughout the sector and was recommended recently by the EFRA Select Committee.

2. BACKGROUND

Battersea Cats and Dogs Home is one of the oldest and best-known animal welfare organisations in the world. Our expertise has been developed over 150 years due to our work on the front line of animal welfare and our non-selective animal intake policy.

3. COMMENTS ON CLAUSES 98 AND 99

Keeping Dogs under proper control (Clause 98)

Battersea welcomes the extension of the law to all places. However, we believe it will not reduce the number of dog attacks on people or other animals. If an incident occurs, there will be no opportunity for preventative approaches. At present, action will only be taken once an incident has occurred.

4. For prevention of dog attacks to be effective, there needs to be a sustained education and engagement campaign to advise people on how to be safe around dogs and to keep dogs under control around people in both public and private places.

5. Battersea accepts the need for householders to defend themselves against intruders in the home. The Committee needs to examine this clause very closely, get clarity on the so-called “householder case” and the nature of the exemptions and possible defences available for householders.

6. There is no mention of “trespass with intent” and it does not include potential mitigating circumstances eg “a young child kicks a football across a garden fence and seeks to retrieve it from a neighbouring property and then is attacked by a dog”.

7. It raises questions on the legitimacy of visitors to private property and whether they are trespassing or not, ie a family member or a friend with a verbal agreement to be within the property at the time, but later this visit could be deemed by householder as a “trespasser” to try and avoid prosecution when the dog attacked. We would expect in such cases that the police would investigate them thoroughly.

8. We agree that the rights of enforcement officers should be extended to seize dogs from both public and private places.

9. More early intervention powers should be extended to these enforcement officers, to intervene before an incident takes place on private property. We would urge the Government to introduce Dog Control Notices in England, which can provide authorisation to intervene to prevent dog control problems on private property. The main strength of Dog Control Notices (DCNs) is that they are attached to an owner, similar to an improvement notice.

10. Battersea is concerned that if any police constable, PCSO or Local Authority officer could undertake this work without some basic (and suitable) training and demonstrable competency in dog welfare and behaviour. We believe that the results could lead to compromises in animal welfare or even make dog behaviour worse due to lack of understanding in these areas.

11. Clarity within the legislative guidance is still required as to who will be undertaking this work, as dangerous dogs are currently a matter for the police, but the explanatory notes mention local authorities only.

Assistance dogs

12. We agree with the Government’s intention to make it an offence under Section 3 for a dog to be dangerously out of control when there are grounds for reasonable apprehension that it will injure an assistance dog, whether or not it actually does so.

13. Whilst extending the legislation to what are essentially dog-on-dog attacks on assistance dogs, we would like the Government to go further and include measures to allow Section 3 to cover deliberate dog-on-dog attacks or attacks on protected animals.

14. Battersea frequently sees dogs that have deliberately been used for fighting and dogs that have deliberately been goaded by their owners to attack other dogs in a public place. We believe further consideration should be given to tackle these issues.

Clause 99—“Whether a dog is a danger to public safety”.

15. This Clause aims to amend the Dangerous Dogs Act following a judgement in the High Court “The Queen on the Application of Sandhu v Isleworth Crown Court and Defra”.

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CLAUSE 99—"WHETHER A DOG IS A DANGER TO PUBLIC SAFETY".

15. This Clause aims to amend the Dangerous Dogs Act following a judgement in the High Court “The Queen on the Application of Sandhu v Isleworth Crown Court and Defra”.

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16. Battersea is opposed to breed specific legislation as it predicts a dog's behaviour based upon its appearance; however we accept that the Sandhu judgement does not provide the necessary solutions to the current problems with Breed Specific Legislation.

17. Sandhu does not provide a long-term solution for dogs that do not present a risk to public safety and that could be re-homed responsibly.

18. We agree that dogs that pose no danger to public safety should remain with an owner of good character, whilst an application for an exemption to the Court takes place. This amendment seeks to clarify this aim.

19. In 2012, 155 dogs arrived at Battersea, which were later deemed by the Metropolitan Police Service to be Section 1 Dogs under the Dangerous Dogs Act (1991). Battersea has no right of appeal against any decision to section a dog under the law.

20. In 2012, 94% of the dogs that were deemed by the Police for being a banned type at Battersea we believed as a result of our observational and behavioural assessments posed no risk to public safety. These dogs could have been re-homed had it not been a banned breed of dog.

Anti-social Behaviour measures in the Bill

21. Battersea is very concerned about the proposed replacement of Dog Control Orders (DCOs) with Public Spaces Protection Orders (PSPOs), as the new orders will not be dog specific. We do not believe that dog control should be included within powers that are designed to tackle such a wide range of anti-social activities, as this may ignore or impact upon the welfare of dogs.

Public spaces protection orders

22. PSPOs will replace DCOs. They are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community’s qualify of life, by imposing conditions on the use of that area. The order could also be used to deal with likely future problems.

23. Dog Control Orders have very specific requirements (fouling; lead; lead by direction; exclusion; limit on numbers) and local authorities have informed us that they have found DCOs useful as a prevention tool. We support the current powers to restrict owners from visiting certain locations with their dogs providing that the orders are consulted upon appropriately, used proportionately and enforced consistently and effectively.

24. These new measures will be used for a variety of anti-social behaviour problems and very serious dog control problems. However, we remain concerned about how the new measures will provide for effective early intervention and prevention.

25. It remains unclear, how these proposals will effectively tackle irresponsible dog ownership, how enforcers will be able to prioritise dog control over other serious anti-social behaviour and how they will identify the most appropriate power in each case.

Community protection notices (CPNs)

26. In our Home Office anti-social behaviour consultation response, we expressed our support for the streamlining of anti-social behaviour powers, but sought clarification on how this will tackle irresponsible ownership in the community.

27. CPNs will be used for a variety of anti-social behaviour problems and we are concerned about how these proposals will effectively tackle irresponsible dog ownership and how enforcers will be able to prioritise dog control over other serious anti-social behaviour.

28. Scotland has already implemented Dog Control Notices, which we believe are an effective means of ensuring responsible ownership of dogs. It would be helpful to get a full assessment of how CPN’s will operate in comparison with DCNs.

Labelling dog owners as anti-social

29. In our view, owners may be irresponsible with a lack of understanding of their responsibilities, but are not necessarily anti-social and to label them in this way appears to be unfair and a disproportionate response to the problem.

30. We believe a different, more positive approach using education on and advice (more akin to the concept of advice notices) about the needs of their pet and their duties as a responsible owner should be followed in order to break the cycle of irresponsible or undesirable behaviour.

31. These proposals could result in some local authorities and others using these powers to respond to perceived problems or fears about specific dogs or even breeds/types of dogs in the community rather than dogs and owners whose behaviour is genuinely problematic and requiring intervention.

June 2013
Summary

1. Mencap is concerned that the Anti-social behaviour, Crime and Policing Bill does not adequately take account of how many of the measures will affect people with a learning disability, particularly the clauses on i) responding to complaints about anti-social behaviour, ii) the conditions and prohibitions/requirements of the various injunctions/orders/notices to tackle anti-social behaviour and iii) criminalising forced marriage.

2. We would like to see steps taken to ensure people with a learning disability are not adversely impacted by the use of injunctions/orders/notices and that responses to anti-social behaviour and forced marriage afford people with a learning disability the strongest protection possible.

Response to complaints about anti-social behaviour (Part 6, Clause 96–7)

3. Mencap is concerned that there is no mention of vulnerable complainants in these clauses and no mention of people being targeted because of a personal characteristic about them. People with a learning disability are disproportionately likely to be victims of anti-social behaviour (ASB) and often they are targeted because of their learning disability—making it a disability hate incident or even a disability hate crime—but this is often not picked up and so is not dealt with adequately. We would like to see this link between ASB and disability hate crime acknowledged within guidance accompanying the Bill.

4. The Bill stipulates that an ASB case review will only take place if the victim applies for such a review and the authorities decide the threshold for a review has been met. Mencap believes that if the victim has a learning disability—or would be classed as vulnerable for another reason—the option of an ASB case review should be made very clear to them and relevant family members/carers, and the case should automatically meet the threshold for review. An ASB case review should also look carefully at any potential motivating factors, eg the person’s disability.

Injunctions/Criminal behaviour orders/Community protection notices/Public spaces protection orders (Part 1, Part 2, and Part 4)

5. Mencap is concerned that people with a learning disability may not be made to understand the prohibitions/requirements of injunctions/orders/notices that are set out in the Bill, which could result in them inadvertently breaching such prohibitions/requirements. This could lead to people with a learning disability committing an offence and serving custodial sentences or paying large fines simply because information was not given to them in an accessible way. This is all the more concerning as people with a learning disability will often struggle to cope in prison and rarely have adequate financial means to pay such fines.

6. Communicating the prohibitions/requirements of injunctions/orders/notices in a way the person can understand, and ensuring rather than assuming this information has been understood, is the responsibility of the court/authorised person granting the injunction/order/notice. Where requirements are made of the perpetrator, and an individual/organisation is specified to supervise compliance with said requirements, they should also be made responsible for ensuring the offender’s comprehension of what is required of them. We would like to see guidance cover information on prohibitions/requirements and the consequences of breaches so that perpetrators understand what is expected of them.

7. Mencap is concerned that one of the conditions for granting an injunction is that the individual “threatens to engage” in ASB. This is subjective and, due to the prejudice and misunderstanding we know many people with a learning disability face in their communities, we are concerned that they could fall into this category unfairly. This is especially concerning as injunctions can exclude a person from their home—in effect making them homeless—and/or, where a power of arrest is attached, lead to a person being arrested without warrant and appearing in court within 24 hours. We would like to see appropriate safeguards for people with a learning disability detailed in guidance to ensure they will not be unfairly penalised.

Forced marriage (Part 9, Clauses 103–4)

8. Currently the Bill covers using violence, threats and coercion to force someone into marriage but not acts of deception, which we know can be a factor for people with a learning disability, who will often not have a full understanding of what marriage entails and so can be deceived into marrying someone.

9. The issue of mental capacity to consent to marriage is also not mentioned in the Bill. If someone lacks capacity to make the decision about whether to get married but ends up married, this has by definition been forced (as per the Mental Capacity Act 2005)—even if it has been done with good intentions by a family member.

10. A small but significant number of reported cases of forced marriage involve people with a learning disability (58 out of 1468 cases in 2011, or 4%). Mencap believes that this is just the tip of the iceberg and people with a learning disability are disproportionately likely to be affected by forced marriage. This is because there is a higher than average incidence of forced marriage among South Asian families. In turn there is a higher than average incidence of learning disability in the South Asian community.
11. Furthermore ethnic minorities are less likely to receive services from local authorities—and social care services are becoming increasingly restricted—which we believe is causing some families to feel the only way their family member with a learning disability will be cared for is if they are married. Therefore Mencap would like to see guidance on those enforcing this legislation to take account of the specific issues people with a learning disability might face and the reasons forced marriage is such a concern for this particular group of people.

12. In addition, people with a learning disability who lack capacity rely on family, friends and carers and or statutory services to support them. This support network works for some but not for all and many are left vulnerable and exposed to everything from sexual, physical, financial and psychological abuse and in some cases being coerced into marriage.

13. Furthermore those enforcing this legislation must take account of the specific issues people with a learning disability might face and the reasons forced marriage is such a concern for this particular group of people. Information for this group, their families and carers about their rights would also be invaluable.

June 2013

Written evidence from Countryside Alliance (ASB 15)

INTRODUCTION

1. The Countryside Alliance welcomes the opportunity to submit evidence to the Public Bill Committee considering the Anti-social Behaviour, Crime and Policing Bill. The Countryside Alliance works for everyone who loves the countryside and the rural way of life. Our aim is to protect and promote rural life and to help it thrive. With over 100,000 members we are the only rural organisation working across such a broad range of issues. Thousands of our members are dog owners and many of those will use their dogs in a working capacity in connection with land management activities, farming, shooting and pest control.

SUMMARY

2. We are supportive of the Bill and its provisions in those areas which are of principal interest to our members, specifically Part 7 on Dogs and Part 8 on firearms. We would, however, like to draw the Committee’s attention to our concerns over calls to extend further the provisions on dogs and the possible unforeseen impact on working dogs of the current drafting of Part 4, Chapter 2, on Public Spaces Protection Orders.

PUBLIC SPACES PROTECTION ORDERS (PSPO) (PART 4, CHAPTER 2)

3. It is possible that PSPOs as drafted in the Bill could cause problems for those using workings dogs in rural areas such as sheep dogs, gun dogs etc. These Orders would replace the current provisions for local authority Dog Control Orders under the Clean Neighbourhoods and Environment Act 2005. Under the 2005 Act restrictions, such as requiring all dogs to be on leads or a total exclusion of dogs, can be applied to “any land which is open to the air and to which the public are entitled or permitted to have access (with or without payment)”.

4. However, Regulations under the 2005 Act provide two defences on which those using working dogs can rely. These are “having a reasonable excuse for failing to comply” and “acting with the consent of the owner or occupier of the land, or any other person or authority which has control of the land.” The Explanatory Notes to the 2005 provisions state with regard the latter defence: “There is no specific exemption in the Regulations for working dogs, but this provision will cover any dog that is working on land with the consent of the person in control of the land.”

5. The new regime proposed for PSPOs would allow local authorities to apply restrictions on dogs to any public place defined as: “any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.”

6. Failure to comply with a PSPO is an offence under clause 63 which states: “It is an offence for a person without reasonable excuse to do anything that the person is prohibited from doing by a public spaces protection order, or to fail to comply with a requirement to which the person is subject under a public spaces protection order. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order.”

7. Thus an Order could be made which covers substantial areas of land requiring dogs to be on leads, restricting the number of dogs etc even on land which is privately owned but to which the public or any section of the public has access as of right or by virtue of express or implied permission. The only defence is one of “reasonable excuse” or where the local authority has exceeded its powers. The current defence of acting with the consent of the owner or occupier or any person or authority having control of the land is not found the current Bill. In order to protect those using working dogs in the countryside this needs to be clarified.
8. It is hard to see why the additional defence of owner/occupier consent could not be replicated from the provisions under the existing 2005 Act and placed alongside that of reasonable excuse in clause 63. This could be achieved with a simple amendment to clause 63 inserting a new subclause after 63(3) using similar wording to that found in the Dog Control Orders (Prescribed Offences and Penalties, etc) Regulations 2006.

**DOGS (PART 7)**

“Householder Exemption”

9. We welcome the extension of the offence of a dog being dangerously out of control to all areas. We would, however, argue that the scope of the “householder exemption” in Part 7 of the Bill needs to be amended. As originally proposed in the draft Dangerous Dogs (Amendment) Bill this defence would only have applied where the owner was in, or partly in, the dwelling at the time. We welcome the fact that the Government has amended the clause such that in the current Bill no offence will be committed by someone whose dog attacks a trespasser in a dwelling, whether or not there is anyone in the dwelling at the time. However, the Bill currently limits the householder defence to dwelling houses and forces accommodation.

10. We note that the Efra Committee recommends extension to enclosed buildings associated with a dwelling such as sheds, garages and outbuildings and that the definition of curtilage of the dwelling or ancillary building should be defined in guidance or during the passage of the Bill. They do not support an extension to non-domestic buildings such as commercial and other types of premises. What is not entirely clear is whether outbuildings would cover buildings around a farm yard where a dog is kennelled. This needs to be clarified. We would strongly suggest that this exemption is extended to include outbuildings and possibly the curtilage of such buildings. This would take account of a situation where a dog is kept outside the dwelling house, such as in a barn or separate kennels, and someone enters as a trespasser. Otherwise a person climbing into a farmhouse at night would not be able to argue a dog was dangerously out of control while someone breaking into a barn to steal machinery could do so.

**DOG CONTROL NOTICES (DCNs)**

11. The Bill as drafted contains anti-social behaviour powers which are sufficiently broad and flexible to address any issues arising with regard to dogs. The concern over DCNs, indeed any notice issued with respect to dogs, is the question of who will be responsible for issuing them. If they are to be applied properly then there must be proper training for persons having those powers. Judgements as to when a dog is, or is not, “dangerously out of control” must be based on an objective assessment of a situation and not just subjective opinion. The fact that someone is frightened by a dog does not mean that dog was “dangerously out of control” or objectively speaking frightening or dangerous. We would be opposed to the amendment of the Bill to include a specific provision for DCNs.

**PROTECTED ANIMALS**

12. We welcome the extension of the aggravated offence of a dog being dangerously out of control to cover assistance dogs. However, there have been suggestions that the definition of “dangerously out of control” should be extended to all “protected animals”, within the meaning of the Animal Welfare Act 2006. Extending the offence to other “protected animals” would create huge problems for dog owners, especially when coupled with the extension of the offence to private places such as gardens or homes. A dog chasing a neighbour’s cat, a family dog killing a pet hamster, a sheep dog nipping a sheep, could all fall foul of the law were it to be extended in this way. Indeed were an animal to be actually harmed it could lead to the destruction of dogs that are not dangerous and are simply behaving like dogs.

June 2013

Written evidence from the City of London Corporation (ASB 16)

1. This memorandum responds to the call for written evidence issued on 11 June. The City Corporation has a particular interest in the Bill, relating to the control of anti-social behaviour in public open spaces. The Corporation governs a number of open spaces which are outside the City of London, and for which it is not the local authority. This memorandum proposes that the new public spaces protection orders introduced by the Bill should be available to statutory custodians in the position of the City Corporation.

2. Since the mid-nineteenth century, the City Corporation has assumed responsibility for the governance and management of a number of significant open spaces outside the City of London, for the purposes of public recreation and enjoyment. Notable examples include Epping Forest, Hampstead Heath, Burnham Beeches, Kenley Common and West Ham Park. These spaces are funded by the Corporation from its corporate and charitable resources and not from public funds. They are very popular with the public they serve. The City Corporation is probably the most significant example of a statutory custodian of public space for which it is not the local authority, but it is by no means the only such body.
3. The City Corporation has extensive regulatory powers, including the power to make bye-laws, under the various private statutes which govern the open spaces. In practice, bye-laws made by the Corporation are the principal means of controlling anti-social behaviour in its open spaces. These bye-laws are enforced in the first instance largely by the Corporation’s own officers, who generally have the statutory powers of constables for this purpose, but who also liaise with the local police forces. Prosecutions for breaches of the bye-laws are undertaken by the Corporation.

4. Bye-laws have, however, come to be regarded as a relatively out-moded and inconvenient tool for preventing anti-social behaviour. They are enforceable only by way of full legal proceedings in the magistrates’ courts, and breaches are generally punishable only with small fines (often laid down many years ago) which are very cumbersome to amend. Even where the fines which may be awarded are not minimal, penalties imposed by the courts for bye-law offences are frequently derisory.

5. Statutory orders of the sort devised by governments in recent years provide a more modern means of tackling anti-social behaviour and nuisances. Such orders can be used flexibly to respond to particular problems as and when they arise, and breaches can be punished with a fixed penalty notice, or (if prosecution is preferred) with a fine which increases over time in accordance with the standard scales applicable to criminal offences.

6. The Home Office White Paper which preceded the Bill (“Putting victims first: More effective responses to anti-social behaviour”, May 2012) indicated that the new public spaces protection order (then referred to as a “community protection order (open space)”) was intended to operate in place of traditional local authority bye-laws for good rule and governance: see paragraph 3.25. It would seem appropriate that the same powers should be available where Parliament has conferred the ability to make bye-laws governing a public space on a body which is not the local authority.

7. A similar argument prevailed in Part 6 of the Clean Neighbourhoods and Environment Act 2005. That Act introduced dog control orders, which can be used to prohibit various anti-social activities involving dogs in public places, and which operate in place of local bye-laws covering the same subject-matter. The power to make dog control orders rests primarily with local authorities. However, the Act also provides for other bodies which have statutory powers of regulation over land to be designated as “secondary authorities”, which are able to make dog control orders where the local authority for the area has not done so. The City Corporation has been designated as a secondary authority under these provisions.

8. It is the City Corporation’s view that the same considerations justify permitting the statutory custodians of public open spaces to make public spaces protection orders in relation to anti-social behaviour on their land. Such orders would only cover matters which the custodian would otherwise be able to control by way of bye-law, but would enable a more responsive and flexible approach to different sorts of behaviour, as well as a more modern and effective means of enforcement. This would be in the public interest.

9. Such an approach would seem justified as a matter of legal principle, and would also have practical attractions. As described above, the Corporation governs the open spaces under its control whereas the local authorities have no direct involvement, and the Corporation is therefore in a position to take a more active role in tackling matters of local concern. It would be of considerable advantage to the City Corporation to be able to exercise a modern range of powers to tackle anti-social behaviour in its open spaces, without the need to make additional calls on the resources of hard-pressed local authorities.

10. Furthermore, some of the City Corporation’s larger spaces traverse several local authority boundaries. The practical consequence of having a patchwork of public spaces protection orders covering a single open space would be to introduce uncertainties in enforcement, with the possibility of legal arguments over whether or not an offence took place within the area covered by a particular local authority where the location concerned was close to a boundary. This eventuality could be avoided if the whole area could be covered by a single order made by the City Corporation.

11. The City Corporation will therefore be seeking to persuade the Government to introduce provisions to allow statutory custodians of public open spaces to share in the new powers to protect public places from those who engage in anti-social behaviour. The Corporation hopes that the members of the Public Bill Committee will be supportive of such a step.

June 2013

Written evidence submitted by the Ramblers (ASB 17)

SUMMARY

— The Ramblers works to protect the places where people walk, and to encourage walking, not only for recreation, but for the health, social and environmental benefits which arise from it.

— An unintended consequence of Gating Orders has been the closure of routes in regular use, on foot, by the public to reach local amenities.

— Public Spaces Protection Orders, as set out in the Anti-social Behaviour, Crime and Policing Bill, which are intended to replace Gating Orders, have the potential to further diminish such access.
The Ramblers does not oppose the rationalisation of anti-social behaviour measures but believes that the Bill should be amended, and regulations drafted, to provide key checks and balances so as to secure a proportionate and effective approach towards tackling anti-social behaviour whilst protecting vital community assets.

Introduction

1. The Ramblers Association (the Ramblers) is Britain’s walking charity. We work to help everyone realise the pleasures and benefits of walking, and to enhance and protect the places where people walk. We are committed to encouraging and supporting walking as a health-promoting physical activity. We have around 112,000 members, about 18,000 volunteers, and a network of around 500 local Groups across England, Scotland and Wales. Through these Groups we offer over 38,000 led walks which attract half a million participants each year, covering all types of terrain and levels of ability.

2. Although perhaps best known for our work to protect and enhance rights of way and other access for walkers in the countryside, we are also active in towns and cities, and work extensively to promote walking and to encourage and support people to walk more. Ramblers’ volunteer-driven led walks programme offers over 500 walks a week, including an increasing number of shorter and easier walks and walks suitable for families with children. We also deliver projects that specifically target insufficiently active people, those from socially excluded communities and those that suffer from health inequalities. These include our flagship “Get Walking Keep Walking” project which encouraged everyday independent walking in selected inner city locations, and which has been highly successful in reaching challenging target audiences, including those in deprived communities and black and minority ethnic groups, and our hosting of the national centre of Walking for Health, in partnership with Macmillan Cancer Support. This supports many hundreds of walking for health schemes across the country.

3. The benefits to physical and mental health and wellbeing of regular moderate physical activity are well attested, and for most people, including those suffering deprivation and social exclusion and therefore with priority needs, walking is the easiest way to meet physical activity recommendations. Walking is free and requires no special equipment, training or gym or club memberships. It is available to almost everyone; safe and low-impact, with low risk of injuries and accidents; easy to start slowly and build up gradually; and one of the easiest activities to fit into everyday life.

4. Walking is a low-carbon, non-polluting means of transport which provides both a viable alternative mode for the short trips that make up a significant proportion of urban transport journeys, and a vital link in journeys involving public transport. It is sociable and inclusive, improving our sense of community and helping tackle crime and the fear of crime through the “eyes on the street” effect. And it is beneficial to local economies, attracting custom to local businesses and providing access to work to those for whom other modes of transport may be unaffordable.

The Anti-social Behaviour, Crime and Policing Bill

5. Our interest and concerns lie with Part 4, Chapter 2 of the Bill, namely the provisions which deal with Public Spaces Protection Orders (PSPOs). We fully understand the Government’s desire to consolidate and simplify the toolkit of measures used to tackle ant-social behaviour, and we acknowledge that in some circumstances this may necessitate restrictions on public access. However, our experience with Gating Orders indicates that measures of this kind can have serious unintended consequences in terms of preventing access to routes which people use to go about their everyday business. The provisions which provide local authorities with the power to make Gating Orders are set out in sections 129A–129G of the Highways Act 1980 (as amended by the Clean Neighbourhoods and Environment Act 2005). Information on the operation of Gating Orders is provided at Annex 2, whilst Annex 3 provides a number of case studies. Gating Orders will be repealed by the present Bill and we believe that PSPOs offer even less protection for routes in everyday use than the existing measures.

6. Gating Orders are only applicable to linear routes and infringement of such an order is not an offence—the way in question is physically gated and so becomes impossible to use. However, because PSPOs will replace other anti-social behaviour measures such as designated public place orders and dog control orders, they will have wider application and will be available for use on all public places, including town and village greens, registered commons and open country as defined in the Countryside and Rights of Way Act 2000, and it will be an offence to infringe a PSPO. Thus it would be possible for an order to be made which prohibited the public from entering such an area, rendering trespass a criminal offence, which we consider to be a serious and far-reaching matter.

7. However, we are firmly of the view that the Bill can be amended so that vital checks and balances are introduced to protect the public interest, whilst retaining an effective package of measures to limit and reduce anti-social behaviour. An outline of our proposed amendments is set out below. These amendments are also supported by the British Mountaineering Council (BMC), Living Streets and the Open Spaces Society (OSS) (see Annex 1).
Clause 56 Duration of orders

8. The Bill provides that a PSPO can only have effect for a period of three years unless extended as provided for under clause 56. This is too long a period for the closure of any route of which everyday use is being made. A number of classes of highway are completely exempt from the application of PSPOs (we discuss this further below). Public rights of way are not so exempt. These are the class of way over which we have particular concerns, and we believe that the time limitation should be different in the case of public rights of way. An analogy can be drawn with Temporary Traffic Regulation Orders. Traffic authorities have the power to make temporary traffic regulation orders to restrict or prohibit the use of any road (defined in the Road Traffic Regulation Act 1984 as including public rights of way) because of works being carried out on or near the road, for public safety, and to enable cleaning and litter clearance. Such orders may last for 18 months in the first instance after which approval for an extension must be sought from the Secretary of State. However, for public rights of way, an order can last for only six months before approval for an extension must be sought. We argued successfully when the Road Traffic (Temporary Restrictions) Bill sought to bring in the 18 month limit for all highways that rights of way were a special case. The extra distance involved in taking an alternative route will make very little difference to a person travelling in a car, but can make a huge difference to a person on foot. In the circumstances of a footpath closed by a Gating Order or Public Spaces Protection Order (see the examples in Annex 3), it might mean that a journey is not taken at all, or that a car is used instead should one be available. (In the communities in which many of these orders are made cars are less likely to be an option: 25% of British households do not have access to a car.) Gating Orders can be made for an indefinite period (with a Home Office recommendation that they be reviewed after 12 months), so the present Bill provides the opportunity for the rights of way to be recognised as a special case with PSPOs over them being applicable for a far shorter period in the first instance. We would recommend that period be for six months in the first instance, as for Temporary Traffic Regulation orders.

Clause 60 Orders restricting public rights of way over highway

Clause 60 (1)

9. The Bill rightly recognises that restriction of public rights over highways is of such consequence that an authority wishing to impose an order to that effect must take into account certain matters relating to the status of the way as a highway, namely—

(a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
(b) the likely effect of making the order on other persons in the locality;
(c) in a case where the highway constitutes a through route, the availability of a reasonably convenient through route

(The same form of words as appears in the Highways Act in respect of Gating orders.)

Again, we would recommend that the opportunity be taken to strengthen the protection given to highways by importing a further matter for consideration, namely “any other measures that have been or could be taken for alleviating the activities which have had or are likely to have a detrimental effect on the quality of life of those in the locality”.

It is essential that the gating of a through-route is a matter of last resort. The suggested form of words is taken from s.118B(8)(a) of the Highways Act which is concerned with the stopping up of rights of way for purposes of crime prevention and for reasons of school security.

Clause 60 (2)

10. The notification procedures prior to making an order which will restrict public rights over a highway are insufficient, and should provide for the Secretary (and Welsh Ministers) to publish regulations to make these more rigorous. A suitable amendment would be the inclusion of a clause or clauses which provided that the Secretary of State (and Welsh Ministers) must by regulation make provision as to further procedures to be complied with by a council in relation to the making of a PSPO which would restrict access to a highway and that those regulations must include provision as to—

(a) the publication of a proposed order;
(b) public availability of copies of the proposed order;
(c) notification of persons (other than those referred to in clause 60(2)(a)) likely to be affected by a proposed order.

10. It would then be possible for the Regulations to explicitly provide for the notification of a comprehensive list of parties with an interest in highways, as is the case with Gating Orders. Those parties include other councils through whose area the highway in question passes, the emergency services, relevant NHS trusts, providers of gas, electricity, water or communications services, Local Access Forums, and persons who have asked to be notified of any PSPOs which are applied to highways. This list should be extended to include the

52 Local Access Forums are statutory advisory bodies, set up under s.94 of the Countryside and Rights of Way Act 2000, whose function it is to advise the local highway authority as to the improvement of public access to land in that area for the purposes of open-air recreation and the enjoyment of the area, and as to such other matters as may be prescribed.
main public rights of way user groups who are prescribed to receive notice of the closure and diversion of public rights of way under the Highways Act 1980,\textsuperscript{13} and the Town and Country Planning Act 1990.\textsuperscript{14}

11. As with Gating Orders, the Regulations should provide for the holding of a public inquiry, where an objection has been received from the police, another emergency service, an NHS trust, or another council through whose land the way passes, but we strongly recommend that this list be extended to cover the receipt of objections from users of the way where that way constitutes a through route. Experience with Gating Orders has shown that it is possible for one or two local councillors to push through Gating Orders in the face of fierce opposition from the local community (see Annex 3). Independent arbitration would ensure that the evidence of anti-social behaviour is properly balanced against the needs of the local community. It is the lack of such independent scrutiny which has been our primary concern with Gating Orders since their introduction.

Clause 61 Categories of highway over which public rights of way may not be restricted

12. We have so far argued that public rights of way should be recognised by this legislation as requiring special treatment if they are to be closed to try to limit activities which are having a detrimental effect on the quality of life of local residents. A simpler way of protecting many (although not all) of the routes about which the Ramblers is concerned would be to amend clause 61 so that a PSPO cannot restrict the public right of way over a highway that is a way shown on a definitive map and statement\textsuperscript{35} as a footpath, bridleway, restricted byway or byway open to all traffic. This could done either on the face of the Bill, or by way of the regulations mentioned in Clause 61(1) (e) and (f). The Bill clearly recognises that certain types of highway should not be stopped-up because of their strategic value: our view is that definitive rights of way may also be of vital importance to those who use them.

Clause 62 Challenging the validity of orders

13. Our experience with Gating Orders has shown that they are most commonly imposed in areas of high social deprivation, where those who are seriously affected by the loss of a route to local amenities would not be able to consider applying to the High Court to question the validity of a PSPO. In these situations, local people look to organisations such as the Ramblers to defend their interests and, where appropriate, to challenge any injustice through the courts. As the Bill is drafted we would not be able to undertake such a challenge for them. Such challenges are not undertaken lightly and we ask that the Bill be amended to delete the word “interested” and its definition from Clause 62.

Clause 67 Interpretation of Chapter 2

14. We are concerned to note that the interpretation of “local authority” in this chapter means—

“(a) In relation to England, a district council, a county council for an area for which there is no district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly.”

Our concern arises because this interpretation appears to mean that in places where there is both a county council and a district council (which is still the situation over a quite a large part of England), then the power to make PSPOs would be restricted to the district council. This is a problem because, where there are two tiers of local government, it is the county council which is the highway authority and which is responsible for such things as rights of way improvement plans, Local Access Forums, for highway maintenance, and many other duties including the duty to assert and protect the public’s right to use highways. As the Bill is drafted it seems that where this is both a county and a district council, the power to make PSPOs would rest with the district council and it wouldn’t even have to consult the highway authority about the plans to close a highway. We would strongly recommend that this be re-considered.

15. Also in Clause 67 “public place”—

“(a) means any place to which the public or any section of the public has access, on payment or otherwise, as of right of by virtue of express or implied permission,…”

It is our view that the definition of “public place” is too broad, and should be restricted so that a PSPO cannot be used to restrict public access to land to such open space which the public at large so enjoys.

A simple amendment would prevent the use of PSPOs on such land. For example, insert into Clause 67—

(c) does not include registered common land, access land as defined in section 1 of the Countryside and Rights of Way Act 2000, town or village greens or local green space.

An alternative to amending the definition of “public place” in clause 67 would be to amend clause 55 so that a PSPO cannot be used as a blunt tool to simply prevent overall access to such land. This could be done, for example, by introducing a new sub-clause after 55(5)—

\textsuperscript{13} Public Path Orders Regulations 1993 SI 1993 No 11.

\textsuperscript{14} Town and Country Planning (Public Path Orders) Regulations 1993 SI 1993 No 10.

\textsuperscript{15} The definitive map and statement is the legal record of public rights of way held by each surveying authority (synonymous with highway authority) in England and Wales; the depiction of a highway on a definitive map is conclusive evidence of its status, without prejudice to any higher rights which may exist. The rights of way information shown on Ordnance Survey maps is derived from definitive maps.
A prohibition may not prevent access by all persons to registered common land, access land as defined in section 1 of the Countryside and Rights of Way Act 2000, town or village greens or local green space.

16. The Ramblers urges the Public Bill Committee to amend this Bill so that routes in everyday use by people on foot are not closed without proper scrutiny, and without due regard to the health and environmental implications of closing off vital community assets.

Annex 1

THESE AMENDMENTS ARE ALSO SUPPORTED BY

LIVING STREETS

“We are the national charity that stands up for pedestrians. With our supporters we work to create safe, attractive and enjoyable streets, where people want to walk. We work with communities, professionals and politicians to make sure every community can enjoy vibrant streets and public spaces.

We started life in 1929 as the Pedestrians Association and have been the national voice for pedestrians throughout our history. In the early years, our campaigning led to the introduction of the driving test, pedestrian crossings and 30 mph speed limits. Since then our ambition has grown. Today we influence decision makers nationally and locally, run successful projects to encourage people to walk and provide specialist consultancy services to help reduce congestion and carbon emissions, improve public health, and make sure every community can enjoy the benefits of walking.”

THE OPEN SPACES SOCIETY (OSS)

The Open Spaces Society is Britain’s oldest national conservation body, founded in 1865. We campaign for the protection of common land, town and village greens and other open spaces, and for public paths and public access in town and country, throughout England and Wales. Our earliest campaigns in the mid-Victorian era were concerned with saving open spaces in urban areas from exploitation and development, for enjoyment by the local population for informal recreation. Hampstead Heath, Wimbledon Common and Epping Forest were among our early successes.

THE BRITISH MOUNTAINEERING COUNCIL (BMC)

The BMC, established in 1944, is the representative body that exists to protect the freedoms, and promote the interests, of climbers, hill walkers and mountaineers.

Annex 2

A NOTE ABOUT GATING ORDERS

(i) The Clean Neighbourhoods and Environment 2006 Act amended the Highways Act 1980 so that local highway authorities are empowered to make Gating Orders which have the effect of restricting access to any highway other than a special, trunk, classified, principal or strategic road. The powers permit access to be restricted, by means of gates across the highway, on grounds of crime reduction and to deal with problems of anti-social behaviour (defined as meaning behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more other persons not of the same household as himself). Practical guidance on using this procedure has been issued by the Home Office.36 Regulations (SI 2006 No. 537 The Highways Act 1980 (Gating Orders) (England) Regulations 2006) prescribe the procedure that authorities must adopt in proposing and making orders.

(ii) Before making an order, an authority must be satisfied that:

(a) premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour;
(b) the existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour; and
(c) it is expedient to make the order for the purposes of reducing crime or anti-social behaviour, having taken into account all the circumstances, including:

(i) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
(ii) the likely effect of making the order on other persons in the locality; and
(iii) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.

(iii) Many of the major urban authorities have seized upon these new powers with enthusiasm and large numbers of orders are being made. The reason for this is not hard to understand. Authorities were given the power to close or divert public paths for crime prevention reasons under the Countryside and Rights of Way Act 2000 but such orders can be made only in areas which have been specifically designated by the Secretary of State, and the order-making procedure in that instance is the standard

for path orders which involves notification of the prescribed organisations, and the right to have objections and representations heard before an independent Inspector. In contrast, the Gating Order Regulations only require representations to be considered by the council, and although a council may hold an inquiry into a gating order following an objection from a member of the public, this is a discretionary power, not a requirement. Only representations from the emergency services, a local NHS trust or another council (but not a parish or community council) will cause an inquiry to be held and then only before an Inspector appointed by the council (so not a Planning Inspector).

(iv) Despite the making of a number of highly controversial Gating Orders, which have drawn numerous letters of objection from the local community, to the best of our knowledge an inquiry has yet to be held. If the provision for an inquiry were operating in the manner envisaged by government—who presumably enacted it to ensure that all views would be properly taken into account in the event of a contentious order—it would seem reasonable to expect at least one to have been held. We know that some authorities are pushing through controversial gating orders and we are concerned that the views of those people who regularly use a soon-to-be-gated route are not always given adequate weight.

(v) We have attempted to monitor the number of gating orders which have been made since the provision was introduced. We did this by writing to every highway authority in England and asking them to send us notice of any proposal to make a Gating Order. (The Regulations enable any person to make such a request.) It is probably the case that not every gating order has been sent to us but in the period between 2007 and 2013 we estimate that at least 1758 orders have been made, affecting more than 4,000 separate ways.) The cost of this is unknown but we believe that a single gating order can cost up to £5,000.

(vi) It is certainly the case that many of the routes which have been made the subject of gating orders will not have served a utilitarian purpose. Our concern is with the routes which are used by the public to go about their everyday business—to get to shops, schools, Doctors’ surgeries and so on. These are routes which provide traffic-free routes and which people use as short-cuts. A number of case studies are set out below. These show very clearly that routes are being gated by councils in the face of local opposition, and without recourse to a public inquiry at which the interests of legitimate path users could be balanced against any likely reduction in anti-social behaviour. There is a clear civil liberties issue here, with the general public losing their right to use a highway because of the criminal and anti-social behaviour of the few.

Annex 3

EXAMPLES OF GATING ORDERS, MADE IN THE FACE OF FIERCE LOCAL OPPOSITION, ON ROUTES IN EVERYDAY USE

LIVERPOOL CITY COUNCIL

Liverpool City Council gated a 500-year old path in Croxteth. The gating of the Altcross Road footpath leading to Dam Wood and Croxteth Country Park took place in the face of a passionate campaign and 700-name strong petition. The likely beneficiaries of the closure amounted to no more than nine-households. Path users now face a 40 minutes detour along main roads to get to the park. There is no record of persistent crime or anti-social behaviour associated with the path and the legislation requires that these should be shown to exist before an order can be made. Ramblers sought to assist local campaigners in their fight to retain the path to no avail and a resident contacted us to say “The gates have gone up this morning, it broke my heart. The council have shown no sympathy towards the community and its children, and I have lost all faith in the powers that be … they have taken away a part of our history.”

DUDLEY METROPOLITAN BOROUGH COUNCIL

A commodious, well-surfaced long established urban path, providing access to open country was proposed for gating. It ran past only four-houses. The highway authority rejected the idea of permanent closure using the Countryside and Rights of Way Act provisions since that would have involved designating the area as a high crime area. Instead they opted for a Gating Order. The reported crimes in the locality were not related to the path. The views of the Local Access Forum were ignored. The only alternative route was along neighbouring roads alongside vehicular traffic. A second example in the same authority’s jurisdiction involved a path of great antiquity. There had been problems with crime and ASB but the situation had improved: the key issue was that the authority was not bothering to maintain the path: there were obstructions, vegetation was over-growing the footways amid noisy traffic, and again the views of the Local Access Forum were not taken into account.

COVENTRY CITY COUNCIL

This Gating Order was made on a path running between allotments and a cemetery, providing an off-road link between schools and a playing field. There were only three residential properties along a 400 metre length of path. Evidence of crime and anti-social behaviour was limited (ten reported incidents in a 12 months period, one of which was treble counted and one double counted). The views of those who used the path were that the
Council moved too hastily to gating the path, without considering other measures which might have satisfied complainants eg closing the path during the hours of darkness.

**Stockport Metropolitan Borough Council**

In 2007, Stockport MBC made a gating order to close an alleyway between Kingsland Road and a large social housing estate. The route was the most convenient means of travel between the housing estate and local amenities such as a school, medical centre, bus stop and shops. Approximately 400 households relied on the path to access goods and services and were severely inconvenienced by its closure. The alternative is a mile longer and runs alongside a busy road carrying HGVs. The loss of the path curtailed the freedom of movement of the most vulnerable people on the estate, namely the elderly and those with mobility problems. The alleged problem of ASB were on Kingsland Road rather than the estate itself. Eventually, the terms of the order were changed so that it was only gated at night, and although it made life easier for the residents of the estate, no-one was really happy and the estimated cost of opening and closing the gate, 365 days of the year was £5,500.

**Bristol City Council: Path in the Fishponds Area**

This was a Gating Order imposed on FP 163. By the Council’s own account an exceptionally high level of journeys were made on foot using this popular route—2,700 per month over a three month period. Many of these journeys were made by mothers accompanying young children who were using a safe route, away from traffic. The alternative route involved an extra 385 metres on roadside pavements. This is a significant extra distance and enough to cause inconvenience to the extent of tempting some pedestrians to use motorised transport instead. The police had had made no effort to demonstrate that the type of nuisance crime mostly experienced here would not simply be displaced by a few metres or take place on the highway rather than the back alleys. The estimated cost to the Council was given as £2000, but this took no account of the ongoing costs of the administrative burden including annual review and the cost of maintenance.

**Tameside Metropolitan Borough Council, FP 27 Dunkinfeld**

FP 27 Dunkinfeld is a well-used path, providing a very useful short-cut between Kenyon Avenue and Cheetham Hill, which has been made the subject of a gating order by Tameside MBC. An earlier attempt to close the path using the provisions of the Town and Country Planning Act which was submitted to the Secretary of State for determination, was dismissed by a Planning Inspector who observed that “excluding children going to and from school, the path is probably used, at a conservative estimate, by around 250 people each day between 9 am and 5 pm. This figure is probably more than double if these children are included.” The police statistics used to justify the order referred only to “a large problem of crime and disorder in this area”, not specifically to premises adjoining or adjacent to the path, and no reports of anti-social behaviour or criminal damage that could be directly linked with the footpath. The gating of the path is having a detrimental effect on many other persons in the locality because it provides a shorter link to many important services, in particular All Saints College, the local health centre and playing fields. Pedestrian counts reveal the large number of people using the route, the majority of whom are school children. The path provided a through route and the alternative is not reasonably convenient: it is 495 metres long, and uses footways adjacent to roads which are subject to heavy traffic, compared to the route proposed for gating which only measures 60 metres. No consideration at all was given to the needs of the elderly or infirm wishing to use the path to access the medical centre.

**Wigan Metropolitan Borough Council**

A path between Old Road and Tenbury Drive, Ashton-in-Makerfield, which provided a safe, direct route for parents taking small children to and from school was gated. Three or four dozen parents were using the path each day. This wide alleyway had been in constant use as a footpath for more than 60 years. Users had never been prevented or challenged during this period. Wigan MBC said the reason for gating was to prevent anti-social behaviour. Users denied that there were such problems. The alternative route was along a busy main road.

*June 2013*

**Written evidence by Blue Cross (ASB 18)**

— Blue Cross is one of the UK’s leading pet welfare charities. Every year we rehome thousands of animals through our network of rehoming centres, in addition to offering free veterinary care to the pets of those owners who cannot afford private fees.

— Blue Cross is pleased to respond to the House of Commons Public Bill Committee’s call for evidence on the Anti-social Behaviour, Crime and Policing Bill (ASBCPB). Blue Cross has previously submitted evidence on these issues to the Home Affairs Select Committee and the Environment Food and Rural Affairs Select Committee during pre legislative inquiries.

— Blue Cross has long campaigned for improved dangerous dog legislation. We consider that dog control and dog welfare are inexorably connected and that a holistic approach, which includes both
behaviour change activities and useful legislation is needed if we are to improve society’s attitude to dog ownership in the long term.

— Although we are pleased that action is being taken in this area, we are disappointed that the government has opted for piecemeal reform rather than introduce a new consolidated Dog Control Bill.

— Our comments are mostly concerned with Part 7 of the Bill, which relates to the Dangerous Dogs Act. Many of the amendments included here are welcomed and long overdue in our opinion, however we consider that the government could and should have gone much further, specifically with regards to the inclusion of attacks of protected animals.

— We have concerns relating to the new Anti-Social Behaviour measures which the government have assured us will provide enforcers with the tools to deal with dangerous dogs before an attack happens. We have advised that dog specific measures, such as Dog Control Notices (DCNs), are the preferred option for both animal welfare organisations and enforcers.

— Ultimately we would wish to see a total repeal of Breed Specific Legislation (BSL). If this is not desirable then more flexibility for rehoming organisations dealing with prohibited breed types is essential.

— We want see the government offer a commitment to ensure that all children are educated on animal welfare and staying safe around dogs. Blue Cross has been campaigning for this to be included as a compulsory part of the National Curriculum.

— The voluntary sector provides (at its own cost) a wide range of educational workshops to address these issues. A concerted effort by the government to promote and coordinate these services would enable the sector to reach many more children.

— The EFRA select committee recommended in its recent report Dog Control and Welfare that DEFRA assess the cost benefits of funding dog welfare charities to provide support on the issues of anti-social behaviour and crime involving dogs this is something we would support.

**PART 7 DANGEROUS DOGS**

*Clause 98—Keeping Dogs under Proper Control*

1. Extension to Private Property

1.1 We welcome the government’s proposals to extend the Dangerous Dogs Act to cover dogs that are dangerously out of control on private property. Whilst supporting these measures we feel it is important that householders have an adequate defence if their dog attacks someone who is trespassing on their property.

1.2 In itself this extension will not necessarily prevent any dog bites or out of control incidents occurring. However, this will allow for the prosecution of owners who allow their dogs to be dangerously out of control on private property and therefore pose a threat to legitimate visitors. This we feel is fair, but we do consider that defences should be strengthened to ensure that responsible dog owners that take all reasonable steps to prevent an incident are not prosecuted.

2. Assistance Dogs and Protected Animals

2.1 We were pleased to see that Dangerous Dogs legislation will be extended to include attacks on assistance dogs because of the serious impact such incidents can have on both the dog and owner. However, this also extends to other animals such as livestock, horses and cats, where the impact on the owners is financial, psychological or emotional.

2.2 Action is needed to deal with the increasing problem of attacks on livestock and other protected animals (as defined under the Animal Welfare Act). And we support an amendment to Clause 98 of the Bill to include attacks on protected animals as an offence.

2.3 Blue Cross has much experience of dealing with horses and horse owners. We know that dog attacks on horses are increasing, with hundreds reported to the British Horse Society every year. Blue Cross has produced a safety resource with the British Horse Society and the Association of Chief Police Officers aimed at both dog and horse owners. Whilst information and education of owners and handlers is part of the solution, it is essential that the legislative framework offers as much protection as possible. In addition, the financial impact of an attack, or fear of an attack, on livestock is significant and there is clearly a need for better legislation to protect farmers.

2.4 It is suggested that on average there are two fatal dog attacks on cats a week. Attacks on cats are often horrific, fatal, and deeply distressing for the owners and anyone witnessing the incident. We do not consider that this kind of behaviour should be tolerated. Many thousands of pet cats and dogs live together harmoniously in homes all around the UK. In addition, attacks on cats are often the first sign that a dog is dangerously out of control and such incidents are not acceptable.
Clause 99 Whether a dog is a danger to public safety

3. Assessing the character of the dog owner/keeper

3.1 In principle we welcome the requirement for a court to consider if the owner is a fit and proper person to be in charge of a dog. However further clarification is needed on exactly what proportion of the decision will be based on the behaviour of the owner and what proportion on the behaviour or characteristics of the dog? This is particularly relevant for those dogs seized under Section 1, where the consideration of other “relevant circumstances” could be of vital importance. The courts should consider such factors in all circumstances. This must include kennelling time, and any other factors that may impact negatively on the animal’s behaviour and welfare. This is particularly relevant in Section 3 cases where the cases could be complicated and there may be a number of contributing factors. It is essential that rather than the court having discretion to consider relevant factors that this is required.

PART 4 COMMUNITY PROTECTION

4. Preventive Measures

4.1 We remain disappointed that the government has not taken this opportunity to introduce Dog Control Notices (DCN), dog specific measures which could have provided a swift flexible and proportionate way to deal with irresponsible dog ownership before public safety is compromised. DCNs, as introduced in Scotland, would enable enforcers to impose conditions on irresponsible owners. These could vary from muzzling and restrictions on off lead activity, to neutering and compulsory dog training.

4.2 In the absence of Dog Control Notices the government insists that the Community Protection Notice (CPN) and Public Space Protection Order (PSPO) could be used as above to tackle anti-social behaviour involving dogs. This is particularly relevant where a dog has displayed aggression, but before an attack has taken place. It is at this point that we feel a useful measure could make a real difference. It is in this scenario that the swift application of a DCN is preferred. This could allow for expert guidance and advice that is tailored to the dog and owner in each circumstance. It is our opinion that, at present, the proposed CPNs are too “catch all” and focussed on community issues, rather than individual instances.

4.3 If this is to be effective the measures must be introduced in a consultative fashion and must be properly resourced. It is essential that dog specific accompanying guidance is robust, that enforcers are aware of exactly how the new measures will work and the level of competency required for those using such measures in the community. We would not wish to see the application of “one size fits all” measure due to a lack of resources and/or expertise, as that could have the opposite effect of undermining the welfare of the dog and impacting negatively on its behaviour. The expertise of the authorised officer and the ability to specific requirements in each case is essential.

4.4 We are also keen to ensure that the new measures are implemented in a fair and proportionate manner so as not to unduly target certain types of dogs or their owners. Blue Cross has much experience of working with young people and their dogs. We run “RespectaBull”, an educational workshop specifically designed to reduce anti-social behaviour and promote responsible dog ownership amongst young people in urban areas. We are well aware that some young people acquire dogs of certain breeds and breed-types, often for status reasons. We are firmly of the belief that no dog is inherently dangerous and that the majority of young “status” dog owners are not anti-social or irresponsible but lack knowledge and information. Dog ownership can enrich communities and provide much needed companionship for isolated and vulnerable people. These measures must not be used to penalise people because of their age, location and/or choice of dog.

5. Breed Specific Legislation

5.1 Although we are pleased to see the government commit to providing the police with more flexibility when seizing Section 1 dogs we believe that Breed Specific Legislation is ineffective and remain committed to its repeal.

5.2 There is much evidence that BSL is ineffective as a method of protecting the public from dangerous dogs. We believe that any dog of any breed type has the potential to be a happy, sociable pet and that legislation should be based on the “deed” and not the “breed”.

5.3 We are disappointed that some degree of flexibility has not been included to provide for the rehoming of Section 1 dogs once they are abandoned on to organisations such as Blue Cross. More often than not these dogs are sociable, friendly and in our opinion could be safely rehomed to responsible owners. However, we are unable to transfer ownership of these animals and they have to be euthanized. This appears to us to be an extremely sad and unjust state of affairs, and we would support an amendment that provided us with the ability to transfer ownership.

6. Consolidated Bill

6.1 Blue Cross has called on the government to use this opportunity to introduce a consolidated Dog Control Bill—to address all the relevant issues including anti-social behaviour, dangerous and out of control dogs, and indiscriminate breeding and sale. These issues are all interlinked and we feel the best approach to improving
both dog welfare and dog control would be to address all relevant issues, including over population, supply and irresponsible ownership.

7. Education strategy

7.1 Although the changes proposed in this Bill could go some way towards tackling the problem of dangerously out of control dogs in our communities, we feel the government also needs to support an effective education strategy which will have a more significant impact on dog ownership in the longer term. This includes not only the education of school children and young people but also the behaviour change aspects of any preventative measures.

7.2 If the government is committed to tackling the growing problem of anti-social behaviour with dogs through CPNs they must ensure that the proper resources and links with the voluntary sector are in place to ensure that enforcers are aware of the education aspects of the orders and don’t only enforce the more punitive elements such as muzzling or restrictions on off lead activity. The combination of measures including education is the key in ensuring behaviour change amongst irresponsible owners.

REFERENCES:
1. The term ‘periodic’ remains undefined in the Bill and is left to the Home Secretary to set out in the relevant code of practice as specified under paragraphs 6 of Schedule 6 to the Anti-Social Behaviour, Crime and Police Bill.
2. Biodata taken from people detained under Schedule 7 is stored on the same database as convicted terrorists.

June 2013

Written evidence from the Gun Control Network (ASB 19)

We welcome and support clauses 100,101,102 in the Bill.

However, we regret that the government has lost an opportunity to introduce several more important and transforming measures to improve public safety and reduce anti social behaviour.

1. The widespread misuse of unlicensed airguns is a scourge on communities up and down the country. It is a major element of anti-social behaviour. In 2011–12, 37% of all firearm offences were committed with airguns, the most commonly used firearm in crime, and around 400 people were injured, many of them seriously. The solution to this problem is to license airguns as Scotland is in the process of doing. This measure could be introduced gradually starting with the purchase of new airguns, amnesties for old and unwanted weapons and working towards general licensing of airguns over a two or three year period.

2. Improvements to the Sec 1 and shotgun licensing processes so as to ensure that people with a history of drug and alcohol abuse, domestic violence and mental illness are prevented from owning guns. For this to happen it will be necessary to consult family members, tag the medical records of gun owners and place a duty on all health professionals, gun club owners, teachers and social workers to report the inappropriate behaviour of a gun owner.

3. Immediately introduce full cost recovery for firearms and shotgun licence applications. At a conservative estimate, the taxpayer is subsidising legal gun owners to the tune of £100 million over five years. The current cost of a licence is £50 and this does not allow for proper investigations to be conducted at the time of application or renewal.

4. Many victims’ families say that a hotline allowing people to register their concerns over a gun owner’s behaviour could have prevented a tragedy. The establishment of such a phone line would help to remove guns from unsuitable people.

5. There is currently a tradition of secrecy surrounding gun ownership and gun crime which is not conducive to public safety and proper analysis. It is difficult to get information about the circumstances of gun misuse and what action the police have taken. There should be a presumption of Freedom of Information in this matter.

June 2013

Written evidence from JUSTICE (ASB 20)

SUMMARY

— The criminal standard of proof should apply to IPNAs.
— The nuisance or annoyance test is far too low a threshold and should be replaced by the current “harassment, alarm or distress” test, as well as a test of necessity for IPNAs and CBOs.
— All terms imposed must be required to be necessary and proportionate.
— Maximum duration of terms must be specified.
— Positive requirements must be formed from an exhaustive list, take account of care arrangements and not duplicate existing community orders.
— Orders should not be available for children. If they are, Acceptable Behaviour Agreements should first be tried. Reporting restrictions should remain in place to protect children. Imprisonment for breach should not be an option.
— Dispersal powers should only be available where there is a significant and persistent problem, not exceed 24 hours and not be available to PCSOs. Non-compliance should not be made an offence as public order offences already exist.
— The time limit for all extradition appeals should be 14 days. Discretion to extend should be available in exceptional circumstances where the interests of justice so require.
— A leave requirement should not be imposed upon requested persons. If introduced, this should extend to requesting states, and be subject to review. Legal aid must remain available and be granted expeditiously.
— Compensation for miscarriages of justice must not be limited to cases where new evidence shows beyond reasonable doubt that the person is innocent. The current test should remain, that no reasonable jury could convict.

INTRODUCTION

1. Established in 1957, JUSTICE is an independent law reform and human rights organisation. It is the United Kingdom section of the International Commission of Jurists.

2. This briefing focuses upon the creation of the Injunction to Prevent Nuisance and Annoyance (Part 1), the Criminal Behaviour Order (Part 2), and the Dispersal Power (Part 3) since these are the anti-social behaviour proposals with which our organisation has most concern at this stage.37 We also consider proposed amendments to extradition proceedings in Part 11 and compensation for miscarriages of justice in Part 12. Silence as to any other part of the Bill should not be taken as approval of the proposed reforms.

3. Whilst not the focus of this briefing, we note that the proposals in Part 4 to create powers to issue Community Protection Notices (Chapter 1), Public Spaces Protection Orders (Chapter 2) and Closure Notices for premises associated with nuisance or disorder (Chapter 3) raise important issues and have attracted the concern of other organisations.

ANTI-SOCIAL BEHAVIOUR

4. We welcome the recognition by the Government in last year’s White Paper38 that anti-social behaviour is a local issue which needs local responses and, where possible, this should avoid the criminal or civil justice systems. We also welcome the intention to tackle the drivers of anti-social behaviour which in our view cannot be solved by imposing draconian, restrictive orders, but need to be resolved through treatment and support.

5. JUSTICE has longstanding concerns about the breadth of anti-social behaviour orders, and other similar civil orders, and the scope for them to be used inappropriately.

6. We believe that it is appropriate and indeed desirable for public authorities to apply for civil orders to restrain illegal acts causing injury to the community and/or vulnerable individuals. However, these should only be available to restrain unlawful behaviour, rather than acts that are merely, or likely to be, distressing or irritating. Furthermore, any such order should be limited in scope. In particular, in the context of criminal orders, they should not become equivalent to community sentences available upon conviction. They should contain only prohibitions and (perhaps rarely) positive injunctions closely linked to the unlawful behaviour itself and necessary to prevent it. The overall restriction of a person’s liberty should be proportionate to the seriousness of the illegality that the order seeks to restrain and to the status of the order as a civil preventative measure. The orders should be time-limited and regularly reviewed. Finally, the powers available upon breach of an order should reflect the nature of the breach and the context in which it occurred. The most concerning development over the last decade in the attempt to curb anti-social behaviour has been the imprisonment of people, not because they committed crime, but because they breached an order that they were almost certainly going to fail to keep.

7. We support the use of informal and out of court disposals in tackling anti-social behaviour that keep people from being drawn into the criminal justice system and believe that restorative approaches should be used in reducing anti-social behaviour for both children and adults. We recommend that Acceptable Behaviour Agreements, neighbourhood mediation and support for families be used in preference to coercive orders. JUSTICE has long argued for such an approach, most recently in our report Time for a New Hearing which details how restorative justice could be fully incorporated into the youth justice system of England and

37 JUSTICE welcomed the Home Affairs Committee’s pre-legislative scrutiny of the Draft Anti-Social Behaviour Bill. This briefing is largely based upon our response to the Committee. We previously responded to the Home Office consultation: More Effective Responses to Anti-Social Behaviour (2011) in similar terms.

38 Home Office, Putting Victims First: More Effective Responses to Anti-Social Behaviour, Cm 8367 (May 2012).
Wales.\textsuperscript{39} We therefore welcome the focus in Part 6 of the Bill on restorative justice and out of court disposals. In particular the Community Remedy has the potential to provide a positive means of addressing anti-social behaviour outside of the court system.

8. However, we are disappointed that the government has not taken the opportunity in this Bill to conduct a comprehensive reform of the anti-social behaviour regime. There is a lack of imagination and innovation in the reforms and for the most part what has been proposed simply tinkers with labels, while framing the proposed orders to cover even wider categories of behaviour than the existing measures. “Criminal Behaviour Orders” and “Injunctions to Prevent Nuisance and Annoyance” risk creating individual community sentences for people who have not committed any crime or civil wrong. “Dispersal Powers” will allow people to be dismissed from public places without sufficient safeguards for people to explain their presence and could be used inappropriately against protestors and young people.

9. All of the proposed powers are, we believe, likely to be used disproportionately against children and young people and particular care is needed to avoid locking children into the criminal justice system as a result. Evidence for this can be found in the current regime where 38% of anti-social behaviour orders have been issued to 10–17 year olds, despite them comprising only around 13% of the population.\textsuperscript{40}

\section*{PART 1: INJUNCTIONS TO PREVENT NUISANCE AND ANNOYANCE}

10. Part 1 of the Bill creates a new civil order to replace, inter alia, the Anti-Social Behaviour Order on application (ASBO) issued under s1 Crime and Disorder Act 1998 (CDA), and the currently limited Anti-Social Behaviour Injunction (ASBI) pursuant to the Anti-Social Behaviour Act 2003.

\subsection*{General concerns}

11. We do not support the use of ASBO’s for under 18s and are therefore concerned at the proposed continued application of the replacement Injunction to Prevent Nuisance and Annoyance (IPNA) to children aged 10 to 17.

12. As we observed in the creation of “Injunctions to prevent gang-related violence” by the Policing and Crime Act 2009,\textsuperscript{41} the procedural guarantees of the criminal process as guaranteed under article 6(3) European Convention on Human Rights (ECHR)—and the criminal standard of proof—should apply. This is because IPNAs are ASBOs in all but name but attract much milder behaviour, without the safeguards that are currently available before the criminal courts and applying criminal evidential standards. In the well-known case of McCann\textsuperscript{42} the House of Lords held in relation to ASBOs that, given the seriousness of the matters involved, at least some reference to the heightened civil standard of proof—\textit{which was all but indistinguishable from the criminal standard}—should apply. The Court decided that as a matter of pragmatism, the criminal standard of proof should be applied in ASBO cases.\textsuperscript{43}

13. In our view, the civil standard is not appropriate and applications should continue to be dealt with before the criminal courts. Irrespective, the defence of reasonable conduct available to defendants in response to an ASBO application should remain,\textsuperscript{44} to ensure an opportunity to explain any behaviour or conduct. Legal aid should also be available for representation at the hearing, for both adults and children, given the complexity of these types of case and the frequent vulnerabilities of those facing such orders.

\subsection*{Clause 1—Threshold Test}

14. We welcome the move away from criminalising conduct which the IPNA provides, and that the detention periods for breach would be shorter than those available in ASBO breach proceedings. However, we are concerned that the IPNA would be available in circumstances where no pre-existing civil wrong has been committed and that the scope of the order could result in wide-ranging restrictions upon a person’s liberty which are both disproportionate to and insufficiently closely connected with the wrong giving rise to the injunction. The effect could be not only a disproportionate interference with their right to private and family life pursuant to article 8 ECHR, but also punishment of vulnerable people who upon breach of an injunction may face a term of imprisonment that leads to engagement with, rather than diversion from, crime.

15. The “nuisance or annoyance” test is far too low a threshold to ensure reasonable application. While this test currently applies in ASBIs,\textsuperscript{45} these are only available to social landlords and must relate to housing management functions and behaviour against persons within a neighbourhood. Further, ASBIs only allow

\begin{enumerate}
\item \textsuperscript{40} Ministry of Justice, \textit{Anti-Social Behaviour Order Statistics—England and Wales 2011} (2012), Table 1.
\item \textsuperscript{41} Our briefings in relation to the passage of the Bill are available on our website here \url{http://www.justice.org.uk/resources.php/141/policing-and-crime-bill}
\item \textsuperscript{42} R v Manchester Crown Court, \textit{ex parte McCann} [2002] UKHL 39.
\item \textsuperscript{43} Notwithstanding the Government’s view that the civil standard was appropriate, the JCHR most recently considered that the criminal standard should apply in relation to injunctions to prevent gang-related violence, given the similarity to ASBOs and the reasoning in \textit{McCann}, which it concluded equally applied in this context, JCHR, \textit{Legislative Scrutiny: Policing and Crime Bill (gang injunctions)}, 10\textsuperscript{th} Report of Session (2008-2009), HL 68/HC 395 (18 December 2008) at [1.26]-[1.34]
\item \textsuperscript{44} Pursuant to section 1(5) CDA.
\item \textsuperscript{45} Section 153A Housing Act 1996.
\end{enumerate}
“prevention of engagement in conduct causing nuisance and annoyance”. The proposed IPNAs would afford wide ranging terms to be imposed for very broad types of behaviour, occurring anywhere. Clause 1(2) only requires the respondent to the injunction to have (1) engaged or threaten to engage in (2) conduct capable of causing nuisance or annoyance to (3) any person. The test if far too subjective to accord with principles of legal certainty, irrespective of whether the criminal or civil standard applies. It would enable the possibility of someone, simply by standing on the pavement in a busy high street, being given an injunction because their presence could have caused annoyance to passers-by. This is draconian and unreasonable. As drafted the injunction could also be applied to impede freedom of speech and peaceful assembly, rights protected by articles 10 and 11 ECHR, which can only be interfered with in pursuance of a legitimate aim and by necessary and proportionate means.

16. The test of “behaviour causing or likely to cause harassment, alarm or distress” which is currently applied for ASBOs should continue to be applied for the proposed injunctions to ensure that minor problems are not brought into the courts. Whilst “nuisance and annoyance” may be considered the appropriate test in housing related disputes because people living in close proximity and affecting each other’s enjoyment of their private lives and property rights, it is not for wide ranging anti-social behaviour.

17. Equally, a test of “necessity” as required for ASBOs should continue to be applied, to ensure that courts assess whether the impact upon the article 8 ECHR rights of the respondent to respect for their private and family life is proportionate in all the circumstances.

Clause 1(4) – (5) and Clause 2—Injunctive Terms

18. Clause 1(4)(b) of the Bill introduces positive requirements into the IPNA. It is our view that if positive requirements are to be included in an order as non-specific and easily available as an IPNA, it is essential that some limitations are placed upon the types of requirements that can be imposed. This is important to ensure that individuals’ rights are protected, that IPNAs remain proportionate to the behaviour that they seek to prevent and that breach does not become almost inevitable.

19. We note that clause 1(5) of the Bill places only limited restrictions on the range of positive requirements that may be imposed. This list must be extended to include any caring obligations towards children or dependants. We believe that legislation should specify the maximum number of hours per week that positive requirements can last, to prevent them becoming unmanageable and at risk of breach. We also consider that the types of requirements to be included should be exhaustively identified in legislation to prevent widely divergent approaches across the country and the application of orders that amount in all but name to community sentences, which currently can only be imposed in the criminal courts after rigorous assessment of appropriateness by probation services and experienced tribunals.

20. Clause 2 sets out conditions for the imposition of a requirement, but in fact only seeks evidence about suitability and enforceability to be given by the person or organisation responsible for supervising the requirement, and other demands upon how they must carry out that function. We consider that the legislation must expressly require the imposing court to be satisfied that a requirement is suitable and enforceable, bearing in mind that positive requirements are always more intrusive than prohibitive ones, and more difficult to formulate. Indeed, in order to comply with article 8 ECHR, we consider a proportionality check must be carried out by the court for the imposition of any term in the injunction, be it preventive or mandatory. The current proposal does not require the court to do anything but assess whether the injunction is “just and convenient” (clause 1(3)). The court must also be required to assess whether the terms of the injunction are proportionate. In the case of children we believe that this order should only be available in circumstances where informal support and an acceptable behaviour agreement has been attempted and has failed.

21. Although we support measures that may assist a respondent to resolve underlying problems such as drug dependency or anger management, we are concerned that positive requirements may be difficult for people to comply with and that imposing such requirements may be setting people up to fail. We propose that, while prohibitive elements should take into account the views of the complainant, society and the respondent, positive requirements should be focussed on rehabilitation of the respondent alone. Sufficient resources must be made available to ensure that the respondent can comply with the requirements that are imposed and be properly supported in order to do so.

Clause 1(6)—Duration

22. We are concerned that the Bill does not provide a maximum duration for the IPNA, leaving this to the discretion of the courts. An indicative maximum duration must be given to prevent wide divergence in approach and improve legal certainty. Because these orders are more wide ranging and likely to be more restrictive than other civil injunctions, in our view IPNA’s should last for a maximum of two years and should be reviewable during that period. We welcome the inclusion in clause 1(6) of a maximum period of 12 months where an injunction is imposed on a respondent before they reach the age of 18 years.

46 Section 1(1)(b) CDA: “that such an order is necessary to protect relevant persons from further anti-social acts by him.”
47 R v Boness [2005] EWCA Crim 2395.
48 This is particularly relevant given the intention behind the Offender Rehabilitation Bill, currently before the House of Lords.
Clause 4(1)(c)—Applicants

23. We do not consider it appropriate that the police be able to apply for a civil injunction. Police officers have a unique responsibility to fight crime and should only engage these powers in the criminal context and in relation to criminal conduct. If the government seeks to reduce anti-social behaviour by dealing with it at a community level, it is not appropriate to involve police forces unless there is a breach. Moreover, the police could apply for an injunction where criminal conduct exists because it will be an easier and quicker process, rather than ensuring that the person is properly prosecuted through the criminal courts. If a criminal offence is suspected, the Crown must establish the ingredients of the offence in accordance with criminal evidential rules. In all cases, where clear criminal conduct is alleged, this should be properly investigated and prosecuted in accordance with fair trial standards.

Clause 11 and Schedule 2—Sanctions for Breach

24. Whist we welcome the acknowledgment that children should be dealt with differently to adults in relation to breach, we do not consider that detention should be available in any circumstances where children breach an injunction. If detention remains available, this should not be possible for a first breach of an injunction, when it would be highly unusual for detention to be ordered by a criminal court upon a first offence, unless the offence was particularly grave. Detention should always be a last resort for children. Equally we consider that the referral order is the most appropriate response to a first breach rather than moving immediately to a supervision order. Children in breach of an order need additional support, not a draconian and criminalising response.

Clauses 17 and 22(8)(a)—Reporting restrictions

25. We share the concerns of the Standing Committee for Youth Justice (SCYJ) regarding the continued presumption in favour of naming children subject to anti-social behaviour proceedings. The Bill states that section 49 Children and Young Persons Act 1933, which restricts reports on proceedings in which young people are concerned, does not apply to proceedings involving IPNAs or Criminal Behaviour Orders.

26. Not only is this contrary to the approach in the youth justice system where young people are given anonymity, it is our view that reporting is unnecessary and that the presumed justification that naming young people would help members of the community spot and report anti-social behaviour is outweighed by the detrimental impact upon young people and their rehabilitation. We believe a presumption in favour of naming children would be a disproportionate interference with their article 8 ECHR right to privacy. We support the SCYJ recommendation of a presumption against the reporting of court proceedings involving persons under 18.

PART 2: CRIMINAL BEHAVIOUR ORDERS

27. Part 2 of the Bill creates the Criminal Behaviour Order, which a court can impose upon a person convicted of any offence. This replaces the current post-conviction ASBO issued under s1C CDA.

General concerns

28. We are opposed to the creation of a Criminal Behaviour Order (CBO), and fail to see how the order is necessary or appropriate in the criminal context. The use of post-conviction ASBOs has fallen in recent years by almost two thirds from 2,271 in 2004 to 863 in 2011 and it can therefore be assumed to be of limited effectiveness in comparison to the many community sentencing options available to the courts. The CBO would become available because a person has been convicted of an offence; however it will not comprise the sentence for the offence but rather an additional injunctive measure to the sentence that will be imposed. In our view, if the behaviour being targeted by the CBO forms the subject of the conviction, the existing sentencing options available to a court are sufficient, and the defendant should not be sentenced twice for the same offence. If the behaviour is unconnected to the offence, then this should be dealt with separately using an IPNA (as amended by our above suggestions).

29. The CBO has, we believe, an undesirable mixture of criminal and civil aspects. Its name, the fact that it becomes available because of a criminal conviction and the breadth of obligations and prohibitions that can be imposed suggest that it is criminal in character; however, it appears to be available on the civil standard of proof. We believe that if the order is to be available in this form, the criminal standard of proof should apply, as should the guarantees of a fair trial in criminal proceedings pursuant to article 6 ECHR and the decision in McCann.
Clause 21(3) and (4)—Threshold Test

30. The threshold for making a CBO is that the court a) is satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to a person, and b) considers that making the order “will help in preventing the offender from engaging in such behaviour”. This test is broader than the current power in which the court considers whether the order is “necessary to protect persons from further anti-social acts by the offender”.54

31. We are concerned that the second limb of the test is much lower than the current threshold and is far too vague to be a meaningful restriction on the making of such orders. The test of “necessity to protect persons” is the appropriate test to ensure legal certainty and justification for the restriction, and should continue to apply if CBOs are introduced.

Clause 21(5)—Injunctive Terms

32. Clause 21(5)(b) of the Bill introduces positive requirements into the CBO. This again marks a change from the current regime. We repeat our concerns outlined above with regard to positive requirements in relation to IPNAs.

33. Further, there should be no “double sentencing”—the community sentence for the offence that has been committed (which could encompass a curfew, restraining or exclusion order and requirements to attend at a specific location) should be taken into account when a court is considering whether to impose a CBO. As should any licence conditions if imposed in conjunction with a custodial sentence. The necessity test is equally required to ensure that any terms in a CBO are appropriate in addition to the sentence.

Children

34. We do not support the use of CBOs for children and young people under 18. They will act as an accelerator into the criminal justice system and therefore into custody. Recent data provided by the Ministry of Justice for the period 1999 to 2011 reveals that the overall breach rate by children and young people subject to ASBOs is 68% compared to 52% of adults.55 Custody has been used as a sanction for breach by 10–17 year olds in 38% of cases.56 Moreover research published by the Prison Reform Trust highlights specific problems faced by children and young people in complying with orders and the negative effects that breach has (including acceleration into custody).57 This is likely to occur with CBOs more than with post-conviction ASBOs due to the inclusion of positive requirements, which may be more easily breached.

35. We believe that, as indicated above, informal measures such as Acceptable Behaviour Agreements and more dedicated support for children and families should be offered to prevent genuine anti-social behaviour. However, if CBOs are to be used against defendants of this age then it is essential that their personal circumstances and care arrangements are assessed before the order is imposed. The assessment should cover factors including (but not limited to) mental health, learning and communication difficulties (all of which can affect ability to participate in the proceedings, understanding of the order and ability to comply with its terms), parental supervision and home environment. Clause 21(9), which specifies that any requirements must avoid conflict with religious beliefs; times of work or education; and other court orders, does not in our view afford sufficient discretion to the courts to consider the factors impacting upon children.

PART 3: DISPERSAL POWERS

36. The dispersal powers as proposed could be widely and inappropriately used in violation of article 11 ECHR (protecting freedom of assembly and requiring safeguards against arbitrary interferences with that right).

37. The proposed dispersal power would enable a constable to direct a person to leave an area, in contrast to the current prior authorisation requirement. The current regime requires the dispersal to be in the context of anti-social behaviour that is a significant and persistent problem in the locality. In contrast, the proposed power would be available simply in relation to members of the public being harassed, alarmed or distressed, or the occurrence of crime and disorder. Without the existing parameters, the power available in the proposed amendments could have wide ranging effect. Furthermore, inappropriate use of the power will be difficult to restrain because subsequent litigation will depend upon funding arrangements and willingness of individuals to bring proceedings. In any event, inappropriate use of the power will be difficult to prove because of the breadth of the provision.

38. We do not consider that the power should be available to disperse the commission of general “crime”. If a criminal offence has been committed for which the person is suspected, they should either be arrested and conveyed to a police station for investigation, or summarily dealt with by an out of court disposal as appropriate. The power should be limited to causing harassment, alarm or distress, or disorder in the locality.

54 Section 1C(2)(b) CDA 1998.
55 MoJ, note 16 above, Table 11.
56 Ibid, Table 12.
Clause 32—Length of dispersal

39. A dispersal order may, under the current regime, not exceed 24 hours. We do not consider that there is any justification for extending a direction to 48 hours. 24 hours is a sufficient restriction on peoples’ ability to enter a location without evidence to demonstrate otherwise.

Clause 34—Restrictions

40. Whilst the proposal includes a number of important restrictions in clause 34, which we welcome, we would include a further restriction that the constable must not give a direction for a person or group to disperse where a reasonable excuse has been put forward for their conduct. This would reduce the danger of arbitrary use of the power, in the context of people exercising their right to peaceful assembly, and ensure that the requirement of necessity set out in clause 32(3) is properly engaged.

Clause 37—Offences

41. We are particularly concerned that non-compliance with the new direction will constitute a criminal offence and carry a maximum penalty of three months’ imprisonment. Given that the dispersal is an alternative to pursuing a conventional response to offending, where a person returns and continues to commit the same type of behaviour in spite of the dispersal power, they should then be processed or investigated for the offence in accordance with existing powers. If disorder is engaged, a penalty notice could be administered, pursuant to section 1 Criminal Justice and Police Act 2001. This encompasses a wide range of disorderly conduct. For children and young people for whom penalty notices are not appropriate, an out-of-court youth restorative disposal should be used. Anything more serious should be properly investigated and charged if sufficient evidence of a crime is made out. We do not consider it appropriate or necessary to create a new offence in this context, particularly one with a custodial term attached.

Clause 38—Powers of community support officers

42. The proposal will allow Police Community Support Officers (PCSOs) to direct a dispersal with the same powers as constables once an authorisation has been given. Whilst this power is available under the 2003 Act, we nevertheless consider that PCSOs should not be able to carry out law enforcement powers which require the exercise of a broad discretion, such as this. This is a role for qualified police officers.

Part 11—Extradition

43. Part 11 makes certain technical changes to the Extradition Act 2003 (EA) to clarify language and strengthen the procedural safeguards for the requested person. We welcome these changes in general, particularly in relation to asylum claims as a ground for discharge in clause 128.

Clause 127—Appeals

44. We also welcome the attempt to provide flexibility in the time limit for appeal from a decision to surrender under Part 1 of the EA or extradite under Part 2. However, at the same time as introducing flexibility, the clause creates a limit upon the possibility of appeal by the introduction of a leave requirement. This will make it more difficult for requested persons to prevent an extradition or surrender request against them taking effect.

Extension of time

45. Section 26 of the EA provides a time limit of seven days to appeal, and sections 103 and 108, 14 days. The reason for extra time in the latter sections is not because of greater complexity in those cases. It is because it relates to Part 2 extraditions. Part 1, on the other hand, gives effect to the European Arrest Warrant (EAW) procedure which has a very strict time scale in order to comply with the EU framework decision and therefore shortens the process wherever possible. We welcome the intention in the clause to introduce discretion to the court to consider an appeal. As Lord Mance observed in the majority Supreme Court decision in Lukaszewski v The District Court in Torun, Poland,58 “[t]he problems of communication from prison with legal advisers in the short permitted periods of seven and 14 days are almost bound to lead to problems in individual cases. It is no satisfactory answer that a person wrongly extradited for want of an appeal as a result of failings of those assisting him might, perhaps, be able to obtain some monetary compensation at some later stage”.59 The provision has led to some notable injustices,60 particularly where people are remanded in custody and

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59 At [37].
60 Such as in Garry Mann v City of Westminster Magistrates’ Court and others [2010] EWHC 48 (Admin) where Moses LJ observed ‘Neither Parliament, in enacting the strict statutory scheme relating to Part 1 extraditions in the 2003 Act, nor the House of Lords in Macelli and in Hilali, nor this court in Navadonskis can possibly have envisaged one man being deprived of proper legal assistance by two sets of lawyers in two separate jurisdictions on two distinct occasions. Yet I accept this court is powerless to act. It has no jurisdiction’ at [17]. See also Fair Trials International report http://www.fairtrials.net/cases/garry-mann/.
unrepresented.61 Without amendment, the statute is capable of generating considerable unfairness in individual cases.62 Clause 127 introduces flexibility into this process in this way:

But where a person gives notice of application for leave to appeal after the end of the permitted period, the High Court must not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.

46. We understand that the wording follows Lukaszewski where the Court held that ‘[the High Court] must have power to permit and hear an out of time appeal which a litigant personally has done all he can to bring and notify timeously.’63 However, it is curious to include this level of explanation in legislative form. The Court in the same paragraph also held that:

‘the statutory provisions concerning appeals can and should all be read subject to the qualification that the court must have a discretion in exceptional circumstances to extend time for both filing and service.’ (Emphasis added)

We would propose that a formulation akin to the italicised wording is used. It is more appropriate for legislative drafting and leaves the exceptional circumstances in which an extension of time may be allowed to be defined by the court, in the interests of justice. This will avoid the appellant having to satisfy a further requirement of proving whether they did ‘everything reasonably possible’ to submit in time.

47. We also consider that a 14-day period of time to appeal is the more appropriate period in Part 1 as well as Part 2 cases, in addition to the court’s discretion to extend time. This is because it can often take time for a legal aid application to be considered, during which it is not possible for lawyers representing the requested person to undertake any work on the case. Were a 14-day period available this might reduce the number of flawed notices that are submitted by unrepresented people.

Leave

48. Clause 127 also creates a requirement for leave of the High Court to be granted before a requested person’s appeal against an extradition order will be allowed to proceed. Currently appeals can be submitted as of right and proceed straight to the merits. The leave test intends to introduce a paper sift of applications for prospects of success in order to reduce the burden of appeals upon the High Court.64 It is unclear why the leave requirement is limited to the appeals of requested persons and does not include appeals by the requesting state. Both parties should be subject to the same requirements in order to foster the equality of arms. In extradition cases, the requesting state is already assisted by specialised CPS extradition lawyers, Eurojust and the European Judicial Network. The requested person may only receive the assistance of an inexperienced duty solicitor.

49. The proposed amendment does not provide for procedure or appeal. The Scott Baker Review recommended leave should be sought and granted on paper with right of appeal against refusal to a judge at an oral hearing.65 A review of the decision must be provided in order to make the process fair. At a minimum this process should be clarified either in the EA or in the Criminal Procedure Rules.

50. Nevertheless, we are concerned that the introduction of a leave process will prevent meritorious appeals from being heard. Many appellants within the seven day period for appeal are unrepresented and can manage only the bare minimum in the submission of their appeal.66 Despite the appropriate course being to file a notice of appeal containing the grounds of appeal with the court and then serve the court sealed copy of the notice and grounds upon the CPS within seven days, the Supreme Court in Lukaszewski has indicated that a failure to do so under the current system can be cured during the case management process of the appeal.67 If a leave procedure is introduced, it will be necessary for appellants to satisfy the High Court upon application that they have an arguable case that the extradition judge’s decision was wrong in fact or law. Without legal representation this process will risk the extradition of people who have meritorious grounds for refusal but cannot express them in terms that will satisfy the sifting judges.

51. Even if the requested person had the assistance of a duty solicitor at court for the extradition hearing, this does not necessarily mean that a legitimate concern will be raised, since duty solicitors are not required to undertake training in extradition law. As Edward Grange, a specialist extradition solicitor, has explained,

At present there are over 400 individual solicitors signed up to the extradition rota at Westminster Magistrates’ Court. The majority of individual solicitors have never had conduct of an extradition case

61 See the facts of Lukaszewski where all three appellants were remanded in custody at HMP Wandsworth following decisions to surrender them to Poland. None had legal representation. They were assisted by the prison officers in the Legal Services Department to file their notices of appeal. The officers do not have a legal background. They faxed the applications to the Court, which returned a sealed front page. The Legal Services Department then faxed only these front pages to the Crown Prosecution Service without the rest of the applications. The CPS objected that this did not amount to service, with which the High Court agreed, though the Supreme Court reversed the decision. This process has been repeated on numerous occasions.

62 Lukaszewski, at [35].

63 Ibid, per Lord Mance at [39].


65 At [10.14].

66 Consider the facts of Lukaszewski.

67 At [19].
before and yet these are the solicitors that are entrusted to provide appropriate advice and assistance to those arrested on extradition warrants. The Extradition Act 2003 is complex and the case law it has generated is vast.64

52. Mr Grange refers to the case of Juszczak v Poland65 to illustrate his concerns, where the High Court overturned a decision to surrender on the ground that the requested person was the essential carer of his 17 year old daughter with severe four limb cerebral palsy and to surrender him would interfere with their family life pursuant to article 8 ECHR. No mention of this was made to the extradition judge during the hearing. Mr Justice Collins went so far as to say,

That shows, on the face of it, a failure of the duty by that solicitor, and I hope some inquiries will be made to see whether that solicitor should indeed remain as one who is available to appear in extradition cases at Westminster Court.70

Under a leave application, before new lawyers could be found to properly present the evidence, Mr Juszczak could have been returned to Poland.

53. Whilst it is hoped that this type of case is a rare occurrence, if a leave procedure is to be introduced, the extension of the time limit to 14 days is even more important as a mechanism to ensure effective access to the High Court. To satisfy a leave condition will require specialised and complex work. We believe that a 14-day time limit to enable fair access to the court justifies the potential failure to comply with the strict time limit of the EAW framework decision.

54. It is equally essential that legal aid is granted expeditiously and prior to the leave decision. Currently, the means testing requirements in extradition cases can operate to prevent legal representation at the extradition hearing. This is unacceptable.71 Given the Government proposals for price competitive tendering at the magistrates’ court and removal of legal aid for judicial review hearings,72 it is by no means certain that sufficient defence expertise will be accessible at the initial or appeal stages of the extradition process.

PART 12—CRIMINAL JUSTICE AND COURT FEES

Clause 132—Compensation for miscarriages of justice

55. Clause 132 proposes the amendment of section 133 of the Criminal Justice Act 1988 which provides for the payment of compensation to a person whose conviction has been reversed, or they have been pardoned, owing to the discovery of new evidence, which shows beyond reasonable doubt that there has been a miscarriage of justice. The duty falls upon the Secretary of State to pay such compensation. The proposed amendment would re-define the test for a miscarriage of justice, limiting it to circumstances ‘if and only if the new or newly discovered fact shows beyond reasonable doubt that the person was innocent of the offence.’

56. Between 1957, when JUSTICE was founded, and 1997, when the Criminal Cases Review Commission (‘CCRC’) was established, JUSTICE was the leading organisation concerned with correcting miscarriages of justice in the UK. The Court of Appeal and the Criminal Cases Review Commission were set up following cases involving undoubted ‘miscarriages of justice’—a phrase which has now entered everyday parlance. Following the abolition in 2006 of the ex gratia compensation scheme, section 133 is now the only means by which a person who has suffered a miscarriage of justice can obtain financial redress from the State. It is vital that the threshold for obtaining such compensation is not set unattainably high. It would be perverse, for example, if none of the notorious miscarriage of justice cases which led to the establishment of the CCRC would now qualify for compensation under section 133.73 Restricting compensation under section 133 to cases where the applicant can demonstrate his innocence is unduly narrow, and does not provide adequate redress in cases where the criminal justice system has gone seriously wrong.

57. The UK Supreme Court considered the test for ‘miscarriage of justice’ in R v Adams74. JUSTICE intervened in that case to ask the court to find that Lord Bingham’s formulation in R (Mullen) v Secretary of State for the Home Department [2005] 1 AC 1 at [4] is correct. Lord Bingham stated that compensation should be paid where the applicant is (a) innocent, or (b) ‘whether guilty or not, should clearly not have been convicted’ or where ‘something has gone seriously wrong in the investigation of the offence or the conduct of the trial, resulting in the conviction of someone who should not have been convicted.’

58. The Supreme Court in Adams did not go as far as this, but decided that the test should be:

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65 [2013] EWHC 526
66 At [17].
68 Ministry of Justice, Transforming legal aid: delivering a more credible and efficient system, Consultation Paper CP 14/2013.
69 The cases of the Birmingham Six, the Guildford Four, The Maguire Seven, The Cardiff Three and Judith Ward would not satisfy the proposed innocence test.
A new fact will show that a miscarriage of justice has occurred when it so undermines the evidence against the defendant that no conviction could possibly be based upon it.\(^79\)

59. In coming to this conclusion, Lord Philips considered a test that requires innocence,

…will deprive some defendants who are in fact innocent and who succeed in having their convictions quashed on the grounds of fresh evidence from obtaining compensation. It will exclude from entitlement to compensation those who no longer seem likely to be guilty, but whose innocence is not established beyond reasonable doubt. This is a heavy price to pay for ensuring that no guilty person is ever the recipient of compensation.\(^76\)

60. We agree with this analysis. It is also an unnecessary price to pay since the Government indicates in the Explanatory Notes that only four individuals have been awarded compensation by the Secretary of State under s.133 since 2010.\(^77\) There can be no justification for narrowing the test further when so few applications are currently granted.

61. The test was considered by the Divisional Court in \(R\) (Ali and others) \(v\) Secretary of State for Justice\(^78\) following re-applications for compensation on the \(Adams\) test, which the Secretary of State again refused. The Court re-formulated the test in this way and we agree that this is the appropriate and fair test to apply:

40. In our view, it is highly desirable that the test should be formulated in a practicable way, and with reference to the system of criminal justice that obtains in England and Wales. It must accommodate the fundamentals of that system: the burden and standard of proof, and the tribunals of fact which reach conclusions on guilt or innocence… In the test formulated by [Lord Philips], and specifically in the phrase “no conviction could possibly be based upon it”, we do not understand him to convey anything other than a consideration of what a jury (or magistrates) might do when properly directed as to the law and acting reasonably. In his phrase, the word “possibly” stands proxy for the high standard, demanded by the statute, by which a claimant must prove that no reasonable jury could properly convict. The formulations preferred by Lord Clarke and Lord Kerr did this in a different way, and one that we consider is more sensitive to the trial processes in this jurisdiction.

41. With great deference to Lord Phillips, we suggest that the following formulation, derived from those of Lord Clarke and Lord Kerr, carries an identical meaning to the test he formulated, but may be more readily useful to lawyers advising claimants and the Secretary of State:

“Has the claimant established, beyond reasonable doubt, that no reasonable jury (or magistrates) properly directed as to the law, could convict on the evidence now to be considered?”

62. A test of innocence will be impossible for many to satisfy. As Lady Hale observed in \(Adams\), the Court’s favoured test, as opposed to one requiring innocence,

is the more consistent with the fundamental principles upon which our criminal law has been based for centuries. Innocence as such is not a concept known to our criminal justice system. We distinguish between the guilty and the not guilty. A person is only guilty if the state can prove his guilt beyond reasonable doubt… He does not have to prove his innocence at his trial and it seems wrong in principle that he should be required to prove his innocence now.\(^79\)

63. It also reflects the intention and purpose of section 133 as drafted. The section gives effect, almost verbatim, to section 14(6) of the International Covenant on Civil and Political Rights 1966. Nothing in the Covenant itself, or in the \textit{travaux préparatoires}, demonstrates a consensus among the States Parties that compensation should be paid only to the innocent. As Lord Bingham noted in \textit{Mullen}, “every proposal to that effect was voted down. The \textit{travaux} disclose no consensus of opinion on the meaning to be given to this expression. It may be that the expression commended itself because of the latitude in interpretation which it offered.”\(^80\) To that extent, an amendment to limit compensation to the factually innocent would breach the UK’s international obligations to give effect to the ICCPR.

64. Furthermore the proposed amendment may infringe article 6(2) ECHR (which provides for the presumption of innocence). The European Court of Human Rights has applied the presumption of innocence to a variety of scenarios following acquittal and concluded that the right under article 6 will be violated where a statement or decision reflects an opinion that the person is guilty, unless he has been proved so according to law.\(^81\) If compensation is not awarded following the quashing of a conviction because the Secretary of State is not satisfied of the applicant’s innocence, this will be a clear interference with the presumption of innocence that the person is entitled to.

\(^79\) \textit{Ibid.} at [55].
\(^76\) At [50].
\(^79\) At [116].
\(^80\) \textit{Supra} at [9(2)].
\(^81\) \textit{Hussain v United Kingdom} (2006) 43 EHRR 22 (concerning a decision on costs following acquittal); \textit{Lamanna v Austria} (App no. 28923/95, 10 July 2001) (concerning compensation for detention on remand).
65. Finally, were the Secretary of State to attempt to decide on the innocence of an applicant whose conviction has been reversed, they would find themselves manifestly ill-suited to the task. The serious difficulties faced by the Home Office in reviewing criminal convictions in potential miscarriage of justice cases were outlined by JUSTICE in its 1968 report *Home Office Reviews of Criminal Convictions*, were recognised in 1993 by the Runciman Commission, and led to the establishment of the CCRC as a body better equipped, by reason of its independence and expertise, to carry out that fact finding function. This was without a requirement to consider whether a person is innocent beyond reasonable doubt. There may be little assistance from the Court of Appeal since it does not make a finding of innocence on quashing a conviction\(^2\) and in no other than the clearest cases will the judgment reveal actual innocence.

66. We can see no justifiable reason to overturn the decisions of the courts in *Adams* and *Ali*, other than to restrict access to compensation for those who have had their convictions overturned. Many of these people have spent significant periods in prison and have endured hardship, stigma and deprivation as the result of wrongful conviction. It is unfair and unreasonable to deny them compensation for that treatment.

June 2013

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**Written evidence from Irwin Van Colle (ASB 21)**

**Background for this Submission**

1. On 22 November 2000 my son Giles was murdered, to stop him being a witness in a trial of a former employee, who had stolen some of his stock.

2. Since that time my wife and I has been through every court in the UK and in the Court of Human Rights in Strasbourg.

3. Our son’s murderer is in jail and will remain there for several more years.

4. As a result of information learnt at the trial we complained to the then Police Complaints Authority about the Hertfordshire policeman in the case.

5. This led to a disciplinary hearing at which the policeman was disciplined with the punishment of loss of five day’s pay, which we learnt much later.

6. Because of the failure to advise us of the punishment and the failure to provide us with an apology, we instituted proceedings under the Human Rights Act—Van Colle v The Chief Constable of Hertfordshire Police.

7. In the High Court we were successful.

8. The police appeal to the Court of Appeal was unsuccessful but the damages award was reduced.

9. The second police appeal to the House of Lords led to the judgement being reversed in favour of Hertfordshire Police.

10. Because of the reasoning in the House of Lords judgement, we took our case to Europe where, under the margin of appreciation rule, we were unsuccessful.

11. Our subsequent appeal to The Grand Chamber was also unsuccessful.

**The Legal Principles at Stake in our Case**

12. Our case is one of the two most significant Article 2 cases that have been considered by the UK Courts in relation to policing in the UK. The other case was the Osman case.

13. Our case included

   (a) whether the police were subject to Human Rights law;

   (b) whether witnesses should have special consideration under Human Rights law, which they did in the period between the High Court judgement and the House of Lords judgement;

   (c) whether Witness Protection Protocols had legal significance; and

   (d) whether the Osman judgement had been infringed sufficiently to find that Article 2 of the Convention had been breached. Four judges had found unanimously for us but five in the House of Lords rejected their colleagues’ judgements.

14. The Courts have long protected the police, as a matter of public policy, from claims under common and statute law. Our case was precedent setting. It was the first case to be found against the police under Human Rights law.

\(^2\) In the Birmingham Six case, *R v McIlkenny and others* [1992] 2 All ER 417, the Court of Appeal held: ‘Nothing in s.2 of the 1968 Act or anywhere else obliges or entitles us to say whether we think that the appellant is innocent. This is a point of great constitutional importance. The task of deciding whether a man is guilty falls on the jury. We are concerned solely with the question whether the verdict of the jury can stand’ at [424-5].
15. The judgement in the House of Lords was that because the policeman had “not perceived the risk”, (despite being found guilty of failing to do his job properly at his disciplinary) the “knew and ought to have known” part of the Osman judgement did not apply. This judgement created the best excuse anyone working in the public sector will ever need to avoid legal challenge in any case which involves a death of, or injury to, anyone with whom they are dealing. The judgement returned witnesses to the previous status quo—they were not a special category in law. That the Witness Protection Protocol had been breached, but did not affect the outcome of the case, meant the Protocol was without legal significance.

16. The threats that were made to our son were communicated to the experienced policeman, who took no action even though his ordinary job function could have been used to provide some protection. Police powers ordinarily include the power to inform an arrested person that his behaviour had been reported to the police, which can cause that person to desist from threatening a witness. Police powers also include arresting a person, subject to unconditional bail conditions, and taking them before a magistrate to vary the conditions as a result of reported witness intimidation. The policeman could not be disciplined for failure to enact the Hertfordshire Witness Protection Protocol because he had not received training about it and had never seen it.

17. The House of Lords heard our case together with a common law case in which the litigant was challenging the police for failing to protect him from a vicious attack by a former friend and established legal principles were applied. The judgement in that case was for the police. When we learnt that both cases were to be heard together, we knew that it would be surprising to expect the Court to find for us in our Human Rights case.

18. There have now been two Human Rights cases decided by the House of Lords/Supreme Court in favour of litigants bringing actions against the NHS involving fatalities—the Savage case and the Rabone case. The NHS is routinely subject to claims for negligence. There is now huge hypocrisy in the law as it affects the NHS and the police, both equally important organs of the state. The police appear to be above both common and Human Rights law, when it is clearly obvious that they have failed to do their job properly. That is both wrong and unacceptable.

19. It remains a fact that the police have no duty to protect in law, other than the Osman judgement. The UK Courts in our case have now rendered that meaningless in relation to the police. The public does not understand that the duty to protect is not backed up by statute law in any Act of Parliament.

CONCLUSION

20. This submission is written without any firm recommendations as to what Parliament may wish to do about this, as I have not had time to collect advice as to how exactly the bill before the committee may be amended to reverse the judgement in our case. That the judgement does need to be reversed by parliament is absolutely necessary. Clearly parliamentary draughtman skill is required to effect that objective.

21. Witness Protection Protocols need to be given legal significance so that the failure to engage one automatically gives rise to fault if death or injury results to a witness.

22. The state provides its citizens with a range of personal services under different laws and the provision of policing should be no more or less significant in law than, say, the provision of social services or the NHS. All are absolutely necessary for the proper functioning of society. That one branch of the state is completely protected from legal challenge if at fault does not seem to be sensible in the twenty first century. As seen in the NHS recently, all parts of the state are subject to fault or error. This must be expected from time to time because services are provided by people, and people are fallible.

23. Human Rights law provides a cheap method of redress because damages are tiny and it is case specific. The apology in the form of a declaration costs nothing other than drafting time. If greater use was made of this type of legal resolution, significant savings can be made to the state budget for legal costs.

24. The bill before you provides an opportunity to introduce into law some strengthening of the law in relation to policing for the benefit of those who they serve.

25. Any change in the law will have no effect on our case, which is lost. We seek no sympathy, despite losing our son and bearing significant legal costs in our action. Our legal legacy, through no fault of our own appears to be appalling law. This submission is for those that come after us, who may be similarly affected, and is our attempt to right the legal wrong that now exists.

26. I am willing to attend your committee to speak on this further if you wish to ask me.

27. Thank you for considering my submission.

June 2013
Written evidence from the Association of Police and Crime Commissioners (ASB 22)

Introduction

Police and Crime Commissioner Response to Q 142 as raised by the Rt Hon Stephen Barclay, North East Cambridgeshire (Con).

Question (Extract)

Stephen Barclay, North East Cambridgeshire (Con): What I am driving at is that if you look at the fire service, where they have a college, it has not overcome the obstacle of the legal independence of fire authorities. One can look at even simple measures, such as the procurement of a white shirt: I lost sight of the different options—I began to lose the will to live—for pockets on a white shirt, which different forces seemed to require, at variance to other forces. On the matter of back office mergers, the north-west in particular was an outlier in its failure to work with other forces on back office controls. What I wanted to understand—

The Chair: Order. I have to interrupt because we are out of time.

Stephen Barclay: Perhaps we can have a note. The key issue is how the college will address what the NAO has found with the fire service and police procurement, to do with the benefits we all agree on, of procurement as a whole, as against the individual actions of legal entities that can do their own thing.

PCCs Submission Note in Relation to Question 142 of This Session (Above)

In the present climate it is even more essential for Police and Crime Commissioners (Commissioners) to be at the heart of shaping future police procurement and commercial strategies. This includes the implementation of the recommendations from the recent National Audit Office report into police value for money.

Commissioners are members of the Home Office Collaborative Police Procurement Programme Board (CPPPB) which seeks to maximise savings through securing smarter procurement activity. One of the primary aims of this board is to ensure that the NAO recommendations are actualised.

Key activities under the programme to date include the delivery of the national forensics framework which has already brought 10% savings to the police service, the National Police Vehicle Fleet Framework has resulted in savings of £8 million due to regional collaboration and the development and introduction of the CPPP operating model which provides a “best value” route to market for the majority of non-IT spend.

Commissioners and other board members are presently focused on a number of spend reduction programmes which include supporting the delivery of a national end to end managed uniform strategy, which for the first time will allow a national approach to the delivery of police uniforms. This strategy could reduce costs by up to 15% as well as freeing up police officers time to spend on front line duties.

Police and Crime Commissioners’ are also members of the Police Commercial Forum which is an informal and confidential gathering of senior police stakeholders to discuss to explore the value and benefit of entering into private sector partnering or furthering the partnerships already in place. Commissioners’ will support the Policing College and relevant National Policing Business leads to enable standardisation and common specifications that deliver significant savings and benefits across the police service.

June 2013

Written evidence from Rt Hon Damian Green MP (ASB 23)

Anti-Social Behaviour, Crime and Policing Bill: Government Amendments for Commons Committee Stage

I am writing to let you have details of amendments to the Bill which I have tabled today.

Amendments to Existing Provisions

Independent Police Complaints Commission (amendments to clauses 116 and 118 and Schedule 7)

The Bill includes a number of provisions extending the remit and powers of the Independent Police Complaints Commission (IPCC). These include provision, at clause 118, conferring on the IPCC a power to serve an ‘information notice’ on any person where they hold information that is reasonably required for the purposes of an investigation being conducted by the Commission (and therefore relate to the most serious categories of alleged misconduct). An ‘information notice’ will require the organisation concerned to disclose the relevant material to the IPCC. Clause 118 on introduction included some safeguards for certain sensitive information, but we have concluded that we now need to build on these safeguards in order to fully protect information which, if disclosed more widely (beyond the IPCC), may damage national security or the public interest.

The amendments to clause 118, and the associated amendments to Schedule 7, therefore make a number of changes to the existing provisions in the Bill, these:
to be destroyed. In fact, as at 11 June, 7.7 million DNA samples have been destroyed, and 1.1 million profiles
National DNA Database, but not required for use in ongoing investigations or in court and these will continue
be retained. The great majority of DNA samples are taken to allow a profile to be produced for addition to the
samples than is required by the Scottish model, because only DNA samples needed for evidence in court will
be damaging to national security or international relations, or the economic interests of the United
Kingdom (or any part of the United Kingdom), as a new category of information in respect of which
consent for onward disclosure is required;
— amend the exclusion for communications data under Chapter 2 of Part 1 of the Regulation of
Investigatory Powers Act (RIPA) 2000 from the scope of an information notice served by the IPCC.
This exclusion preserves the status quo so that the IPCC continue to use RIPA to secure communications
data from any communications service provider, rather than through the broad information notice
power. The current exemption is, on reflection, too wide and could prevent a person who is the subject of
an information notice from legitimately passing onto the IPCC relevant communications data which
that person has acquired from a third party under the terms of RIPA.

Clause 116 amends Part 2 of the Police Reform Act 2002 so as to extend the remit of the IPCC to cover
private sector contractors who provide services to police forces. The Bill achieves this by conferring on the
Home Secretary a power to provide that contractors of a specified description are to be treated as persons
serving with the police for the purposes of Part 2 of the 2002 Act. The amendments to this clause make it clear
that such contractors are also to be treated as persons serving with the police for the purposes of any regulations
made under Part 2 of the 2002 Act. This will ensure that the complaints framework—whether set out in primary
or secondary legislation—fully applies to designated contractors as intended.

Port and border security powers (amendment to Schedule 6)

Schedule 6 to the Bill amends the port and border security powers in Schedule 7 to the Terrorism Act 2000
in line with our commitment to ensure the right balance between security and civil liberties. Paragraph 11
of Schedule 7 already makes express provision for the retention of a ‘thing’ seized, for example for use as
evidence in criminal proceedings. New paragraph 11A of Schedule 7 to the 2000 Act makes express provision
for the copying and retention of information from a seized item, for example the call history information stored
on a mobile phone. The subsequent retention of such information will, as now, be governed by the statutory
code of practice on the Management of Police Information.

NEW PROVISIONS

Amendment to the Protection of Freedoms Act 2012 to preserve forensic samples to be used as evidence
in court (New clause 'Retention of personal samples that are or may be disclosable' and amendments to
clause 140)

The Protection of Freedoms Act 2012 (the 2012 Act) requires that all samples taken from individuals (such as
cheek swabs for DNA, blood, hair and urine) must be destroyed within six months. (This provision has not yet
been brought into force.) This applies whether the samples were taken for the purpose of including the resultant
profile on the National DNA Database or for evidence in court. It differs from the 2012 Act’s treatment of all
other evidence where retention of evidence for court is governed by the Criminal Procedures and Investigation
Act 1996 (CPIA) and retention of DNA profiles is governed by the 2012 Act.

During implementation of the 2012 Act, concerns have been raised by the Crown Prosecution Service and
police forces that this requirement to destroy samples could jeopardise prosecutions where samples are used in
proceedings (as it is difficult to counter defence arguments about samples if they are made after the sample has
been destroyed), and also jeopardise the identification of bodies where it may be necessary to retain samples
from relatives. This new clause therefore amends the 2012 Act so that samples which may be needed in court
proceedings will be governed by the CPIA in the same way as other types of evidence—thereby enabling them
to be retained during investigation and prosecution. If the 2012 Act is brought into effect as it currently stands,
forces would have to seek court orders on an individual basis for retention of samples, which would be likely
to result in a large number of applications for such orders, particularly in relation to serious cases. This would
result in increased bureaucracy and higher costs for the police and courts.

The new clause is in line with the commitment in the Coalition Agreement to ‘adopt the protections of the
Scottish model for the DNA database’. Under the Scottish model, DNA samples and profiles are both retained
if the person is convicted and destroyed if they are not. The new clause adopts a more rigorous approach to
samples than is required by the Scottish model, because only DNA samples needed for evidence in court will
be retained. The great majority of DNA samples are taken to allow a profile to be produced for addition to the
National DNA Database, but not required for use in ongoing investigations or in court and these will continue
to be destroyed. In fact, as at 11 June, 7.7 million DNA samples have been destroyed, and 1.1 million profiles
belonging to innocent individuals have been deleted from the National DNA Database under the programme to implement the 2012 Act.

Direct entry at the rank of chief constable (New clause ‘Appointment of chief officers of police’)

In January we launched a consultation on the implementation of schemes to enable direct entry into the police as recommended by Tom Winsor in his second report on Police Officer and Staff Remuneration and Conditions. This consultation sought views on how, rather than whether, we should give effect to Tom Winsor’s recommendations in this area. Facilitating direct entry to senior ranks in the police would ensure that the police have access to the best and widest pool of talent at leadership ranks and that, as a result, they are best placed to fight crime and keep communities safe.

Direct entry at chief officer rank requires primary legislation to relax the current stipulation in the Police Reform and Social Responsibility Act 2011 that a person appointed as a chief constable must have served as a constable in the UK. This new clause places a duty on the College of Policing to determine other countries in whose police forces a person may have served, with the list being subject to the approval of the Home Secretary. The Home Secretary’s approval would only be granted in relation to common law jurisdictions which practise policing by consent.

June 2013

Written evidence from Fair Trials International (ASB 24)

ABOUT FAIR TRIALS INTERNATIONAL

Fair Trials International (Fair Trials) is a non-governmental organisation that works for fair trials according to internationally recognised standards of justice and provides advice and assistance to people arrested across the globe. Our vision is a world where every person’s right to a fair trial is respected, whatever their nationality, wherever they are accused.

Fair Trials pursues its mission by helping people to understand and defend their fair trial rights; by addressing the root causes of injustice through our law reform work; and through targeted training and network activities to equip lawyers to defend their clients’ fair trial rights.

Through our expert casework practice, assisting people in cross-border criminal cases, we are uniquely placed to provide evidence on how policy initiatives affect suspects and defendants facing extradition. We provided detailed evidence to the enquiries of Sir Scott Baker (the Sir Scott Baker Review), the Joint Committee on Human Rights (the JCHR) and the Home Affairs Committee (the HAC), highlighting ways in which the UK’s extradition laws could be amended to introduce workable safeguards against abuse and injustice.

INTRODUCTION

1. The benefits of a streamlined extradition system are clear. However, insufficient attention has been paid to the heavy toll that extradition takes on individuals and their dependents and families. After debates in Parliament, in-depth enquiries and many high-profile cases, there is a growing consensus that there are flaws in the UK’s current extradition arrangements requiring legislative action. On 5 December 2011, for example, MPs from across the political spectrum voted for reform of the UK’s extradition laws.

2. On 16 October 2012, the Home Secretary responded to the Sir Scott Baker Review in a statement to the House of Commons. Subsequently, in March 2013 a number of amendments to the Extradition Act 2003 (the Extradition Act) came into force, including the introduction of statutory forum bar and the removal of the Home Secretary’s discretion in Part 2 extradition cases. However, a series of further amendments to introduce much needed safeguards into the UK’s extradition laws were tabled but not debated, and the Home Secretary stated in the House of Commons on 18 March 2013 that she would bring forward additional changes to the Extradition Act, both to add further safeguards where they are needed and to improve its effective operation, “as soon as parliamentary time allows”.

3. The Government has now published a series of amendments to the Extradition Act in response to the Sir Scott Baker Review in Part 11 and Schedule 7 Part 3 of the Anti-Social Behaviour, Crime and Policing Bill (the Bill), which was introduced into the House of Commons on 9 May 2013. Fair Trials was delighted to have the opportunity to give evidence to the Public Bill Committee on 20 June 2013. This briefing relates to Clause 127 of the Bill, which changes the process and deadlines for appeals against extradition from the UK.

83 The Sir Scott Baker Review reported in October 2011; the Joint Committee on Human Rights reported in June 2011; and the Home Affairs Committee reported in March 2012.
84 Hansard 5 Dec 2011 : Column 130.
85 Hansard 16 October 2012: Columns 164 to 166.
86 Hansard HC Debate, 18 March 2013: Column 753.
87 The text of the Bill and accompanying documents are available at http://services.parliament.uk/bills/2013-14/antisocialbehaviourcrimeandpolicingbill.html
4. This briefing also contains further amendments to the UK’s extradition laws which implement many of the additional changes recommended by the Sir Scott Baker Review and the report of the JCHR. The Home Secretary has acknowledged that there are problems in the use of the European Arrest Warrant (EAW) for trivial offences and around lengthy pre-trial detention of British citizens overseas. Fair Trials is therefore disappointed that the Government did not include reforms to address these issues in the Bill, which are crucial if the UK is to have a fair and effective extradition system. They will also reduce costs and increase efficiency.

A. PROPOSED REFORMS TO THE EXTRADITION ACT 2003 IN THE ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL

1. Extend the deadline to appeal against extradition in EAW cases

1.1. Fair Trials welcomes the introduction of flexibility to the treatment of appeal deadlines which address, to a certain extent, one of the recommendations of the Sir Scott Baker Review. The current timeframes for filing appeals against extradition decisions in the UK are far too strict. The one week deadline in EAW cases is too short and can result in injustice given the court’s lack of discretion to hear the appeal if the deadline is missed, even where this is not the fault of the individual concerned. The amendments proposed in Clauses 127(1)(c), (2)(c) and (3)(c) recognise that such strict deadlines are not appropriate given the unique difficulties faced by extradition defendants in terms of gathering evidence from abroad or compiling information about the human rights situation in other countries. The Sir Scott Baker Review concluded that the inflexible time limit for the filing of an appeal in EAW cases is operating to cause injustice.

1.2. This is demonstrated by the case of Garry Mann, who was extradited to Portugal to serve a 2 year prison sentence in May 2010. In 2004 Garry was arrested, tried and convicted within 48 hours for involvement in a riot, in a grossly unfair trial where he had no time to prepare a defence and standards of interpretation were inadequate. Garry accepted voluntary deportation from Portugal on the understanding that he would not have to serve his sentence, but was subsequently astonished to be arrested under an EAW in 2009. Garry’s lawyers then missed the appeal deadline by less than 24 hours through no fault of his own. Lord Justice Moses, sitting in the English High Court, described the case as an “embarrassment” and said that neither Parliament or the courts “can possibly have envisaged one man being deprived of proper legal assistance by two sets of lawyers in two separate jurisdictions on two distinct occasions.” Despite this, he accepted that there were no available legal grounds upon which to refuse Garry’s extradition or allow him an appeal.

1.3. In 2012, the UK Supreme Court also recognised that “the statute will be capable of generating considerable unfairness in individual cases, unless some further relief is available”. The UK courts have since decided that there should be some flexibility to extend the appeal deadline in EAW cases where it is in the interests of justice to do so, but this only applies where the requested person is a UK national.

1.4. Whilst welcoming the introduction of flexibility, Fair Trials has concerns regarding the specific formulation proposed in Clause 127 which requires that the High Court must not refuse a “notice of application for leave to appeal after the end of the permitted period [...] if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given”. Fair Trials considers that the threshold is set too high to capture all putative reliance of most requested persons upon third parties—such as prison officials or legal aid lawyers—who actions they may not be able to influence. As such, a preferable approach would be to follow the suggestion in the Sir Scott Baker Review that flexibility be introduced through the grant of discretion to the court “to extend the time limit in the interests of justice”.

1.5. Whilst Fair Trials welcomes the introduction of flexibility in relation to appeal deadlines, we remain concerned that the current drafting may be insufficient to address potential injustices, particularly in light of the proposed removal of the automatic right to appeal. Given the often enormous impact of extradition on individuals, a standard period of 7 days to appeal (or seek leave) is, in our view, too short. This is often exacerbated by the need to obtain evidence from other jurisdictions and can raise enormous challenges when a person decides to change their lawyer after the first instance hearing. Our position on the introduction of the leave requirement is discussed in more detail in section 2 below, but its potential impact on the ability of the person to comply with the appeal deadline must also be taken into consideration. If the leave requirement is introduced and the proposal set out in paragraph 10.14 of the Sir Scott Baker Review is followed, with leave to appeal being sought and granted or refused on paper with a right of appeal against refusal to a judge at an oral hearing, the preparation and drafting needed to produce the leave application could be more onerous, complex and time-consuming than for the current notice of appeal system. Fair Trials therefore suggests that the timeframe flexibility introduced in the amendments to Sections 26(5), 103(10) and 108(5) be retained, but the permitted period in Section 26(4) also be extended to 14 days.

88 Hansard 15 October 2012: Column 36.
89 See page 333 of Sir Scott Baker’s Report.
90 See Lord Mance’s leading judgment in Łukaszewski v District Court in Torun, Poland [2012] UKSC 20, paragraphs 37 and 39
92 See paragraph 10.6 of the Sir Scott Baker Review.
2. Necessity for further details about the process of requesting leave to appeal in extradition cases

2.1. The Bill introduces a new condition requiring the leave of the High Court to appeal against an extradition order. Extradition has an enormous impact on suspects’ lives, and those of their families. Given the problems that we regularly see arising at first instance extradition hearings, Fair Trials has concerns about any measure which limits access to appeal courts. A vast majority of suspects subject to extradition proceedings cannot afford a lawyer and are therefore represented by a duty solicitor. Many of these have little experience of extradition cases and therefore may not be familiar with the complex provisions of the Extradition Act and associated case law. If the legal aid reforms that the Government is proposing, including price competitive tendering, are implemented then this is likely to become a more common problem. This can be contrasted with the position of the requesting state, which is automatically entitled to representation by a specialist unit of CPS lawyers. The complexity of extradition cases also means that there is often inadequate time at a first instance hearing for consideration of all the relevant facts and issues. If suspects lose their automatic right to appeal, then, as long as these problems at first instance remain, there may be cases which result in people being wrongly extradited.

2.2. These problems are demonstrated by the recent case of Krzysztof Juszczak, who in February 2013 successfully appealed against extradition to Poland on the basis that his removal from the UK would constitute a disproportionate interference with his family life under Article 8 of the European Convention on Human Rights. Although Mr. Juszczak is the primary carer for his severely disabled step-daughter, this was not raised by the duty solicitor before the District Judge—an omission which was criticised as a “failure of [...] duty” by Mr Justice Collins in his appeal judgment.93 As this evidence was only obtained late in the process, there is a clear danger that, under the proposed system, Mr. Juszczak would have been denied leave to appeal.

2.3. We do however recognise the problems raised by the Sir Scott Baker Review in relation to the large number of unmeritorious appeals in the extradition process, and understand the need for a leave process to ensure that appeals with merit are heard and disposed of more quickly.94 It is in the interests of both defendants and the state that the appeal process works to correct genuine errors rather than to delay the judicial process. However, while the current amendments are designed to implement the Sir Scott Baker Review’s recommendations,95 we are concerned that, as drafted, they provide inadequate information to assess whether this objective has been achieved given the absence of any reference to procedure.

2.4. It is vital that suspects are given a full opportunity to put together a case and identify any valid grounds on which their extradition should be refused, and the appeal process should reflect this. Any leave to appeal should, as recommended by the Sir Scott Baker Review, follow the standard required for judicial review, namely that the defendant must show an arguable case in order to be allowed to appeal. The inclusion of any higher standard of proof would be inappropriate, not least because the requirement to demonstrate an arguable case would, as is the case in the judicial review process, suffice to weed out those cases with no merit. Leave should be sought on paper with written reasons provided for the outcome. Defendants must then have a right of appeal against refusal to a judge at an oral hearing. Only the judge at first instance or the High Court judge who would hear the appeal should consider applications for leave to appeal.96 If all of these safeguards are guaranteed, a requirement for leave to appeal may be acceptable. However, the lack of information in the current amendments makes it far from clear that they satisfy the above recommendations of the Sir Scott Baker Review, and people could still have their lives ruined by an unjust extradition.

2.5. The current amendments do not affect the requesting state’s automatic right to appeal if an extradition request is refused. This introduces a further inequality of arms into EAW proceedings, which are already heavily weighted in favour of requesting states who have far greater resources than individuals and benefit from a strict ‘no questions asked’ regime which gives courts very little power to refuse extradition. If leave to appeal is introduced, then this must apply equally to requesting states and requesting persons to ensure protection of the fundamental principle of equality of arms.

93 Juszczak v Circuit Court Poznan Poland [2013] EWHC 526 (Admin), paragraph 17.
94 See paragraph 10.15 of the Sir Scott Baker Review.
95 This is stated on page 65 of the Explanatory Notes to the Bill.
96 These recommendations are set out in paragraph 10.14 of the Sir Scott Baker Review.
B. Proposed Additional Amendments to the Extradition Act 2003

I. No extradition under an EAW until a case is trial ready

Amendment

After section 14 (Passage of time) insert:

“14A Prematurity in accusation cases

1) A person’s extradition to a category 1 territory is barred by prematurity if (and only if)—
(a) he is accused of committing an extradition offence, and
(b) it appears that the proceedings against him in respect of that offence are not yet ready for trial.

2) A decision by the judge that a person’s extradition is barred by reason of prematurity does not prevent the subsequent execution of a Part 1 warrant against that person in respect of the same extradition offence.”

In section 11 (Bars to extradition), in subsection (1), after paragraph (c) insert—

“(ca) prematurity;”

Effect

1.1. The proposed amendment would prevent extradition where this is merely to aid an investigation and would enable the court to defer extradition on an accusation warrant (an EAW issued for the purposes of prosecution when a person is accused of committing an offence) where the case is not ready for trial in the requesting state.97

Briefing

1.2. The purpose of extradition is either to enable a person to be prosecuted, or to require them to serve a prison sentence already imposed. However, Fair Trials sees numerous cases where people are extradited under an EAW, long before the state is ready to prosecute. Prior to extradition these people are frequently granted bail and are able to continue their work or studies. Following extradition, however, they have no local address and, as foreign nationals, may be considered a flight risk. This can lead to them being held for months in prison, often in extremely difficult conditions, awaiting trial.

1.3. Approximately 21% of the total EU prison population is in pre-trial detention; over a quarter of those detainees are foreign nationals. In some EU countries, pre-trial detention can last for up to four years. People are often detained in appalling conditions that make trial preparation impossible. Excessive pre-trial detention caused by extradition before a case is trial-ready also has a detrimental effect on a suspect’s family members, particularly when detention is overseas, as visiting will be more costly and difficult. There is a wider socioeconomic cost as lengthy pre-trial detention will usually result in the suspect losing his or her job, which can have a severe financial impact on other family members.

1.4. This point is illustrated by the case of Andrew Symeou, a British student who was extradited to Greece in July 2009 to face charges in connection with the death of a young man on a Greek island. Andrew was extradited long before the Greek court was ready to try him, and endured almost a year in terrible prison conditions before being granted “local” bail in Greece. Andrew was finally cleared by a Greek court in June 2011, almost four years after the events in question, during which time he had not been able to continue his university studies and his family had their lives turned upside down.

1.5. The Extradition Act should be amended to prevent extradition where this is merely to aid an investigation and to allow for deferred extradition where a case is not trial-ready.98

97 This problem was recognised by both the Sir Scott Baker Review and the JCHR.
98 This problem was recognised by both the Sir Scott Baker Review and the JCHR.
2. Allow courts to seek further information in an EAW case where there is suspicion of mistaken identity

Amendment

In section 7 (Identity of person arrested) after subsection (4) insert—

“4A) If the judge decides that question in the affirmative he must decide whether the person in respect of whom the warrant was issued is the person who is alleged to have committed, or to have been convicted for, the offence on which the warrant is based.

4B) The judge must decide the question in subsection (4A) on the balance of probabilities, but if he considers there is a reasonable doubt as to that question, he may not decide it in the affirmative unless he has first requested the issuing authority to provide further information within the time specified in the request (which must not be less than a reasonable time in all the circumstances) and the issuing authority has provided him with the information requested within that time.

4C) If the judge decides the question in subsection (4A) in the negative he must order the person’s discharge.”

Effect

2.1. This amendment would enable the judge at the extradition hearing to request more information where there is real doubt that the person sought is actually the person suspected or convicted. That would be particularly valuable in cases where there is a reasonable belief that the person sought has had his/her identity stolen or where there is a clear case of mistaken identity.

Briefing

2.2. There are currently no grounds in domestic law upon which to refuse extradition where there are serious doubts about whether the person sought is the person who committed the crime or is suspected to have committed the crime.99 Such a situation has arisen in several cases where the person subject to the EAW has had their identity stolen by the real perpetrator or where that perpetrator has falsely identified someone else as the person who committed the offence. The inability of courts to ask for this even where there is clear evidence that the person could not have committed the crime can lead to suffering and injustice.

2.3. This is demonstrated by the case of Edmond Arapi. Edmond was tried and convicted in his absence in Italy and given a sentence of 16 years. He had no idea that he was wanted for a crime or that the trial or subsequent appeal had taken place until he was arrested at Gatwick Airport in 2009 on an EAW on his way back from a family holiday. The British courts ordered that Edmond be sent to serve the sentence in Italy despite clear proof he was at work in the UK of the day of the alleged offence. On the day the appeal against his extradition order was to be heard at the High Court, the Italian authorities decided to withdraw the EAW following a campaign by Fair Trials International, admitting that they had sought Edmond in error. Edmond narrowly avoided being separated from his wife and children, including a newborn son, and spending months or years in an Italian prison awaiting a retrial.

2.4. An amendment is needed to give courts greater discretion to request further information where there are reasonable grounds to believe that the person sought under an EAW is the victim of mistaken or stolen identity.100

99 Article 15(2) of the EAW Framework Decision contains a general duty on the court in the executing state to seek further information where it considers existing information deficient.

100 The JCHR’s Report recommended this amendment (see page 34). Sir Scott Baker’s report acknowledged that the current legislation could cause a problem in the case of identity theft (see page 158).
3. Discretion to refuse extradition where requested person wanted under a “conviction EAW” is a British national or resident

Amendment

After Section 20 (Case where person has been convicted) insert:

“20A. Service of sentence in United Kingdom

3) If the judge is required to proceed under this section (by virtue of section 20) he must decide whether the person is a United Kingdom national or a resident of the United Kingdom.

4) If the judge decides the question in subsection (1) in the negative he must proceed under section 21.

5) If the judge decides that question in the affirmative he must decide whether it is possible for the person to serve the sentence in the United Kingdom.

6) If the judge decides the question in subsection (3) in the negative he must proceed under section 21.

7) If the judge decides that question in the affirmative he must decide whether it is possible for the person to serve the sentence in the United Kingdom.

8) If the judge decides the question in subsection (5) in the negative he must proceed under section 21.

9) If the judge decides that question in the affirmative he may refuse extradition provided that he orders the person to serve the sentence (or to complete the service of the sentence) in the United Kingdom.

10) Where the judge makes an order under subsection (7) he shall issue a warrant authorising the person’s detention in the United Kingdom and containing any provisions which the judge considers appropriate for giving effect to the sentence which gave rise to the proceedings (or the portion of the sentence remaining unserved”).

Consequential amendments are required to Sections 20 and 21 as follows:

In section 20(2) and (4), for “21” substitute “20A”, so “proceed under section 21” reads “proceed under section 20A”

In section 21(1), for “21” substitute “20A” so “by virtue of section 11 or 20” reads “by virtue of section 11 or 20A”.

Effect

3.1. This proposed amendment would allow the judge at the extradition hearing to refuse to extradite a person under a conviction EAW (an EAW issued not to require a person to be prosecuted in the requesting country, but to serve a sentence already imposed there) if the person is a British resident or national or lawfully staying in the UK and it is possible for them to serve their sentence in the UK.

Briefing

3.2. UK courts have no discretion to refuse to extradite a British national or resident to serve a sentence in another country on the basis that it is more appropriate that he or she serves that sentence in the UK. This means that individuals may be extradited from the UK following a conviction in another jurisdiction only to be transferred back to the UK after the lengthy and bureaucratic prisoner transfer process. This is a waste of time and money. UK courts should be given the option of allowing the defendant to stay in the UK to serve the sentence. There is, however, no clear legal basis for this to happen at present.

3.3. This issue is illustrated by the cases of Luke Atkinson and Michael Binnington, two young cousins from Essex who were extradited to Cyprus under a conviction EAW to serve a sentence imposed after they were backseat passengers in a car that collided with a moped, killing the driver and seriously wounding the passenger. Their uncle, the driver of the car, had pleaded guilty to manslaughter on the understanding that Michael and Luke would not be prosecuted as passengers. Despite this, both were tried. Although they were initially acquitted, they were later convicted in their absence on appeal by the prosecutor. Eight months after extradition, they were transferred back to the UK to serve their sentences. This extradition was a waste of time and money and caused unnecessary suffering to Luke, Michael and their families.

3.4. Sir Scott Baker recognised that this ground for refusal to execute an EAW “is not only humane it would avoid the expense and inconvenience of resorting to the prisoner transfer process”. 101 UK courts should be given the option of allowing the defendant to stay in the UK to serve their sentence. This is expressly allowed for under the EAW Framework Decision.

C. PROPOSED AMENDMENT TO THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

1. Abolish means-testing for legal aid in all extradition cases

Amendment

Insert new subsection (1A:

"(1A) But subsection (1) does not apply to services in connection with proceedings for dealing with the individual under the Extradition Act 2003."

Effect

The suggested amendment would eliminate means-testing from legal aid in cases involving extradition.

Briefing

3.5. Legislation should be introduced to end legal aid means-testing for extradition cases, something that Sir Scott Baker recommended be looked at as a matter of urgency. Fair Trials was delighted that means-testing of suspects held in police stations was not included in the Legal Aid, Sentencing and Punishment of Offenders Act 2012. This change is equally important in extradition cases where a lack of legal representation can result in unfair extradition with devastating consequences for the individual. Means-testing also results in unnecessary delays and adjournments and in requested persons appearing unrepresented at hearings, wasting resources.

3.6. Several judges have expressed their concern about the unnecessary injustice and expense caused by the current rules on legal aid in extradition cases. In June 2012, Lord Justice Thomas said in the High Court that “it is clear that the present system for means testing produces unacceptable delays that are unjust. The system is in effect unworkable in practice...and is inconsistent with overarching principles of fairness and justice in timely decision-making in extradition cases.”

3.7. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 already provides for non-means-tested legal aid for suspects held in police stations. By inserting a new subsection (1A), means-testing would be eliminated from determinations of eligibility for both advice assistance and representation in extradition cases. We are of course aware of the ongoing discussions surrounding the reform of legal aid in the UK, but the injustices caused by the means-testing requirement in extradition cases mean that this change is needed immediately.

June 2013

Written evidence from Social Landlords Crime and Nuisance Group (ASB 25)

1. INTRODUCTION TO THE SOCIAL LANDLORDS CRIME AND NUISANCE GROUP

1.1 The Social Landlords Crime and Nuisance Group (SLCNG) is a national membership body of registered providers of social housing.

1.2 Tackling anti-social behaviour (ASB) is core business for our 300 plus members who have a proven track record of positive achievement stretching back almost two decades.

1.3 Our members manage around 3.5 million homes throughout the UK.

1.4 We believe that ASB can be tackled effectively and that no one should have to suffer its damaging effects.

2. OPENING STATEMENT

2.1 The SLCNG supports the Bill’s objectives and considers that it has the capacity to make a positive contribution towards improving outcomes for victims and witnesses of ASB.

2.2 The centrality of “protecting individuals and communities from harm” is a message that the SLCNG is particularly anxious to stress.

2.3 We do, however, consider that some specific proposals are capable of further improvement. Details of those are given in this submission together with our recommendations.

102 See page 335 of the Sir Scott Baker Report.
103 Jakub Stopyra v The District Court of Lublin, Poland [2012] EWHC 1787 (Admin).
104 Section 13 provides for non-means tested legal advice and assistance for persons in custody; Section 15 provides for legal advice and assistance for criminal proceedings; and Section 16 provides for representation for criminal proceedings. Section 14 defines “criminal proceedings” as including proceedings for dealing with an individual under the Extradition Act 2003.”
3. **SUMMARY OF MAIN POINTS**

3.1 Provision needs to be made for applications for Injunctions to Prevent Nuisance and Annoyance (IPNA) that involve multiple defendants who span the age threshold to be heard together in the same court. To do so would avoid the risk of placing added burdens on witnesses and incurring additional costs and resources for the applicant.

3.2 We would like to see the Bill set maximum timescales for hearing applications for IPNAs and for hearings for breach: we recommend that the maximum period should be 28 days.

3.3 The power provided by the IPNA to exclude persons from their home address in appropriate circumstances should not be restricted to persons resident in social housing. The IPNA should retain the ability of the current Anti-social Behaviour Injunction (ASBI) on which it is closely modelled for the court to exclude persons from their home regardless of their tenure.

3.4 The criteria for issuing Community Protection Notices (CPNs) should be amended to clarify that a CPN may be issued in respect of noise nuisance which consistently accounts for around one third of all complaints of anti-social behaviour to housing providers.

4. **COMMENTS ON SPECIFIC PROPOSALS WITHIN THE BILL**

4.1 In this section we provide comment and recommendations, where appropriate, on specific proposals set out in the Bill.

4.2 **Injunctions to Prevent Nuisance and Annoyance (IPNA)**

4.2.1 **Section 1(8) Power to grant injunctions.** The Bill as currently framed will require separate proceedings in different courts for proceedings against two or more individuals that span the age threshold (eg where action is necessary against a group of individuals some of whom are adults and others are minors) in some instances. This will impose added burdens on witnesses and incur additional costs and resources for the applicant for the injunction.

4.2.2 To avoid this circumstance, we suggest that provision is made for ‘cross-generational’ proceedings relating to the same case (from a victim’s perspective) to be heard together in the same court.

4.2.3 **Section 2(4) (c) Requirements included in injunctions.** The Bill does not indicate when the obligation on the person responsible for supervising compliance to inform the applicant for the injunction and the Chief Officer of Police arises (eg whether at the end of the duration of the requirement or after each and every appointment is missed). Furthermore, the person responsible for supervising compliance may not be the person/organisation who applied for the injunction. There needs, therefore, to be a mechanism for ensuring that the responsible person is notified of their obligation.

4.2.4 It is noted also that that a power of arrest may not be attached to a positive requirement set out in the injunction. The requirement, therefore, to notify the Chief Officer of Police of every instance/case where a positive requirement has not been met may unnecessarily overload the police with additional paperwork.

4.2.5 In light of these observations we would suggest that:

1. the requirement to inform is more clearly defined.
2. provision is made to ensure that the person responsible for supervising compliance is fully aware of their obligation to inform the applicant and Chief Officer of Police.
3. consideration is given to removing the requirement to inform the Chief Officer of Police in all cases in respect of compliance with positive requirements.

4.2.6 **Section 7(1) Variation or discharge of injunctions.** The Bill should be amended to enable a variation to the injunction to be applied for by an appropriate body other than the original applicant. To do so would overcome issues arising where the original applicant, who may no longer have the problem, has to seek the variation or discharge of the injunction on behalf of the new area/organisation having problems. The alternative would be that fresh proceedings are initiated for a new injunction which would bring the risk of duplication, confusion and additional costs.

4.2.7 Provision needs also to be made for circumstances where, for example, the respondent moves to another area and causes problems which still amount to breach of their IPNA. Where these arise, how would this affect any subsequent breach of the order in terms of who would be classed as the original applicant for the purpose of informing and which police force would require notification etc?

4.2.8 The Section should also specify the timescale within which the notification has to be made.

4.2.9 **Sections 8(3) (a) and 8(4) Arrest without warrant.** Since the High Court and the County Court may make an injunction in respect of persons over 18 years, this section requires amendment to reflect the position where a person arrested for breaching an injunction made by the High Court should be brought before a judge of the High Court.
4.2.10 Section 8(4) which disregards Christmas Day, Good Friday and any Sunday for the purposes of calculating the 24 hour period within which a person arrested must be brought before the court should be amended to include all Bank/Public holidays in the disregards.

4.2.11 The Bill is currently silent on the timescales within which applications for IPNAs should be heard. We recommend the setting of maximum timescales for hearing applications for IPNAs and for hearings for breach. We suggest that the legislation include a prescribed timescale based upon the existing Civil Procedure Rules 1998 in respect of ASBI proceedings.

4.2.12 Schedule 1 Section 2 deals with remand but does not set a timescale: we think that it should do so in order to prevent enforcement becoming protracted and potentially ineffective in consequence.

4.2.13 Section 12(1) Power to exclude person from home in cases of violence or risk of harm. We are concerned that, unlike the current ASBI, the power to exclude persons from their home address is restricted to residents of social housing only, meaning that people living in owned or privately rented property will not in future be able to be excluded from their home address. In our opinion this weakens the legislation and the current ability of housing providers to provide protection for all victims consistently. We recommend, therefore, that this power should be available across all tenures.

4.2.14 Section 14(1)(b) Requirement to consult etc: Whilst appreciating that the requirement for an applicant for an injunction to ‘inform any other body or individual they think appropriate’ is intended to limit bureaucracy, we think that the requirement as currently drafted risks defendants using it ex post facto to criticise the procedure and undermine the orders by saying consultation was ineffective.

4.2.15 We suggest that there is a need for this duty to be clarified, possibly within statutory guidance, and that there is a need to set time limits for replies to notifications.

4.3 Criminal Behaviour Order (CBO)

4.3.1 Section 24(1) and (2) Duration of order etc.: In some circumstances the terms of the CBO will be intended to commence on a future date that coincides with an individual’s release from detention/prison. The Bill as currently drafted does not provide this facility as it seems to require the Order to date from the hearing date. The Bill, therefore, should be amended to enable an Order to commence from a future date in the circumstances described.

4.4 Community protection notices

4.4.1 Section 40(5) Power to issue notices. The provision as currently framed suggests that noise nuisance in many instances may not be treatable by a Community Protection Notice (CPN). Noise nuisance consistently accounts for around one third of all complaints of antisocial behaviour to housing providers and we consider that it would be a seriously retrograde step to exclude noise nuisance from the jurisdiction of the CPN. We recommend that this sub clause is removed or otherwise suitably amended to clarify that a CPN may be used to resolve incidences of noise nuisance.

4.5 Closure orders

4.5.1 Section 73(1) Power of court to make closure order. This measure restricts applications for Closure Orders to the Magistrates Court alone. We suggest that the Order should also be available in the County Court in appropriate circumstances to avoid unnecessary additional burdens on witnesses, applicants and the Courts’ system. By making the Order available in the County Court it would allow Closure Order proceedings to be combined with Injunction applications or possession proceedings, for example.

4.6 Recovery of possession of dwelling-house: anti-social behaviour grounds

4.6.1 Section 91(1) Offences connected with riot. We have reservations as to whether this provision will be practically operable and anticipate that it will be rarely, if ever, used. For completeness though, we would suggest that if the provision is to be retained that other, equally or more serious offences, such as murder and rape should be included.

4.7 Local involvement and accountability

4.7.1 Section 93 The community remedy document disposals etc. The policing body should be required expressly to consult with the local authority and housing providers.

5. Conclusion

5.1 Protecting people from harm is central to the purpose of housing providers and ASB Practitioners who are supportive of the objectives of the Bill and of many of the measures it contains. Some further amendments are required in a limited number of areas in our opinion and we are committed to continuing to work with all relevant stakeholders on those issues.

5.2 The measures set out in the Bill are designed for a multi-agency environment in which agencies individually and collectively are publicly accountable for addressing the issues that matter most to local people.
In this environment the effectiveness of partnerships will be of critical importance to delivering positive outcomes and maximising the effective deployment of valuable resources. We would urge that the opportunity is now taken to ensure that partnerships are more universally effective and that all agencies involved in delivering relevant services, including preventative and supportive interventions, engage meaningfully.

5.3 We also urge that the vital attendant processes (eg exchanging information between agencies; and delays within the courts’ processes) that facilitate, but all too often frustrate, timely action are addressed positively. We support the ACPO recommendation that an overt positive requirement for Community Safety Partners to proactively share information be considered.

5.4 We are particularly mindful of experience of introducing the Anti Social Behaviour Injunction (ASBI) on which the proposed IPNA is closely modelled and which resulted in the utility and success of the then new injunctive remedy being unpredictable until the higher courts ruled on contested points of interpretation. In the interests of efficiency, effectiveness and most of all of victims, we cannot afford for those experiences to be repeated here. It is essential in our view that all relevant stakeholders, including the courts, are fully trained in advance in the application of the new measures and that the extensive body of case law built up over recent years is preserved.

June 2013

Written evidence from StopWatch UK (ASB 26)

Schedule 7 to the Terrorism Act 2000

1. Under Schedule 6 to the Anti-Social Behaviour, Crime and Police Bill the coalition government has proposed changes to Schedule 7, the widest ranging stop power in the UK. This memoranda outlines the current powers available to officers at ports under Schedule 7 before a discussion on the data of its use is included followed by an account of the impact it has had on communities. Finally, StopWatch’s own recommendations for changes to the power are outlined which are proposed in line with our aims of making policing more proportionate, fair and effective. An annex is included at the end of this briefing which contains more detailed data on use and convictions.

Current powers

2. Schedule 7 is a highly intrusive stop power which operates outside of the regulatory framework that covers other police powers of stop and search. Individuals stopped under the power are not under arrest but may be examined for up to 9 hours wherein they may be questioned, searched (as well as their belongings), strip-searched and have samples of their biometric data including DNA & fingerprints taken from them regardless of the outcome of the encounter and in the absence of a lawyer. People stopped under it are obliged to cooperate or face an arrest, a period of imprisonment and/or fine. In addition, there is no right to compensation or assistance in rearranging any flights missed or other transportation as a result of a Schedule 7 examination or detention.105

Data on use

3. In 2011–12, 63,902 stops were carried out under Schedule 7, of which 2,240 lasted over an hour and 680 (less than 1%) resulted in a detention. Although no information has been provided on the number of people convicted and on what charges, there were just 10 total terrorism-related convictions since 2009–12 (see Appendix).106

4. Black and minority ethnic groups make up the majority of those subject to Schedule 7 stops (56%) even though they account for approximately 14% of the national population.107 Asians accounted for 27% of Schedule 7 stops in 2011/12 (and 7.5% of the national population), Blacks accounted for 8% of stops (and 3.3% of the population), people from mixed backgrounds accounted for 3% of stops (2.2% of the population) and people from other ethnic groups (including Chinese and ‘other’) accounted for 18% of stops (but only 1% of the population). The targeting of black and minority ethnic groups continues to be even more marked when we consider the most intensive Schedule 7 stops. Of those stops which lasted over an hour, 36% were of Asians, 14% were of blacks, 3% were of people from mixed backgrounds and 24% were of ‘other’ ethnic groups. Fewer than 12% of stops over an hour were of whites.

Impact

5. A number of communities in the UK are affected by the use of Schedule 7 although most research and media reports highlight the impact of these powers on people from Muslim backgrounds. For example, the Equality and Human Rights Commission (EHRC) found that Schedule 7 was having “the single most negative impact” on Muslim communities and also reported that:

105 A full outline of the power is outlined here: http://www.legislation.gov.uk/ukpga/2000/11/schedule/7
106 This figure includes convictions for multiple charges of individuals convicted of direct terrorism-related offences arising from a Schedule 7 encounter. Therefore it does not represent the number of people convicted.
107 Based upon 2011 census data produced by the Office of National Statistics.
“[f]or some Muslims, these stops have become a routine part of their travel experience” and that “—this power is silently eroding Muslim communities’ trust and confidence in policing.”

6. Another set of studies conducted with British Muslims in Scotland revealed that respondents had a strong British identity and that encounters with officers at ports, on both sides of the border, were places where they felt that this identity was undermined by counter-terrorism officers and damaged their perceptions of fairness and faith in counter-terrorism measures.

7. In particular, the taking of people’s DNA and fingerprint information has caused the greatest discontent amongst travellers, most of whom were not suspected of any wrongdoing. As has been reported by a number of media outlets, not only has this made people feel criminalised but it has significantly undermined faith in counter-terrorism and perceptions of fairness.

8. Meanwhile, politicians such as David Lammy MP, Lord Nazir Ahmed and Humza Yousaf MSP and civic groups like StopWatch have a long history of raising concerns on the use and impact of this power which remain unaddressed by the Bill. The United Nation’s Human Rights Committee also expressed “grave concerns” over the use of counter-terrorism measures in the UK, with particular concern over what they judged to be religious and ethnic profiling in the use of those powers. In a review of the utility of the Schedule 7, David Anderson QC, the UK’s terrorism watchdog, concluded that:

“It is fair to say that the majority of examinations which have led to convictions were intelligence-led rather than based simply on risk factors, intuition or the ‘copper’s nose’. Indeed, despite having made the necessary enquiries, I have not been able to identify from the police any case of a Schedule 7 examination leading directly to arrest followed by conviction in which the initial stop was not prompted by intelligence of some kind.”

9. Despite this, official statistics on the use of this power illustrates that it has not been used in an intelligence-led approach and that people from ethnic minority backgrounds are more likely to be subjected to the more extreme aspects of the power, particularly those from Asian backgrounds. This can be seen in the table provided in the Appendix.


10. After a recent review of Schedule 7 by the Home Office, the first since it was enacted in 2000, the government proposed some changes to the use of the power under Section 124 and Schedule 6 to the Anti-Social Behaviour, Crime and Police Bill. These changes are outlined below alongside current provisions to provide a comparison.

<table>
<thead>
<tr>
<th>Current provisions</th>
<th>Proposed changes</th>
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<tbody>
<tr>
<td>A maximum period of examination and/or detention of 9 hours.</td>
<td>A Reduction of the maximum period down to 6 hours.</td>
</tr>
<tr>
<td>The power to take DNA and fingerprint samples regardless of the outcome of the encounter.</td>
<td>Unchanged.</td>
</tr>
<tr>
<td>Intimate biometric data (blood, semen, etc) may be taken from individuals examined or detained.</td>
<td>To be repealed.</td>
</tr>
<tr>
<td>Ability to subject the examined or detained individual to a strip search without reasonable suspicion.</td>
<td>Strip searches may only be conducted if the person is detained and they are reasonably suspected of concealing an item.</td>
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112 Verkaik, R. (2010) They asked me where Bin Laden was, then they took my DNA’. The Independent Newspaper. [21 Sept 2010]. Available at: http://www.independent.co.uk/news/uk/home-news/they-asked-me-where-bin-laden-was-then-they-took-my-dna-2084743.html


114 See: http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights24May2012am.aspx

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<tr>
<th>Current provisions</th>
<th>Proposed changes</th>
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<tr>
<td>Only people detained at ports but transferred to a local police station may consult a solicitor, although this right can be delayed by a senior officer until the person has already been questioned and searched.</td>
<td>Extends this right to any person detained, whether at ports or at a police station, to consult a solicitor although this right can still be delayed until the person has already been questioned and searched.</td>
</tr>
<tr>
<td>No training is currently required for the use of Schedule 7.</td>
<td>The Home Secretary must set out guidance for the training of officers.</td>
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**StopWatch’s Position:**

11. StopWatch welcomes the proposed reforms under the Bill and we believe that it can go much further towards ensuring that this power will be used proportionately, fairly and with greater transparency. Our proposals have been developed from regular contact and discussions with people who have been stopped or detained under Schedule 7 and these include:

- The legal maximum period of detention should be reduced to one hour at which point the person should either be released or arrested. 97.2% of examinations take less than an hour which proves that this is, in fact, practical.

- The power to take non-intimate biometric data, including DNA and fingerprints, should be repealed in light of the huge concerns and impact that this provision is causing. The government has proposed only to repeal intimate samples but will still allow non-intimate samples to be taken.

- Officer training to use Schedule 7 should be developed in consultation with a range of legal, academic and equality and community groups and also subject to independent and public evaluation.

- Advice and assistance should be provided to people who miss their flights or other transportation as a result of an examination or detention.

- There should be a minimum threshold of suspicion upon which individuals can be stopped. This should be based upon objective facts, information, and/or intelligence, so as to minimize the risk of arbitrary or discriminatory application of stop and search powers.

- The PACE Codes, which governs other stop powers, should be extended to cover stop and searches conducted under Schedule 7 of the Terrorism Act 2000. This would require that Schedule 7 stops to be monitored under the same recording framework as all other stop and search powers and that data should be shared with community and monitoring groups.
EXAMINATIONS MADE UNDER SCHEDULE 7 OF THE TERRORISM ACT 2000¹

<table>
<thead>
<tr>
<th>Year and ethnicity</th>
<th>Under the hour examinations</th>
<th>Over the hour examinations²</th>
<th>Total Schedule 7 examinations²</th>
<th>Number of detentions³</th>
<th>Number of DNA &amp; fingerprints taken</th>
<th>Number of convictions⁴</th>
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<tr>
<td>2009/10</td>
<td>82,870</td>
<td>2,687</td>
<td>85,557</td>
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<td>2010/11</td>
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<td>2,288</td>
<td>65,684</td>
<td>913</td>
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<td>325</td>
<td>26,466</td>
<td>75</td>
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<td></td>
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<td>95</td>
<td>1,969</td>
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<td>5,974</td>
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<td>11,233</td>
<td>188</td>
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<td>Not stated</td>
<td>651</td>
<td>37</td>
<td>688</td>
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<tr>
<td>2011/12</td>
<td>61,662</td>
<td>2,240</td>
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<td>26,757</td>
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<td>2,074</td>
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<td>810</td>
<td>17,254</td>
<td>237</td>
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<tr>
<td></td>
<td>Chinese or Other</td>
<td>10,663</td>
<td>527</td>
<td>11,190</td>
<td>155</td>
<td></td>
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<tr>
<td></td>
<td>Not stated</td>
<td>992</td>
<td>246</td>
<td>1,238</td>
<td>53</td>
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</table>

Source: ACPO(TAM) National Coordinator’s Office Protect & Prepare.

1. All data, unless otherwise stated, covers the period of April to March of each of the stated years.
2. Does not include examinations of unaccompanied freight.
3. In 2009/10 reliable data on those detained were not recorded separately; estimated data are included in the total of over the hour examinations.
4. This is not the number of people convicted- which remains unknown- but the number of successful convictions including from multiple charges of the same individual. Data covers January-December of the first stated year.

July 2013

Written evidence from The Standing Committee for Youth Justice (SCYJ) (ASB 27)

ABOUT SCYJ

The Standing Committee for Youth Justice (SCYJ) is a coalition of over 30 voluntary sector organisations which champion youth justice reform.

The Standing Committee for Youth Justice is calling for the Government to:

— Retain the definition of ASB as ‘causing harassment, alarm and distress’;
— Keep the criminal standard of proof test of ‘beyond reasonable doubt’;
— Introduce a pre-order assessment of health, mental health and welfare needs;
— Restrict the reporting of ASB proceedings involving under-18s;
— Remove the possibility of imprisonment as a sanction for breach by under-18s; and
— Abolish the mandatory housing eviction clause.

INTRODUCTION

1. We recognise that antisocial behaviour causes serious harm to individuals and communities. Robust and effective responses are required if such behaviour is to be properly addressed. However we do not believe that the measures proposed in the Bill are useful tools for responding to children’s antisocial behaviour (ASB).
DEFINITION OF ANTIMSOCIAL BEHAVIOUR (CLAUSE 1)

2. SCYJ is seriously concerned that the adoption of the lower threshold of ‘causing nuisance and annoyance’ as the test for the injunction to be granted will have a particularly detrimental effect on children. The existing test—harassment, alarm and distress—is already low and has the scope to encompass a wide range of behaviour. Lowering the threshold risks children being made subject to such orders simply for being ‘annoying’, thus widening the net of children subject to ASB orders. Frontline professionals have informed us that ASBOs are already imposed inappropriately on children for mere ill discipline, such as swearing loudly in large groups; they question why the threshold needs to be lowered further. In recent months, a range of children’s charities, ACPO and several Police and Crime Commissioners have warned that the new threshold risks being ‘too subjective’ and could ‘unnecessarily criminalise’ children.116 The current test of ‘harassment, alarm and distress’ should remain.

THE BURDEN OF PROOF (CLAUSE 1)

3. It is troubling that granting an injunction will only require the civil standard of proof—balance of probabilities—to be met, rather than the more rigorous, currently-used criminal standard test, ‘beyond reasonable doubt’. We view this as all the more problematic given that imprisonment is available as a sanction for breach by children. The test of ‘beyond reasonable doubt’ set out in the 2002 House of Lords judgement should be included in the new statutory provisions.117

ASSESSMENT OF NEED

4. Between one to two-thirds of ASBO recipients have mental health problems and/or learning difficulties.118 Early persistent behavioural problems constitute one of the most common childhood mental health problems, affecting 6% of children.119 Despite the acknowledgment in the ASB White Paper of the strong links between ASB and health issues, nowhere in the Bill are such needs provided for. Without proper assessment, children with mental health problems risk being made subject to inappropriately imposed and ‘undoable’ ASB orders. There is therefore a strong argument for proper assessment and early help through well-proven interventions, many of which have demonstrated potential for improved outcomes and significant savings across a range of budgets in the longer term.115 Children should have a full health and social assessment before any ASB order is granted. The order should take account of any identified needs and clearly set out how they are to be addressed.

‘NAMING AND SHAMING’ (CLAUSES 17, 22 (7) AND (8), 29 (5))

5. We are concerned that the Bill specifically disapplies section 49 Children & Young Persons Act 1933—the presumption against revealing details of a child’s identity—to children subject to ASB proceedings, including breach. This means that children as young as 10 are able to be publicly named. The exclusion of ss49 Children & Young Persons Act 1933 from the Bill is problematic for several reasons. The provision:

(a) Contravenes the anonymity that is usually granted to children in criminal proceedings;
(b) Can hinder successful rehabilitation;
(c) Is a safeguarding issue as it makes public the details of often vulnerable children;
(d) In our age of the internet and social media, means that details of a child’s identity are indelible once revealed;
(e) Can be a ‘badge of honour’—an incentive for a child to engage in ASB; and
(f) Disregards the right to privacy in the UN Convention of the Rights of the Child, to which the UK is a signatory.

6. SCYJ would like to see ss49 Children and Young Persons Act 1933—the presumption against revealing details of a child’s identity—applied to all ASB application and breach proceedings involving under-18s. This would protect children from the blanket reporting and resulting harms outlined above, but would still enable the court to lift the reporting restrictions if it was felt to be necessary.

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117 R (on the application of McCann and others) v Crown Court at Manchester [2002] UKHL 39; [2003] 1 AC 787
118 See BIBIC (2007) as cited in Centre for Mental Health, p5
119 Centre for Mental Health (2012) A chance to change: delivering effective parenting programmes to transform lives, London: Centre for Mental Health, p55
IMPRISONMENT AS A SANCTION FOR BREACH (CLAUDES 11, 29 & 37)

— Nearly 7 in 10 children breach their ASBOs.\(^\text{122}\)
— Imprisonment is imposed as a sanction for juvenile ASBO breach in 38% of cases.\(^\text{123}\)
— Under-18s receive on average 6.3 months in custody for breach of an ASBO, compared to 4.8 months for adults.\(^\text{124}\)

7. Long-lasting ASBOs have been criticized for making breach ‘almost inevitable’ as young people cannot see the end in sight and, thus, have little incentive to comply.\(^\text{125}\) Detention is widely shown to be counterproductive and particularly harmful for children.\(^\text{126}\) We are therefore particularly troubled by the proposal that imprisonment is available as a sanction for children who breach the new orders (two years detention for breach of a Criminal Behaviour Order [CBO] and three months for breach of an injunction or dispersal order). Only the most serious and dangerous young offenders receive custodial sentences in the youth justice system. The sanction proposed here is therefore disproportionate and is in our view not in accordance with the UNCRC provision that custody should be used only as a last resort. Custody should not be available as a sanction for breach of ASB orders by children. Serious breaches should instead be addressed by means of robust community alternatives.

MANDATORY EVICTION (CLAUSE 86)

8. We are seriously concerned by the proposal that if conditions for eviction relating to ASB are met and eviction is sought by the landlord, the court must commence eviction order proceedings. Conditions include: that a tenant of or person visiting the dwelling breaches their injunction or CBO, or commits a serious offence. It is clear that this could have severe implications for under-18s, affecting both blameless children residing in such houses and young people who breach or offend. The proposals are all the more troubling given the fact that nearly 7 in 10 children breach their ASB orders,\(^\text{127}\) typically due to lack of support rather than willful non-compliance. Such a sanction would fail to address the underlying causes of the behaviour and may serve to perpetuate it. SCYJ calls for the deletion of this clause.

July 2013

Written evidence from BVA and BSAVA (ASB 28)

1. The British Veterinary Association (BVA) and the British Small Animal Veterinary Association (BSAVA) welcome the opportunity to comment on the Anti-Social Behaviour, Crime and Policing Bill.

2. The BVA is the national representative body for the veterinary profession in the United Kingdom and has over 13,000 members. Its primary aim is to protect and promote the interests of the veterinary profession in this country, and it therefore takes a keen interest in all issues affecting the veterinary profession, be they animal health, animal welfare, public health, regulatory issues or employment concerns.

3. The BSAVA is the largest specialist division of the BVA and of the veterinary profession. It represents over 8,500 members, the majority of whom are in general practice and have an interest in the health and welfare of small animals, namely dogs and cats.

4. In our previous submissions, BVA and BSAVA have repeatedly called for consolidation and simplification of the legislation relating to dog control. This remains our position; however, we acknowledge that it is the content of legislation which is the most important issue. For this reason, if the Anti-Social Behaviour Bill is to become law, it is critical that the content of the Bill enables enforcers to deal with issues surrounding dog control effectively.

5. Although we can appreciate, in principle, the Government’s rationale for simplifying the powers used to combat anti-social behaviour, we believe that targeted powers for Dog Control Notices would be preferable to general powers that will require extensive guidance to make them workable in the case of dogs and ensure that they are applied consistently. We therefore ask that the Committee amend the Bill to include Dog Control Notices and that the Government develop proposals, building on the experiences gained from the use of Dog Control Notices in Scotland. The experience gained from Dog Behaviour Contracts, such as those trialled in Eastleigh, should also be considered.


\(^{123}\) Ibid

\(^{124}\) Ibid


6. As it currently stands, the Community Protection Notice (CPN) is cited as the power closest to a Dog Control Notice; however, as drafted, the Bill leaves much open to interpretation. For example,

(a) The trigger for a CPN is conduct, which affects the locality rather than individuals.
(b) The provisions relating to dogs are an adjunct to the provisions relating to humans who participate in anti-social or criminal behaviour. While we understand that many of the provisions can require the person to undertake or refrain from certain activities, including those involving dogs, we are concerned about how some of the potential requirements of a CPN (such as neutering) would be applied if the person subject to the order were not the legal owner of the dog. By contrast, in Scotland, Dog Control Notices are only issued to the owner of the dog or the person who has day-to-day charge of the dog.
(c) There is no requirement that those issuing CPNs have appropriate training or have appropriate guidelines available to them. In the case of dog control, issuing officers should have appropriate training or should be working to guidelines drawn up by those who have knowledge and understanding of dogs, their owners and the problems that are likely to be encountered. Where the issuing officer meets a situation that they do not feel confident to deal with, they should have ready access to those with specialist training who can advise on the appropriate measures to take.
(d) Clauses 47 and 48 deal with the forfeiture and seizure of items used in the commission of the offence of breaching a CPN. The seizure of dogs should be considered as part of dog control measures, should the behaviour of the owner or keeper and/or the dog give sufficient concern that the remedial action is not deemed appropriate. However, these sections are written in a way which presumes that the items used are inanimate objects and not animals. Specific and more detailed considerations will apply when dealing with dogs. The need for suitably qualified individuals to assess the health, welfare and behaviour of the animal, the welfare implications of kennelling animals for periods of time, and the possibility of rehoming animals are all important considerations. (Similar issues would arise from clause 35 in relation to dispersal powers).

7. As stated above, in its current form the Bill would need comprehensive guidance to make it effective; enforcers will need to be provided with a set of clear, specific and achievable measures. We believe that in order to ensure that this guidance is followed, it is essential that it is statutory guidance, as is the case in Scotland.

8. The Bill also seeks to amend the Dangerous Dogs Act in a number of ways. We have supported the extension of the law to cover private property and also to extend protection to assistance dogs.

9. In the context of calling for consolidated legislation, we have also called for legislation to cover attacks on other protected animals. We remain concerned about attacks on other animals and ask that the Government further investigate this area.

10. The legislation will need to be simple to understand and apply so that the public can learn what is and is not acceptable. We believe that if the legislation is too complex and subjective, it will capture some people but not educate the remainder. Legislation should capture an element of reasonableness so that responsible owners are afforded a degree of protection. The overall aim of legislation in this area should be to prevent dog attacks and encourage responsible ownership.

**July 2013**

**Written evidence from the Open Spaces Society (ASB 29)**

**Summary**

The Open Spaces Society is concerned about chapter 2, clauses 55–68 of the bill, which introduce public spaces protection orders (PSPOs). We fear these will lead to loss of public amenity, whether or not this is intended. While we are sympathetic to the need to curb anti-social behavior, we believe that the bill should be amended, and suitable guidance issued, to ensure the PSPOs achieve what is intended without damaging the public interest.

**Introduction**

1. The Open Spaces Society is Britain’s oldest national conservation body, founded in 1865. We campaign for common land, town and village greens, open spaces, public paths and public rights of access, in town and country, throughout England and Wales.

2. The society has long been involved in promoting urban recreation and the use of urban spaces. One of our first victories, a year after we were founded in 1865, was to rescue Hampstead Heath from development. Shortly after that we saved other urban commons for public enjoyment. So we have a proud history of defending the public’s rights to enjoy spaces and paths in the towns.

**Public spaces protection orders**

3. These replace designated public place orders, gating orders and dog control orders. However, the Open Spaces Society believes that the PSPOs are more vicious and wide ranging than any of those orders.
4. A local authority may make a PSPO if it is satisfied on reasonable grounds that two conditions are met: (1) that activities carried on in a public place have a detrimental effect on the quality of life of those in the locality, or that it is likely that activities will have such an effect; and (2) that the effect or likely effect is, or is likely to be, of a persistent or continuing nature or is, or is likely to be, such as to make the activities unreasonable, and justifies the restrictions imposed by that notice.

5. The order identifies the public place and prohibits specific activities in the area, and/or requires specific things to be done. While it is limited to ‘reasonable’ prohibitions or requirements, it does not define ‘reasonable’. No doubt most authorities would act with restraint, but there is nothing in the bill to prevent an order from prohibiting anyone from entering the area. If that were to be the case, the order would make trespass, normally a civil offence, a crime. We consider that to be a serious matter.

6. An order could apply to land where the public has rights of access, such as registered common land or other access land, town or village greens or local green space. Such areas are usually much enjoyed by the public and in many cases the public’s rights are of a historic nature, part of the culture of the community.

7. We therefore consider that the bill should be amended to exclude from PSPOs any land which is registered common land or town or village green, or mapped access land. This might best be achieved by amending the definition of ‘public place’ in clause 67(1)(a).

Advertisement (Clause 55(7))

8. The authority is not required to advertise its intentions. In clause 55(7) it is only required to consult the police and ‘whatever community representatives the authority thinks it appropriate to consult’. This is totally inadequate, since the public space or public highway may be used and enjoyed by a wide range of people.

9. We consider that, at the very least, there should be a prescribed list of organisations to be consulted, to include the Open Spaces Society, Ramblers and others. There are many precedents for this: for instance local authorities are required to notify a list of organisations when they make orders to alter the routes of paths; and there is a prescribed list of consultees for matters relating to access land in the Countryside and Rights of Way Act 2000, and for matters relating to coastal access in the Marine and Coastal Access Act 2009.

10. Furthermore, in this bill, the authority is not required to pay any attention to what the consultees say. There should be a requirement for a public hearing or public inquiry if there are objections to the order. Ideally in such cases the decision would be taken out of the local authority’s hands and referred to the independent Planning Inspectorate, as occurs for contested path-change proposals.

Duration (Clause 56)

11. The duration of orders before review, three years, is far too long. There should be a review after six months to assess whether the order is having the desired effect.

Public Highways (Clause 60)

12. An order can also include a public highway (clause 60), and the authority is only required to ‘consider … the availability of a reasonably convenient alternative route’ among other things. It is not required to ensure that such a route exists.

13. We consider that there should be a prescribed list of consultees, with provision for a public hearing or inquiry in the case of objection and there should be a requirement on the authority to ensure there is a suitable alternative route (as is indicated in para 150 of the explanatory notes). However, it would be simpler and infinitely preferable for the bill to be amended so that a PSPO cannot be made on a route which is shown on the definitive map and statement as a public highway.

Challenge (Clause 62)

14. The procedures for challenging the validity of orders are limited to ‘an individual who lives in the restricted area or who regularly works in or visits that area’. That is far too limited, particularly as there is no means of objecting to the imposition of the order. In any case, the individual’s only recourse is to the high court which is prohibitively expensive and means that few people will be able to challenge an order. They would no doubt request organisations such as the Open Spaces Society and Ramblers to assist them, but under the bill these organisations have no locus. There should be no restriction on who can challenge the validity of the order.

Interpretation (Clause 67)

15. We are concerned that in clause 67 the definition of ‘local authority’ includes ‘district council’. This means that, in a two-tier authority, a district will make a PSPO for an area for which it is not the highway authority (the highway authority being the county or unitary council). Thus the district makes the PSPO, which could involve a public highway, without having to consult, or even inform, the county council which is authority with responsibility for that route. Similarly, the county or unitary council (outside national parks) is the access authority and the district could therefore make a PSPO affecting public access without informing or consulting the access authority. Highway and access authorities have both day-to-day responsibility for
maintaining highways and access land and strategic responsibility for overseeing the access network as a whole. It is therefore unacceptable that PSPOs should be made by bodies other than the highway or access authority.

16. We suggest that the definition of local authority in clause 67(1)(a) is amended so that the highway and access authorities only can make PSPOs. In two tier authorities, if the district wishes to make a PSPO, it must apply to the county council to do so on its behalf.

CONCLUSION

17. The Open Spaces Society urges the Public Bill Committee to amend the Bill to protect the rights and interests of legitimate users of paths and public open spaces during the process of considering and making PSPOs.

July 2013

Written evidence from Imkaan (ASB 30)

Imkaan is the only national Black, Minority Ethnic and Refugee (BME) second-tier organisation dedicated to working on violence against women and girls (VAWG). The Imkaan team has extensive experience of working around a range of issues including domestic and sexual violence, forced marriage and ‘honour-based’ violence.

Imkaan is a membership organisation, which represents the expertise and perspectives of frontline BMER women’s services working to prevent and address VAWG. Our work is delivered through research, strategic advocacy, accredited training packages, capacity building, consultancy, and sector development.

Imkaan welcomes the government’s commitment to addressing forced marriage, including the announcement that over £500,000 of funding will be made available over the next three years to support work in this important area. The signing of the Council of Europe Convention on Combating and Preventing Violence Against Women and Domestic Violence sends an important message that VAWG is both unacceptable and a priority in the UK. However, we remain concerned about the proposal to create a specific criminal offence on forced marriage. As is the case with any area of work, prosecution cannot work on its own and is not enough. We remain concerned that criminalisation of forced marriage would further drive the practice underground, potentially resulting in more girls and boys being removed to other countries without warning. The new legislation would need to run in parallel with other sources of support if women and girls are to come forward for help and get timely and appropriate assistance and advice.

Our consultation with 48 organisations and individuals highlighted the following key concerns:

1. A strong concern that a specific criminal offence will have limited and potential detrimental impact on women and girls. For instance, lower levels of reporting as children and young women will often not want to prosecute. Young women would prioritise safety and empowerment. There is a distinction between an adult taking criminal action against an intimate partner compared to a child taking significant family members to court that may lead to a prison sentence. Relationship breakdown with significant family members can be much more isolating, permanent and has a much more damaging and longer-term impact on young women, thereby affecting their health and wellbeing on a long-term basis, which potentially could have a much wider impact within society than intended. This especially is the case as victims are often under 18. Taking parents to court is understandably complex, emotionally fraught and difficult. Women often want to leave, want the choice to say no to a forced marriage and to access safety rather than criminalise their parents.

2. The current system fails victims largely in the area of support, ie civil remedies, and support to enable reporting to occur in the first place. Criminal sanctions in isolation are not sufficient to address the needs of women and girls. They need to be provided as part of a package of specialist support measures. Women are much more likely to engage with the criminal justice system if they are able to access information, ongoing safe accommodation and emotional support from specialist women’s organisations. Therefore, resources would be far better utilised in sustaining and improving the infrastructure of support services given that existing organisations working in this area are facing increased demand at a time where their funding is being significantly reduced in the current economic downturn.

3. The introduction of legislation without the right level of grassroots voluntary sector support services in place is dangerous and raises women’s and girls’ expectations that they will have access to appropriate support. Imkaan’s own report, The Missing Link (2011), produced for the Mayor of London points to inadequacies in many London boroughs, where women and girls at risk of, or going through a forced marriage cannot access the specialist support and advice they need from women’s organisations– as they simply do not exist in their area (See also our finding in Vital Statistics and Vital Statistics 2. All these reports can be found at www.imkaan.org.uk/resources).

4. Statutory professionals have an over-reliance on girls to come forward for help. This is particularly problematic as young women are less likely to define or disclose their experience as a ‘forced marriage’ particularly where the coercion from family members is more subtle and by virtue of their age less likely to access opportunities for getting help and advice from external agencies. Schools and other educational institutions have a key role to play yet are often not engaging on these issues as highlighted by our research The
5. Furthermore, despite well-established child protection policy in the UK, professionals often lack the confidence, skills and knowledge to utilise existing systems in cases of forced marriage. Whether the Bill will have any practical effect is likely to depend upon how effectively organisations concerned with child protection are able to identify children at risk and provide them with the protection and the practical and emotional support they need. Our own research—see para 3 above—has shown that specialist services, including vital support from specialist voluntary sector organisations for women and girls at risk of forced marriage are sparse. Furthermore, our concern in this area is also supported by the Office of the Children’s Commissioner for England’s A Child’s Rights Impact Assessment of the Anti-Social Behaviour, Crime & Policing Bill (Parts 1–6; Part 9—see (http://www.childrenscommissioner.gov.uk/content/publications/content_67, accessed 2/7/13). As the Children’s Commissioner states, forced marriage involving children is best understood and addressed robustly as a safeguarding and child protection issue, and concerns about forced marriage would reach the threshold of ‘significant harm’ under the provisions of the Children Act 1989. In practice, there are many challenges to implementation of the law, including the complexities involved where a victim is expected to make claims against family members, and the fact that some forced marriage cases involving children ‘take place on the cusp of private and public law proceedings’. If forced marriage and other forms of harmful practice were better integrated within existing child protection policy and practice, (similar to other forms of child abuse and neglect) rates of disclosure would improve. More significantly, girls would not have to deal with the often traumatic and difficult prospect of going to court, as agencies would be in a much better position to intervene much earlier to prevent forced marriage.

6. The UK does have an obligation to create specific legislation to address forced marriage under the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. However, the implementation of the criminalisation of the forced marriage civil protection order breaches will enable the UK to fulfil its obligations under the convention and therefore there is no additional requirement to develop a specific offence. We support the view of the Children’s Commissioner for England in terms of a concern that the evidentiary threshold in criminal cases is higher than in civil cases, and securing convictions will be challenging in many cases, particularly those where coercion is a process which happens over a long period of time. After all, there is limited evidence on which to assess the likely impact on children of a creation of an offence of forced marriage. Where children are involved, forced marriage must be understood and addressed as an integral part of child protection policy and practice, and a range of laws already exist which make this possible (see para 5 above for details of the Children’s Commissioner’s report). Furthermore, victims of forced marriage are likely to experience coercion, threats and violence from multiple perpetrators, and multiple interested parties, including parents, siblings and wider community networks. It may be more difficult to gather the level of evidence required to prove the culpability of some individuals for prosecution.

7. Although we think that the current civil remedies and criminal sanctions are sufficient to prosecute perpetrators of forced marriage, there is a lack of understanding and awareness of existing legislation amongst professionals and the general public, and a strong misperception that there are no legal frameworks in place for addressing forced marriage.

8. Our Members felt that there are other ways of sending out a strong message on FM. If the Government implemented the criminalisation of breaches this would in itself provide an opportunity for sending out a strong message and awareness raising opportunity. Some members thought that a national awareness-raising campaign similar to the drink driving campaign would help to raise awareness and shift attitudes amongst the general public and professionals with a duty to respond. Furthermore, it should be noted that domestic violence in itself is not a crime; instead aspects of domestic violence have been criminalised. However, a strong message is increasingly sent across agencies and through the media that the UK has a zero tolerance approach to domestic violence and a similar approach should be adopted for forced marriage.

9. In order to ensure that women and girls affected by forced marriage are protected it is essential that the government prioritises early intervention and prevention, and that schools (including independent schools) are encouraged to work in partnership with voluntary sector specialists to adopt a whole-school approach to violence against women and girls. Furthermore, that the availability of specialist frontline support services with an expertise and history of working on these issues is refuge, outreach and advice currently delivered primarily by BME women’s specialists are more readily available as these are likely to be the first contact for women and girls and the services they are most likely to access and trust. On-going support and resettlement is also vital to ensure that victims are able to access consistent support at points at which they are most vulnerable eg at the point of disclosure as well as the emotional support required to deal with the longer-term physical and emotional impact of forced marriage. Yet many of these services are facing deep cuts and are struggling to manage the increased demand for their services. It is critical that women and girls have access to a robust support package across the UK. Investment in improving multi-agency responses to women and girls affected by forced marriage as well as other forms of violence against women and girls would provide a much more effective strategy for tackling these issues than relying on enforcement measures alone.
Please see (Annex—NOT PUBLISHED) for the full views of our members on the government’s proposal to criminalise forced marriage.

July 2013

Written evidence from the Guide Dogs for the Blind Association (ASB 31)

1. Introduction

1.1 Guide Dogs provides mobility and rehabilitation services to increase the independence of blind and partially sighted people in the UK. Our core service is the guide dog service where we work with both guide dog and owner to create a successful partnership through which the individual can become as independently mobile as possible. We also work closely with other organisations to train and provide assistance dogs for people who have additional disabilities (such as with Hearing Dogs for the Deaf to provide “dual-qualified” dogs). Guide Dogs provides guide dogs to over 4,500 blind and partially sighted people.

1.2 Alongside our mobility work we campaign to break down physical and legal barriers to enable blind and partially sighted people to get around on their own. Guide Dogs’ work is informed by blind and partially sighted people and we are responding to this as an issue of major concern for guide dog owners.

1.3 Guide Dogs submitted evidence to the EFRA Select Committee’s Pre-Legislative Scrutiny of the Anti-Social Behaviour, Crime and Policing Bill. Part of this submission reiterates points which were made to the Select Committee on this Bill.

2. Attacks on Assistance Dogs

2.1 Guide Dogs’ data shows a total of 240 dog attacks on guide dogs were reported between March 2011 and February 2013, an average of 10 attacks per month. The number of reported attacks is increasing: when we last reported in 2012 (for the period 2010 to 2012) the number of reported attacks was 8 a month. The cost of withdrawing dogs attacked between March 2011—February 2013 from service is estimated at £171,000. There is considerable regional variation in reported attacks and a further breakdown of data is available if required. Aggressor dogs were not with their owner on 22% of reported attacks and were with their owner but off the lead on a further 42% of occasions. Allowing dogs to roam alone and out of control demonstrates that owners don’t have a proper understanding of their responsibilities as a dog owner.

2.2 Attacks on guide dogs are extremely distressing for their owners. The relationship between an assistance dog and its owner is qualitatively different to the relationship between a pet dog and owner. As well as being a constant companion, a guide dog is a mobility aid which gives independence to its owner. This reliance makes the bond between guide dog and owner particularly strong.

2.3 The nature of visual impairment means guide dog owners are less able to protect themselves. A sighted person will see potential danger and take evasive action but a blind person is unable to do this. In addition, in the event of an attack a visually impaired person might have trouble fighting off an aggressor dog and protecting their guide dog.

2.4 The Anti-Social Behaviour, Crime and Policing Bill will make it an offence for a dog to be dangerously out of control when there is reasonable apprehension that it will injure an assistance dog (such as a guide dog). Where an out of control dog causes injury to an assistance dog, an aggravated offence will have been committed. We believe that this single measure, more than any other, will have the greatest impact on reducing the number of guide dogs who are attacked by other dogs.

2.5 We approve of the extension of the Dangerous Dogs Act to private property as it will give greater protection to guide dog owners when they are on private property. We welcome the increase emphasis on the role of responsible dog ownership in keeping dogs under control. It is Guide Dogs’ position that dog attacks are caused by bad ownership not by bad dogs. We also welcome the focus on prevention with early identification of out of control dogs allowing for preventative measures to stop attacks from happening in the first place.

3. Sentencing

3.1 Although the changes to the Dangerous Dogs Act would make it clear that an attack on an assistance dog is an aggravated offence, to ensure it is given sufficient weight in sentencing, we would propose that an addition be made to section 3(ii)(b) of the Dangerous Dogs Act with words to the effect of:

Whether the aggravated form of the offence comprises an attack on a person or on an assistance dog they will be treated, for sentencing purposes, in the same way.

3.2 Alternatively we would like the Sentencing Guidelines to state unequivocally that attacks on assistance dogs be considered as being equally serious as attacks on people for the purpose of sentencing.
4. **Definition**

4.1 The definition of “assistance dog” in the draft amendments is very broad and could encompass a wider range of dogs than may be intended by the legislation to include dogs that have not been trained by an accredited assistance dog organisation. This could potentially result in problems of definition as to whether the dog has been properly trained to provide assistance to a recognised standard.

4.2 The definition of “assistance dog” in the Bill is as defined in the Equality Act 2010. The definition in full states:

(a) a dog which has been trained to guide a blind person;
(b) a dog which has been trained to assist a deaf person;
(c) a dog which has been trained by a prescribed charity to assist a disabled person who has a disability that consists of epilepsy or otherwise affects the person’s mobility, manual dexterity, physical coordination or ability to lift, carry or otherwise move everyday objects
(d) a dog of a prescribed category which has been trained to assist a disabled person who has a disability (other than one falling within paragraph (c)) of a prescribed kind

4.3 Guide Dogs recommends a more precise definition, such as that used by the Department for Environment, Food and Rural Affairs and the Animal Health Agency in its guidance and protocols for the airport industry to help it meet its obligations under European Regulation (EC) 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air. The definitions are as follows:

4.3.1 Guide Dog—A guide dog is a dog trained to provide mobility assistance to a blind or partially sighted person. In the UK, the guide dog is trained, assessed and accredited by The Guide Dogs for the Blind Association (Guide Dogs). Outside the UK, a guide dog is a dog trained by an individual or organisation that is accepted by and affiliated to the International Guide Dog Federation.

4.3.2 Assistance Dog—An assistance dog is one which has been specifically trained to assist a disabled person and which has been qualified by an accredited Member of Assistance Dogs International (ADI), the body that sets standards for assistance dog organizations worldwide. Assistance dogs trained by a Member organization of Assistance Dogs International will have formal identification.

4.4 These definitions are an example of existing legal definitions which would be a good starting point. We would want a similar definition to be fully robust in the long term. For example in the future ADI may accredit guide dog schools or IGDF could accredit other assistance dog schools. It is also possible, though unlikely, that either organisation might cease to operate at some point. Any definition in the law would ideally have enough flexibility to allow for this.

4.5 The inclusion of a requirement that the assistance dog be accredited by a recognised assistance dog organisation ensures that the dog will meet certain standards of behaviour. It also protects against possible ambiguity, for example in a situation where an owner claims their dog has been trained to provide assistance it could be difficult to prove in front of a court what constitutes the terms “trained” and “assistance”.

July 2013

Written evidence from Southall Black Sisters (ASB 32)

Public Bill Committee: Anti-Social Behaviour, Crime and Policing Bill—Debate on the Criminalisation of Forced Marraige—Third Sitting Thursday 20 June 2013

We are somewhat surprised that in the course of the discussion on forced marriage at the above sitting, the Public Committee chose to invite two representatives from organisations that support the government’s proposals to criminalise forced marriage. In the interest of balance and to ensure that there is proper scrutiny and democratic debate on the subject, we expected the Committee to have shown an interest and willingness to also hear from and engage with those who oppose the proposals and who have exceptional track records stretching over 3 decades or more on addressing gender-based violence against minority women and interrelated issues.

In view of this significant omission, we would like to make the following submission. Our aim is to ensure that a more robust and informed scrutiny is brought to bear on the proposal.

We set out our submission in two sections. The first part highlights some key overall concerns regarding the criminalisation of forced marriage. This section is based on a comprehensive submission that we made in March 2012, in response to the Home Office Consultation on the subject. (See Annex—NOT PUBLISHED) The second section comments on the oral evidence given by the representatives from Karma Nirvana and the Freedom Charity and makes additional points.

Section 1

1. We are not opposed to the criminalisation of forced marriage in principle. We support the proposal to criminalise any breach of a protection order obtained under the Forced Marriage (Civil Protection) Act, because
perpetrators would have been placed on notice. We understand too that the criminal law can have symbolic value but we question whether it will be workable or viable as a deterrence measure. Our experience shows that few if any vulnerable young persons are willing to come forward to report a forced marriage if they believe that their parents will face criminal prosecutions and possible imprisonment.

2. The symbolic value of any criminal law on forced marriage will be greatly diminished if perpetrators know that it will not be used. They will continue to flout the law with impunity.

3. We support the proposal to introduce forced marriage as an aggravating feature during the sentencing stage of criminal proceedings. This will also have a symbolic and deterrence value.

4. Although it is difficult for young people to report their parents, they are nevertheless coming forward to seek protection for themselves. Our experience shows that the Forced Marriage (Civil Protection Act) 2007 has been a very effective protection mechanism and is being widely utilised. However, we fear that the criminalisation of forced marriage will deter vulnerable persons from coming forward and will lead to a vast reduction in the use of this and other civil remedies.

5. Our main concern is that criminalisation of forced marriage will be counterproductive since it will not only deter vulnerable people from coming forward, but will also drive the problem further underground.

6. For many young persons, talking the step to support the prosecution of those who they love in what are often complex family relationships will be perceived too drastic a step to take because it will permanently close the door on any future rehabilitation, however tenuous that may be. Many young women and girls who come from closed communities in particular, are psychologically unprepared to live independently and require considerable support to do so. Acute isolation and lack of adequate support structures are often the most cited reasons for young persons returning to their families following reports of forced marriage. If such women and girls are forced to support criminal proceedings, they may think twice about reporting a forced marriage since they will not want to risk being isolated without any hope of rehabilitation in the future.

7. Our view is that the focus should be on existing civil and criminal laws and guidelines on forced marriage to ensure that they are robustly implemented. Inconsistent enforcement of the current law remains the most problematic aspect of State response to forced marriage. Improved enforcement will also serve a symbolic and educative function in creating a culture of zero tolerance towards forced marriage. There is for example no specific criminal offence of domestic violence but that has not prevented a culture of zero tolerance on domestic violence from emerging—this has been achieved through awareness raising campaigns, better policing and monitoring, early intervention projects in schools and colleges and the establishment of specialist refuges and other services all of which are now under immense threat due to public spending cuts.

8. This is one area where a law cannot remain ‘resource neutral’ mainly because adequate support structures need to be in place to ensure long term protection and independence. Without these no vulnerable person would be willing to risk coming forward to support criminal prosecutions. The cost of pursing criminal prosecutions for victims is potentially life threatening. However, the massive cuts in legal aid, welfare and housing benefits and educational grants that we have witnessed will deter young people from coming forward to report their families, particularly as most are wholly and financially dependent on them. Our view is that they will not support criminal proceedings if they are no viable alternatives to living with their family and if it means that by doing so they sever all hope of future contact with their families and communities.

Section 2

9. We are concerned that the government is pressing ahead with the proposal to criminalise forced marriage in England and Wales, when it has yet to examine the impact of laws criminalising forced marriage in other jurisdictions including Scotland where a law on the criminalisation of a breach of a forced marriage order exists.129 To our knowledge, since the introduction of the law in Scotland, no criminal proceedings for a breach of a forced marriage protection order has been brought. This may be due to variety of reasons such as a lack of awareness on the part of the police and prosecution services or because there have been no or relatively low level breaches of such orders but it could also be the result of victims simply being unwilling to come forward to report a breach or give evidence in support of a prosecution. At the very least, we would expect the government to examine the effectiveness or otherwise of the criminalisation of forced marriage in other jurisdictions before introducing such laws in England and Wales.

10. Similarly, we are concerned that in England and Wales although the present criminal law allows for those who have committed offences under the heading of forced marriage, including abduction, threatening behaviour, assault and violence to be prosecuted, no such prosecutions have taken place. If as the representative from Karma Nirvana pointed out in her oral evidence, there are 6,779 forced marriage cases reported on their helpline every year we would have expected that at least some of these cases which would have been deemed appropriate to prosecute on the basis that serious offences have been committed. In any event, we doubt the accuracy of the figures provided by Karma Nirvana, since the organisation does not distinguish between forced marriage, honour based crimes and domestic violence cases. Although awareness and enforcement of gender based violence cases remains patchy or inconsistent throughout the police services in the UK, it is not so

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129 The Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 was passed on 26 April and came into force on 28 November 2011.
lacking as to result in no attempt at prosecution. We are of the view therefore, that the government should carry out research into why forced marriage cases in the UK have not resulted in any prosecutions under the existing criminal law before introducing a law that may not work.

11. It is claimed by the representative of the Freedom Charity that the proposal to criminalise forced marriage is wholly victim focused and that it is based on prevention. This is not our view or experience. Indeed the problem with the criminalisation proposal is that it takes control and choice away from the victim. For example what will happen if the victim withdraws her allegations and decides not to support a prosecution? What happens if she turns into a ‘hostile victim’? It is unclear how the police and CPS will deal with this situation. We are also concerned that prioritising criminal proceedings will result in more pressure being put on victims by family and community members to make them withdraw reports to the police.

12. On the other hand, under the Forced Marriage Act, if a victim wants to lift a forced marriage protection order, there is effective judicial oversight over the process, especially if she returns to her family. Therefore the view expressed by the representative from Karma Nirvana that a forced marriage protection order is not monitored behind closed doors is simply not accurate. In cases where a forced marriage protection order is granted and then the victim requests it to be lifted, experts are usually instructed by either family lawyers or local authority departments with permission from the courts, to assess the risks and to assess the overall needs and circumstances of the victim in the light of her history and background. This report is then placed before a judge who makes a final decision based on all the evidence before him/her. SBS is often instructed to provide such reports and our experience in doing so leads us to believe that it is a particularly effective mechanism of monitoring and prevention, precisely because it involves judicial oversight through the entire process.

13. Protection orders obtained under the Forced Marriage (Civil Protection) Act 2007 offer much better potential for prevention because the orders can be more finely tuned to fit an individual’s circumstances and needs. What they are designed to do is to ensure that a victim can obtain immediate emergency protection. It also gives some respite to a victim to think through her options in respect of her long term needs which she cannot do if a prosecution proceeds since it will remove any space that a victim may have for manoeuvre. Sometimes proceedings of this kind force perpetrators to understand that they cannot impose their will and so change their minds and in other cases, civil proceedings provides a victim with the space she needs to build her own life but with the option of establishing some sort of relationship with her family in the future. This option will be taken away if the State insists on prosecutions in circumstances where she is reluctant or unwilling.

14. One significant outcome of compelling victims to pursue criminal proceedings in forced marriage cases is that it is very likely to permanently sever all ties between victims and their families including with sympathetic siblings with whom, in our experience victims often stay in touch. (See our submission to the consultation on this point.) Any prosecution and conviction of family members will make it immensely difficult if not impossible for victims to re-establish contact or reconcile with their families in the future. Our experience shows that with time, many victims are eventually rehabilitated with their families, often on their own terms. The hope of re-establishing family relationships at some point in the future remains an important goal for many victims. However, the prospect of rehabilitation is likely to be diminished if victims are perceived to have supported criminal prosecutions which have wider ramifications for families.

15. Criminalisation of forced marriage is not about prevention since it is important to also note that by the time criminal proceedings take place, the forced marriage will already have taken place, probably abroad by perpetrators seeking to circumvent this jurisdiction. A case may have got so far that it may be too late to do anything about it. That is why the most effective measure is to focus on prevention by providing the resources and training to those who are in a position to do something before it occurs—the teacher or social worker who notices that a particular child has been absent from school or a slump in academic performance, or any one of a number of the published indicators and can therefore put protection measures in place. This has to be the main priority. Our fear is that the criminalisation route will force key professionals to give priority to the criminal route and this will also add to the trauma experienced by a vulnerable person who is likely to fear the prosecution of their parents or the process of going through a criminal trial.

16. The case of the young woman from Luton forced into a marriage cited by the representative from Karma Nirvana in her oral evidence, where there is a breach of a forced marriage protection order, could in our view, be just as effectively dealt with by the proposal to criminalise the breach of a forced marriage protection order. The pressure that was put on her by her parents to have the protection order lifted is precisely the kind of risk assessment that is directed by the Courts when deciding whether or not to discontinue a protection order as discussed in paragraph 12 above. It is also the kind of pressure that a specialist agency would also be alert to and would address as part of the support services that it offers if such a service exists. The case that is cited therefore is more relevant in highlighting the acute shortage or absence of support structures and resources needed to provide effective protection rather than in highlighting the need for a criminal law on forced marriage. Indeed it could be argued that had a criminal law been in place, the young woman would have been under even greater pressure to withdraw her support for any criminal charges and may even have been subjected to or threatened with serious harm for non compliance. Her awareness of the potential criminalisation of her parents may have in fact deterred her from going to the police station in the first place.

17. We are also concerned that innovative projects on preventing forced marriage will cease if the focus shifts to criminal law. For example we are working jointly with the Forced Marriage Unit on a repatriation
project providing support to young women and girls rescued abroad and repatriated to the UK. Whilst these women and girls have requested support in re-building their lives once in the UK, none have expressed any desire to have their families or relatives prosecuted, despite often being subject to addiction, imprisonment and violence abroad. The repatriation project has also involved working on an innovative pilot project aimed at identifying vulnerable young girls or persons who find themselves at ports of exit and entry in the UK. We are currently working with the police and security staff in patrolling such ports of exit and entry and will be reporting on the outcome of the project shortly. We have also just completed a 2 year project funded by Comic Relief with support from the Forced Marriage Unit on undertaking prevention work on forced marriage and all forms of gender-based violence in local schools. This is currently being evaluated and it is hoped that resource packs produced will be used by schools across London. Early results form the schools project show that working in schools on gender-related violence issues has had a significant impact in changing attitudes and behaviour across the school community. The project has had a positive impact in changing the ethos of schools and both pupils and teachers have show increased understanding and willingness to help a victim of abuse by sign posting to appropriate agencies. However, these important projects are insufficiently funded if at all, and we fear that any shift in priority will distract from the key prevention and training work that needs to take place in schools and colleges.

18. Our experience shows that the education system has been the slowest to respond to the need to address forced marriage. There needs to be considerable attention on increasing awareness and creating monitoring mechanisms for all forms of gender-related violence and equality issues in schools. Issues such as child sexual abuse, sexual grooming, forced marriage, ritual abuse, female genital mutilation and many others are not properly covered in PSHE classes with the result that many children simply do not recognise warning signs or know how to stay safe. Indeed, our experience shows that children from some communities are withdrawn from these classes on religious grounds although it is precisely such classes that are likely to help them increase their awareness and seek appropriate support. We would like to see PSHE classes become compulsory in all schools so that all children have access to information delivered in a sensitive and age appropriate way. More work also needs to be done to train Ofsted inspectors. We are of the view that heads of secondary schools and further education colleges have an obligation to provide clear and well publicised information on a range of gender-related violence issues and Ofsted has an important role to play in monitoring how these issues are addressed.

19. It is well recognised, the motives for forced marriage are varied and complex. By and large they stem out of and reflect patriarchal forms of control in which family and community members, including some women collude. At the heart of forced marriage cases is the perceived need to control female sexuality which is why it is often associated with the issue of honour based crimes. For this reason, we would urge utmost caution on making a direct link between forced marriage and the desire for immigration to the UK. SBS intervened successfully in the Supreme Court case of Quila and Bibi in 2011129 in which the link between forced marriage and immigration, in that case concerning under 21 year olds, was examined in depth. It was accepted by the Supreme Court that that there are a variety of motivations behind forced marriages, and without empirical evidence that immigration is the (or at least a) primary motivation it may be difficult to categorically determine that an immigration based deterrent is the solution. The apparent focus on immigration as a fundamental aspect of forced marriage is therefore, on the evidence available, an incorrect approach to addressing the problem of forced marriage and potentially counter-productive and dangerous for the victims.

20. Given that there are are many motivations for forced marriage—including issues of familial control, hiding mental disability or homosexuality and the attempt to seek redress for perceived dishonourable behaviour—to focus specifically on the immigration aspect is to distract from understanding the root cause or causes which may lead to a continuation of the practice. It is, of course, correct that immigration may impact upon forced marriages resulting in movement of the victim (or alternatively the spouse) from a non-EU country but it has no effect upon forced marriages taking place in this jurisdiction or between a UK national and another with residence in the EU and so entitled to travel. It also does not prevent a potential spouse from being brought into the jurisdiction on an alternative visa (for example a visitors or students visa) and married whilst here. Analogous evidence suggests that this has been the experience in Denmark following changes to their immigration policy.

21. Although the immigration aspect may in some cases be a possible root cause of the forced marriage, it is similarly distinctly possible that the immigration aspect, and particularly sponsorship of any necessary spousal visa, is a necessary result of the initial forced marriage whatever the root cause for that might have been. Practical experience also shows that the coercive process may continue past the point of the marriage and through the immigration process. However the use of immigration controls will not necessarily serve to remove the possibility of a forced marriage, and may simply exacerbate the problem by increasing the length of time for which those who would force the victim to marry exercise control over them.

22. We are alarmed by the proposed changes to legal aid which will have an adverse impact on forced marriage cases. In particular, the introduction of the ‘residence test’ to access legal aid will also have the effect of excluding British Nationals from exercising their rights in the UK. We envisage two types of scenarios

129 R (on the application of Quila and another) (FC) (Respondents) v Secretary of State for the Home Department (Appellant); R (on the application of Bibi and another) (FC) (Respondents) v Secretary of State for the Home Department (Appellant) [2011] UKSC
where young vulnerable women subject to forced marriage will be adversely affected by the residence test since the very issue of ‘lawful residence’ is likely to be in dispute:

— An applicant who travels to this jurisdiction on a lawful visa who is then threatened with forced marriage but who is in the UK less than 12 months;
— A British national who is sent overseas and is threatened with a forced marriage but who cannot meet the first limb of the residence test as she is outside of the UK.

23. The latter scenario is the most common situation that we encounter. In the last five years or so, we have seen an increasing number of calls from desperate young girls and women who are taken abroad, forced into a marriage and then abandoned there.

Case Example 1: Munira is a 26 year old British National. Three years ago she was taken to Pakistan by her paternal grandparents. Prior to this, her paternal grandmother had been visiting her in the UK and was responsible for taking her to Pakistan. She had a boyfriend in the UK, who came to the attention of her mother who strongly disapproved of the relationship. Her grandmother tricked her into going to Pakistan on the promise that she would allow her to marry her boyfriend as his parents resided in Pakistan. When she arrived in Pakistan, she realised that her grandmother was lying. She was afraid of being forced into a marriage with someone else as her grandmother was introducing her to suitors. She feared that she was being forced to marry someone because she was the eldest of her siblings. She was held against her will in her grandmother’s house in Pakistan for two years. In February 2010, she was forced to marry one of her cousin although she did not give her consent. Eventually, she managed to contact the British Embassy, who with assistance of an FCO facilitated her return to the UK. In an attempt to keep her in Pakistan, her grandmother confiscated her passport. She was then issued with a travel document. On arrival in the UK, her family made several attempts to trace her but she was adamant she did not want any contact with her family.

Case Example 2: Ayesha is a British National. Her parents separated four years ago and she lived with her mother in the UK. She has three younger siblings. Although her parents were separated, her father continued to reside in the same area. She faced considerable abuse from her mother throughout her childhood. Her mother often held a hot iron to her face and threatened to kill her. She was also kept isolated from her friends. Ayesha did not have a stable relationship with her father as he had been party to the abuse that she experienced as a child. Sometime in early November 2012, Ayesha was locked in her bedroom. Her mother told her that she would only be allowed out if she agreed to go to Afghanistan. On 9 November 2012, she went to Afghanistan, where she was visited by numerous suitors and eventually she was forced into marrying her maternal cousin who was 8 years her senior. Ayesha eventually managed to escape from her husband in Afghanistan and made contact with the Foreign and Commonwealth Office. She was repatriated to the UK. However, the FCO retained her passport in exchange for the loan covering her travel fare back to the UK. She was told that she would have to pay £500.00 to retrieve her passport. SBS also assisted Ayesha in instructing publicly funded family solicitors to commence wardship proceedings to ensure that social services provided her with appropriate support. She also obtained a Forced Marriage Protection Order as her parents were actively trying to trace her.

24. Both Munira and Ayesha would not pass the first limb of the proposed residence test. Both would need to gather evidence of their previous ‘lawful residence’ in the UK. This may be difficult for them to prove, especially if they have no access to documents, as is the case with Munira whose documents have been retained by her family with whom she is now estranged. The residence test will severely hinder victims ability to obtain legal aid in order to secure forced marriage protection orders or commence wardship proceedings. Indeed, they may be refused legal aid for lack of evidence of ‘lawful residence’.

25. It is also important to note that in many forced marriage repatriation cases like that of Ayesha, the Forced Marriage Unit can retain an individual’s passport pending repayment of a loan used to finance their return. In these cases, minors, who have no ‘original’ proof of identity may also be caught out by the ‘lawful residence test’.

26. The proposed residence test will therefore undermine the ability of migrant women and British nationals alike, to exercise their right to protection under the Forced Marriage Act, thereby frustrating the purpose of the Act. It will also undermine the government’s strategy to combat and prevent forced marriage as set out in the document entitled ‘Call to End Violence Against Women and Girls (2010). There is no indication at present that forced marriage cases will be exempt from the residence test.

27. Moreover, for the purposes of the Committee’s scrutiny on the proposal to criminalise forced marriage, the lack of access to legal aid to obtain a forced marriage protection order is also likely to deter a victim from contemplating criminal proceedings since she will not feel protected before, during and after the criminal process.

28. One of the most serious impediments to protection from forced marriage is the lack of specialist black and minority women’s services across the country. It is ironic that at a time when awareness on forced marriage has increased if in a somewhat uneven way, resources to address the issue are diminishing at an alarming rate. For example, funding processes in local areas are working against smaller specialist organisations. More and more black and minority women’s services are under pressure to merge, or become subsumed with larger organisations as local authorities seek to make budget cuts and move towards a commissioning funding model for ‘generic’ services. But the ‘generic’ services often run by housing associations or others do not have the
inclusion or the ability to carry out the sensitive, labour intensive support that is required in these cases, especially, where they involve the intersection of a number of issues, including immigration matters. Yet without specialist services, vulnerable victims are less likely to pursue criminal charges since they will be left without support and assistance in trying to navigate their way around complex areas of law and procedure. They are likely to be isolated and left to face an uncertain future in circumstances where they may be acutely traumatised.

29. It has long been recognised that specialist domestic violence services are essential to meet the needs of black and minority women, where there is specialist expertise that is sensitive to the issues and risks that they face, leading to increased trust and access to statutory services. Black and minority women’s services have historically arisen out of need in circumstances where generic services have failed to understand and meet their needs. Black and minority women have additional complex needs such as insecure immigration status, lack of knowledge of how systems work in Britain, fear of abduction as well as language barriers which necessitate additional support. They also tend to remain in abusive relationships for longer periods of time before reporting to outside bodies and have disproportionate suicide and homicide rates.

30. However, cuts in public spending have already closed or threatened the closure of specialist services for black and minority women. What funding is available is being channelled towards faith based organisations which seek to address gender issues from a ‘faith perspective’ that greatly undermines the gains in achieving equality that black and minority women have made. The cuts coupled with a ‘multi-faith’ perspective threaten to derail completely the role of secular women’s services as key agents of change in their communities. For example, 2 out of 5 black and minority women’s refuge services in one local authority have closed and two of the remaining four have had funding cuts. The ‘Every Woman Safe Everywhere’ report commissioned by the Labour Party has noted that during the period that its research was undertaken, two specialist black and minority women’s refuges closed in London.

31. Also, it is significant that local authorities have cut the funding of domestic violence and sexual abuse services by 31% between 2010/11 to 2011/12, a reduction from £7.8 million to £5.4 million. Organisations with smaller amounts of local authority funding of less than £20,000 were disproportionately higher. Between 2010/11 and 2011/12, on average they faced a 70% cut compared with 29% for those receiving over £100,000. As black and minority services are more likely to be smaller specialist services and more dependent on statutory funding, the cuts have had and are having a devastating impact on their services.

32. There is also growing concern that with the loss of Supporting People funding, projects for vulnerable people and in particular black and minority women will be disproportionately impacted. Financial pressures lead to monies being diverted elsewhere. There has been little or no research into the impact of the loss of Supporting People funding on black and minority women. The organisation, Imkaan for instance has reported that funding bodies and commissioners do not adequately evaluate services in order to capture the specialism of the black and minority violence against women sector.

July 2013

Written evidence from Ashiana Network (ASB 33)

We are writing to you in response to the Anti-Social Behaviour, Crime & Policing Bill—addressing the practicalities of supporting victims and survivors of forced marriage. We attach our response to the Forced Marriage consultation in 2012 for your perusal (Annex A—not published).

We welcome the fact that the Government is taking the problem of forced marriage seriously. We agree that it constitutes an appalling violation of an individual’s fundamental human rights. We support the proposal contained in the consultation to criminalise any breaches of the civil protection orders to bring this area of law in line with the law relating to domestic violence where breaches of civil non-molestation orders are treated as criminal offences. We also support the introduction of forced marriage as an aggravating feature in sentencing of criminal offences.

The primary purpose of any legislation in respect of forced marriage must be to protect victims. Many victims are reluctant to report their experiences to the authorities for fear that their family will face criminal sanctions. Victims often need to be reassured that the protection they seek can be obtained in the family courts, and, thus, that their families will not be prosecuted, before they will agree to make a formal statement. The creation of a specific criminal offence will prevent victims from coming forward to obtain essential assistance and will directly impact upon their access to justice as they will be unlikely to invoke existing civil remedies. Women who pursue legal processes may withdraw or their accounts may be inconsistent; they are then deemed to be wasting police time.

As a result of our extensive first hand case-handling experience, we have observed the vulnerabilities of forced marriage are often so great and the complexities of high risk situations being such that the victims do not

\[\text{\footnotesize 130 2012, Towers, J. and Walby, S., Measuring the impact of cuts in public expenditure on the provision of services to prevent violence against women and girls, [online] Available at http://www.trustforlondon.org.uk/VAWG%20Full%20report.pdf}\]

have the capacity or desire to withstand rigorous legal proceedings, in particular criminal proceedings where
the Crown Prosecution Service need to satisfy the high criminal burden of proof, namely “beyond reasonable
doubt”.

There are problems around current practice that cannot be solved by legislation alone. A disproportionate
focus on enforcement has a much more harmful and damaging impact on women and girls as the interventions
often take place when women are in crisis.

The significant stumbling blocks to an effective response include poor awareness amongst key professionals,
a lack of mandatory training, historically poor levels of investment in grassroots provision, not responding to
forced marriage as part of mainstream child protection responses, a lack of prevention and early intervention
work in schools and other community-based settings, a lack of monitoring and implementation of the statutory
guidelines.

Statutory agencies have a legal duty to ensure safeguarding policies and practices are implemented. All
statutory services should fully comprehend the familial and community dynamics associated with forced
marriage, which would then equip them to assess and effectively execute those duties. We know that
safeguarding duties related to forced marriage are under-utilised and there is no consistency of practice
or approach. It is imperative to establish consistent safeguarding mechanisms, so risk can be assessed and
managed not only for the woman/girl at risk of forced marriage but also to ensure the safety and protection
of any other woman/girl in the family or community that may also be at risk from threats, coercion and other
forms of violence.

A consistent multi-agency response, embedding forced marriage into VAWG policy and practice is urgently
required to improve current approaches. The Missing Link (2011) report provides evidence of promising
practice which if more consistently implemented would improve detection, reporting and interventions. The
report refers to our schools which work to prevent forced marriage, at a cost of £31,000, resulted in 95% of
girls feeling more confident about forming healthy relationships and 93% feeling more confident in telling
someone if they experienced violence. The programme also prevented a number of forced marriages from
taking place, while delivering a range of other positive outcomes for students and staff.

The recent creation of the Forced Marriage (Civil Protection) Act 2007 within existing domestic violence
legislation in England and Wales was a positive development: the increasing number of applications for Forced
Marriage Protection Orders (far exceeding the numbers anticipated), is a strong indication that the legislation
is effective. It is significant to note that domestic violence is prosecuted under a range of separate offences
and that there is no existing or proposed specific criminal offence of domestic violence. In the case of FM too,
the Crown Prosecution Service should be prosecuting the large number of serious criminal offences already
committed by perpetrators during the course of a forced marriage, which include rape, kidnap and assault.
Upon conviction, the circumstances of forced marriage should be introduced as an aggravating feature at the
sentencing stage. The Crown Prosecution Service report that since they have developed a system for flagging
cases of forced marriage and have trained specialist prosecutors on forced marriage and honour based violence,
the confidence of prosecutors has improved and levels of prosecution on existing offences associated with
forced marriage have improved.

Statutory agencies (including the education, health, police and social services) are insufficiently versed in
the Government’s own best practice guidelines for dealing with forced marriage cases: further training for
relevant professionals is needed as a matter of some urgency to ensure that existing criminal and civil remedies
including child safeguarding mechanisms are used effectively.

If there is money available in these times of austerity, we are of the view that this would be better spent on
the initiatives outlined above and in funding the refuge and support services which are essential to a victim
being able to access justice in the first place and which are central to victims overcoming the multiple traumas
they experience as a result of being threatened or forced into marriage.

We will not effectively address forced marriage without adequate resources for front-line provision and an
integrated multi-agency approach which promotes the need for early-identification, intervention and prevention.

July 2013

Written evidence from the Association of Convenience Stores (ASB 34)

LOW VALUE SHOP LIFTING CLAUSE 133—AMENDMENTS

ACS (the Association of Convenience Stores) represents 33,500 local shops across the country in the
Co-operative, Spar, Costcutter, Nisa Retail and thousands of independent retailers. Shop theft is the largest
operational challenged faced by convenience retailers.

Industry and Government statistics show that shop theft is the highest volume crime committed against the
UK retail and it is estimated to account for 28%132 of the cost of all retail crime. Despite the high volume and
wide ranging impact that shop theft has on local shops and the wider retail sector the Home Office failed to consult on this clause.

ACS supports three changes to Clause 133 ‘Low Value Shop Theft’:

**Repeat Offenders:**
Prolific and repeat offenders account for a large proportion of shop theft and should be held accountable in Court. The £200 threshold should not be extended to any individual that has already received a police caution or penalty notice for disorder for shop theft.

**£200 Threshold:**
The impact or severity of shop theft should not be defined in monetary value. Setting a high threshold of £200 would codify discrimination against businesses selling groceries and other everyday goods (such as convenience stores) from high end fashion and electrical retailers. It will also downgrade the vast majority of offences, which are for goods of a lesser value than £200. The threshold should be dropped to £100 this would be closer to the median amount of value of goods stolen (£40).

**Shop Theft not ‘Shoplifting’:**
The term ‘shoplifting’ is disliked by retailers as it portrays the idea that theft from their business is less serious and victimless. Shop theft is a very serious and damaging offence and should be recognised as theft.

**KEY STATISTICS**
- Retail Crime in total cost £1.6 billion in 2012 equivalent to £135,000 thousand jobs.
- Shop theft accounts for 28% of the total cost of shop theft
- Home Office data from 2012 shows that shop theft accounted for almost half of total crime against businesses surveyed.
- Almost half of all Fixed Penalty Notices issued for retail theft go unpaid

**AMENDMENT 114—REPEAT OFFENDERS**
The clause intends to prevent persistent offenders from benefiting from the £200 threshold and not having to attend court. Offenders are more likely to be charged with individual offences not successive offences, therefore a mechanism must be in place to ensure persistent offenders do not benefit from the very high £200 threshold.

If an offender has a previous caution or penalty notice for disorder for shop theft it is appropriate for interventions to be made by the courts to prevent them from reoffending.

Clause 133, Subsection 22A 3, Page 103, line 37, at end insert—
(d) the person accused has not received a Simple Caution, Conditional Caution or Penalty Notice for Disorder for a previous shoplifting offence.

**AMENDMENT 113—REDEFINING £100**
The median amount of goods taken in the 2006 study used to justify this clause was £40. Only 23% of the recorded incidents in the survey were between £100 and £200. Dropping the threshold £100 would ensure that the minority of high level offence above £100 are still heard in court.

Shoplifting £200 worth of stock from a convenience or supermarket would require significant and effort, and multiple visits. The threshold should be reduced to reflect the low value nature of the majority or shop theft incidents.

Clause 133, Subsection (3) 22A, Page 103, line 31, leave out ‘£200’ and insert ‘£100’

**Shop theft not ‘shoplifting’**
ACS would also support amendments to change the term ‘shoplifting’ as currently referenced in the Bill to “shop theft”. ACS understands that the term shoplifting has been used because of inclusion in other legislation but believe it should be changed because of the perception it gives that shop theft is not a serious offence.

Shop Theft is serious and does have a damaging affect on a business’s income and can leave staff and retailers feeling vulnerable. Calling it ‘shoplifting’ lowers the perception that shop theft is a serious offence that will be dealt with appropriately.

Clause 133, Page vii, Part 12: Criminal Justice and Court Fees, leave out ‘Shoplifting’ and insert ‘Shop Theft’
Clause 133, Page 103, line 14, leave out ‘Shoplifting’ and insert ‘Shop Theft’

133 Sentencing Advisory Panel Research 2006
Clause 133, Subsection (3) 22A, Page 103, line 19, leave out ‘Shoplifting’ and insert ‘Shop Theft’
Clause 133, Subsection (3) 22A (3), Page 103, line 20, leave out ‘Shoplifting’ and insert ‘Shop Theft’
Clause 133, Subsection (3) 22A (2), Page 103, line 21, leave out ‘Shoplifting’ and insert ‘Shop Theft’
Clause 133, Subsection (3) 22A (2), Page 103, line 29, leave out ‘Shoplifting’ and insert ‘Shop Theft’
Clause 133, Subsection (3) 22A (3c), Page 103, line 36, leave out ‘Shoplifting’ and insert ‘Shop Theft’
Clause 133, Subsection (3) 22A (4b), Page 103, line 42, leave out ‘Shoplifting’ and insert ‘Shop Theft’
Clause 133, Subsection (3) 22A (5), Page 104, line 1, leave out ‘Shoplifting’ and insert ‘Shop Theft’
Clause 133, Subsection (3) 22A (6), Page 104, line 9, leave out ‘Shoplifting’ and insert ‘Shop Theft’
Clause 133, Subsection (3) 22A (6), Page 104, line 12, leave out ‘Shoplifting’ and insert ‘Shop Theft’
Clause 133, Subsection (3) 22A (7), Page 104, line 13, leave out ‘Shoplifting’ and insert ‘Shop Theft’
Clause 133, Subsection (3) 22A (7), Page 104, line 15, leave out ‘Shoplifting’ and insert ‘Shop Theft’
Clause 133, Subsection (5b), Page 104, line 30, leave out ‘Shoplifting’ and insert ‘Shop Theft’
Clause 133, Subsection (6a), Page 104, line 34, leave out ‘Shoplifting’ and insert ‘Shop Theft’
Clause 133, Subsection (6b), Page 104, line 37, leave out ‘Shoplifting’ and insert ‘Shop Theft’

July 2013

Written evidence from the Local Government Association (ASB 35)

ABOUT THE LOCAL GOVERNMENT ASSOCIATION

1. The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government.

2. We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

3. The LGA covers every part of England and Wales, supporting local government as the most efficient and accountable part of the public sector.

OVERVIEW

4. The LGA welcomes the added flexibility to tackle anti-social behaviour that this Bill provides. We appreciate the amendments the Home Office made as a result of feedback received, by the LGA and others, during the development of the proposals and pre-legislative scrutiny. For example, the proposals in Part 1 of the Bill on injunctions to prevent nuisance and annoyance now include a power of arrest, as recommended by the LGA.

5. There remain some areas where we believe the proposals would benefit from greater clarification or amendment.

5.1. It is not clear how the ‘positive requirements’ imposed on perpetrators of anti-social behaviour through the injunctions and criminal behaviour orders will be funded (given budget cuts facing councils);

5.2. We would like to see the Government advise Police and Crime Commissioners to consult local authorities on the use of dispersal powers in their areas, should this action be under consideration;

5.3. We are concerned that closure notices can only be made if ‘reasonable’ efforts have been made to inform the owner in advance. Sometimes premises need to be shut down immediately for the protection of the public, so the process should not be delayed and this should be clarified in any subsequent guidance;

5.4. We would like to see greater ability to tackle anti-social tenants in private housing. This could be achieved by extending the scope of the injunctions to prevent nuisance and annoyance

5.5. On the community trigger, the LGA would like to see the threshold set by local partners, including the police and council. A national threshold will fail to take account of local circumstances, where it may need to be higher or lower than the suggested three complaints.

6. Councils know that the most effective way of tackling anti-social behaviour is to stop it happening in the first place. This means working in partnership with schools, youth offending teams, health, fire services, probation services, and the police to steer people away from activity which causes harassment or distress to others.
7. Councils have a good track record of providing services that turn lives around, both in terms of supporting those affected by anti-social behaviour, and rehabilitating perpetrators. However, continuing this support will not be easy due to the budget pressures on councils and other public services.

8. The provisions within the Bill relate to all persons from the age of ten years and over. The Bill thus presents an opportunity to consider how anti-social behaviour rules should apply to young people. Where they are responsible for such behaviour, the focus of the response must be to help them grow into law-abiding citizens, and be proportionate to their age, behaviour and any similar history.

9. The extension of dangerous dogs legislation to private land will help councils work with the police to respond to issues as they arise, and the growing concerns about dangerous dogs and their owners. Combined with the anti-social behaviour measures, these proposals offer councils and local partners the ability to work together to tackle the very real fear that irresponsible dog owners have created for some local communities.

10. We remain to be persuaded of the need for a specific dog control notice in the legislation. With no clear description of how a dog control notice would fundamentally differ from the provisions included in the Bill, we would prefer for guidance to be developed by the dog charities alongside the Home Office and the LGA. This could then set out how all local partners can get maximum benefit from these tools to protect local communities and improve the welfare of dogs.

**PART 1—INJUNCTIONS TO PREVENT NUISANCE AND ANNOYANCE**

11. The LGA supports the creation of a genuine civil order that allows councils and other partners to act swiftly to protect victims and communities, and can be obtained on a civil burden of proof. As the proposals were being developed, the LGA raised concerns that a power of arrest could not be attached to the injunction, so the Government’s decision to provide for a power of arrest to be attached is welcome.

12. Councils have a good record of providing services that turn lives around. Continuing this support will not be easy due to budget pressures on councils and other public services. The Impact Assessment for the injunctions does not quantify the cost of imposing 'positive requirements', partly because the existing Individual Support Orders or Intervention Orders have been used so infrequently. While we support the ability of courts to impose positive requirements as part of the injunction, the LGA is concerned that, as the use of positive requirements is predicted to impose an additional financial burden on councils, the overall estimates that the injunctions will be cheaper to use than ASBOs may not be right, and councils may be placed under an additional financial burden.

13. As with current legislation, the provisions relate to persons from the age of ten years and over. The Bill therefore presents an opportunity to consider how anti-social behaviour rules should apply to young people, in particular when it comes to handling of cases where there is a group of defendants with varied ages, some of whom would be treated as young offenders while some would be treated as an adult. This could mean the case being heard in two different courts with the cost implications and additional burdens placed on witnesses that brings. Where young people are responsible for anti-social behaviour, the focus of the response must be to help them grow into law-abiding citizens and be proportionate to their behaviour and any similar history. The distinction between the youth justice and the adult criminal justice system in England is an important principle that should also underpin the response to anti-social behaviour.

14. We support the Home Affairs Select Committee’s finding that injunctions should only be available after attempts to resolve the issue through informal support and acceptable behaviour agreements have failed. The overwhelming evidence concerning the ineffectiveness of custody in preventing reoffending by young people reinforces the view that it should only be used as a genuine last resort. Three out of four of those leaving custody go on to commit further offences and according to the Ministry of Justice the average cost of a place in a Young Offender Institution is £65,000 a year.

15. The LGA also supports the ability of the court to impose positive requirements as part of the injunction on young people, although it is essential that there is consultation with youth offending teams where the young person is under 18.

**PART 2—CRIMINAL BEHAVIOUR ORDERS**

16. The LGA supports the introduction of Criminal Behaviour Orders, which is similar to the anti-social behaviour order currently available on conviction. However it is important that before seeking an order against someone under 18, the Youth Offending Team is consulted and closely involved, in order that the support available to the offender is considered and any issues such as learning difficulties or mental health are understood.

17. It is also vital that where someone under 18 is subject to an order that there is an annual review of the situation.

**PART 3—DISPERSAL POWERS**

18. The provisions on the use of dispersal powers would see the decision made on whether to use dispersal powers resting solely in the hands of the police. While rationalisation of the powers is welcome, the current
designation of areas where the police can exercise dispersal powers is done in consultation with the local authority, while in some cases councils have responsibility for making the orders. Use of such powers can on occasion prove controversial, which is why their use should be dependent on democratic oversight. This could be provided by Police and Crime Commissioners (PCCs), but given the local nature of the issues that dispersal powers are used for, and the large area PCCs cover, this will be challenging.

19. Councillors on Police and Crime Panels or community safety scrutiny committees could provide alternative and valuable mechanism for providing the local community with a voice in the use of the dispersal powers. As a result, the LGA would expect PCCs, when scrutinising the use of dispersal powers by officers in their force, to consult local authorities in their area as to whether the use of such powers is appropriate, proportionate, and effective.

PART 4—COMMUNITY PROTECTION NOTICES/PUBLIC SPACES PROTECTION ORDERS/CLOSURE NOTICES

20. The LGA welcomes the introduction of these notices and the flexibility they offer, which will allow councils to decide how to take action swiftly and effectively to prevent and tackle anti-social behaviour. The LGA will be seeking to work with councils to offer guidance on the effective use of these powers.

21. Councils are familiar with problem premises and these notices will allow them to take action swiftly with local partners to ensure property does not house or lead to anti-social behaviour. However, the LGA has a concern about closure notices only being made if ‘reasonable’ efforts have been made to inform the owner in advance. Sometimes premises need to be shut down immediately for the protection of the public, so the process should not be delayed and this should be clarified in any subsequent guidance.

PART 5—RECOVERY OF POSSESSION OF DWELLING-HOUSES: ANTI-SOCIAL BEHAVIOUR GROUNDS

22. These powers represent a serious sanction and councils would use them in a proportionate way, investing in prevention and working with partners.

23. Clearly it is crucial that the use of these powers do not result in displacement of the problem rather than solution. This is particularly important when considering councils’ homelessness duties and the Government should clarify how the new powers will interact together.

ANTI-SOCIAL BEHAVIOUR IN PRIVATE RENTED ACCOMMODATION

24. A further issue is the two tier approach to dealing with anti-social behaviour in different types of housing tenure. The LGA is of the view that the Bill could be extended to provide councils with the means to deal more effectively with anti-social behaviour committed by private sector tenants. This can be a considerable problem in some areas, and it should be noted that the injunctions to prevent nuisance and annoyance can only be used to exclude tenants from social housing.

25. One means of dealing with this issue would be to amend the injunction provisions to allow private tenants and owner occupiers to be excluded from their homes in the same way that social housing tenants will be able to be excluded from their homes.

26. An alternative would be to provide private landlords with greater incentives to take action to manage their tenants better. The Housing Act 2004 allows councils to selectively licence private landlords in the whole of their area or part of it where there is significant and persistent anti-social behaviour problems, and private landlords are not taking action to tackle this. A scheme can currently be introduced where local residents, tenants and landlords have been consulted for at least 10 weeks. Where a licensed landlord fails to take action the council can apply for a management order to allow it to take action against the tenants. There remains the issue from a council’s perspective that it of course has to take action if the landlord fails to.

27. In Scotland there is a positive requirement on private landlords to take action to deal with anti-social behaviour through the Anti-Social Behaviour etc (Scotland) Act 2004 and landlords also have to be registered with their council. If the landlord fails to take action the council can serve a notice on them specifying the action they have to take, and if this is ignored the council can seek an order banning the landlord from collecting rent. Provisions similar to those in the Scottish legislation could be inserted into this Bill to provide private sector landlords with a greater incentive to take action against anti-social tenants.

PART 6—LOCAL INVOLVEMENT AND ACCOUNTABILITY

28. Councils face a continual challenge to ensure the most vulnerable victims of antisocial behaviour do not slip through the net. As a result, the LGA appreciates the value of the community trigger. The Home Office has published the results of the community trigger pilots and these identify a number of benefits of introducing the trigger, and from it being able to identify cases of long term and persistent anti-social behaviour.

29. However, we would like to see the threshold for the trigger set by local partners, including the police and council. A national threshold will fail to take account of local circumstances, where it may need to be higher or lower than the suggested three complaints.
PART 7—DANGEROUS DOGS

30. Local communities have suffered because police and councils have been left powerless to respond to growing concerns from residents about dangerous dogs and their owners. The extension of dangerous dogs legislation to private land will help councils to work with the police to respond to issues as they arise.

31. Educating the public about responsible ownership, and allowing councils to direct irresponsible owners to undertake training, can provide a greater protection for the public.

32. The LGA has open and productive dialogue with the dog charities and before the Government proposals on anti-social behaviour were put forward, we supported their work to introduce specific dog control notices as an opportunity to address the day to day fear that irresponsible dog owners are creating in our communities.

33. We are aware that there is continued pressure for specific dog control notices to be included in the Bill. The LGA remains to be convinced that separate tools are necessary as no details have been provided of the specific gaps in the provisions for the injunctions, community protection notices or public space protection orders that a dog control notice is needed to fill.

34. However, we do recognise that existing proposals for dog control notices do not require approval from a court and therefore would enable councils to respond quickly and require less resource than some of the tools available in the Bill. Whether final parliamentary decisions favour the introduction of generic anti-social behaviour measures or specific dog control notices, we would welcome the opportunity to work with the Home Office and the dog charities to develop guidance about how all local partners can get maximum benefit from these tools and shared expertise to protect local communities, improve the welfare of dogs and work together to encourage general promotion of responsible dog ownership.

July 2013

Written evidence from the Administration of Justice (‘CAJ’) (ASB 36)

1. CAJ is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

2. CAJ welcomes the opportunity to provide Written Evidence to the Committee in relation to the Anti-Social Behaviour, Crime and Policing Bill a number of whose provisions extend to Northern Ireland. CAJ has concerns in relation to some of the proposed changes including those relating to removing extradition safeguards. This submission will comment briefly on the proposed changes to ‘port and border controls’ (clause 124/ schedule 6) and then focus on the bills provision to redefine a ‘miscarriage of justice’ (clause 132).

PORT AND BORDER CONTROLS: STILL LACKING LEGAL CERTAINTY

3. Schedule 7 of the Terrorism Act 2000 (TACT) (port and border controls) permanently contains the type of widely drafted emergency power which became familiar to many in Northern Ireland throughout the period of conflict. The current powers allow police, immigration or customs officers to stop, question and detain any person to ascertain whether they appear to be a “terrorist”. There is no requirement for reasonable suspicion to exercise the power. The detained person must give ‘any information’ or ‘any document’ on his or her possession the officer requests, and can be detained for up to nine hours for this purpose. The person and their possessions can be searched. The powers can be exercised in ports, airports or in anywhere in a mile long strip of land on the Irish land border. The lack of safeguards to regulate the conduct of officers clearly risks such powers being exercised in an arbitrary or discriminatory manner, and hence in our view the provisions lack the requisite legal certainty required by matters which engage Convention rights.

4. CAJ recognizes that the changes in the Bill are designed to introduce safeguards in the exercise of the power which in principle is to be welcomed. In our view however these new provisions will be insufficient to ensure the requirements of legal certainty are met in relation to the powers. This will mean powers akin only to the type of questioning and detention an individual would expect to be subjected to in a police station following arrest can still be used on any person who is merely travelling from Northern Ireland to Great Britain, or across or by the land border.

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134 Clause 140 (extent) of the Bill as introduced to the Commons sets out that the following provisions will apply in Northern Ireland: Increased penalty for improper importation of firearms etc (clause 101); Review bodies for police remuneration etc (clauses 112, 113, & 115 and schedule 5); changes to Terrorism Act 2000 port/border controls (clause 124 and schedule 6); changes to extradition (clauses 126-131); miscarriages of justice (clause 132); and Court and Tribunal fees (clause 136).

135 Defined under section 40(1)b of TACT as a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism.

5. For example, whilst the Bill would oblige the Secretary of State to issue a Code of Practice, its function is limited to addressing the training given to examining officers and the procedure for designating such officers rather than actually regulating the use of the power. An existing Code of Practice on the powers is not otherwise amended by the Bill.137 Recently the Northern Ireland Court of Appeal in Canning and Others (2007) “cannot be properly exercised in the absence of a valid and effective code of practice which ensures article 8 compliance.”138 Finding the use of the powers had been unlawful the Court found “the kind of safeguards against potential abuse or arbitrariness envisaged by the Strasbourg case law” were not present in the absence of a Code of Practice which effectively regulated their use. In the view of the Court of Appeal therefore such a Code is required to satisfy the minimal requirements of Article 8 in relation to a non-suspicion question power. It would appear expedient to reappraise the current Code of Practice for Schedule 7 TACT powers to ascertain whether it meets this threshold and introduce further safeguards on the face of the legislation and/or within the Code according to regulate the use of the questioning power. Neither is however taken forward in the Bill as it stands.

6. The Bill would also shorten the maximum time a person can be questioned from nine to six hours. A person will have to be detained to be questioned for over one hour, but can still be questioned without being ‘detained’ for up to one hour. Whilst the reduction in time is travel in the right direction CAJ remains concerned about the ongoing potential to use the power for temporary arbitrary detentions.

CAJ urges Parliament to amend the Bill to repeal the Schedule 7 TACT port and border control powers or provide effective ECHR-compliant safeguards for them.

MISCELLANEOUS

7. Clause 132 of the Bill would amend section 133 of the Criminal Justice Act 1988 (compensation for miscarriages of justice) to change the definition of a ‘miscarriage of justice’. The change would significantly raise the threshold for compensation to one which will often be very impractical to meet and hence significantly reduce the number of miscarriages of justice which are recognised as such.

8. In Northern Ireland the changes will apply to compensation applications determined by the Secretary of State and not those determined by the Department of Justice.139 The Secretary of State determines Northern Ireland applications when she takes the view ‘protected information’ is relevant to an application (for example, because the court which quashed the original conviction did not make public, in whole or in part, the reasons why), and she is of the view that ‘on the grounds of national security’ the Department of Justice, or their assessor, is not to be given the protected information or a gist of it.140

9. The Bill would mean that a miscarriage of justice falling to be determined under its provisions would only be categorised as such “if and only if the new or newly discovered fact shows beyond reasonable doubt that the person was innocent of the offence”. In effect the victim of the alleged miscarriage of justice will have to take on the roles usually undertaken by police and prosecutors and gather evidence to prove themselves innocent to the high threshold of a criminal law test, for matters which may have occurred sometime ago.

10. Such a threshold would appear inconsistent with the UK’s international obligations. The UN International Covenant on Civil and Political Rights (ICCPR) provides that:

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.141

11. The Bill would overturn the UK Supreme Court judgement of 2010 which dealt with the appeals of Adams and two Northern Ireland Judicial Review cases (Eamonn MacDermott and Raymond McCartney).142 The judgement held that a ‘miscarriage of justice’ occurred when the original evidence said to justify the conviction has been undermined to the extent whereby no conviction could possibly be based up on it. This state of affairs must furthermore be shown by reference to a ‘new or newly discovered fact/s’ which was interpreted as including either facts the significance of which were not appreciated previously by the accused or his/her lawyers, or alternatively facts which were newly ‘discovered’ to the appeal court on appeal (with comparison

138 Fox (Bernard) and McNulty’s (Christine) Application and Canning’s (Marvin) Application [2013] NICA 19 [49-50]. [Available at http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2013/[2013]%20NICA%2019\_1\_GIR8885Final.htm June 2013.]
139 Clause 132(1) of the Bill would insert subsection 1ZA into section 133 of the Criminal Justice Act 1988, this would require the new test to be used when cases under subsection 6H of the Criminal Justice Act 1988 (as amended by schedule 6 of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010).
141 Article 14(6) ICCPR. The UK is party to the ICCPR and entered no such reservation in relation to Article 14(6) at the time of signature, succession, or since.
with the fresh evidence principles on appeal). CAJ has had subsequent concerns about the restrictive manner in which Northern Ireland Courts have interpreted this test.\(^{143}\)

12. The present Bill however does not merely ‘clarify’ the law but significantly changes it away from a position whereby the individual is to demonstrate that a Court could not have rightly found beyond reasonable doubt that they were guilty, to one whereby an individual is expected to prove their innocence. The Bill would constitute a significant change rather than a clarification of the position, and as the new provision sets a threshold it will be very difficult for applicants to meet, the motive for its introduction is questionable.

13. There are unresolved issues relating to ill treatment of detainees during the Northern Ireland conflict and subsequent convictions in non-jury emergency courts, often based on ‘confession’ evidence.\(^{144}\) It would be a matter of concern if in part the motivation behind the current provision relates to preventing such practices from being further exposed. The proposed change sits uncomfortably with a recent recommendation to the UK by the UN Committee Against Torture. The Committee commented on mechanisms carrying out historical investigations related to the Northern Ireland conflict, including those relating to torture and ill-treatment. The Committee noted reported limitations on current mechanisms which curtail “the ability of competent bodies to provide prompt and impartial investigations of human rights violations and to conduct a thorough examination of the systemic nature or patterns of the violations and abuses that occurred in order to secure accountability and provide effective remedy.” In this context The Committee recommended that the UK “ensure that all victims of torture and ill-treatment are able to obtain adequate redress and reparation.”\(^{145}\)

14. The devolution of policing and justice powers to the Northern Ireland Assembly in 2010 removed a provision in the Northern Ireland Act 1998 that the criminal law was a matter reserved to Westminster.\(^{146}\) The current legislation does not appear to explicitly exempt the subject matter of the Criminal Justice Act 1988 from the devolution of powers. Government may therefore wish to clarify whether a Legislative Consent Motion is required to amend the Act in relation to Northern Ireland.

CAJ recommends amendment to remove or reformulate clause 132 in a manner consistent with the UK’s international obligations.

July 2013

Written evidence from Dr Aisha K. Gill, Southall Black Sisters and Ashiana Network (ASB 37)

We are writing to you in response to the commenting on the Anti-social Behaviour, Crime – addressing the practicalities of supporting victims and survivors of forced marriage. We attach responses submitted on behalf of Ashiana Network, Southall Black Sisters, and also the report of a study by Dr Aisha Gill (University of Roehampton) addressing the challenges of supporting victims/survivors in this jurisdiction.

We welcome the fact that the Government is taking the problem of forced marriage seriously. We are all agreed that it constitutes an appalling violation of an individual’s fundamental human rights. We support the proposal contained in the consultation to criminalise any breaches of the civil protection orders to bring this area of law in line with the law relating to domestic violence where breaches of civil non-molestation orders are treated as criminal offences. We also support the introduction of forced marriage as an aggravating feature in sentencing of criminal offences.

The primary purpose of any legislation in respect of forced marriage must be to protect victims. Many victims are reluctant to report their experiences to the authorities for fear that their family will face criminal sanctions. Victims often need to be reassured that the protection they seek can be obtained in the family courts, and, thus, that their families will not be prosecuted, before they will agree to make a formal statement. The creation of a specific criminal offence will prevent victims from coming forward to obtain essential assistance and will directly impact upon their access to justice as they will be unlikely to invoke existing civil remedies. The higher standard of proof in the criminal courts will have a significant effect upon the rate of effective and successful prosecutions in forced marriage cases.

The recent creation of the Forced Marriage (Civil Protection) Act 2007 within existing domestic violence legislation in England and Wales was a positive development: the increasing number of applications for Forced Marriage Protection Orders (far exceeding the numbers anticipated), is a strong indication that the legislation is effective. It is significant to note that domestic violence is prosecuted under a range of separate offences and that there is no existing or proposed specific criminal offence of domestic violence. In the case of FM too, the Crown Prosecution Service should be prosecuting the large number of serious criminal offences already committed by perpetrators during the course of a forced marriage, which include rape, kidnap and

\(^{143}\) See in the matter of application for Judicial Review Joseph Fitzpatrick and Terence Shiels, High Court Northern Ireland Queens Bench Division TRE8655 delivered 30 November 2012.


\(^{145}\) UNCAT Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013), paragraph 22.

\(^{146}\) The Northern Ireland Act 1998 (Amendment of Schedule 3) Order 2010, article 3 substituted the previous paragraph 9 in the Northern Ireland Act 1998, schedule 3.
assault. Upon conviction, the circumstances of forced marriage should be introduced as an aggravating feature at the sentencing stage. Statutory agencies (including the education, health, police and social services) are insufficiently versed in the Government’s own best practice guidelines for dealing with FM cases: further training for relevant professionals is needed as a matter of some urgency to ensure that existing criminal and civil remedies including child safeguarding mechanisms are used effectively.

If there is money available in these times of austerity, we are of the view that this would be better spent on the initiatives outlined above and in funding the support services which are essential to a victim being able to access justice in the first place and which are central to victims overcoming the multiple traumas they experience as a result of being threatened or forced into marriage.

_July 2013_

**Written evidence from Dr Aisha K. Gill (ASB 38)**

**FORCED MARRIAGE**

The Forced Marriage (Civil Protection) Act 2007 (FMCPA) came into force on 25 November 2008. It was accompanied by an implementation manual entitled _Right to Choose: Multi-Agency Statutory Guidance for Dealing with Forced Marriage_. The first review report on the FMCPA, published by the Ministry of Justice (MOJ) in November 2009, was positive in many respects, though it expressed concern over variations in the uptake of the Act, questioning whether it had not been used at all in some areas due to a lack of understanding of (a) the legislation or (b) the impact of FM on victims in terms of the support they require. No breaches of Forced Marriage Protection Orders (FMPOs) were recorded. The MOJ has published no further reports on the efficacy of the FMCPA.

Thirty months after the FMCPA was implemented, and 18 months after the MOJ’s review, the Home Affairs Select Committee published its eighth report on FM in May 2011[47]. This report highlighted a number of concerns centred on what it perceived as the inadequate monitoring of compliance with FMPOs and the lack of effective action in cases of reported breaches, only one of which lead to a conviction involving imprisonment. Thus it was suggested that ‘it was not at all clear that the Act is wholly effective as a tool in protecting individuals from forced marriage. It recommended that criminalising FM would a very clear and positive message to perpetrators worldwide. However, the report relies on information wholly unsupported by any corroborative evidence: this information was provided by Jasvinder Sanghera, on behalf of the NGO Karma Nirvana, and Cris McCurley, a solicitor, both operating in the North East. On 26 May 2011, the FMU set up an NGO roundtable meeting to discuss the report’s recommendation that a specific criminal offence concerning FM be created.

Between February and July 2011 an independent consultation was conducted by Criminologist Dr Aisha Gill at Roehampton University’s Social Research Centre to explore the results of the roundtable meeting further with the attendees and their organisations. The group submitted its finding in July 2011 to the FMU and the Coalition Government: a summary of this report was published in December 2011 in _Family Law_. Over half the participants took the view that FM should not be criminalised. Moreover, 64% felt that the existing legislation was adequate both to deal with the perpetrators of FM and to protect victims (Gill, 2011).

**THE PROS AND CONS OF CRIMINALISATION**

Many who support criminalisation believe that, since FM is an infringement of human rights, the State has a legal obligation to protect victims and punish perpetrators (Gill and Anitha, 2009). However, for criminalisation to be effective, a distinction would need to be made between the practices of forced marriage and arranged marriage. This is far from simple: even trained professionals struggle to distinguish between the two in some cases as there is a significant grey area in between. It would be difficult enough to provide sufficient training for all criminal justice professionals involved in FM cases to make effective distinctions, but all jury members in FM cases would also need to be adequately informed.

Setting aside these practical issues, proponents argue that the law has an important symbolic value (Gill and Anitha, 2009), citing how the criminalisation of female genital mutilation sent a powerful message to communities that seek to perpetuate the practice. However, the practice is known to continue in Britain and yet there has not been a single successful prosecution made under this legislation. As such, it is at all not clear that merely making FM a criminal offence would automatically ensure that it has a deterrent effect. In communities where FM is prevalent, self-interest is often considered secondary to the need to fulfil obligations to one’s extended family and the wider community: many black and minority ethnic communities in Britain originate from clans and tribes where loyalty to the clan takes precedence over all other relationships. Given that this ideology often lends legitimacy to a range of heinous crimes, including FM and so-called ‘honour’ killings, even knowing that these actions are considered criminal is unlikely to exert a significant deterrent effect on perpetrators either domestically or internationally.

A number of European countries, including Norway, Denmark and Austria, have criminalised FM. However, no research on the success of this legislation has been published to date. The Scottish Government, having investigated these European examples, opted to forgo criminalisation of FM. The Forced Marriage (Protection and Jurisdiction) (Scotland) Act 2011\textsuperscript{148} follows the pattern of the English civil statute, differing only in that, in common with domestic violence legislation, in the event of a protection order being breached a maximum term of two years imprisonment is applicable on conviction on indictment (ie the same term as may be imposed under a successful committal application) rather than the five years applicable to breaches of domestic violence injunctions in England. In any event it may be significant that to date Scotland has not dealt with a single application for a FMPO.

Over the last four years, the number of FM cases dealt with by the courts has risen annually. In some areas there has been a 40\% increase. Since being named a “relevant third party”, local authorities have been vigilant in working to identify cases of FM and in taking immediate action using the FMCPA, in conjunction with care proceedings, to obtain the appropriate orders to protect victims and potential victims. Had the courts failed to grant the appropriate protective orders, this would have been identified in appeals.

The Home Affairs Select Committee’s May 2011 report is also critical of the lack of monitoring currently undertaken after FMPOs are made under the FMCPA. However, in this regard it relies almost solely on Karma Nirvana staff-member Jasvinder Sanghera’s views\textsuperscript{149}:

\begin{quote}
I am not aware of any other injunction in this country under which the individual is returned to the perpetrators. In these cases, forced marriage protection orders are issued to victims, in the main minors, then those victims are returned to multiple perpetrators in that house.
\end{quote}

This statement shows a lack of understanding of the law as it relates to children. In most, if not all, cases where FM is an issue, care proceedings are issued and statutory protection measures are put in place. The majority of victims desire to return home and often do so once the FMPO and appropriate protective orders under the Children Act 1989 are in place: suggesting that in every case victims of FM should be removed from their family home to ignore both victims’ wishes and the fact that when victims are removed from their normal environment through a protection order they often find it difficult to adjust. It would also represent a breach of both the European and United Nations Conventions on the Rights of the Child: disregarding victims’ wishes would infringe their right to respect for their private and family life.

Moreover, when a FMPO is obtained by the police, arrangements are usually made for the victim to remain in contact with the police and vice versa. The local authority and relevant education authorities will also be alerted. Similarly, in cases where the local authority has instigated the proceedings. All information that is received is shared at regular the Multi-Agency Risk Assessment Conference (MARAC) meetings, though it would be useful for guidelines to be introduced to ensure that these meetings occur more frequently. After an initial, successful experience of dealing with the authorities, many young people acquire the confidence and trust to inform them if any further attempt is made to force them into a marriage or any steps are taken to breach an FMPO made in their interest.

The increasing numbers of applications issued and orders made under the FMCPA is a strong indication that the legislation is effective. However, it is widely acknowledged that current statistics do not accurately represent the scale of the problem (Gill, 2011) as many victims are reluctant to report problems as they fear not only that their families will get in trouble but that, as a result, they will be excluded from both their family and community. Victims often need to be reassured that the protection they seek will be obtained in the family courts and that their families will not be prosecuted.

Stakeholders agree that most victims have little interest in pursuing remedies in the criminal courts: the majority are willing to go no further than the protective orders that civil courts can make. Many will require help from trained specialist professionals able to command their trust to comprehend the differences between the remedies available under the civil versus criminal justice system. Moreover, qualified personnel would be needed to assess the capacity, understanding and maturity of individual victims in relation to their ability to make an informed decision: a significant matter as many are 16 or under and/or have learning difficulties and/or mental health issues. As victims are often extremely vulnerable, thought also needs to be given to the fact that many may be susceptible to even minor pressure to comply with the wishes of the various professionals involved. Moreover, even when victims are able to make an informed choice, the police or the Crown Prosecution Service may conclude that there is insufficient reliable evidence to charge the alleged perpetrator(s) under the new criminal offence. Additionally, there is a real risk that having made the choice the victim on reflection may wish to withdraw the allegations or retract the statement/s made.

It is difficult enough for adult victims to cope with the civil legal process, so the fact that many victims are 16 or under bears careful consideration, especially since some also have learning difficulties and/or mental health disorders. It is challenging enough to get these victims to seek help and to disclose the true facts: experienced NGO professionals often spend days extracting the necessary details to obtain an FMPO. However, these effective working methods would offend against the rules on the making and taking of statements that apply in the criminal justice system which require that the statement must comply with the provisions of The

\textsuperscript{148} Source: http://www.legislation.gov.uk/asp/2011/15/contents/enacted
\textsuperscript{149} Source: http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaflf/880/88002.htm
Criminal Justice Act 1967 s 9 and that the statements must record the witness’s own account of facts and that the investigating officer taking the statements should not ask leading questions (CPR r27).

It is not uncommon for victims of FM to give conflicting and contradictory information in different accounts of their experiences of abuse (eg in multiple statements taken on different dates). In criminal investigations, all accounts must be recorded and comply with the above provisions and then disclosed to defendants. If a victim’s statements are inconsistent, the defence lawyer will use them to discredit the victim during cross-examination. Moreover, the standard of proof required to successfully prosecute criminal cases is higher than for civil and family cases: to secure a conviction, a person must be found guilty beyond all reasonable doubt. A failed prosecution that results in the victim being discredited may cause her (or his) family and the community at large to feel exonerated, increasing the risk that the victim will then face isolation and perhaps further abuse. This, in turn, could lead to the victim taking drastic measures (eg suicide), feeling this to be the only remaining option for escape.

The argument for criminalisation ignores the practicalities of prosecuting FM as a crime and the adverse effect such prosecutions may have on victims, especially given that most FM cases would be heard before a judge and jury. The criminal justice system in the UK is adversarial. The victim, and any witnesses whose evidence is relied upon, are required to give oral evidence and be cross-examined. Evidentiary rules require that full disclosure be made to the defence team of all materials held by the prosecution, whether these are to be used or not. Often confidential and highly sensitive information is gathered by the police, local authorities and other organisations when a complaint is made or information given about a possible FM. If a case goes to court, victims must face the fact that not only will this information be shared and discussed in court, but that they may be questioned by the lawyer(s) for the defence, who may have little interest in sparing their feelings. As it is likely that many FM cases would be vigorously contested if prosecuted in the criminal courts, consideration should be given to the impact on victims and informants of being embroiled as key witnesses in difficult and lengthy public legal proceedings.

The Government also has yet to address the wider issues that afflict young people who are displaced through protection orders, or care and safety plans, under the FMCPA. All the reports published to date have suggested that further training and monitoring is needed: adequate resources need to be provided for this. Moreover, victims who do not return home need extensive support across a wide spectrum of services relating to housing, psychological issues, financial difficulties and their overall welfare as many are financially reliant on their parents: a burden that the State must bear after displacement. As criminalisation would increase the number of victims displaced not just from their family but their community, it is significant that there is no reference in current proposals to how and where displaced victims would be accommodated.

In the case of those who are 16 or under, this burden would fall on already overstretched and cash-strapped local authorities, many of which are struggling to cope with the increasing number of child abuses cases they currently deal with, a problem complicated by a national shortage of suitable foster carers and other placements. Moreover, victims of FM require specialist carers with specific training, sensitivity and understanding not only of the cultural issues involved in housing these young people, but also the specific psychological and emotional needs associated with their traumatic experiences. Victims between 16 and 18 are even more vulnerable as, in the main, they are left to fend for themselves as they are allocated to the Adult Team, who have limited resources; as a result, the support they receive is often haphazard and inadequate. Many come to rely on NGOs.

When the FMCPA was launched, inadequate resources were made available to provide for the needs of victims, both during and after legal proceedings: a situation that is particularly problematic given that many of the support services available to victims of FM were established primarily to deal with domestic violence issues. In the current economic climate, it is telling that there is no reference to the resources (key among them Legal Aid) that will need to be made available to support victims.

SELECTED REFERENCES


July 2013
1. EXECUTIVE SUMMARY

— Dogs Trust believes that there is a need for a fundamental overhaul of dog legislation, especially in relation to irresponsible dog ownership—we do not believe that the current proposals being considered go far enough or are clear enough to tackle the roots of the problem.

— Although we welcome the fact that this issue is finally being addressed, we are disappointed that the government has opted for a piecemeal approach, rather than introduce a new consolidated Dog Control Bill.

— Instead both dog owners and enforcers will be left to contend with, at a minimum, 12 different pieces of legislation relating to dog control, excluding any local bylaws. Dogs, their owners, the public and enforcers deserve better.

— We don’t believe that the dog aspect of the Bill has been given sufficient scrutiny to date apart from the EFRA Committee which recommended that the Government rethink these proposals and introduce Dog Control Notices under the Dangerous Dogs Act 1991.

— We would like to be reassured that enforcers have been widely consulted and Community Protection Notices are workable for dog issues, currently we remain unconvinced.

— We believe these proposals may cause more problems than they will actually solve: the principle of labeling dog owners as anti-social; confusion about how these proposals will be implemented on the ground and communicated to dog owners; the potential for their misuse and the lack of genuine early intervention and prevention.

2. ABOUT DOGS TRUST

— Dogs Trust is the UK’s largest dog welfare charity. Every year, we care for around 16,000 stray and abandoned dogs at our nationwide network of 18 re-homing centres. No healthy dog is ever destroyed. We also promote dog welfare substantially through educational, neutering and lobbying campaigns.

— Dogs Trust invests heavily in our outreach and educational programmes to tackle irresponsible dog ownership. We are currently working with over 300 local authorities to address the issues that are causing these nationwide problems. As the UK’s largest dog charity, we believe we are in the best position to encourage change through non legislative interventions.

In 2013, Dogs Trust will spend:

— Over £4.5m across the UK in campaigns and outreach work educating communities about responsible dog ownership; working with Housing Associations, Councils, Social Services, Police, Probation Officers and other relevant organisations.

— Over £1m on education programmes aimed at primary and secondary school-age children, youths at risk and Young Offenders; in partnership with schools, youth centres, Youth Offending Teams, Young Offenders Institutes and other relevant parties.

— In addition, we have already distributed over 45,000 microchips to members of the public and Local Authorities since January of this year.

3. DANGEROUS DOGS

Clause 98—Keeping Dogs under Proper Control

— Dogs Trust supports changing the law to allow an offence to be committed if a lawful visitor (eg postal worker, nurse or invited visitor) is injured by a dog on private property. However, it is important to note that these measures will not actually prevent those attacks happening in the first place.

— We are pleased that the Government removed the clause which would have allowed an owner to be prosecuted if the dog attacked an intruder and the owner was not present—we believe if someone enters onto private land, without lawful authority to be present, that there should never be criminal liability for an owner if an incident takes place.

— We remain concerned that this only applies inside a dwelling so, for example, if a burglar were to be stealing property from a farmyard and a dog attacked that trespasser, the owner could be prosecuted.

— We remained concerned that there is no definition of ‘trespasser’, ‘building’ or ‘dwelling’ and would like for the meaning of these under new proposed legislation to be clarified.

— In addition, we believe that defences should be extended to ensure that dog owners who take all reasonable steps to prevent an incident occurring are not prosecuted, whether on private land or elsewhere.

4. ATTACKS ON ASSISTANCE DOGS AND PROTECTED ANIMALS

— We were pleased to see that Dangerous Dogs legislation will be extended to include attacks on assistance dogs because of the serious impact such incidents can have on both the dog and owner.
Dogs Trust believes that every dog owner has a responsibility to ensure that their dog is properly trained and kept under control at all times. We are aware that the number of unacceptable dog on dog on animal incidents is an increasing problem.

In instances where there has been a serious unprovoked attack on a dog by another dog we would not object for the law to be extended so as to provide for an owner/keeper to be prosecuted under Section 3 of the Dangerous Dogs Act provided the Act was amended to allow for a defence of provocation ie. merely requiring proof of ‘injury’ should not be sufficient to prove that the incident was unprovoked.

If the DDA were to be extended to make serious unprovoked dog on dog attacks an offence, then we would suggest that the penalties should be as per a non-aggravated incident involving a person.

However, we would anticipate that in most such instances that the case would more appropriately be dealt with by alternative enforcement action:

1. Under the Animal Welfare Act 2006, an offence is committed if a person causes/fails to prevent unnecessary suffering to another animal, the penalty for which is up to six months imprisonment.

2. Under the Dogs Act 1871 if the Court finds that a dog is dangerous to other dogs and was not kept under proper control then an order may be made for the dog to be kept under proper control or destroyed.

3. In cases where a person is injured during the incident (or reasonably fears injury) then a prosecution can already be brought under the Dangerous Dogs Act 1991.

With regards to attacks on livestock, there already exists the Dogs (Protection of Livestock) Act 1953, under which the owner/person in charge of the dog will be guilty of an offence if it worries livestock on agricultural land. Livestock is defined as cattle, sheep, goats, swine, horses or poultry. Penalty is a fine of up to £1,000 and compensation of up to £5,000.

5. Clause 99—Whether a dog is a danger to public safety

This proposal did not form part of the consultation and so it is difficult to gauge the reasoning behind this proposal. The suggestion is that it is needed because of an ‘adverse judgement’ [sic].

The Dangerous Dogs Act does not prohibit an owner transferring keepership. Conversely the Act does not specifically allow an owner to transfer keepership. The Sandhu case was heard in the High Court on 23 May 2012. The Court ruled that in determining whether a dog would be a danger to public safety, they should be looking at the “nature and characteristics of the dog”. Prior to this case, the Courts have on occasions dwelt on the background of the dog and whether the owner was a fit and proper person. The Sandhu ruling also opened the door to changing keepership as the Judges said there is “no reason…why the application [to register] should not…be made…by the person who is to be, for the time being, the keeper of the dogs”.

A significant benefit of the Sandhu ruling is that it has confirmed that it is permissible for there to be a keeper, separate to an owner. This means that a dog that a Court has found to pose no danger to the public could be allowed to be in the charge of someone other than the owner provided that the Index of Exempted Dogs is notified and all the other conditions of the exemption are complied with. However, the proposed Bill does seem to cast doubt on whether that would still be possible as the implication is that a Court would have to find that a keeper is also fit and proper—yet at the time of the hearing it may be that the owner is able to retain the dog and so a keeper would not necessarily be even considered let alone that they may have someone in mind.

If Parliament decides to retain a fit and proper person test, then a sensible way round this would be to provide for an application to be made to a Court whereby a new keeper could be appointed.

Although we are pleased to see the government commit to providing the police with more flexibility when seizing Section 1 dogs, we do not consider breed specific legislation to be effective and would like to see a move away from it entirely or a sunset clause to be put in place that would phase it out.

We are disappointed that some degree of flexibility has not been included to provide for the rehoming of Section 1 dogs, already legally registered on the Index of Exempted Dogs, should their owners be no longer able to, or willing to, care for them. As these dogs have already been through a court process and tested for temperament and subject to control orders, we see no reason why they cannot be rehomed to a responsible owner who is willing to abide by the conditions placed on a dog.

Or if a dog not known to be a Section 1 dog is handed into one of our centres and then is later identified as being a Section 1 dog, we want the ability to be able to apply to have the dog placed on the Index as an organisation and then be able to transfer keepership to a responsible owner.

6. Part 4 Community Protection

Anti-Social Behaviour Measures in the Bill

Dogs Trust is extremely disappointed that the Government has ignored requests from the EFRA Committee and dog welfare charities to introduce Dog Control Notices (DCN), which are preventative measures applicable to dog control issues only, unlike the generic measures proposed by the...
Government in its draft anti-social behaviour legislation. Dogs Trust has grave concerns about the merits of tackling irresponsible dog ownership under generic anti-social behaviour measures.

— In the absence of Dog Control Notices, the government insists that the Community Protection Notice (CPN) and Public Space Protection Order (PSPO) could be used as above to tackle anti-social behaviour involving dogs. It is our opinion that, at present, the proposed CPNs are too ‘catch all’ and focussed on community issues, rather than individual instances.

— In the case of a dog that was causing a nuisance to people and/or other dogs it does not appear obvious why a CPN would be more effective than for instance a Dog Control Notice (DCN) (as in Scotland and NI). A DCN includes dog specific requirements (muzzling, training, neutering), and we’d like to see Guidance on how a CPN would be used and for that Guidance to be legally binding.

— We are also concerned about the use of Public Spaces Protection Orders (PSPOs). Whilst we welcome the fact the existing Dog Control Order’s (under the Clean Neighbourhoods and Environment Act) will remain in place (but only for 3 years), we do have some concerns that the new orders may not be as effective as they will run out every three years, whereas a DCO has no time limit.

— Dog Control Orders have been in operation for some time now, and have very specific requirements (fouling; lead; lead by direction; exclusion; limit on numbers).

— Where the DCOs have been properly resourced and enforced they generally work well to reduce dog related problems locally, and to promote responsible dog ownership.

— The proposed PSPO is unlimited, which raises some concerns about consistency and the proportionality of response in each case.

— It has been suggested that injunctions could be used in serious cases to restrict, prevent and direct activity with dogs. It doesn’t appear obvious how this would work in practice and when an injunction is likely to be used rather than a CPN in the case of a ‘nuisance’.

— In the most serious cases and there is an injury or fear of injury then the Dangerous Dogs Act would apply.

7. How the proposals will benefit victims of antisocial behaviour

— We consider that the use of new terminology will to a certain extent confuse the general public, both those that are victims of anti-social behaviour and those that are the perpetrators.

— There is merit in involving the local community to a greater extent when dealing with anti-social behaviour, as suggested through the Community Remedy.

— However, ultimately the key to reducing anti-social behaviour involving dogs in the longer term is the consistent use of measures that restrict and direct behaviour whilst also allowing for effective punishment for those that do not comply, acknowledging it for the social issue it is.

8. Community Remedy

— There is clearly a need for a range of measures to be included in any enforcer’s toolkit, and when dealing with low anti-social behaviour then informal agreements and arrangements are often appropriate.

— However, the key to improving public safety and reducing anti-social behaviour involving dogs is to enforce the principles of responsible dog ownership before an incident occurs.

— The current legislation (the Dangerous Dogs Act) does not allow action to be taken until such a point that an attack has taken place, or there is fear of an attack.

— In many cases an out of control dog has been known to the local community before an incident occurs, and at present enforcers can do very little to compel the owner to take reasonable steps such as neutering, training classes, muzzling in public etc, reasonable steps that could provide an effective solution.

— Whilst Acceptable Behavioural Contracts do offer the opportunity to be case specific with requirements (for a dog owner), the contact is informal. A breach can only result in legal action if there is supportive legislation, which in the case of a dog related incident would mean reverting to the Dangerous Dogs Act only when an incident has already taken place.

— We do not consider such measures to offer a long term solution to the problem of dangerous dogs and irresponsible dog ownership in our communities.

— Behavioural change is the key to addressing the problems of anti-social behaviour involving dogs in the longer term, but there must be a level of compulsion for the irresponsible owner and sanctions should they transgress.

July 2013
Written evidence from Lambeth Mediation Service (ASB 40)

Lambeth Mediation Service is a non-governmental organisation established in 1989 to provide a mediation service for the London Borough of Lambeth, and to spread knowledge and understanding of conflict resolution. It is a registered charity and a company limited by guarantee, and a member of the Restorative Justice Council. It has dealt mainly with neighbour disputes, many of which could fall within the definition of anti-social behaviour, but has also promoted mediation in schools and other settings, such as workplaces. It has a small staff, and most of its work is carried out by approximately 50 trained volunteers, 15 of whom have received extra training for Neighbourhood Justice Panels, for which Lambeth is one of the pilot areas. Since the service started operation in 1989 over two thousand cases have been referred to it; of those that led to a face-to-face mediation, the great majority ended with an agreement. Follow-up monitoring has found that the great majority of agreements have been kept, but much of the benefit has been because of the communication between the parties and the removal of misunderstandings resulting from the mediation process.

1. Anti-social behaviour can have a serious impact on the quality of life of other members of the community, and clearly powers are needed to deal with it when other methods are not sufficient. We have however two main concerns about the Bill and its Explanatory Notes in their present form. The first is that the definition of anti-social behaviour is so broad as to draw in everyday nuisance which can be dealt with more satisfactorily through guided dialogue without the full force of the law, and the second is that it makes no provision for resolving as many cases as possible by mediation before invoking the law.

2. In addition we wish to point out that mediation is suitable cases can be very cost-effective compared with measures using law enforcement measures; these can be reserved for those cases where mediation cannot be used or has not resolved the issue. However it does require resources, and these should be provided from the savings made in other parts of the system.

DEFINITION

3. We note that the Bill opens with powers to grant injunctions imposed on persons as young as 10, and the conditions under which this can be done do not include any requirement of an attempt at informal resolution or mediation; mediation is only mentioned in the Explanatory Notes. The definition in clause 94(6) states that “anti-social behaviour” means behaviour capable of causing nuisance or annoyance to any person, which could include almost anything, such as a single evening spent installing shelves with a power drill; it should include words such as ‘serious’ and ‘persistent’, or at least ‘repeated’.

4. On the other hand the Explanatory Notes to clause 95(1–2) exclude ‘hate crime’; this is indeed a serious offence, but it is one for which dialogue can be effective in removing ignorance and stereotyping.

MEDIATION

5. We welcome the references to out-of-court disposals (clause 94), which go some way towards meeting our concerns about over-use of the criminal justice system. The wording (which refers to dealing with behaviour without court proceedings) clearly allows for the use of mediation, although we would prefer mediation to be mentioned specifically. The word only occurs once, in the Explanatory Notes but not in the Bill itself.

6. The proposed community remedy document (clause 93) is an interesting idea, but we have two reservations. One is that it would be desirable for it to mention the establishment of a community mediation service, where this does not already exist, at least as an option even if not as a mandatory requirement. We would recommend following the example of Norway, where every local authority is required to provide a mediation service. The second is that the document is the responsibility only of the local policing body; it would be better if more emphasis were put on prevention, or better still on a healthy community as the norm, by including other agencies such as Education, Health (including mental health and addiction) and Social Services, following the example of Youth Offending Teams—and Housing could well be added to the list.

7. We are also glad that the respondent is to be ‘invited’ to carry out an action, which would preserve the voluntary nature of mediation. Similarly, it is stated that the views of the victim are to be sought as to whether the respondent should carry out any of the actions listed in the community remedy document (clause 94(3), clause 95(1), new clause 23ZA of Criminal Justice Act 2003). This implies a one-to-one conversation between, say, a police officer and the victim; it would be preferable, where possible, to obtain the victim’s views in the course of mediation, that is, in a restorative dialogue with the offender. The activities required of the offender would then be more likely to be appropriate. Activities to which the offender has agreed are more likely to be carried out, and also to reduce the likelihood of repeating the anti-social or offending behaviour.

COST-EFFECTIVENESS

8. Already in 1996, when researchers at Sheffield University surveyed 34 community mediation services in 57 local authorities. they found that a housing transfer cost between 3 and 10 times as much as an average
mediation, and a possession order about 15 times as much; these differentials are unlikely to have changed significantly.

9. A more recent (2003) study of 100 mediation cases found that the average cost of handling a case was £204 when face-to-face or shuttle mediation was involved; the maximum case cost was £484. From the 50 legal cases, the average cost (excluding overheads) was £3,546, with a range from £339 to £13,692 for a very complex eviction case. Average costs of Antisocial Behaviour Orders (ASBOs) and repossession actions were approximately £2,250 and £9,000 respectively at that time.

10. It has to be recognised that all the legal action cases studied involved serious and protracted anti-social behaviour, often including fighting, verbal abuse, swearing and damage to property. In many cases, there was a history of criminal convictions and/or mental health and/or alcohol-related problems. These cases in general were much more serious than those found in mediation services. Also, mediation was found to be one part of a process of intervention. Disputes are therefore not necessarily dealt with either by mediation or by other methods—a range of interventions, including mediation, are often employed in one case. Informal negotiations may precede mediation, and formal intervention may succeed it if mediation does not bring resolution. Informal intervention may or may not increase the chances of successful mediation. Informal intervention is likely to sift out cases unsuitable for mediation. Criminal or other civil legal proceedings may (but not necessarily) prevent a dispute from going to mediation. It is therefore impossible to compare like with like when looking at outcomes and costs in cases resolved through mediation or legal intervention.

11. The research team made three main recommendations:

— greater awareness and information about mediation and closer working with housing, police and mediation services
— robust monitoring and evaluation of mediation services
— more detailed research into the use of mediation in serious, complex cases, and into the long-term outcomes of ASBOs.

We endorse these recommendations with regard to England and Wales, and recommend action to promote the establishment of mediation services nationwide.

12. As regards the cost, it is welcome that the purposes of grants to local policing bodies (clause 122) have been broadened, and we hope that guidance will be given to make clear that this can include contributions to the funding of mediation services. The Explanatory Notes rightly point out (para. 376) that action taken early can result in savings later in the process. It is important that a part of these savings is allocated to the earlier action that makes the later savings possible. In line with our comments above, however, we would recommend that the funding of mediation services should not come exclusively from the police, but from all the other agencies which work directly or indirectly for crime reduction and harmonious communities.

July 2013

Written evidence from Ben Abbott (ASB 41)

I am writing to show that I do not favour your proposals to downgrade thefts under £200.

I understand completely that the prison system is stretched, that cuts are to be made and that pressure must be lifted but I believe this will have the adverse effect. Giving petty thieves a respite will simply encourage them to thieve more. It is widely accepted that taking low class drugs leads to taking more dangerous drugs—surely the same logic must be applied to shoplifting—petty thieves that can get away with it will not only destroy our high streets and steal any remaining retailer margins—but lead to a wider crime epidemic like that of the London riots.

July 2013

Supplementary written evidence from ACPO (ASB 42)

Dog Attack Deaths since 2005

11.07.05 Liam Eames (M) 1 year, Leeds, American bulldog (pprb)
Verdict—Accidental death

23.09.06 Cadey-Lee Deacon (F), 5 months, Leicester, 2 Rottweilers (pprb)
Verdict—Accidental death


01.01.07 Ellie Lawrenson (F), 5 years, St Helens, Pit Bull Terrier type (pprtb)
Grandmother prosecuted for manslaughter—found not guilty
Uncle prosecuted under s1—sentenced to 8 weeks imprisonment

28.12.07 Archie-Lee Hirst (M), 1 year, Wakefield, Rottweiler (pprtb)
Accidental death—no prosecution pursued

27.01.08 James Redhill (M), 78, Plaistow, London, Rottweiler (public)
Victim was owner

20.01.09 Stephen Hudspeth (M) 33, Bishop Auckland, Staffordshire Bull Terrier (public)
Dog owner not identified

07.02.09 Jaden Mack (M), 3 months, South Wales, Staffordshire Bull Terrier & Jack Russell (pprtb)
No prosecution

01.05.09 Andrew Walker (M), 21, Blackpool, 2 Alsatians (pprtb)
Verdict—accidental death

30.11.09 John-Paul Massey (M), 4 years, Liverpool, Pit Bull Terrier type (pprtb)
Uncle prosecuted under DDA 1991 (breeding and (2x) keeping prohibited dog) and sentenced to 4 months’ imprisonment
Grandmother prosecuted under s1—4 months imprisonment suspended for 18 months

17.04.10 Zumer Ahmed (F), 18-months, Crawley, American Bulldog (pprtb)
Uncle arrested and released without charge for manslaughter
Separate conviction for s1 dog not related to the death of his niece

23.12.10 Barbara Williams (F), 52, Wallington, Surrey, Belgian Mastiff (pprtb)
Arrested on manslaughter.
Pleaded guilty—failing to ensure welfare of the animal—150 hours unpaid work and pay costs of £3,340

23.01.12 Leslie Trotman (M), 83, Brentford, London, Pit Bull Terrier (ppNrtb)
Manslaughter to Isleworth Crown Court—dismissed for insufficient evidence

30.10.12 Gloria Knowles, (F), 71, Morden, London—2 French Mastiffs, 2 American bulldogs and a mongrel (pprtb)
No prosecution—police applying to Magistrates court to destroy the dogs

20.11.12 Harry Harper (M), 8 days, Ketley—Jack Russell (pprtb)
No prosecution

26.03.13 Jade Lomas-Anderson, 14, Wigan, Mastiffs (pprtb)
Pending

26.05.13 Clifford Clarke, 79, Liverpool, Bull-mastiff cross (ppNrtb)
Pending

July 2013

Written evidence from the Home Office (ASB 43)

Antisocial Behaviour, Crime and Policing Bill: Government Amendments for Commons Committee Stage

I am writing to let you have details of a second and final tranche of Government amendments to the Bill which I have tabled today.

Extradition

The Bill includes a number of largely technical amendments to the Extradition Act 2003 (the 2003 Act) to improve the operation of our extradition arrangements, including in response to recommendations made in Sir Scott Baker’s review of those arrangements. As the Home Secretary set out in her oral statement yesterday on the 2014 opt-out, the Government now proposes a number of additional changes to the 2003 Act to strengthen further the operation of the European Arrest Warrant (EAW), particularly around the issues of proportionality, pre-trial detention and dual criminality.

Introducing a ground of refusal in the 2003 Act on the basis that execution of a EAW would be disproportionate (new clause Proportionality and amendments to Schedule 7 (amending section 21 of and Schedule 1 to the 2003 Act)

Proportionality has long been identified as a problem with the EAW. Significant concerns have been expressed by the European Council and the European Parliament on proportionality, and both have recognised that improvement is needed in this respect. There have also been a number of reports and studies undertaken on
the principle of proportionality and, notably, Sir Scott Baker’s review recommended that the EAW Framework Decision be amended in future to ensure that proportionality was a mandatory requirement in issuing an EAW.

The UK receives a high number of EAWs annually and many of these relate to minor offences. Action to remedy this problem has been undertaken both bi-laterally and at EU level, for example via guidance in the EAW handbook. However, such guidance places no legal obligation on Member States. Accordingly, such measures have not had the required impact in terms of reducing volumes and the UK continues to receive many requests for relatively minor offences.

However, proportionality is a fundamental principle of EU law—it therefore should underpin the operation of the EAW. In particular, Article 1(3) of the Framework Decision expressly provides that the instrument shall not have the effect of modifying the obligation to respect fundamental rights and principles as enshrined in Article 6 of the Treaty on the European Union. In addition, Article 52(1) of the Charter of Fundamental Rights makes clear that limitations on rights enshrined in the Charter are “subject to the principle of proportionality”. For that reason, we believe the proposed provision is consistent with EU law.

This new provision will require the courts to consider whether execution of an incoming EAW request would be disproportionate, and is tied closely to existing human rights considerations under section 21 of the 2003 Act. The factors which the court must consider have been limited to an exhaustive list of the most obviously relevant factors, such as seriousness of the conduct and likely length of sentence. This will help to address concerns that all EAW cases will be challenged on grounds of proportionality. The outcome of this new clause should be a reduced burden on the wider criminal justice system in the processing of disproportionate requests. This statutory provision will be complemented by an administrative proportionality check that will look to weed out the most trivial requests when they are first received.

Preventing the execution of EAWs where the requesting State is not ready to charge and try the person (new clause Extradition barred if no decision to charge and to try in requesting territory)

Concerns have also been expressed about the lengthy pre-trial detention of people following surrender on an EAW. Such concerns have been raised by the European Parliament and NGOs like Fair Trials International (including in their oral evidence to the Committee), as well as the UK Parliament. This issue has arisen in several notable cases involving UK nationals and, in part, is a consequence of surrendering individuals under an EAW when the case is still at the investigative stage.

To address these concerns, we intend to clarify that no surrender can take place unless a decision to charge and a decision to try that person has been made. Where it appears (but only where it appears) to the judge that there are reasonable grounds for believing that these decisions have not been made (or one of them has not been made), it will then be for those representing the issuing State to prove that the decision or decisions have been made. This will ensure the correct balance between providing the requested person with a meaningful safeguard and taking into account the mutual recognition principle which lies at the heart of the EAW Framework Decision. We believe this is consistent with Article 1(1) of the EAW Framework Decision, which says that an EAW may only be issued “for the purposes of conducting a criminal prosecution”.

However, if our courts are satisfied that the only reason a decision to charge the person and a decision to try the person have not been taken is because the person has not been physically present in the issuing State, then the person may be extradited to enable that to happen. It is acknowledged that the systems and legal requirements of other Member States differ from the UK; this is therefore a pragmatic solution which reflects the clear limitation on when EAWs can be issued.

Temporary transfer etc (new clause Request for temporary transfer etc and amendments to Schedule 7 (amending section 197 of the 2003 Act))

This amendment will allow the person to be temporarily transferred to the issuing State, pending extradition, if both the person and the issuing State agree. We understand many other EU Member States already have this provision in national law. Similarly, this new clause will allow the person to speak with the authorities in the issuing State (for example, by videoconference) pending extradition, if both the person and the issuing State agree. This should lead to a reduction in pre-trial detention times, or in some cases, to the person not being extradited at all.

Dual criminality (new clause Definition of “extradition offence” and amendments to Schedule 7 (amending sections 66, 137 and 138 of the 2003 Act))

Dual criminality is a key consideration in EAW cases, with the exception of the list of 32 offence categories set out in the EAW Framework Decision. However, given there are perceived concerns about the lack of dual criminality in EAW cases, we propose to make the 2003 Act much clearer as regards the existing requirement for dual criminality (where that is not prohibited by the Framework Decision), since it is currently buried in detailed provisions of the Act and could be made much more prominent. We also propose to make it very clear that in cases where all or part of the conduct occurred in the UK and the conduct is not criminalised here, the EAW must be refused for that conduct. This will require dual criminality to be present in cases where the offence was committed in whole or in part in the UK, which is in our view consistent with the terms of the Framework Decision.
Consent to extradition and speciality protection (new clause Consent to extradition not to be taken as waiver of speciality rights)

At present, the 2003 Act states that where a person consents to extradition, he or she must be taken to have waived any right he or she would otherwise have not to be dealt with in the requesting State for an offence committed before his or her extradition. This is known as speciality protection. This leads in practice to very few people consenting to extradition, even where they may otherwise have no objections. Removing this waiver will enable those who wish to be extradited speedily to be surrendered quickly without risking being tried for any other alleged offences. This change will apply to both Parts 1 and 2 of the 2003 Act. We believe this will increase the number of people who consent to extradition at their initial hearing, reducing the costs associated with onward legal challenge.

Hostage-taking (new clause Hostage-taking considerations)

Section 16 of the 2003 Act provides that a person’s extradition is barred if the category 1 territory requesting extradition is a party to the 1979 International Convention against the Taking of Hostages and certain conditions apply. There is no equivalent ground for refusal in the Framework Decision and accordingly this new clause repeals section 16 to ensure consistency with the Framework Decision.

Deferral of Extradition proceedings (new clause Judge informed after extradition hearing or order that person charged with offence or serving sentence in United Kingdom and amendments to Schedule 7 (amending sections 11, 35, 36, 117 and 118 of the 2003 Act))

Consultation with the Crown Prosecution Service has identified an issue concerning cases where a person’s extradition has been ordered, but a domestic criminal matter then arises or comes to light before surrender takes place (eg the person commits a crime while on bail awaiting surrender or is charged with a crime that had been committed earlier but the individual’s involvement had not previously come to light). Normally, domestic criminal proceedings take precedence over extradition. Under the 2003 Act, the judge must adjourn extradition proceedings where he or she is notified at the initial hearing or at any time during the main extradition hearing that the person is charged with an offence in the UK. However, there is at present nothing in the Act that allows surrender to be postponed because a person has been charged with an offence after the end of the extradition hearing. In order to enable a domestic hearing to take place an extradition request would need to be issued by the UK after the person’s surrender so that the person could be returned from the country to which he or she had just been extradited. This new clause would require surrender to be deferred in these cases.

Criminal Procedure Rules (new clause Criminal Procedure Rules to apply to extradition proceedings etc)

At present, extradition proceedings in the magistrates’ court are governed by the Criminal Procedure Rules, whereas extradition proceedings on appeal in the High Court are governed by the Civil Procedure Rules. In the interests of consistency, this new clause provides for the Criminal Procedure Rules to apply also in the High Court.

The amendments to clause 140 make consequential amendments to the extent provisions. As with the 2003 Act, these provisions, with one exception, will apply throughout the UK. The exception relates to new clause Criminal Procedure Rules to apply to extradition proceedings etc which will extend to England and Wales only reflecting the jurisdiction of the High Court.

Examination and seizure of invalid travel documents (new clause and new Schedule Powers to seize invalid passports etc and amendment to clause 140)

The criteria for exercising the Royal Prerogative power to refuse or withhold passport facilities on public interest grounds was updated in a Written Ministerial Statement on 25 April 2013. The Royal Prerogative is an important tool in disrupting the travel of individuals who seek, for example, to engage in fighting, extremist activity or terrorist training outside the United Kingdom, and then return to the UK with enhanced capabilities. At present, there is no statutory power to examine cancelled passports for the purpose of seizing them. Therefore, in order to enhance the impact of the Prerogative power to disrupt activity that is not in the public interest, this new Schedule confers a statutory power on immigration, customs and police officers at ports to examine and seize cancelled passports and any other invalid travel documents which should not be in the individual’s possession. The new Schedule also confers a similar power on the police to examine and seize cancelled passports and other invalid travel documents in country as there may not always be specific intelligence as to when and from which port a person with an invalid travel document intends to travel.

I am copying this letter to all members of the Public Bill Committee, to Baroness Smith of Basildon, Keith Vaz (Chair, Home Affairs Select Committee), Dr Hywel Francis (Chair, Joint Committee on Human Rights) and Baroness Hamwee. I am also placing a copy in the Library of both Houses.

Rt Hon Damian Green MP

July 2013
**Supplementary written evidence from the Home Office (ASB 44)**

**ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL: CLAUSE 8**

During the Committee’s consideration of clause 8 of the Bill on 25 June, I undertook to confirm the intention behind subsection (6) of the clause in response to an intervention from Stephen Phillips (Official Report, column 192).

Clause 8(6) provides that where a person is arrested without warrant by a police officer for breaching an injunction to prevent nuisance and annoyance and is brought before a Justice of the Peace, the Justice of the Peace must remand the arrested person to appear before the youth court that granted injunction if the person is under 18 or before the county court if the person is aged over 18.

Stephen Phillips correctly identified the purpose of this provision, namely it covers a situation where a person was aged under 18 when the injunction was granted by the youth court, but was 18 or older at the point at which he or she was arrested for breach of an injunction. In such a case, the Justice of the Peace would be required to remand the person to appear before the county court rather than the youth court.

I am copying this letter to Stephen Phillips and the other members of the Committee.

Jeremy Browne MP
Minister of State
July 2013

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**Written evidence from the Kennel Club (ASB 45)**

**EXECUTIVE SUMMARY**

— The Kennel Club welcomes the opportunity to give written evidence to the House of Commons Public Bill Committee regarding the Anti-social Behaviour, Crime and Policing Bill.

— The Kennel Club believes that more targeted measures, such as Dog Control Notices (DCNs), are necessary as an alternative to the proposed Community Protection Notices (CPNs) and Public Space Protection Orders (PSPOs) which it believes are too community driven and not individually targeted enough to deal with specific incidents of problem behaviour and irresponsible dog ownership.

— DCNs would place a requirement on an owner to undergo detailed measures tailored to the needs of the individual and their dog. These could include the use of a muzzle at appropriate times, the maintenance of a dog-proof fence, or a requirement to undertake certain training such as the Kennel Club Good Citizen Dog Scheme.

— The Kennel Club has been assured that the principles of a DCN could be applied within a CPN. However the specific elements of the Notices will be contained within the accompanying Guidance as opposed to the regulations. The former would not be mandatory and therefore not guarantee that all local practitioners would follow them.

— The effectiveness of the new PSPOs due to replace Dog Control Orders (DCOs) under the Clean Neighbourhoods and Environment Act (CNEA) 2005 is of concern to the Kennel Club. Where DCOs have been properly resourced and enforced they work well to reduce dog related problems locally, and promote responsible dog ownership. However, the current proposals for PSPOs are largely unlimited, which raises concerns about consistency and the proportionality of response in each case.

— The extension of dog control legislation to cover private property is welcomed by the Kennel Club. It does remain concerned however that current protection for owners of dogs that bite unlawful visitors to their home only applies inside a dwelling. If therefore, for example, a burglar was stealing property from a garden or barnyard and was injured by a dog, the owner could be prosecuted. The Kennel Club firmly believes that if someone enters onto private land without lawful authority to be present there should never be criminal liability for an owner if a dog bites them.

— Generally, the Kennel Club fears that the provisions in the Act are so wide that they could be abused.

**ABOUT THE KENNEL CLUB**

1. The Kennel Club is the largest organisation in the UK devoted to dog health, welfare and training. Its objective is to ensure that dogs live healthy, happy lives with responsible owners.

2. Within its wide remit, the Kennel Club runs the country’s largest registration database for both pedigree and crossbreed dogs and the Petlog database, the UK’s biggest reunification service for microchipped animals. The Kennel Club is also the only organisation in the UK accredited by UKAS to inspect breeders as part of its Assured Breeder Scheme, in order to protect the welfare of puppies and breeding bitches. It also runs the world’s greatest dog show, Crufts, and Discover Dogs, a family focused event that educates people about how to buy responsibly and care for dogs.
3. In addition, the Kennel Club invests extensively in welfare campaigns, dog training and education programmes and the Kennel Club Charitable Trust, which supports research into dog diseases and dog welfare charities, including Kennel Club Breed Rescue organisations that re-home dogs throughout the UK.

4. The Kennel Club is involved in promoting responsible dog ownership at all levels and launched an ongoing initiative last year to work more closely with local authorities and help them hold ‘Responsible Dog Ownership’ (RDO) days. The Kennel Club has worked with numerous councils throughout the UK offering help in organising RDO days by providing related literature, free merchandise and advice on all aspects of responsible dog ownership.

5. The Kennel Club also runs the Good Citizen Dog Training Scheme, the UK’s largest dog training scheme, and the Safe and Sound Scheme, the Kennel Club’s education initiative to teach children how to be safe and interact around dogs. It also provides extensive information guides covering everything from travelling with your pet to dog law, up to date access information for dog walkers and responsible dog ownership messages from a trusted source. The Kennel Club is committed to continuing this work now and in the future for the benefit of dogs and their owners alike.

KENNEL CLUB position on the dog related elements of the Anti-social Behaviour, Crime and Policing Bill

Part 4 Community Protection:

Chapter 1 Community Protection Notices (CPNs)

6. The Kennel Club has expressed concerns to the Department for Environment, Food and Rural Affairs and the Home Office in regards to the provisions for dogs and their owners within the draft Anti-Social Behaviour, Crime and Policing Bill. It feels that the suggested proposals and lack of specific mandatory dog related requirements fail to adequately address irresponsible dog ownership or introduce genuinely preventative measures to effectively reduce the number of dog related incidents and prevent more serious attacks from occurring. The Kennel Club, RSPCA, Dogs Trust, British Veterinary Association, Blue Cross and Battersea Dogs and Cats Home and enforcers share these concerns.

7. The measures within the Bill to tackle anti-social behaviour with dogs have been cited as being tools for dealing with low level scenarios to prevent more serious incidents from occurring. In any case where a dog has injured, or made an individual fear injury, the Dogs Act 1871 or the Dangerous Dogs Act should be used instead of the Draft Bill’s proposed tools. Yet CPNs require verbal communication and a written warning prior to their distribution. The Kennel Club does not agree that this is suitably pre-emptive and instead could allow problem behaviour to escalate further before being able to be dealt with effectively.

8. CPNs also allow enforcers to place unlimited requirements or conditions on an individual to improve or curb the problem behaviour. Understanding dog behaviour, and therefore a suitable requirement to prevent it, requires specific expertise. There is no such requirement within the current CPN proposals for enforcers to have any specific knowledge of dog training or behaviour when placing these requirements on dog owners. This could lead to ‘misdiagnosing’ of dog behaviour and therefore inappropriate Notices being placed on dogs and their owners—which would indeed be wholly ineffective and pointless.

9. It is also important to note however that implementation of dog specific CPNs and indeed the requirements which enforcers may place on dog owners would be the decision of the respective local authority or police authority, as these dog specific requirements do not form part of the mandatory regulations, only the accompanying Guidance. This, the Kennel Club believes is a fatal flaw in introducing any kind of effective dog control measures. Similarly, the power to issue these Notices falls on both the police and local authority. As no single body is required to enforce the provisions, both could choose not to take on the responsibility of issuing CPNs due to lack of resources etc.

10. Also of concern to the Kennel Club within the current draft proposals is the ability for dogs to be destroyed/euthanised if an owner fails to comply with their set provisions. The Kennel Club does not believe this to be appropriate for what is considered to be early and low level intervention.

11. The Kennel Club does not condone irresponsible owners who allow their dog to be a nuisance to other animals and people, and therefore believes that a provision creating a DCN, essentially working on the principle of a statutory improvement notice, to require measures such as leashing, muzzling or attending training would be ideal.

12. DCNs, as drafted within the New Clause 4 amendment tabled by David Hanson MP on 21 June 2013 would fulfil the role of a preventative tool much more appropriately than CPNs and as such the Kennel Club would recommend that such provisions be considered within the Bill.

Chapter 2 Public Space Protection Orders (PSPOs)

13. Under the proposals, PSPOs would serve as new powers to deal with community protection which would see the repeal and replacement of Dog Control Orders (DCOs) under the Clean Neighbourhoods and Environment Act (CNEA) 2005. The Kennel Club has serious concerns regarding such proposals as it feels that DCOs, when implemented effectively, can have a positive impact in communities by promoting responsible dog ownership and reducing negative dog-related issues.
14. There are distinct differences between PSPOs and DCOs under the CNEA which raise concerns regarding how effective the PSPOs would be to actually deal effectively with issues of antisocial behaviour with dogs rather than just implementing blanket orders to penalise the many for the actions of a few. There are five different types of DCOs which include dogs on lead, dogs on lead by direction, dog fouling, dog exclusion and the maximum number of dogs permitted to be walked by one individual. These five orders allow the local authority to effectively deal with different issues surrounding irresponsible dog ownership. Under the PSPO however, there is no limit to what can be required which raises concerns on proportionate responses to antisocial behaviour and the consistency of these responses, especially in light of the reduced consultation requirements. It would therefore be much easier for less dog tolerant councils to implement particularly draconian Orders with no restriction.

15. The obligation to consult on the PSPOs would principally remain with the local policing body, chief police officer and any community organisation/representatives that the local authority believes is appropriate to consult with. Under the CNEA, when local councils propose to make DCOs to alter public paths in town or country, they have to notify a range of bodies, such as the Ramblers, British Horse Society etc.

16. The Kennel Club would therefore suggest in the case of PSPOs that councils should still be required to notify the relevant organisations as there is already precedent for this. The Kennel Club believes this should be included in the regulation rather than the guidance. For example there could be a provision in the Bill in which the Secretary of State can issue a list of organisations that need to be consulted with on certain types of proposed PSPOs.

17. There is a legal precedent in access law for this and similar requirements are found in the following pieces of legislation:
   — Town and Country Planning (Public Path Orders) Regulations 1993 (S.I. 1993/10)
   — Public Path Orders Regulations 1993 (S.I. 1993/11)
   — Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (S.I. 1993/12)

18. Under current proposals there will be no obligation for a local council to advertise in local newspapers, which would inevitably lead to a lack of informed consultation responses and an undemocratic method of consulting amongst the public and stakeholders. Whilst the Kennel Club understands that removing certain requirements within the consultation process is intended to help save costs, it would argue that the consultation process is a vital element to ensure a fair and democratic process.

19. As a minimum the Kennel Club believes Paragraph 32 of the Dog Control Order Guidance which accompanies the CNEA should be included in the new Guidance if it cannot be included within the regulations themselves:

20. **Paragraph 32:**

   If an authority is considering making a Dog Control Order which would affect open access land (land subject to Part 1 of the Countryside and Rights of Way Act 2000) it must consult the appropriate access authority (the local highway authority or, the National Park Authority for land within a National Park; the relevant authority (the National Park Authority for land within a National Park; the Forestry Commission for land that has been dedicated as access land under section 16 of the Countryside and Rights of Way Act 2000 and which consists wholly or predominantly of woodland, or the Countryside Agency in all other cases) if it is not also the access authority; and the local access forum. There are already comprehensive dog control provisions which may be applied to access land, including if necessary the banning of dogs. An authority should therefore pay particular attention to the views of these bodies in deciding whether any proposed order affecting open access land is necessary.

21. The Kennel Club also believes that in terms of the consultation process, it is essential that a notice is placed advertising a planned PSPO on any paths/parks/beaches/other land affected and such a requirement must be included in the Anti-social Behaviour, Crime and Policing Bill regulations themselves.

22. The Bill fails to clarify whether the current exemption of DCOs not being able to be introduced on Forestry Commission land will remain in place for PSPOs. The Kennel Club would ask that this exemption remains as the Forestry Commission has their own by-laws meaning that DCOs (or PSPOs) are not necessary on their land. Furthermore, whilst the Kennel Club welcomed recent clarification that existing Dog Control Orders (DCOs) under the Clean Neighbourhoods and Environment Act 2005 (CNEA) will remain in place for three years from the Bill enactment, the same assurances have not been given in relation to Council Bye-laws introduced prior to the CNEA. Further clarification is therefore needed in this regard.

**Part 7 Dangerous Dogs**

Clause 98—Keeping Dogs under Proper Control

23. The Kennel Club’s primary aim is to ensure that any amendment to the Dangerous Dogs Act strengthens and improves current provisions to better protect the public and improve the welfare of dogs.
24. The original Dangerous Dogs Act was drafted as an urgent response to a perceived political and social crisis and is regarded by many animal welfare and professional bodies as wholly inadequate. The Kennel Club is concerned that if the new proposals are not properly considered, the result would be to compound the original error and continue with ineffective legislation which fails to provide adequate safeguards for the public, responsible owners and innocent dogs.

25. The Kennel Club welcomes the general principles contained within the draft Dangerous Dogs (Amendment) Bill which is intended to deliver Defra’s commitment to extending legislation to provide adequate dog control to private property. The measure will not significantly reduce the number of incidents within private households or land, but merely allow recompense to those who are victims of such incidents. The Kennel Club does however recognise the message this extension sends to dog owners to ensure that their dogs are adequately trained and under control when interacting with lawful visitors, and as the primary body for canine affairs in the UK, views this as very positive.

26. At the same time the Kennel Club would not wish to see such protection extended to anyone trespassing and involved in criminal activity and firmly believes that there should never be a criminal liability for an owner if a dog should injure someone who is in or on their property without lawful authority and undertaking unlawful activity. It is important that the emphasis is on the owner’s responsibility to avoid injury to anybody carrying out their lawful activities. In this regard, defences within the current proposals should be strengthened to ensure that responsible dog owners who can be seen to have taken reasonable steps to prevent an incident are not prosecuted. Furthermore, current provisions only apply inside a dwelling, therefore leaving landowners whose dogs injure a burglar, for example, whilst stealing property from a garden or farmyard without protection from prosecution or criminal conviction.

27. The Kennel Club therefore supports amendment 43 to clause 98 of the Bill tabled by David Hanson MP on 21 June 2013, which strengthens the defence for otherwise responsible dog owners and states:

‘(1C) For the purposes of section 3, a Court must consider all the circumstances, and in particular if the owner, and if different, the person for the time being in charge of the dog at the time of the incident, took reasonable steps to prevent the dog being dangerously out of control in any place.’

ADDITIONAL POINTS

28. Whilst the Kennel Club recognises the intentions of the government to address the ongoing issues relating to irresponsible dog ownership, public safety around dogs and dog control, it remains disappointed with a policy of simply amending what is essentially fatally flawed legislation. A single consolidated Dog Control Bill would be much more effective in ensuring consistent enforcement of dog control legislation. This would also have the advantage of being seen to address the concerns of the general public and the media and indeed better serve the criminal justice system in having to comply with and adhere to one single piece of legislation.

29. The Kennel Club believes that breed specific legislation is unworkable and supports the principle of ‘deed not breed’. Most dog related incidents result from the actions/inactions of irresponsible owners, who have either not taken the time and trouble to train their dog appropriately, or have indeed trained them to behave aggressively. The Kennel Club believes that banning specific breeds simply pushes the problem underground, and/or moves the problem elsewhere to other breeds or even other species. If breed specific legislation cannot be removed it should be time limited with a ‘sunset clause’ commitment from the government to reassess the issue at a specified period.

30. Finally, the Kennel Club feels that any legislative reform must go hand in hand with a commitment to educate the public, and in particular children regarding animal welfare and safety around dogs etc. The Kennel Club is a member of the Animal Welfare Education Alliance, a group of 20 charities and organisations lobbying to achieve this aim within the National Curriculum. Individually, members are investing substantial sums of money into education campaigns to get these messages to a wide audience. Central Government cooperation is essential for this to be as far reaching as possible.

July 2013

Written evidence from Vera Baird, Police and Crime Commissioner for Northumbria (ASB 46)

Thank you for providing the opportunity to submit evidence to the Public Bill Committee considering the Anti-social Behaviour, Crime and Policing Bill. There are elements of the Bill that I fully support and other elements that in my opinion need further consideration and clarity. To ensure fewer victims of crime, safer and more confident communities it is imperative that we are tough on anti-social behaviour and crime; this Bill should be one of the foundation blocks to help us achieve this.

Rationalisation of the current powers available to tackle anti-social behaviour is pragmatic yet I do not believe that all changes to the anti-social behaviour toolkit are positive, instead of protecting victims, the current plans regarding injunctions and breach of injunctions water down Anti-social Behaviour Orders so that someone who continues with anti-social behaviour and keeps ignoring police warnings, court orders and injunctions to stop
terrorising the local area will no longer be guilty of a crime. This seems to weaken police powers to fight anti-social behaviour.

Here in Northumbria I am taking direct action which will make a difference to every person who experiences anti-social behaviour. In my Police and Crime Plan I have given the following commitments:

— Every victim of anti-social behaviour will be contacted personally and their concerns investigated.
— Record every repeat incident of anti-social behaviour and develop a case history so attending officers are fully informed.
— Provide victims of anti-social behaviour who feel targeted and all vulnerable victims with tailor made support and real understanding.
— Neighbourhood Policing Teams and Community Safety Partnerships will engage with the victim in stopping the problem.
— Encourage the Chief Constable to use all powers available to the police to tackle anti-social behaviour and will encourage other partners to do the same.

I believe the police should have the support of the government to tackle anti-social behaviour. Locally we will do everything we can to tackle those who disturb people’s lives by committing such crimes.

The remainder of this response concentrates on my views around specific details in the Bill concerning Crime Prevention Injunctions, Criminal Behaviour Orders, the Community Remedy, commissioning victims services and forced marriage.

1. Crime Prevention Injunctions

1.1 This and related parts of the Bill may minimally streamline procedure for taking anti-social behaviour (ASB) to Court but at the cost of losing established Anti-social Behaviour Order (ASBO) case law. The availability of “positive requirements” on injunctions is a laudable attempt to tackle underlying causes of the Defendant’s ASB. However, as drafted, the Bill broadens the range of conduct which may trigger an injunction and reduces the standard of proof required whilst adding onto civil injunctions, powers hitherto only available on conviction in the criminal courts.

1.2 The test that “a person has engaged or threatens to engage in conduct capable of causing nuisance or annoyance to any person” is a light test. ACPO prefers a more serious test around “harassment, alarm or distress” and I agree. That may also be a less subjective test and thus is, overall a more justifiable basis on which to make a defendant submit to a civil order with potentially a multitude of conditions applied to it. While the only example of “positive requirements” in the original White Paper “Putting Victims First” is to be sent to a dog training class, the pre-condition in Clause 2 of the Bill, that a judge must consult the person to be responsible for supervising such a requirement and the duty to ensure that two such requirements do not conflict, suggest that there can be a wide range of them.

1.3 Clause 1(2) prescribes that the civil standard of proof will apply, which, again, is a light test given the potential consequences to a defendant. If it is more likely than not that someone is, somehow, threatening conduct capable of causing nuisance or annoyance at some time in the future, positive requirements can be imposed which are more usually associated with sentencing for a crime. (Where crime is alleged the Courts will probably take on a quasi-criminal standard of proof, as is usual) but positive requirements may be attached without ANY crime.

1.4 There are a number of points of concern about “positive requirements” as currently designed:

(a) It appears that the scope of requirements could be as broad as those handed down within community sentences although there will have been no criminal process or conviction.
(b) There will be no pre-sentence report and no duty as in S148 2(a) of the Criminal Justice Act 2003 to ensure that the orders made are “the most suitable for the offender” merely a duty to receive evidence about the suitability and enforceability of what is proposed (clause 2).
(c) Neither does there seem to be a duty as in section 148 Criminal Justice Act 2003 that any restrictions on liberty caused by the requirements are “commensurate with the seriousness of the offence “—no offence being necessary for a CPI. Nor is there the Sentencing Guideline Council requirement (SGC Guideline CJA2003) that the requirement should be proportionate.
(d) The community sentence threshold is limited to cases where the offence is punishable by imprisonment or where the offender has had 3 fines for offences since being 18.
(e) “Positive requirements” will, in the case of an adult, be imposed by a County Court Judge who may have no criminal sentencing experience. As noted above, a court must make any two requirements, it imposes, compatible with each other and under 5c avoid any conflict with any other court order, but it is not clear how s/he would know of any other orders, in particular criminal orders, if the injunction were sought by the local authority.
(f) How is a future sentence to deal with a failure to comply with a CBO requirement? Would it mean that s/he may be less likely to impose a community sentence in the future and thus perhaps to fast-track people up the sentencing ladder and have resort to imprisonment too soon.
3. **The Community Remedy**

3.1 This is in principle a good idea but there are reservations. At best victims of persistent ASB, who may have a clear understanding of its cause can prescribe a solution to their own problems to be implemented by the police and the justice system, on their behalf. In other cases it might simply give satisfaction to those who have suffered to see their persecutors contributing to the community through a restorative sentence of their own choice.

3.2 However the officer/prosecutor will need to optimise the chances of the victim’s choice being implemented when it has been offered. Currently, clauses 94 onwards require that “reasonable steps” be taken for those referred by criminal justice agencies, yet these are likely to be typical “positive requirements” on CPIs. Who will pay the cost for any positive requirements and the supervision required by clause 2?

(h) The Ministry of Justice should provide greater clarity on how decisions over requirements will be made and should narrow the availability of positive requirements.

1.5 The White Paper, *Putting Victims First* (PVF) suggests that this availability of positive requirements is an improvement on an ASBO/ASBI since they might “address underlying issues that may be driving (the defendant’s) behaviour”. Notwithstanding all the above reservations, there is the further concern that if that is the intention it seems to sit badly with the breach of a CPI being only punishable as a contempt of court, that is by a fine or imprisonment. If positive requirements are desirable and can be imposed proportionately and may stop further ASB would it not be preferable to have them available when a defendant has failed on the first order but may still have issues that can be dealt with by a positive requirement after a breach too.

1.6 Widening the range of potential applicants for CPI over those who could get ASBOs/ASBIs may add to flexibility and may reduce police involvement, which may be advantageous but may result in different outcomes for different perpetrators, if some are dealt with by civil order and some by prosecution. Information sharing will be important and perhaps guidance as to with what weight each court should deal with an order from the other jurisdiction. A civil contempt will probably not count as a conviction.

1.7 Unless it would not be outside the Bill’s long title the Government could take the opportunity to apply special measures to Domestic Violence injunctions at the same time as applying them to CPIs by clause 16 of Part 1.

2. **Criminal Behaviour Orders**

2.1 There seems to be no restriction on the kind of crime which may be followed by such an order. There is no indication of the standard of proof required for a CBO.

2.2 If someone is convicted of a minor offence it appears that they may be subjected to a CBO in addition to a sentence for that offence, even if the 2 are unrelated and the evidence in the trial of the offence has no relevance to the CBO. (clause 22 (2).

2.3 Another example would be if the defendant’s offence is against someone in the same household, as long as he has also done something likely to cause harassment alarm or distress to someone who is not in that household, there may a CBO, even if what he did, to the outsider, was not criminal and took place at a different time (Clause 21(3).

2.4 Overall, similar concerns apply to CBOs as to CPIs in respect of the imposition of “positive requirements” in that the test for a CBO is less than criminality—it is expressly not to be a sentence for the conviction but to prevent repeat ASB (Clause 21(6).

2.5 If this is just a quick way to get someone to court, without the need for an injunction application, by using criminal proceedings as a platform, it seems an argument for making the test for a CBO the same as for a CPI. Since this defendant must, at least, be convicted before a CBO can be attached, it is particularly odd that the test (likely to cause harassment alarm or distress) is higher than the requirement of nuisance or annoyance for an injunction on a defendant who may not be criminal at all.

2.6 Additionally, if the conviction and the conduct alleged in the CBO application are similar, options such as ordering him to attend an alcohol course would be available to the judge, either as part of a community order on conviction or under the terms of the CBO. If such an order were a term of the CBO, a breach is a fresh offence (clause 29.1) with a maximum sentence of 5 years. If the same condition were part of his sentence, an identical breach would not be a fresh offence and could be dealt with by a minor change to the community order under schedule 8 of the Criminal Justice Act 2003. This seems both odd and to carry a risk of error.

2.7 A dispersal power, which does not require the designation of a specific territory may be a speedy and less bureaucratic way to alleviate anti-social behaviour. However, if it is not merely to move it onto a nearby area with the risk of causing neighbourhood tensions, it needs to be used as part of a strategy for tackling hotspots or as a short-term urgent measure. Reporting on its use is essential and publishing data is something of a safeguard against its abuse. The maximum penalty for a breach is 3 months custody which is substantial. Officers will have to be exceptionally precise with directions to prevent breaches from misunderstanding or lengthy court arguments about precise delineations.

3. **The Community Remedy**

3.1 This is in principle a good idea but there are reservations. At best victims of persistent ASB, who may have a clear understanding of its cause can prescribe a solution to their own problems to be implemented by the police and the justice system, on their behalf. In other cases it might simply give satisfaction to those who have suffered to see their persecutors contributing to the community through a restorative sentence of their own choice.

3.2 However the officer/prosecutor will need to optimise the chances of the victim’s choice being implemented when it has been offered. Currently, clauses 94 onwards require that “reasonable steps” be taken
for the victim to be consulted as to whether the perpetrator should carry out an action on the community remedy list, as a standalone or as a condition on a caution. The choice “must” be offered to the perpetrator “unless it seems to the officer/prosecutor to be “inappropriate””. It would cause frustration if police often advised that victims’ choices were “inappropriate” having asked for their views. Further the officer should determine in advance that the perpetrator will be prepared to do whatever the victim chooses from the list, or the victim may feel further victimised or disempowered by the perpetrator.

3.3 There is no clarity as to what will happen if the chosen action is rejected by the perpetrator or just not carried out. If that will transfer the matter to court, the magistrates ought to be advised what the choice was and might consider taking the community’s wishes into account on sentencing.

3.4 However, it is vital that the Commissioner who has the duty to draw up by consultation with the public, the list of potential remedies ensures that the remedies are proportionate to the level of ASB likely to be dealt with. There is no level prescribed in the Bill and the trigger level is behaviour capable of causing nuisance or annoyance, a low level.

3.5 If victims are given too wide a choice, they may demand an action that is over-severe. That might lead to the officer/prosecutor disallowing their choice as inappropriate or it may subject a low-level perpetrator to too serious a demand. Either might further inflame social discord, and specifically push a low level offender who refuses into court sentencing more severe than what was an over-severe community remedy.

3.6 The community remedy will need to be managed with care from inception to implementation.

3.7 Community harm statements are similar to Community impact statements, already used by Northumbria Police in support of ASBOs being sought by local authorities. They have been used to show that what might be perceived as a minor matter has had significant impact on the community. However Northumbria Police have found some local courts cool to their use where the impact on the community is not obvious.

3.8 The community trigger is intended to be a backup to compel police and other agencies into action where a community is not getting relief from its ASB. It carries with it the danger that in a time of downward cost pressures police will not react until they have to do, ie until either 3 or more complaints have come from one individual or 3 or more individuals have complained—to take a level of triggering that was piloted in Manchester. Northumbria Police assure me that this will not happen here.

3.9 Great care should be taken to ensure that the most in need victims instigate the process. I am concerned that the most vulnerable people are unlikely to initiate the trigger and that vexatious complainants may try and manipulate the system. Fully understanding the evidence on how successful the trigger has been in the pilot areas is vital before this tool is introduced. It is important not to overlook the issue of capacity of partners to deal with the extent of the ASB reviews and associated actions.

4. COMMISSIONING VICTIMS SERVICES

4.1 I support section 123 of the bill that gives powers to local policing bodies to provide or commission services. This provision will help to secure crime and disorder reduction and provide services that are intended to help victims or witnesses of, or other persons affected by, offences and anti-social behaviour.

4.2 Putting victims first is a key priority in my Police and Crime Plan and receives a high level of importance in the work the Chief Constable and I do in Northumbria to keep people safe and feeling safe.

4.3 With the introduction of commissioning responsibilities in 2014–15 I feel Police and Crime Commissioners are perfectly well placed to play a key role in holding local criminal justice agencies to account for delivery of the new reformed Victims Code and commissioning victim’s services. There is a role for PCCs in assessing the standard of the service, identifying gaps and improvement opportunities and commissioning providers. This said, I feel there is a need for an urgent review of the issue of capacity of partners to deal with the extent of the ASB reviews and associated actions.

5. FORCED MARRIAGE

5.1 Part 9 of the Bill introduces two new offences of forced marriage and breaching a Forced Marriage Protection Order (FMPO). Many organisations were consulted by the Home Office in 2005 and the result was overwhelmingly in favour of not criminalising the offence but dealing with it through a civil route. Many individuals, victims and survivors have more recently expressed their support for this view. I do not feel criminalisation is the solution.

5.2 In my opinion the problem is that people might be deterred from coming forward if they fear that they will criminalise their families. If they can take a gentler route and just seek help, thereby stopping the situation before it really starts, there might be possibilities for reconciliation and healing that would not arise if the police were called in.

5.3 We should seek to give young people in danger the tools to prevent the danger from emerging, but if criminal offences are committed and if appropriate, the people involved should be prosecuted.
5.4 We should not put the onus on the young person by saying that the only way they can get out of the situation is to go to the police and compel their family to become involved in criminal proceedings. If they can have recourse to someone else, a civil conclusion can be reached that might head the problem off at the pass.

5.5 In relation to the initial application for a FMPO, there are potential concerns with allowing a relevant third party to make an application without the victim’s knowledge or consent. The worry is for the victim’s welfare within the family home, since serving a FMPO on the individual forcing the marriage may put the victim at risk of both mental and physical harm. Perhaps making it a requirement for the third party to make a substantial effort to obtain the consent of the victim and to show evidence of that attempt would help to mitigate this.

July 2013

Letter from the Rt Hon Damian Green MP (Home Office) to Stephen Phillips QC MP (ASB 47)

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL: COMMUNITY REMEDY

I am writing to follow up the debate in Committee on 4 July on your new clause 1 (Official Report, columns 317–324), which sought to make further provision in respect of the community remedy document. Towards the end of the debate you acknowledged that the new clause might be unnecessary if, given that it had to be agreed by the Police and Crime Commissioner and the chief constable, “it would be a breach of some code of conduct for a chief officer to agree a punishment that breached someone’s human rights”.

As I indicated in the debate, the Bill allows for Police and Crime Commissioners to exercise discretion as to what actions would be appropriate to include in the community remedy document for their local area. I also indicated that we were keen to maintain as much flexibility as possible in this regard, for example, to encourage and support local innovation, but pointed to the fact that the document must be agreed with the chief officer of the police force. In discharging their functions under clause 93 of the Bill, as with their other public functions, Police and Crime Commissioners and chief constables will be aware of, and be bound by, their duty under section 6 of the Human Rights Act 1998, which provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. In the case of a chief constable, this is reinforced by the declaration all persons make on being attested as a constable which includes a commitment to uphold “fundamental human rights and according equal respect to all people”.

I believe that the community remedy will make community justice transparent to victims and the public, with proportionate and meaningful punishments. I hope I have reassured you that use of the community remedy will not expose the perpetrators of anti-social behaviour and low-level offences to inappropriate or unfair punishments and that accordingly it is unnecessary to prescribe further in the legislation the content of the community remedy document. However, as I said in the debate, we will be issuing non-statutory guidance on all the anti-social behaviour provisions in the Bill.

I am copying this letter to the other members of the Public Bill Committee.

July 2013

Letter from Jeremy Browne MP, Minister of State (Home Office) to Stephen Phillips QC MP (ASB 48)

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL: DANGEROUS DOGS

During the debate in Committee on 4 July on new clause 4, which seeks to provide for dog control notices, I indicated that I would write to you to provide further clarity on the position of children under 16 who own a poorly trained or socialised dog and which therefore present a risk to public safety (Official Report, columns 352 to 372). I am aware that you have since had an opportunity to discuss this issue with the Home Secretary.

You acknowledged in the debate that a Community Protection Notice could be used to impose all the requirements that could be imposed under either a Community Protection Notice or a dog control notice under the legislation in force in Scotland. You rightly pointed out, however, that under clause 40 of the Bill a Community Protection Notice could not be issued to a person under 16.

The first point I would make is that a number of the requirements that could be imposed under either a Community Protection Notice or a dog control notice have financial implications for the dog owner (for example, requirements as to microchipping, neutering and compulsory training) and, as such, we consider that it would rarely, if ever, be appropriate to impose such requirements on a child under 16.

Second, irrespective of the provisions in section 3 of the Animal Welfare Act 2006 (the 2006 Act), we believe that a Community Protection Notice can be imposed on a responsible adult where the owner of the dog whose behaviour is at issue is under 16. A Community Protection Notice can be issued against a person if their conduct is having a detrimental effect, of a persistent or continuing nature, on a community’s quality of life, and that conduct is unreasonable (clause 40(1)). A parent or guardian’s unreasonable and persistent or continuing refusal to properly control or supervise their child’s control over a dog owned by that child would constitute
conduct within the meaning of clause 40(1). Moreover, the words “persistent” and “continuing” allow for Community Protection Notices to be used flexibly as the context requires. For example, if a police officer warns a child to put a dog on a lead and the child refuses to do so, that could constitute “continuing” conduct—and a Community Protection Notice could be issued against the responsible adult. As I have made clear, this is an area where guidance is essential and we are working closely with the police, local authorities, the Welsh Government and others to ensure it covers the points raised here. I aim to have draft guidance available in time for Report stage in the Commons.

Having considered further the provisions in section 3 of the 2006 Act, I recognise that, contrary to the indication I gave in Committee on 4 July (at column 369), the effect of subsection (4) of that section cannot be carried across by inference to other legislation. However, as I indicated above, we do not believe that it is necessary to rely on the 2006 Act to enable a Community Protection Notice to be issued to a responsible adult in respect of their conduct in failing to properly control or supervise their child’s control over a dog owned by that child.

I hope that on this basis you will be assured that Community Protection Notices are a more than an adequate alternative to a dog control notice (and, together with the provisions in Part 7 of the Bill, will fulfil our Coalition Commitment to “ensure that enforcement agencies target irresponsible owners of dangerous dogs”). This view has again been echoed by the Local Government Association in their recent written submission to the Committee (ASB 35). At paragraph 35 of their submission they said:

“We are aware that there is continued pressure for specific dog control notices to be included in the Bill. The LGA remains to be convinced that separate tools are necessary as no details have been provided of the specific gaps in the provisions for the injunctions, community protection notices or public space protection orders that a dog control notice is needed to fill.”

I am copying this letter to all other members of the Committee.

July 2013

Written evidence from Living Streets (ASB 49)

1. ABOUT LIVING STREETS

We are the national charity that stands up for pedestrians. With our supporters we work to create safe, attractive and enjoyable streets, where people want to walk. We work with professionals and politicians to make sure every community can enjoy vibrant streets and public spaces. We started life in 1929 as the Pedestrians Association and have been the national voice for pedestrians throughout our history. In the early years, our campaigning led to the introduction of the driving test, pedestrian crossings and 30mph speed limits. Since then our ambition has grown. Today we influence decision makers nationally and locally; run successful projects to encourage people to walk and provide specialist consultancy services to help reduce congestion and carbon emissions, improve public health, and make sure every community can enjoy vibrant streets and public spaces.

2. KEY MESSAGES:

— The Bill provides a more flexible route for local authorities to tackle anti-social behaviour which reduces local environmental quality such as littering, graffiti and dog fouling;

— In order for the Bill to achieve its aims there is a need for government to provide guidance and advice to the users of the new powers, such as local authorities, to ensure the proposals have maximum impact in delivering safe, attractive and enjoyable streets;

— We are concerned that Public Spaces Protection Orders, as set out in the Anti-social Behaviour, Crime and Policing Bill, which are intended to replace Gating Orders, have the potential to further diminish access for pedestrians.

3. Living Streets welcomes the measures outlined in the Bill to tackle persistence place-related anti social behaviour such as littering, graffiti and dog fouling which can negatively affect the quality of life of local communities. We know that these issues are of importance to local people from a YouGov poll carried out for Living Streets in March 2012, which revealed that one third of British adults said they would walk more in their local area if streets were kept in better condition and 46% of 18–24 year olds and 51% of 25–34 year olds would walk more if the streets were safer and more attractive.

4. However, we believe the system of Community Protection Notices and Community Protection Orders (Public Spaces) will only succeed through the provision of advice and guidance to local authorities police and staff of registered providers of social housing.

5. It is seven years since the introduction of the Clean Neighbourhoods and Environment Act (CNEA) 2005 which introduced the system of Dog Control Orders, Litter Control Notices and Graffiti/Defacement Removal Notices (although this power was amended and not introduced by the CNEA) and it is only in the last few years these powers are being used to maximum effect. Defra supported the initial roll out of the powers with other Government Departments in 2005/6 and without such support for the new system of Community Protection
Notices and Community Protection Orders (Public Spaces) there is a serious risk of the effectiveness of these powers being reduced unintentionally as local authorities take time to understand these new powers.

6. Table One below shows a broad correlation between the numbers of Fixed Penalty Notices (FPN) issued and increased awareness and knowledge of the CNEA provisions by local authorities from 2006 until the collection of the figures stopped in 2010. Figures were not collected centrally regarding the numbers of Dog Control Orders and Graffiti/Defacement Removal Notices issued, therefore, the number of FPNs, in table one, is used a proxy measure.

7. Table One

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of FPNs issued for graffiti</th>
<th>No. of FPNs issued for fly-posting</th>
<th>No. of FPNs issued for dog fouling</th>
<th>No. of FPNs issued for dog control</th>
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</thead>
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<tr>
<td>2006/7</td>
<td>120</td>
<td>43</td>
<td>1133</td>
<td>3434</td>
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<td>381</td>
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<td>2071</td>
</tr>
</tbody>
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8. One example of where guidance and the sharing of best practice would be useful concerns the potential use of Community Protection Notices to tackle litter outside office blocks. Under the present system of Street Litter Control Notices Sections 93 and 94 of the Environmental Protection Act 1990 give local authorities the power to issue Street Litter Control Notices on premises that have a frontage on a street, and outside which litter or refuse is causing defacement of the land. However, the legislation was originally envisaged to tackle fast food litter and till receipts, as such, notices cannot normally be served on office buildings unless they sell food and drink whether or not for consumption on the premises (e.g. from a canteen or snack kiosk). The proposed Community Protection Notice would allow local authorities to require the occupiers/owners of offices and non-food retail outlets to play a greater role in dealing with this type of litter problem and would, therefore, provide a vital tool for local authorities to deal with localised littering problems, and would close a loophole in the legislation. It would also encourage members of the public to take increased responsibility for their litter.

9. Living Streets is concerned that the use of Community Protection Notice to tackle graffiti appears to misrepresent the purpose of existing powers. Graffiti/Defacement Removal Notices are served upon building/structure owners who are not normally recipients of ASB action. The owners and occupiers of such land are, therefore, victims of anti-social behavior and are not the usual groups for which ASB action is necessary. FPNs or prosecution may take place for those who carry out graffiti or fly-posting through section 43 of the Anti Social Behavior Act 2003 and the Criminal Damage Act 1971. However,

10. Living Streets believes it is important that the new system of Community Protection Notices and Community Protection Orders (Public Spaces) retains the powers currently contained within the present system of Litter Clearing Notices which allows local authorities to recover the costs they have incurred in cleaning the property or land concerned. This is in order to prevent local communities paying twice, firstly through the amenity cost of having their quality of life reduced by neighbouring land blighted by litter and secondly the financial cost of removal through their Council Tax.

11. Finally, the 2005 Clean Neighbourhoods and Environment Act (CNEA) attempted to bring together a variety of legislation to enable land managers to improve local environmental quality. To ensure the primary legislation achieved these aims a variety of secondary legislation and guidance was reviewed or introduced. One such area of guidance which was reviewed was the Code of Practice on Litter and Refuse (COPL&R) which was introduced to set minimum standards which communities could expect from their local authorities and statutory providers. Accordingly the Litter Control Notice sections of the CNEA are linked with the COPL&R.

12. Section 92A of the Environmental Protection Act as amended by Sec 20 of the CNEA allows a Litter Clearing Notice to specify the standards of compliance. The standards of compliance for Litter Clearing Notices are detailed in the COPL&R. Therefore, any repeal of the system of Litter Control Notices would need to be linked with a review of COPL&R to ensure minimum standards of compliance are achieved by landowners when removing litter and refuse from their land.

13. Living Streets supports the proposals outlined in the evidence submission of the Ramblers (submitted 28th June 2013) regarding Part 4, Chapter 2 of the Bill, namely the provisions which deal with Public Spaces Protection Orders (PSPOs). We fully understand the Government’s desire to consolidate and simplify the toolkit of measures used to tackle anti-social behaviour, and we acknowledge that in some circumstances this may necessitate restrictions on public access. However, our experience with Gating Orders indicates that measures of this kind can have serious unintended consequences in terms of preventing access to routes which people use to go about their everyday business. The provisions which provide local authorities with the power
to make Gating Orders are set out in sections 129A–129G of the Highways Act 1980 (as amended by the Clean Neighbourhoods and Environment Act 2005). Gating Orders will be repealed by the present Bill and we believe that PSPOs offer even less protection for routes in everyday use than the existing measures. We believe that the Bill can be amended so that vital checks and balances are introduced to protect the public interest, whilst retaining an effective package of measures to limit and reduce anti-social behaviour. An outline of amendments proposed by the Ramblers may be seen below in Appendix one.

**APPENDIX ONE**

Proposed amendments by the Rambler supported by Living Streets

**Clause 56 Duration of Orders**

14. The Bill provides that a PSPO can only have effect for a period of 3 years unless extended as provided for under clause 56. This is too long a period for the closure of any route of which everyday use is being made. A number of classes of highway are completely exempt from the application of PSPOs (we discuss this further below). Public rights of way are not so exempt. These are the class of way over which we have particular concerns, and we believe that the time limitation should be different in the case of public rights of way. An analogy can be drawn with Temporary Traffic Regulation Orders. Traffic authorities have the power to make temporary traffic regulation orders to restrict or prohibit the use of any road (defined in the Road Traffic Regulation Act 1984 as including public rights of way) because of works being carried out on or near the road, for public safety, and to enable cleaning and litter clearance. Such orders may last for 18 months in the first instance after which approval for an extension must be sought from the Secretary of State. However, for public rights of way, an order can last for only six months before approval for an extension must be sought. We argued successfully when the Road Traffic (Temporary Restrictions) Bill sought to bring in the 18 month limit for all highways that rights of way were a special case. The extra distance involved in taking an alternative route will make very little difference to a person travelling in a car, but can make a huge difference to a person on foot. In the circumstances of a footpath closed by a Gating Order or Public Spaces Protection Order (see the examples in Annex 3), it might mean that a journey is not taken at all, or that a car is used instead should one be available. (In the communities in which many of these orders are made cars are less likely to be an option: 25% of British households do not have access to a car.) Gating Orders can be made for an indefinite period (with a Home Office recommendation that they be reviewed after 12 months), so the present Bill provides the opportunity for the rights of way to be recognised as a special case with PSPOs over them being applicable for a far shorter period in the first instance. We would recommend that period be for six months in the first instance, as for Temporary Traffic Regulation orders.

**Clause 60 Orders Restricting Public Rights of Way Over Highway**

**Clause 60 (1)**

15. The Bill rightly recognises that restriction of public rights over highways is of such consequence that an authority wishing to impose an order to that effect must take into account certain matters relating to the status of the way as a highway, namely:

- (a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
- (b) the likely effect of making the order on other persons in the locality;
- (c) in a case where the highway constitutes a through route, the availability of a reasonably convenient through route

(The same form of words as appears in the Highways Act in respect of Gating orders.)

Again, we would recommend that the opportunity be taken to strengthen the protection given to highways by importing a further matter for consideration, namely “any other measures that have been or could be taken for alleviating the activities which have had or are likely to have a detrimental effect on the quality of life of those in the locality”.

It is essential that the gating of a through-route is a matter of last resort. The suggested form of words is taken from s.118B(8)(a) of the Highways Act which is concerned with the stopping up of rights of way for purposes of crime prevention and for reasons of school security.

**Clause 60 (2)**

16. The notification procedures prior to making an order which will restrict public rights over a highway are insufficient, and should provide for the Secretary of State to publish regulations to make these more rigorous. A suitable amendment would be the inclusion of a clause or clauses which provided that the Secretary of State (and Welsh Ministers) must by regulation make provision as to further procedures to be complied with by a council in relation to the making of a PSPO which would restrict access to a highway and that those regulations must include provision as to:

- (a) the publication of a proposed order;
- (b) public availability of copies of the proposed order;
- (c) notification of persons (other than those referred to in clause 60(2)(a)) likely to be affected by a proposed order.
17. It would then be possible for the Regulations to explicitly provide for the notification of a comprehensive list of parties with an interest in highways, as is the case with Gating Orders. Those parties include other councils through whose area the highway in question passes, the emergency services, relevant NHS trusts, providers of gas, electricity, water or communications services, Local Access Forums [1], and persons who have asked to be notified of any PSPOs which are applied to highways. This list should be extended to include the main public rights of way user groups who are prescribed to receive notice of the closure and diversion of public rights of way under the Highways Act 1980 [2], and the Town and Country Planning Act 1990 [3].

18. As with Gating Orders, the Regulations should provide for the holding of a public inquiry, where an objection has been received from the police, another emergency service, an NHS trust, or another council through whose land the way passes, but we strongly recommend that this list be extended to cover the receipt of objections from users of the way where that way constitutes a through route. Experience with Gating Orders has shown that it is possible for one or two local councillors to push through Gating Orders in the face of fierce opposition from the local community (see Annex 3). Independent arbitration would ensure that the evidence of anti-social behaviour is properly balanced against the needs of the local community. It is the lack of such independent scrutiny which has been our primary concern with Gating Orders since their introduction.

Clause 61 Categories of highway over which public rights of way may not be restricted

19. We have so far argued that public rights of way should be recognised by this legislation as requiring special treatment if they are to be closed to try to limit activities which are having a detrimental effect on the quality of life of local residents. A simpler way of protecting many (although not all) of the routes about which the Ramblers is concerned would be to amend clause 61 so that a PSPO cannot restrict the public right of way over a highway that is a way shown on a definitive map and statement [4] as a footpath, bridleway, restricted byway or byway open to all traffic. This could be done either on the face of the Bill, or by way of the regulations mentioned in Clause 61(1) (e) and (f). The Bill clearly recognises that certain types of highway should not be stopped-up because of their strategic value: our view is that definitive rights of way may also be of vital importance to those who use them.

Clause 62 Challenging the validity of orders

20. Our experience with Gating Orders has shown that they are most commonly imposed in areas of high social deprivation, where those who are seriously affected by the loss of a route to local amenities would not be able to consider applying to the High Court to question the validity of a PSPO. In these situations, local people look to organisations such as the Ramblers to defend their interests and, where appropriate, to challenge any injustice through the courts. As the Bill is drafted we would not be able to undertake such a challenge for them. 
Such challenges are not undertaken lightly and we ask that the Bill be amended to delete the word “interested” and its definition from Clause 62.

Clause 67 Interpretation of Chapter 2

21. We are concerned to note that the interpretation of “local authority” in this chapter means—

“(a) In relation to England, a district council, a county council for an area for which there is no district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly.”

Our concern arises because this interpretation appears to mean that in places where there is both a county council and a district council (which is still the situation over a quite a large part of England), then the power to make PSPOs would be restricted to the district council. This is a problem because, where there are two tiers of local government, it is the county council which is the highway authority and which is responsible for such things as rights of way improvement plans, Local Access Forums, for highway maintenance, and many other duties including the duty to assert and protect the public’s right to use highways. As the Bill is drafted it seems that where this is both a county and a district council, the power to make PSPOs would rest with the district council and it wouldn’t even have to consult the highway authority about the plans to close a highway. We would strongly recommend that this be re-considered.

22) Also in Clause 67 “public place” –

“(a) means any place to which the public or any section of the public has access, on payment or otherwise, as of right of by virtue of express or implied permission, … “

It is our view that the definition of “public place” is too broad, and should be restricted so that a PSPO cannot be used to restrict public access to land to such open space which the public at large so enjoys.

A simple amendment would prevent the use of PSPOs on such land. For example, insert into Clause 67–

(c) does not include registered common land, access land as defined in section 1 of the Countryside and Rights of Way Act 2000, town or village greens or local green space.

An alternative to amending the definition of “public place” in clause 67 would be to amend clause 55 so that a PSPO cannot be used as a blunt tool to simply prevent overall access to such land. This could be done, for example, by introducing a new sub-clause after 55(5)–
(6) A prohibition may not prevent access by all persons to registered common land, access land as defined in section 1 of the Countryside and Rights of Way Act 2000, town or village greens or local green space.

July 2013

Written evidence from The Institute of Public Rights of Way and Access Management (ASB 50)

1. The Institute of Public Rights of Way and Access Management is the professional body which represents individuals involved in the management of public rights of way and other access in England, Wales, Scotland and Northern Ireland, principally as local government officers.

2. IPROW is a respected and influential voice for access professionals, consulted by government and representing members on national and local bodies concerned with rights of way and access policy. It aims to raise standards of management, encourage the exchange of ideas and information in public rights of way and access management, and foster communication and co-operation between related bodies.

3. Public Rights of Way Officers are employed by county councils and unitary authorities to undertake the highway authorities' statutory duty to assert and protect public rights of access. That function arises from the law relating to minor highways and public open space and to the important benefits of rights of way to all for health and wellbeing. Crime and anti-social behaviour affect public rights of way in both rural and urban areas and open space such as commons or village greens. They are dealt with on a frequent basis by Officers.

4. The following clauses in the draft bill are of concern:

5. **Clauses 55 and 73** allow orders to be made to prevent behaviour “likely to” occur. It is impossible for an Authority to approach something so nebulous as “likely to” objectively. Officers are frequently contacted by owners who perceive that the mere presence of a person near their property is going give rise to crime without any evidence. The present regime at least requires evidence of actual crime, which it is possible to monitor and quantify.

6. It is difficult to maintain balance when compromise is required between public and private rights (public right of way vs property owner) and an authority has to demonstrate consideration of all parties. It must be able to demonstrate reasonableness in its actions; the clause as drafted potentially creates a situation where that would not be possible because “likely to” is not quantifiable.

7. **Clause 67** appears to permit a district authority to close a right of way without consulting the highway authority and could require the highway authority to enforce against the district council.

8. In two tier counties, responsibility for crime and anti-social behaviour reduction may lie with the district or borough council and the duty to assert and protect public rights of way or common land may lie with the highway authority (county council). The highway authority has a wider remit, taking into account strategic access and public rights of way as a network. It is also aware of pending applications or evidence of unrecorded rights.

9. This position should not arise in a unitary authority which has responsibility for both asserting the public right of access and for crime so can act in a unified manner having taken a holistic view of the situation.

10. The clause should be revised so that a highway authority has to be consulted and has power of veto so that conflict between legislation is not introduced.

11. **Clause 68 (3)** is unclear; it appears to mean that existing gating orders will have to be reviewed and re-made as PSPO after three years. This will be a resource issue and the public benefit is questionable, especially for orders made very recently.

July 2013

Written evidence from Leeds City Council (ASB 50)

**INTRODUCTION**

1. This is the response of Leeds City Council to the Anti Social Behaviour, Crime and Policing Bill 2013 and forms its evidence to the Public Bill Committee stage.

2. This response has been compiled by staff working within the following departments of Leeds City Council:

   (a) Safer Leeds

   (b) Leeds Anti Social Behaviour Team

   (c) Legal Services (ASB Team)
INJUNCTIONS TO PREVENT NUISANCE AND ANNOYANCE

3. Name: ASBs are little known by the public. It is well known to practitioners. It would seem sensible to continue using the term “Anti Social Behaviour Injunction” so that to the public ASBOs simply become ASBs.

4. Section 1: guidance to the Act should be issued to guide courts as to what are reasonable prohibitions—such as exclusion zones—and what duration these should be for. This will assist practitioners and the courts to propose and to grant reasonable and appropriate terms.

5. Section 2: The section provides that the court must receive evidence from providers about specified activities before they are included in an injunction. It may take time to obtain such evidence. This should not delay the obtaining of a prohibitive injunction and so the legislation or rules of court should make clear that a Claimant is able to return to court to vary the injunction to include mandatory provisions.

6. Section 9: This section provides for the issue of warrant of arrest where there is breach of a term of the injunction where there is no power of arrest. This is a new procedure, different to that contained in the Civil Procedure Rules, which generally requires the person who obtained the injunction to apply to the county court for committal on application. The power of arrest then only arises if the person is committed in their absence. Is the method of applying for committal on application to the court no longer to be applicable? Are warrants for arrest under this section to be “backed for bail”?

COMMUNITY PROTECTION NOTICES

7. Section 43: it is a defence to a Community Protection Notice to say that the nuisance complained of is a statutory nuisance—ie a nuisance more serious than that which a CPN is designed for. However, when issuing the CPN the authorised person is unlikely to be in a position to know whether the nuisance has passed the threshold into being a statutory nuisance. It would appear to defeat the purpose of the CPN if it can be successfully challenged by a defendant claiming that the nuisance is more serious than can be dealt with by a CPN. The section should say specifically that it is not a defence to claim the nuisance is a statutory nuisance.

8. Section 45: as above, the defence of statutory nuisance should be reversed.

9. Section 73: this section provides that the power to issue a closure order is only available in the magistrates court. The power should be available in the county court for secure tenancies as the landlord will be a local authority who will be required to seek possession of the property in the county court. This will enable all proceedings to be conducted in one court, rather than two.

July 2013

Written evidence from the Angelus Foundation (ASB 52)

SUBMISSION IN SUPPORT OF NEW CLAUSE 2 (NC2) FOR ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL FOR CONTROLLING/BETTER REGULATING THE SALES OF LEGAL HIGHS AND OTHER PRODUCTS THROUGH HIGH STREET HEADSHOPS

SUMMARY

1. NC2 of Anti-Social Behaviour, Crime and Policing Bill would have the effect of tightening up the law on the sale of Legal Highs or New Psychoactive Substances (NPS) in the High Street. These substances mimic the effects of drugs controlled under the Misuse of Drugs Act 1971 (Schedule 2) such as cocaine, ecstasy and LSD but are legal to possess and supply.

2. Since 2009, the volume of trade and number of outlets selling NPS in the UK has risen dramatically. The trend began with the introduction of legal Mephedrone into the UK from China in 2008–10. Some of these drugs, for example Methoxetamine (a substance which mimics the effects of the anaesthetic ketamine), have come under the control of the Misuse of Drugs Act 1971 but continue to be misused. A large variety of new legal substances have continued to be sold in headshops as ‘research chemicals’ and synthetic cannabinoids. There have been many instances of hospitalisations and even death from experimenting and mixing these substances, particularly with alcohol.

3. These products are actively marketed (China White, Banshee Dust, Clockwork Orange) but carry no list of ingredients, no warnings on likely effects, no advice on dosage or on potential dangers of mixing with other drugs. To evade prosecution through the Medicines Act 1968 they are invariably labelled ‘Not for Human Consumption’. The products often contain an unknown, untested ingredient or set of ingredients. Consequently the psychoactive effect from any of these products is often unpredictable and the long-term harms are completely unknown.

4. The UN Office and Drugs and Crime last month estimated the numbers of young people in the UK (aged 15–24) who have taken a legal high as 670,000 (or 8.2 percent)—the highest in Europe. To give a scale of the growth of the industry, European Monitoring Centre for Drugs and Drug Addiction estimated the numbers of websites selling NPS rose from 170 in 2010 to 690 in 2012. About half of this total is UK based. There is no
register of headshops and no reliable numbers available; the Angelus Foundation is in the process of compiling a list, which is expected to be in the few hundred. But as an illustration, UKSkunkworks has 14 shops in and around M25, Dr Herman has six shops in the North of England.

5. NC2 in itself may not greatly affect the Internet trade of NPS, which is substantially larger than the level of High Street sales. However, the sale of dangerous substances in an everyday retail environment has the effect of normalising their use, encourages experimentation among minors and exposes more vulnerable people to powerful psychoactive drugs. The intention of NC2 is to check the substantial increase in numbers of shops selling these substances and cease the trade in untested psychoactive substances in existing outlets.

EVIDENCE OF HARM

6. It is hard to determine the precise scale of harm from NPS because their presence is often not reported by A and E medical staff. Given the inconsistency of ingredients, neither the users themselves nor the health professionals can know at the time what has been taken to cause such adverse reactions. There is likely to be significant underreporting.

(i) PQ John Woodcock Barrow MP 20th May 2013

Q: To ask the Minister for the Cabinet Office how many deaths in the UK were attributed to legal highs in each of the last five years.

Nick Hurd MP

A: Number of deaths related to drug poisoning where GHB/GBL, BZP/TFMPP, a cathinone (including khat) or desoxypipradrol was mentioned on the death certificate, UK, deaths registered between 2007 and 2011 (1,2,3,4)

<table>
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<td>2010</td>
<td>35</td>
</tr>
<tr>
<td>2011</td>
<td>41</td>
</tr>
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(ii) Glasgow NHS Greater Glasgow and Clyde there were 43 admissions in 2011/2012 compared to 12 the previous year.

(iii) A report for the National Programme on Substance Misuse Deaths revealed 43 people in the UK died after taking now-outlawed methcathinones in 2010, compared with five in 2009.

(iv) In recent weeks, there have been 17 deaths in Northern Ireland and Scotland from “fake ecstasy” which could be Class A drug PMA, or legal high AMT and or 5-IT which is under a temporary ban.

EFFECTS/HARMs

7. Generally speaking, NPS/legal highs fall into the following categories:

**Stimulants (Cocaine, Amphetamine type drugs)**

**Tryptamines (Psychedelics/Hallucinogens)**

**Synthetic Cannabinoids**

**Phenylenamines (Ecstasy type drugs)**

The reported effects vary according to drug type but include the following symptoms: anxiety, paranoia, delusions, psychotic episodes, irregular heartbeat, chest pains, hyperthermia and seizures.

DISCUSSION

8. Successive Governments’ response to growth in prevalence of NPS, has been to use the provisions within the Misuse of Drugs Act 1971 to reduce the availability of harmful psychoactive drugs. This was demonstrated by the establishing of Temporary Class Drug Orders (TCDOs) in 2010 and recent controls as Class B drugs of Methoxetamine and various synthetic cannabinoids (Black Mamba and Annihilation) in February 2013. It generally recognised by drug practitioners and NGOs that the Misuse of Drugs Act 1971 has been proven to be ineffective in impacting on individual behaviour: a common pattern is for prevalence to rise following control, eg Mephedrone, Ketamine, GBL. Additionally, the manufacturers of these substances (mainly in China) are able to make minor molecular changes to various substances and rapidly introduce new legal drugs into the market. It is not possible for the law to keep up with the influx of so many new substances.

9. There is one other recent example of regulation of substances outside MDA—the Intoxicating Substances Act 1985, a one page Act intended to stop sale of glues and butane to minors. NC2 is similar in structure to that legislation:
It is an offence for a person to supply, or offer to supply, a psychoactive substance, including but not restricted to—

(a) a powder;
(b) a pill;
(c) a liquid; or
(d) a herbal substance with the appearance of cannabis,

which he knows, or has reasonable cause to believe, to be so acting, that the substance is likely to be consumed by a person for the purpose of causing intoxication.

The maximum penalty would be imprisonment for a term not exceeding six months or a level 5 fine.

10. The legislative solution in the Republic of Ireland, the Criminal Justice (Psychoactive Substances) Act 2010, had a dramatic effect on the headshop sector. In three months, following the commencement of the law, the numbers of shops fell from about 100 to just six nationally. Ireland did not previously have many headshops and so the legislation, being drawn quite widely, had the effect of shutting a whole sector without a firm focus on identifying harms. The UK is in a slightly different situation and that should engender a more cautious approach. Prior to the substantial influx of new drugs, there were already scores of headshops selling ‘counter culture’ products in the UK. Many have diversified into selling ‘research chemicals’ but some have not. Legislation aimed at simply shutting this business sector may not be targeting the harmful activity and could provoke legal appeals on its proportionality. Instead, this proposed legislation targets the range of the products these outlets are to be permitted to trade in.

11. Angelus has been in discussion with ACPO and Police Scotland who have expressed their strong support for introducing some enforcement measures against headshops. The Clause (NC2) would apply only to England, Wales and Northern Ireland targeting the suppliers of these substances. There is to be no possession offence as these are untested and uncontrolled substances, which is in line with section 2A of the Misuse of Drugs Act, which sets out the Temporary Class Drug Orders. The provision (NC2) would, on the face of it, apply equally to suppliers of NPS through Internet sites to high street suppliers. However the Irish experience has shown this is a highly difficult area to impose the same enforcement measures upon.

Annex A

ABOUT ANGELUS FOUNDATION

The Angelus Foundation was founded in 2009 by Maryon Stewart, the health practitioner, author and broadcaster. Her 21 year-old daughter, Hester, a medical student and athlete, passed away after consuming a legal high (GBL) in April 2009. The Foundation has since attracted a group of world-class experts, known as the Angelus Advisory Group, who brings together expertise from chemical, medical and behavioural sciences, as well as having considerable expertise in both the areas of enforcement and misuse of social substances.

Angelus is the only drugs charity dedicated to raise awareness about legal highs and club drugs and launched a national public health campaign in October including the launch of a website for young people www.whynotfindout.org. There is also a website for families www.angelusfoundation.com. The short film (6 min) ‘Not What it Says on the Tin’ available on both websites includes details of individual cases and is a good introduction into Angelus’s work.

Our Mission Statement

To help society understand the dangers of ‘legal highs’ (unclassified substances), to reduce the harm they cause to young people and their families, and to save lives.

Our Aims and Objectives

We aim to become the acknowledged expert and knowledge centre on the subject of the dangers of legal highs and to maximise public understanding of the risks.

The Foundation’s work

We are carrying out programmes, internal and external projects which is:
— scoping the problem
— raising awareness of legal high
— educating young people and parents about the risk
— detecting and analyse new unclassified substances and their impact on the human body
— making the use of party drugs less socially acceptable
— enabling parents to have informed conversations with their children on the use of legal highs
— empowering young people to make more responsible lifestyle choices
improving the understanding of the physiological and psychological impact of these substances on the human body and mind

July 2013

Written evidence from The British Horse Society (ASB 53)

SUMMARY

The British Horse Society is concerned about chapter 2, clauses 55–68 of the Bill, which introduce public space protection orders (PSPOs). We fear that these will lead to the loss of safe off road riding and carriage riding opportunities, when public space protection orders are made which prohibit access to registered commons and equestrian public rights of way.

THE BRITISH HORSE SOCIETY

The British Horse Society (BHS) represents the interests of the 3.4 million people in the UK who ride or who drive horse-drawn vehicles. With the membership of its Affiliated Riding Clubs and Bridleway Groups, the BHS is the largest and most influential equestrian charity in the UK.

In England horse riders have access to only 22% of public rights of way and horse-drawn vehicle drivers to only 5%. In Wales horse riders have access to only 21% of public rights of way and horse-drawn vehicle drivers to only 6%.

Many rights of way are now disconnected from each other because the roads that should connect them are no longer safe for equestrians to use because of the speed and volume of motorised traffic on them. This leaves many equestrians without a safe local route to use.

THE SOCIETY HAS THE FOLLOWING CONCERNS ON THE ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL:

1. Public space protection orders (PSPOs) could prohibit public access on registered common land. Such land often provides safe off road riding opportunities for horse riders and this access should not be denied by the making of a PSPO. Registered common land should be excluded from PSPOs. This could easily be achieved by amending the definition of ‘public space’.

2. PSPOs should not be made, without considering whether any other measures could be taken for alleviating the activities which have had, or are likely to have, a detrimental effect on the quality of life of those in the locality. PSPOs should not be made as an alternative to the Police investigating crimes that would, if investigated and prosecutions brought where applicable, obviate the need for making a PSPO.

3. The notification procedures for the making of a PSPO are inadequate. As with other access legislation there should be a prescribed list of organisations to include The British Horse Society that should be notified.

4. The authority having consulted, is not required to consider the comments of consultees when determining whether a PSPO should be made. There should be a requirement for a public hearing or public inquiry if there are objections to the Order.

5. The three year duration of orders is too long. Orders should initially last for 6 months with a review being held thereafter to consider the effectiveness of the order and whether it needs to be extended if an application for extension is made.

6. Clause 60 aims to restrict public rights of way over highway. When determining whether a PSPO that restricts public rights of way over a highway should be made, the authority is only required ‘to consider the availability of a reasonably convenient alternative route’ among other things. There needs to be a requirement on the local authority to ensure that there is a reasonably convenient alternative route that is safe for all categories of user entitled to use it. Again there needs to be a prescribed list of consultees, with provision for a public hearing or inquiry in the case of objection.

7. The procedures for challenging the validity of orders needs to be extended so that locus is given to user representative organisations such as The British Horse Society. Recourse to the High Court is out of reach for the majority of people and our members would look to the Society to assist them. There should be no restriction on who can challenge the validity of an order.

8. The definition of local authority in clause 67 needs amending so that only highway and access authorities can make PSPOs.

July 2013
Written Evidence from Play England (ASB 54)

About Play England

Play England is the national organisation for children’s play. An independent charity, we are hosted by the National Children's Bureau. We hold Cabinet Office and Department of Health contracts to deliver play programmes as part of Government policy on social action and public health related to children and young people.

Our vision is for England to be a country where everybody can fully enjoy their right to play throughout their childhood and teenage years, as set out in the UN Convention on the Rights of the Child (UNCRC).

Our aims are to ensure that:

— All children and young people have the freedom—time, space, permission and opportunity—to play throughout their childhood and teenage years;
— All residential neighbourhoods are child friendly places where children and young people can regularly play outside; and
— Everyone is aware of the importance of play—outdoors and indoors—as part of children and young people’s daily lives.

Summary

Play England believes that the Anti-social Behaviour, Crime and Policing Bill raises significant human rights issues. There are likely to be unintentional consequences as the normal everyday freedoms to play outdoors that children have enjoyed for generations could bring them into conflict with civil and criminal law.

We are particularly concerned about these aspects of the Bill:

— Change of the definition of ASB to ‘behaviour capable of causing nuisance and annoyance’
— Lowering of the criminal standard of proof test of ‘beyond reasonable doubt’ to the civil standard of ‘the balance of probabilities’
— Custody as a sanction for children breaching the new orders
— Potential conflict with the States Parties obligations under the UNCRC, which are binding under international law
— Potential conflict with other areas of Government policy on social action in the community and public health and well-being through active outdoor play
— Likely failure to meet the Government’s own ‘reasonable, proportionate and effective’ test.

1. Definition of anti-social behaviour (clause 1)

The proposed lowering of the current threshold of causing ‘harassment, alarm and distress’ to ‘conduct capable of causing nuisance and annoyance’ is disproportionate in our view. No harm, nuisance or annoyance has to have actually occurred to trigger the injunction.

It is likely to lead to children as young as ten having restrictions put on their liberty for a wide range of normal behaviour that most children and families would not consider to be a civil wrong.

Alongside the proposed lower civil standard ‘balance of probabilities’ rather than the current ‘beyond reasonable doubt’ criminal standard test as the burden of proof there is the potential to bring normal everyday children’s play into the civil and criminal justice system.

Taken together, these proposals are likely to have a particularly detrimental effect on children’s freedom to play with friends in their neighbourhoods. This runs counter to Government policy on social action to build communities and the Chief Medical Officers’ recommendations that much more “unstructured, active and energetic play” is needed to improve children and young people’s physical and mental health and well-being.

The Association of Chief Police Officers have already warned that the new thresholds risk being too subjective and could unnecessarily criminalise children. A letter to the same effect signed by 50 professionals from the play, environment and academic sectors was published in the Times on 16 June 2013.

We fully accept that genuine anti-social behaviour by a minority of the most troubled families needs to be tackled, and we welcome the Government commitment to do more to support these families.

But we believe that these measures are not fully thought-through and are likely to dilute the focus on the core problems by disproportionately bringing perfectly normal and acceptable behaviour into the net.

2. Potential breaches of international law

The UN Convention on the Rights of the Child is legally binding on States Parties and these proposals will potentially put the Government in breach of:

— Article 3—the best interests of the child shall be a primary consideration
— Article 15—freedom of association and peaceful assembly
— Article 31—the right of the child to engage in play and recreation
— Article 37—the arrest, detention or imprisonment of a child should be used only as a last resort
— Article 40—no child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed

The UN Committee on the Rights of the Child has published a General Comment 17 which calls on States Parties to strengthen protection for children’s rights under Article 31 and places it firmly within the context of other children’s rights.

We call for Clause 1 to be amended to restore the ‘harassment, alarm and distress’ and ‘beyond reasonable doubt’ thresholds.

July 2013

Written evidence from CHP (ASB 55)

1. INTRODUCTION

1.1 CHP is based in Chelmsford, Essex, and is a locally managed and governed charitable housing association. The company’s aims are to provide excellent services and to increase the supply of affordable homes to those in need. As one of approximately 2,000 housing associations in the UK, CHP works closely with residents, local authorities, private sector companies, other charitable agencies and public sector bodies to constantly improve the services we provide. CHP has a Quality of Life team which manages tenancies, estates and tackles anti-social behaviour.

1.2 CHP currently makes good use of the various powers available under current law to tackle antisocial behaviour (ASB). On the whole these allow us to take effective and proportionate measures to deal with the variety of nuisances and minor crimes which fall under the definition of ASB. As a provider of housing, CHP has a contractual relationship with residents (in terms of their tenancy agreement) which puts us in an influential position within communities with respect to tackling ASB.

2. SUMMARY

2.1 On the whole CHP welcomes many of the proposals outlined in the draft Bill and think the range of tools and approaches contained within it have the potential to provide agencies with an effective toolkit that builds upon current practice. We do, however, have a few concerns which are summarised below.

— There is a certain ‘brand recognition’ around current ASB tools, ASBOs, for example, are extremely well known and understood. However, there are already lesser known tools (Anti-social Behaviour Injunctions or ASBIs, for example), the creation of new tools with new acronyms has the potential to cause some confusion. We suspect that explaining the changes of the Bill and the new terminology to all relevant stakeholders may present a challenge.

— We have concerns that the Bill comes at a time of significant reduction in provision supporting vulnerable people (both victims and perpetrators). In our experience effective partnership approaches which focus on early interventions prevent ASB becoming entrenched. Addressing entrenched ASB is very often a resource intensive process. Therefore, reductions in funding for agencies that specialise in early interventions and providing positive activities for people at risk of offending is likely to represent a ‘false economy’.

— We would like to seek clarification regarding what rights of audience housing providers will have in different courts under the Bill. Ideally, we would like the legislation to spell out clearly the rights of audience for housing providers when applying for Crime Prevention Injunctions.

— We are concerned around recent developments in the passage of the Bill, which suggest that social landlords will be unable to take action against private tenants when they are engaging in ASB against social tenants. We would like Parliament to revisit this decision.

— We are not convinced of the need for Section 91(1) (offences connected with riot). There are already many tools which allow the police to deal with riots and if these tools are not implemented correctly on the ground then the issue is one of implementation and not legislation. As it stands this section is likely to be very difficult to operate in practice. We would also question why the provision focuses exclusively on rioting and exclude crimes such as rape or murder.

3. EVIDENCE

3.1 Making sure that all relevant agencies and the public understand the changes introduced by the Bill will be key to its success. For example, the implementation of the Bill should include comprehensive guidance and training for relevant bodies, including the judiciary. From our experience, judges are sometimes not aware of all the ASB tools currently available (such as ASBIs) and this could be exacerbated by further changes to
terminology. This risk will need to be managed in the Bill’s implementation plan. Much of the success of any piece of legislation, in terms of achieving its aims, is determined by how it is implemented. In the past, previous governments have attempted to address implementation failure with further legislation (for example the Crime and Disorder Act 1998 and the Anti-social Behaviour Act 2003). Lengthy, excessive and ineffective additional legislative processes may be avoided by careful implementation planning which involves key stakeholders.

3.2 A key factor in tackling ASB is the way in which different agencies work together and share information. Our experience of this varies depending on the different areas we work in and the different agencies we work with. We recognise, for example, that there has been considerable progress with regards to how housing providers and Police work in partnership. However, there is still a feeling that effective information sharing only takes place when working relationships are built with certain individuals within agencies. Information sharing protocols need to not only be agreed but to also be disseminated and understood fully across partner agencies to prevent delays and frustrations in information sharing, which can damage relationships. For example, we have experienced a situation whereby a PCSO has been concerned about losing their job should they share information with CHP for the purposes of reducing crime and disorder. This Bill could, therefore, represent a useful opportunity to clarify issues around data sharing between different agencies involved in tackling ASB. Clearly defining what powers different types of agencies have and what the public and other agencies should expect from them regarding dealing with ASB would be highly beneficial and, hopefully lead to a more consistent approach to inter-agency working, nationally.

3.3 We welcome that the Bill (in terms of the requirements for perpetrators under the Crime Prevention Injunction) seems to recognise that enforcement is only part of a holistic approach to tackling ASB. Our experience, as well as a significant body of research, suggests that engaging with vulnerable perpetrators (especially young people) and providing positive activities and tailored support is an efficient and cost effective way to tackle ASB. However many of the agencies that conducted this type of work have seen their funding cut or have been abolished (Essex Connexions, for example) in recent years. This has left a gap in provision locally that, as a landlord, CHP is not best placed to fill. Focusing on early interventions prevents behaviours from escalating or becoming entrenched. This has a huge effect on the life chances and social mobility of people as well as being a significant drain on public resources. Reducing the availability of early intervention and support services for vulnerable people stores up problems (and costs) for the future. There is also a severe shortage of support services for people with alcohol addiction. From our experience, alcohol related crime and disorder impacts on many areas of the community (domestic violence, night time economy, arguing and shouting that leads to physical assaults and general disturbances in a neighbourhood) that can seriously impact on quality of life. Therefore investing in early intervention in such cases will reduce the demand for further ASB interventions by preventing the ASB from occurring in the first place.

3.4 We are aware of concerns regarding social landlords’ right of audience in court around ASB cases has been raised previously by other providers of social housing, for example in the evidence presented by the Hyde Group to the Home Affairs Select Committee (pre-legislative scrutiny report Additional Written Evidence, Vol.3, Feb 2013 ). We would concur with these concerns and also wish to seek clarification regarding whether or not housing associations will have a right of audience in court for applying for crime prevention injunctions. If we require legal representation this will impact on costs and overall control of managing cases effectively. Often staff have an excellent knowledge of the cases and are better placed to answer questions in court than legal representatives. In addition we would like to see (either in the legislation or any associated guidance) clarification regarding timescales by which applications and breaches of Crime Prevention Injunctions should be heard in court. It is our experience that timescales for court hearings can be lengthy and this impacts on victims willingness to come forward as witnesses and on their health and wellbeing whilst they wait for issues to be resolved.

3.5 Under existing law, social landlords can obtain ASB injunctions against private tenants where they have an impact on social tenants. Social tenants are victims as well as perpetrators of ASB and in a number of cases social tenants are the victims of ASB perpetrated by residents in other tenures. It is worth noting that it is often social landlords that take the lead on tackling ASB. Taking a holistic approach to managing mixed estates means engaging with all members of the community, regarding ASB issues. We do not see any reason to change this. Certainly, should this power be removed, the issues above regarding inter-agency working take on greater importance as we would need rely heavily on the police in cases of ASB committed against our tenants by private tenants. Alternatively, there will be a need to ensure that local authorities have a duty to do take on cases (currently dealt with by social landlords) where private tenants commit ASB against social tenants. However this could prevent swift action being taken if they do not have the capacity or knowledge to undertake appropriate action. In our experience, for example, it is sometimes the case that local authorities do not utilise ASBOs effectively. This provision could, therefore, present difficulties for local residents as housing providers are often best placed to make swift decisions and act responsibly to support victims of ASB in the community.

3.6 Lastly, It is our view that that, in practice, the recovery of properties under Section 91(1)—offences connected with riot—will present numerous practical difficulties. The decision to evict tenants requires careful and balanced decision making which takes account of numerous factors such as their individual circumstances, past behaviours, proportionality, relevant legislation as well as many other factors. This provision seems to not take account of this real world complexity and ignores that, where appropriate, landlords are able to take (and have, in the past, taken) swift actions against the tenancies of people connected with rioting. However
we would suggest that, if the provision is to be retained that other, equally or more serious offences, such as murder and rape should be included.

July 2013

Written evidence from The Motoring Organisations’ Land Access & Recreation Association (LARA) (ASB 56)

SUMMARY
1. This submission expresses our concern that public spaces protection orders will have a serious and unreasonable adverse effect on the public’s use of public roads and public rights of way. We ask that this provision is referred to the Rights of Way Review Committee (chaired by Lord John Lytton) for expert consideration and inputs in order to assist the House in making better legislation.

SUBMISSION
2. The Motoring Organisations’ Land Access and Recreation Association (LARA) was founded in 1986 and is a national forum and umbrella organisation for the principal national bodies in motor sport and recreation. Our full and associate member organisations between them have around 2,607 clubs, with 682,300 individual members. LARA’s primary role is to safeguard access to land for competitive events, and the use of the public highway for touring and recreational driving. LARA and its members have an ethos supporting responsible and environmentally sustainable activities, and spend considerable resources in education and information to tackle irresponsible and nuisance motor use.

3. LARA is aware that clauses in this Bill are causing great concern to other organisations involved in countryside access (for example the Ramblers Association, British Horse Society, and the Open Spaces Society) and we support their representations as regards the loss of public spaces and public highways as a consequence of this Bill becoming law as drafted.

4. LARA’s concerns are with regard to the way that public spaces protection orders can affect the rights of the public to use and enjoy public highways of all types. We can understand the need sometimes to ‘gate alleys’ in towns (although we believe that alley-gating is too-often the first choice of some authorities), but the scope of the new powers to close public rights of way and public roads really does worry us.

5. We know from long experience that local authorities will be put under pressure to use public spaces protection orders by people who simply do not like having a public right of way, or public road, on or close by their property. These public spaces protection orders will be used as a form of road closure order without the requirement for the consultations, and policy-led objectivity, that current order processes require.

6. One area of our work over more than 25 years is with regard to ‘cowboy motorcycling’, particularly on public footpaths and bridleways, and in country parks. For a long time the management doctrine was primarily physical exclusion: barriers and fences. But these seldom worked for long, if at all, because those people who are not law-abiding in their general behaviour are not law-abiding as regards signs, barriers, fences and gates.

7. Now it is widely recognised that the best way of pushing out undesirable behaviour is for more ordinary people to use a site for proper, everyday behaviour: the good displaces the bad. Similarly, to their great credit, the cycling organisation Sustrans realised that putting up anti-motors barriers on cycle routes simply diminished the character of the place and barred the disabled: getting greater proper use of the routes was the best deterrent against nuisance users. Our people, when out pursuing their activities, often act effectively as ‘eyes and ears’ against criminal and nuisance behaviour.

8. It seems to us to be against this wide experience, futile, and grossly unfair, to bar the law-abiding public from their open spaces, and their public highways of all types, by signs, gates and barriers, as a supposed means of barring nuisance. To the contrary, encouraging the public to use these sites provides benign policing against nuisance.

9. At the very least, section 60 requires regulations or guidance by the Secretary of State, to be enshrined in the Act itself. For example, in section 60(1)(c), just what is a ‘reasonably convenient alternative route’? Again, our long experience of ‘alternative routes’ for permanent and temporary road closure orders indicates that local authorities cannot safely be left to determine this without at the least robust guidance.

10. In summary, we fear that this provision will not achieve its purpose in the significant reduction of urban nuisance, but that it will certainly allow for unfair and inappropriate closures to public highways and public rights of way.

11. We ask that section 60 is not enacted as drafted, but is instead referred to the Rights of Way Review Committee (chaired by Lord Lytton) for review, with the purpose of recommending safeguards for public access consistent with the purpose of Part 4 of the Bill.

July 2013
Written evidence from Skills for Justice on behalf of the JSSC Group (ASB 57)

1. JSSC is the umbrella organisation that incorporates Skills for Justice and Financial Skills Partnership. Our joint licence as a sector skills council (SSC) covers around 3.5 million working people, the equivalent of 13% of the overall UK workforce. They work in police forces and law enforcement agencies; courts, tribunal & prosecution services; forensic science services; custodial care; fire and rescue services (FRS); armed forces; local and central government; the voluntary and community sector; legal and financial services and the accountancy sector. These sectors provide critical public functions within UK society, including providing the safe environment required for business, individuals and communities to thrive. Our sector comprises the spectrum of private, public and voluntary sector organisations and includes large, medium and small scale employers including those dedicated to supporting victims of crime and those working in offender management.

2. We welcome this consultation and the opportunity to contribute. We have focused our submission on the two areas where we feel we can add most value; restorative justice and forced marriage. This includes advice on how to prepare and enable Police and Crime Commissioners (PCCs) to successfully support the government’s ambitions in these areas.

3. We welcome greater use of the restorative justice approach and concur with the government’s suggestions of where this would be appropriate. We support the provision of good restorative practice services, to ensure that the skills requirements of the practitioners are met. In conjunction with employers and key stakeholders, we develop and maintain National Occupational Standards (NOS). NOS define ‘what good looks like’ in terms of competency. Not only does this assist good practice but it also provides reassurance for service users and commissioners. A relevant example is the suite of National Occupational Standards (NOS) that we have developed that articulate the key components of effective restorative practice. However, there are a number of NOS that we have developed for the justice sector that would help to prepare and inform PCCs in delivering the new critical functions outlined in the Bill. As the guardians of such standards, Skills for Justice have regularly reviewed and developed new NOS to ensure that they continue to reflect best practice and remain relevant to the sector.

4. In addition, based upon these standards and again at the request of employers, a Level 4 Diploma in Restorative Practice has been developed. Skills for Justice is also currently in the process of developing a National Competence Assessment Framework (NCAF) for the Victims, Survivors and Witnesses (VSW) Workforce, which the Restorative Practice NOS and qualification will be part of. The NCAF will identify the functions carried out by those who come into contact with victims, survivors & witnesses and clarify the NOS and learning and development opportunities, together with other practice standards that are relevant to these functions. These tools, together with other resources, will be included in readiness for its launch in September 2013. We would be happy to provide more information about the NCAF on request.

5. The National Competence Framework will also provide a useful and timely tool to help support PCCs as it provides a helpful overview of what standards should be met when developing their commissioning frameworks. It will not only be relevant to the new duties associated with restorative justice, but also other new roles and responsibilities outlined in the Bill.

6. With regard to the criminalisation of forced marriage, a wide range of NOS are available to the workforce supporting victims and witnesses. Skills for Justice working, with stakeholders and employers, is keen to ensure that any identified gaps in required practice are appropriately addressed. Again the VSW NCAF could provide a valuable source of support and information.

7. Sector Skills Councils have a unique relationship with employers, and a keen insight into their needs. Skills for Justice is eager to work with government to support the ambition of the Bill through quality workforce development for those providing essential services to victims of crime. We would be happy to discuss further how we support this vision.

July 2013

Written evidence from Inspector Jim Tyner (ASB 58)

1. I am the Community Policing Inspector for Spalding in Lincolnshire. We have a particular problem with day-time street-drinking linked to anti-social behaviour. The area is covered by a Designated Public Places Order (DPPO).

2. I write to request that consideration is given to amending clause 59 of the Bill (and explanatory notes).

3. The current legislation covering DPPOs, under Section 12 Criminal Justice and Police Act 2001 states:

   (1) Subsection (2) applies if a Constable reasonably believes that a person is, or has been, consuming alcohol in a designated public place or intends to consume alcohol in such a place.

   (2) The Constable may require the person concerned:

       (a) Not to consume in that place anything which is, or which the Constable reasonably believes to be, alcohol;
(b) To surrender anything in his possession which is, or which the Constable reasonably believes to be, alcohol or a container for alcohol.

4. Under the current legislation, a person who fails without reasonable excuse to comply with a requirement imposed on him under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

5. There is currently no power to issue a Penalty Notice for Disorder (PND) for drinking in breach of the DPPO. While we can issue a PND if someone fails to comply with our request, a person drinking within the DPPO area is not enough—all we can do is remind drinkers that they are in a no-drinking zone, confiscate the alcohol and pour it away.

6. The current legislation does not allow for the feelings amongst members of the public that groups drinking in the street are considered anti-social in their own right. Invariably persons found drinking surrender their alcohol upon request so there is no power to issue a PND. A game of ‘cat and mouse’ then ensues when persons simply go and obtain more alcohol and the procedure starts all over again.

7. Clause 59 of the new Anti-Social Behaviour, Crime & Policing Bill introduces Public Places Protection Orders to replace DPPOs. The Bill states:

This section applies where a Constable or an authorised person reasonably believes that a person (P):

(a) Is or has been consuming alcohol in breach of a prohibition in a public spaces protection order, or
(b) Intends to consume alcohol in circumstances in which doing so would be a breach of such a prohibition.

In this section “authorised person” means a person authorised for the purposes of this section by the local authority that made the public spaces protection order (or authorised by virtue of section 65(1)).

(2) The Constable or authorised person may require P:

(a) Not to consume, in breach of the order, alcohol or anything which the Constable or authorised person reasonably believes to be alcohol;
(b) To surrender anything in P’s possession which is, or which the Constable or authorised person reasonably believes to be, alcohol or a container for alcohol.

8. Apart from the introduction of powers granted to an ‘authorised person’ the wording of this section is virtually identical to that of the DPPO legislation.

9. Every week in the local media I receive feedback from members of the public that one of the main drawbacks of the current DPPO legislation is that people feel that the police should be granted powers to issue PNDs for drinking in a DPPO.

10. I have read the explanatory notes to the new Bill. Paragraph 149, covering the introduction of Public Space Protection orders explains that Clause 59 (above) provides that breach of the order only occurs when an individual does not cease drinking or surrender alcoholic drinks when challenged by an enforcement officer.

11. There is an important safeguard that, where there is no threat of anti-social behaviour, they need not challenge the individuals, for example a family picnic with a bottle of wine.

12. However, feedback from my police officers, PCSOs and from members of the public is that we are disappointed that there is still no power to issue a PND for drinking in breach of a Public Space Protection Order.

13. I would ask the Public Bill Committee to consider amending Clause 59 so that if a person is found drinking in breach of a Public Space Protection Order, then Breach of the order, without reasonable excuse, is a criminal offence, subject to a fixed penalty notice (of £100) (clause 64) or prosecution. On summary conviction, an individual would be liable to a fine not exceeding £1,000.

14. The explanatory note that a breach only occurs when an individual does not cease drinking should be reconsidered. This effectively prevents an authorised person from taking positive action. The feedback I have received from members of the public is that the ability to issue PNDs when a breach has occurred would have a significant impact on the amount of street drinking that takes place. There is already a safeguard for an authorised person to use their discretion (as per point 10 above).

15. The ability to issue PNDs in the first instance would be an important introduction to the ‘toolkit’ for tackling anti-social behaviour.

July 2013

Written evidence from Victim Support (ASB 59)

The following is Adam Pemberton’s (Victim Support Assistant Chief Executive) written response to the questions asked by Bridget Phillipson MP (Houghton and Sunderland South) at the Public Bill Committee oral evidence session on the Anti-social Behavior, Crime and Policing Bill on 20 June 2013.
About Victim Support: We are the national charity giving free and confidential help to victims of crime, witnesses, their family, friends and anyone else affected across England and Wales. We also speak out as a national voice for victims and witnesses and campaign for change. We have offices throughout England and Wales and we run the Witness Service in every criminal court.

Q. How would you judge the impact that is likely to result from the cuts to the Criminal Injuries Compensation Scheme, in terms of how victims might feel about that, as well as the impact on the work of Victim Support in supporting people to make claims where eligible under the scheme?

1. In our response to the Ministry of Justice’s consultation, Getting it Right for Victims and Witnesses, Victim Support agreed that the Criminal Injuries Compensation Scheme was in need of reform to make it both financially stable, more efficient and to help ensure that victims get compensation more quickly. We accepted that some changes to awards may be necessary. Whilst we did not support every detail of the proposed reforms, we welcomed the decision to protect compensation payments for victims of the most serious crimes, as well as all victims of sexual offences.

2. At present, victims of crime wait too long to receive compensation. A Parliamentary Question in 2010 revealed that of the total live caseload for the Criminal Injuries Compensation Scheme (ie cases where an award was pending, even if was not due for payment yet), 32% had been in the system for over a year, and 14% for over two years. Much of the reason for the delay in making awards is due to persistent underfunding of the scheme. Reforms to the scheme were needed to ensure that it is placed on a firm financial footing for the future.

3. Victim Support welcomed the launch of the hardship fund in November 2012. This scheme is vital for those in urgent need and nowhere else to turn. Victims highly value the practical support we can give, and every year we help around 30,000 to claim criminal injuries compensation. Victim Support will continue to provide support to those victims who are eligible to make a claim by helping them to apply and representing them through the application process if required. For those victims who are no longer eligible for compensation, we will work with them to identify what other methods of support may assist their recovery, recognising that compensation is not always the route that most helps victims cope in the aftermath of crime.

Q. I had a couple of cases, when the scheme was operating as previously, involving dangerous dogs and dog attacks, where victims’ families had sought to make claims for criminal injuries compensation. However, because the law is a bit unclear in that area, it was leading to some confusion about the claim for compensation, with the guidance under the scheme. Do you think that greater clarity is needed in the legislation on dangerous dogs, and might that help victims?

4. Where possible, clarity should always be provided to victims and their families when enquiring about Criminal Injuries Compensation claims. Victims of dangerous dog attacks and indeed other serious offences should be made immediately aware of the eligibility criteria under the Scheme. The Scheme now appears to provide more clarity on the eligibility of those who can and cannot receive compensation for dangerous dog attacks (the scheme states that victims will not be allowed to claim for injuries which “resulted from an animal attack, unless the animal was used with intent to cause injury to a person”).

5. Although limiting the eligibility for dangerous dog attacks is likely to reduce the number of victims who can claim, Victim Support hopes that this will help to reduce the stress and inconvenience caused to those victims who have, in the past, made an unsuccessful claim or whose cases have taken an unreasonable length of time to result in compensation.

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