House of Lords
House of Commons

Joint Committee on Human Rights

Legislative Scrutiny: (1) Serious Crime Bill, (2) Criminal Justice and Courts Bill (second Report) and (3) Armed Forces (Service Complaints and Financial Assistance) Bill

Second Report of Session 2014–15

Report, together with formal minutes

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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The current staff of the Committee is: Mike Hennessy (Commons Clerk), Megan Conway (Lords Clerk), Murray Hunt (Legal Adviser), Natalie Wease (Assistant Legal Adviser), Lisa Wrobel (Senior Committee Assistant), Michelle Owens (Committee Assistant), Holly Knowles (Committee Support Assistant), and Keith Pryke (Office Support Assistant).

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1 Serious Crime Bill

Background

1.1 The Serious Crime Bill[1] was introduced in the House of Lords on 5 June 2014.[2] It received its Second Reading on 16 June[3] and completed its Committee Stage on 15 July.[4] Its Report Stage began on 14 October and is scheduled to finish on 28 October.

1.2 Lord Taylor of Holbeach has certified that in his view the Bill is compatible with Convention rights. We wrote to the Minister on 25 June asking a number of questions about the Bill. Lord Taylor responded by letter dated 15 July.[5]

1.3 We identified the Bill as one of our priorities for legislative scrutiny in this Session and called for evidence in relation to it. Only one submission, however, was received on the Bill—from CAGE, which describes itself as "an independent advocacy organisation working to empower communities impacted by the War on Terror", in relation to the provision which would give extra-territorial effect to certain terrorism offences.

1.4 The Bill's main objective is to ensure that law enforcement agencies have effective legal powers to deal with the threat from serious and organised crime, including drug trafficking, human trafficking, organised illegal immigration, child sexual exploitation, high value fraud and other financial crime, counterfeiting, organised acquisitive crime and cyber-crime.

1.5 The Bill gives effect to a number of proposals in the Government's Serious and Organised Crime Strategy published in October 2013.[6] It is designed to update existing law dealing with recovery of the proceeds of crime, cyber-crime, serious crime prevention orders, gang injunctions, child cruelty, female genital mutilation and the commission of certain terrorism offences abroad, by creating new powers and offences and extending others.

Information provided by the Government

1.6 An ECHR memorandum was published, prepared jointly by the Home Office and the Ministry of Justice, alongside the Bill itself on introduction, in accordance with our recommendations for best practice by departments.[7] The Memorandum is relatively detailed and helpful. Our Legal Advisers met the Bill team on 19 June. We also received a brief supplemental ECHR memorandum from the Home Office dated 7 October 2014 in relation to a Convention compatibility issue raised by a Government amendment to the Bill tabled for Lords Report Stage. In addition to the ECHR memoranda the Government published a number of factsheets on specific aspects of the Bill, and an overarching impact

1 HL Bill 36 (as amended in Committee).

2 HL Bill 1.

3 HL Deb 16 June 2014 cols 643–699.

4 The Bill spent 3 days in Committee, on 2, 8 and 15 July.

5 Insert link to webpage.

6 Cm 8715.

7 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/317915/ECHR_memo_-_Lords_Introduction_version.pdf

assessment, all of which have been helpful in our scrutiny of the Bill. **We welcome the observance of good practice by the Home Office and the Ministry of Justice in their provision of information in relation to this Bill.**

1.7 However, there is one matter on which we have to comment adversely, and repeat a point we have often made in previous legislative scrutiny Reports. Our letter of 25 June asked for a reply by 9 July, which would have enabled us to consider the Government's response to our questions at our last meeting before the summer recess and a draft Report at our September meeting, with a view to us reporting before the start of the Bill's Report stage in the Lords. Unfortunately the Government's response was not received until 15 July, a week later than requested, and too late for it to be considered by us at our meeting before the summer recess. The first day of the Bill's Report Stage has now been scheduled for Tuesday 14 October, the day before our first meeting after the end of the Lords summer recess. **The lateness of the Government's response to our questions has therefore not assisted our reporting before the Bill's Report Stage begins.**

1.8 **We remind the Government that we have previously expressed our concern at the short timescale often afforded for scrutiny of legislation, and at delays in Government responses to requests for information hindering the timely publication of Committee Reports.**[8] **We also remind departments of both (i) the importance of observing the dates by which responses to correspondence are requested and (ii) the responsibility on parliamentary business managers to allow scrutiny by committees to proceed to a conclusion within a reasonable timescale before moving on to the very last stage of a Bill in any one House at which amendments can be considered.**

Proceeds of crime (Part 1)

1.9 Part 1 of the Bill makes amendments to the Proceeds of Crime Act 2002 which are designed to increase the amount of money recovered from serious organised criminals by closing various loopholes in the legislation.

Threshold for restraint orders (clause 11)

1.10 One of the proposed changes is to lower the threshold test that a court applies when deciding whether to freeze property by way of a restraint order, from "reasonable cause to believe" to "reasonable grounds to suspect".[9] The justification for the change is that it is required in order to prevent the risk of assets being dissipated between arrest and charge. We asked the Government what evidence exists to demonstrate that such dissipation of assets is a practical problem which needs to be addressed.

1.11 The Government said in response that the number of restraint orders granted in recent years has steadily declined since a judgment of the Court of Appeal in 2011[10] which made it harder for the Crown Prosecution Service ("CPS") to get restraint orders because the prosecution has to show not only that there is a likelihood that somebody will be

8 Joint Committee on Human Rights, Ninth Report of Session 2012–13, *Legislative Scrutiny Update*, HL Paper 157/HC 1077

9 Clause 11(1), amending s. 40(2)(b) of the Proceeds of Crime Act 2002 which sets out the conditions for the exercise of restraint order powers.

10 *Windsor v CPS* [2011] EWCA Crim 143.

convicted and that there will be a confiscation order in place, but also the likelihood that they will dissipate their assets. The impact of that judgment is said to be reflected in the fall in the number of restraint orders granted, from 1,856 in 2010–11 to 1,366 in 2013–14.

1.12 The purpose of restraint orders is effectively to freeze property to prevent it from being dissipated before a confiscation order is made. The Government says that to be effective in achieving that purpose, such orders need to be available as early as possible in the investigation. The operational experience of the CPS, however, is that at the early stage of an investigation it is very hard to prove reasonable belief because there often is insufficient evidence at that stage. Delaying the obtaining of a restraint order until sufficient evidence is available to meet the reasonable cause to believe test can give suspects the opportunity to dissipate or hide their assets and so protect them from seizure.[11] The Joint Committee which scrutinised the draft Modern Slavery Bill was persuaded that for these reasons the threshold for restraint orders should be lowered from reasonable belief to reasonable suspicion.

1.13 The Government recognises, in both its ECHR Memorandum and in Ministers' contributions to debates, that the Bill's provisions on the proceeds of crime have implications for the right to peaceful enjoyment of possessions, and it acknowledges the need for safeguards to ensure that only necessary and proportionate interferences with that right take place. It accepts the need for balance between ensuring that restraint orders are being made in all appropriate cases, while continuing to provide adequate protection to ensure that restraint orders are not used inappropriately.[12] Significantly, the Government has considered and rejected other suggested changes to the legal framework on the grounds that they would remove important safeguards which are needed to ensure that restraint orders are only used where necessary and appropriate. It considered carefully, for example, the recommendation of the Joint Committee on the Draft Modern Slavery Bill that the existing requirement to demonstrate risk of dissipation of assets should be explicitly removed, but after consulting prosecutors concluded that this is an important safeguard that should be retained. The Government has also rejected the suggestion that the burden of proof should be reversed, so that it is for the defendant to demonstrate that there is no risk of dissipation, again on the ground that this would undermine necessary safeguards:[13]

> We should not lose sight of the fact that every person is entitled to the peaceful enjoyment of his or her possessions. At the pre-charge stage of an investigation, an individual has neither been charged nor found guilty of an offence. It is therefore essential that the onus of proof remains on the prosecutor at this early stage. The Government are all for toughening up the asset recovery regime—we have made that clear, and it is precisely what we are doing in the Bill. However, we need to keep the regime proportionate, maintaining a proper balance between depriving criminals of their ill-gotten gains and protecting the rights of persons who, in the early stages of an investigation, have not yet been convicted of any offence.

1.14 **Restraint orders, which freeze a suspect's assets, can have a serious impact not only on the individual concerned but on that person's dependants and on their business, and**

11 Lord Taylor of Holbeach, HL Deb 2 July 2014 col 1762.

12 Lord Taylor, HL Deb 2 July 2014 col 1751.

13 Ibid at col. 1752.

the proposed lowering of the threshold for the obtaining of such orders therefore reduces the safeguards against such interferences with the peaceful enjoyment of possessions and with the right to respect for private and family life being disproportionate. However, we are satisfied that the Government has demonstrated by evidence that the current approach gives rise to a real, practical risk that assets will be dissipated or otherwise shielded from possible confiscation orders. As the Government points out, other safeguards already exist in the statutory framework: for example, the court has the power to vary or discharge a restraint order if it is not satisfied that the investigation is progressing satisfactorily. In addition to the safeguards expressly provided for in the legislation, other implied safeguards have been read into the statutory framework by the courts pursuant to their obligation to read legislation compatibly with Convention rights.

1.15 **In view of the existence of these other safeguards, we are satisfied that the Government has adequately justified the lowering of the threshold for restraint orders from "reasonable cause to believe" to "reasonable cause to suspect". We consider below whether the opportunity should be taken in this legislation to write the judicially implied safeguards into the statutory framework so that the law is clear on its face and there is no room for doubt about the safeguards which exist to ensure that restraint orders are only used where necessary and proportionate.**

Proportionality

1.16 The statutory framework governing the proceeds of crime has been the subject of much litigation, including a number of Supreme Court cases (the latest one handed down in June this year[14]). The Supreme Court has observed that one of the difficulties with the legislation in practice has been the lack of judicial discretion built into the statutory scheme, and has suggested that the need for such litigation would be reduced if such discretion were introduced.

1.17 The courts have also used s. 3 of the Human Rights Act to read words into the legislation in order to ensure that it operates compatibly with the ECHR, and in particular with the right to peaceful enjoyment of possessions in Article 1 Protocol 1. For example, the requirement that there must be shown to be a risk of dissipation of assets as a condition of obtaining a restraint order, which both the CPS and the Government agree is an important safeguard which should be retained, is not found in the Proceeds of Crime Act itself, but is the result of judicial interpretation of the statute. The duty on the court to make a confiscation order if certain conditions are satisfied has also been qualified by the courts reading in an exception where it would be disproportionate to make such an order. We asked the Government why the opportunity should not be taken in this Bill to write those judicially implied words into the legislation itself, which may reduce the need for future litigation about the Act's provisions. We also suggested two express requirements that could be inserted into the statutory framework to make it clear how it should be interpreted in order to make it ECHR compatible.

1.18 One of the Government's responses to this question was that "to explicitly require in POCA that the Act be interpreted compatibly with the ECHR may have the unintended

14 *R v Ahmad* [2014] UKSC xx.

consequence of casting doubt on other legislation, which has no such explicit reference." **We are puzzled by this response, which is based on a misunderstanding of our questions. Section 3 of the Human Rights Act requires all legislation to be interpreted compatibly with Convention rights so far as it is possible to do so, and this makes it unnecessary for any Bill to include an express requirement to the same effect. Neither we nor our predecessors has ever recommended that a Bill be amended to include an express requirement that it be interpreted in accordance with the ECHR, and nothing in the questions asked by us in our letter suggests that we had this in mind.**

1.19 The question we asked was whether there is any reason why Parliament should not take the opportunity in this Bill to amend the proceeds of crime legislation by writing in to the legal framework the requirements that the Supreme Court has "read in" to the legislation in order to make it compatible with the ECHR.

1.20 The Government's substantive response to that question is that there is no need for any legislative amendments to POCA because of the obligations on courts and prosecutors in sections 3 and 6 of the Human Rights Act (to interpret legislation and exercise functions compatibly with Convention rights) and the "clear guidance" provided by the Supreme Court in the case of *R v Waya*. It is not necessary to add an express requirement on proportionality, in the Government's view, because the requirement for proportionality is satisfied by safeguards already built into the legislative framework.

1.21 In *R v Waya*, however, the Supreme Court said:[15]

> The Proceeds of Crime Act 1995 ("the 1995 Act") was an amending statute, but its effects were far-reaching and, with hindsight after the enactment of HRA a few years later, problematic. The 1995 Act removed from the Crown Court almost all discretion as to the making or quantum of a confiscation order, if it was applied for by the prosecution and the statutory requirements were satisfied. That remains the position under POCA. The Crown Court no longer has any power to use its discretion so as to mould the confiscation order to fit the facts and the justice of the case, even though a confiscation order may arise in every kind of crime from which the defendant has benefited, however briefly. The Crown Court has encountered many difficulties in applying POCA's strict regime. Many of the complexities and difficulties of confiscation cases, arising from the extremely involved statutory language, would undoubtedly be avoided if a measure of discretion were restored, but whether to restore it, and if so in which form, is a matter for Parliament and not for the courts.

1.22 The Supreme Court went on to hold that it was necessary, in order to ensure that the statute is Convention-compliant, to read words into it so that the duty on the court to make a confiscation order is qualified by the words "except insofar as such an order would be disproportionate".[16]

1.23 **In our view the Bill provides an opportunity to bring greater legal certainty to the legal regime governing the proceeds of crime by inserting into the statutory framework express language which would give clear effect to the judgment of the Supreme Court in**

15 *R v Waya* [2012] UKSC 51 at para [4].

16 *R v Waya*, above, at para. [16].

Waya. We recommend that the Bill be amended to give clear statutory force to the qualification on the duty to make a confiscation order that has been "read in" to the POCA by the Supreme Court. The following amendment would give effect to this recommendation:

> Page 4, line 15, before clause 5 insert new clause:
>
> > ( ) In section 6 of the Proceeds of Crime Act 2002 (making of order), in subsection (5)(b) after 'amount' insert 'except insofar as such an order would be disproportionate.'

1.24 We also asked the Government if there are any reasons why Parliament should not take the opportunity in this Bill to give clear effect to the words read in to the legislation by the Supreme Court in the recent case of *R v Ahmad*—that confiscation orders made in relation to a joint benefit can be enforced only to the extent that the same sum has not been recovered through another confiscation order made in relation to the same benefit, to prevent double recovery by the State.

1.25 The Government's response to our question was that *Ahmad* is a new piece of case-law, and the Government intends to review how it operates in practice. **We look forward to being informed about the outcome of this review and expect the Government to make clear to Parliament precisely how it proposes to respond to the Supreme Court's judgment in *Ahmad*.**

Provision of information by third parties

1.26 The Government has tabled an amendment for Lords Report Stage which will confer a power on the courts to require information from third parties about any interest they may have in property that is the subject of a confiscation order.[17]

1.27 **We accept the Government's explanation in its supplemental ECHR memorandum that its amendment is compatible with the privilege against self-incrimination in Article 6 ECHR in light of the express provision that no information given by a person under the new provision is admissible in evidence in proceedings against that person for an offence.**[18]

Computer misuse offence (Part 2, clause 40)

1.28 Part 2 of the Bill creates a new criminal offence of unauthorised acts in relation to a computer (that is, computer hacking) causing serious damage to human welfare, the environment, the economy or national security in any country.[19] The rationale for the new offence is to fill what the Government considers to be a gap in the current criminal law.[20] Under the current law, the most serious computer hacking offence is that of unauthorised access to impair the operation of a computer under s. 3 of the 1990 Act, which carries a maximum penalty of 10 years' imprisonment. That maximum penalty is not considered

17 Amending clause 2 of the Bill by inserting new s. 18A into POCA 2002.

18 New s. 18A(9) POCA 2002.

19 Clause 40, inserting new s. 3ZA into the Computer Misuse Act 1990.

20 EN para. 115.

adequate by the Government for those cases where the impact of the action is to cause serious damage, for example to critical national infrastructure. The purpose of the new offence is to address the most serious cyber-attacks, such as those on essential systems controlling power supply, communications, food or fuel distribution. Such attacks on UK cyber-space were identified in the National Security Strategy 2010 as a "tier one" threat to national security.[21] Tackling cyber-crime is therefore an important part of the Government's Serious and Organised Crime Strategy and, to do so effectively, the Government says it is important to ensure that the right framework of criminal offences is in place.

1.29 The new offence is more serious than the existing s. 3 offence of computer hacking and is triable only in the Crown Court. Where the attack results in loss of life, serious illness or injury, or serious damage to national security, the maximum sentence is life imprisonment; where it results in serious economic or environmental damage or serious social disruption the maximum sentence is 24 years' imprisonment.

1.30 The Bill defines the concept of "damage to human welfare",[22] but does not define damage to the environment, the economy or national security. As the Government's ECHR Memorandum correctly acknowledges, this raises an issue about whether the new offence is defined with sufficient legal certainty to enable individuals to predict the consequences of their actions.[23] However, the Government is satisfied that the terms are capable of being applied with a sufficient degree of legal certainty, because "these terms have been used numerous times in legislation without definition." The courts have tended to leave the determination of whether something endangers national security, for example, to the Secretary of State, but the Government considers that the term is well enough understood to be capable of application by a properly instructed jury.

1.31 We accept that there are a variety of statutory contexts in which the broad terms "damage to the environment, the economy or national security" appear. Indeed, in other contexts we have accepted the Government's argument that it is not appropriate to include a statutory definition of "national security". It was not clear to us, however, whether any of these broad terms had ever before been used in legislation creating a criminal offence. We therefore asked the Government whether there are any examples of other, existing criminal offences in which the concepts of "damage to the environment", "damage to the economy" or "damage to national security" are included as an element of the offence, and if so to be provided with examples of each.

1.32 The Government replied that "We are not aware of any offences which have 'damage to the environment', 'damage to national security' or damage to the economy' as an ingredient of the offence."

1.33 In relation to the environment, the Government does not consider it appropriate in this context to provide specific definitions of the environment and damage to the environment, because this would potentially restrict the cases in which the prohibition might apply. The terms are intended to carry their broad, everyday meanings. In relation to national security and the economy, the Government points out that in the context of

21 *Serious Crime Bill Factsheet: Part 2 Computer Misuse*.

22 New s. 3ZA(3) Computer Misuse Act 1990.

23 ECHR Memorandum, para. 11.

various executive actions which constitute significant interferences with human rights, such as deportation or asset-freezing, the courts have accorded the executive "considerable leeway" in deciding what national security requires or whether action is to the detriment of the UK's economy. The Government "acknowledge[s] that there is a difference between these sorts of executive actions and criminal sanctions", but considers that the terms "national security" and "economy" are sufficiently well understood for a properly instructed jury to be able to reach a verdict.

1.34 We also asked the Government to clarify, with examples, what they consider to constitute serious damage to the environment, the economy or national security in this context. In response, the Government acknowledged that "there is a tension between defining this offence sufficiently broadly to catch the various types of serious harm that might result from unauthorised acts in relation to a computer while providing legal certainty as to the scope of criminal liability." The Government confirmed that the new offence of computer misuse is not intended to capture damage which is trivial or minor, and whether the damage is "serious" will depend on the circumstances of each case, and factors such as the severity of any impact on individuals, the number of individuals affected, the geographical area affected and the duration of the impact. However, the Government did not take up our invitation to provide some examples of what it considers constitutes serious damage to the environment, the economy or national security in this context.

1.35 **We regard as highly significant the fact that the Government is not aware of any other criminal offences which have "damage to the environment", "damage to the economy" or "damage to national security" as an ingredient of the offence. The use of such broad concepts without further definition in other statutory contexts is one thing but, as the Government itself acknowledges, it is quite another in the context of criminal sanctions. Legal certainty requires that criminal offences are precisely defined so that individuals know how to avoid such sanctions. Vagueness is not permissible in the definition of criminal offences.**

1.36 We note that in August 2013 the EU adopted a Directive on attacks against information systems, one of the objectives of which is to approximate the criminal law of the Member States in the area of attacks against information systems by establishing minimum rules concerning the definition of criminal offences and the relevant sanctions.[24] The recitals to the Directive state that it has become apparent from the need to increase the critical infrastructure capability protection of the Union that the measures against cyber-attacks should be complemented by stringent criminal penalties reflecting the gravity of such attacks. "Critical infrastructure" in this context is understood to be "an asset or system, or part thereof, which is essential for the maintenance of vital societal functions, health, safety, security, economic or social well-being of people, such as power plants, transport networks or government networks, and the disruption or destruction of which would have a significant impact in a Member State as a result of the failure to maintain those functions."

24 Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013.According to the Government's Factsheet on this Part of the Bill, current UK law complies with the requirements of the Directive except in two respects, which are addressed by other clauses of the Bill: *Serious Crime Bill Factsheet: Part 2 Computer Misuse*, para. 10.

1.37 The Directive requires Members States to provide for criminal penalties in respect of attacks against information systems, and that those criminal penalties should be effective, proportionate and dissuasive and include imprisonment and/or fines. It recognises that it is appropriate to impose more severe penalties where a cyber-attack causes serious damage, or is aimed at critical infrastructure. However, States are only required to ensure that a maximum penalty of five years imprisonment is available for the most serious offences.[25] This particular change to the law is therefore not required in order to comply with the EU Directive on Attacks on Information Systems.

1.38 **We do not doubt the need to ensure that the criminal law provides adequate protection against cyber-attacks on critical infrastructure. We doubt, however, whether the concepts of "damage to the environment", "damage to the economy" or "damage to national security" are sufficiently certain in their meaning to justify their inclusion as an ingredient of a criminal offence carrying maximum sentences of 14 years and life imprisonment. The broad and vague definition of the new offence of computer misuse appears to be without precedent, and the Bill therefore appears to cross a significant line by using these unsatisfactory concepts in the definition of a serious criminal offence carrying a lengthy sentence. We recommend that the Bill be amended to remove these particular elements of the new computer hacking offence.**

1.39 The following amendment would give effect to this recommendation:

> Page 31, line 1, leave out sub-paragraphs (b), (c) and (d).

Participating in the activities of an organised crime group (Part 3, clause 44)

1.40 Part 3 of the Bill includes a new criminal offence—participating in the activities of an organised crime group[26]—which is designed to plug a gap in the ability of law enforcement agencies to target those who help organised criminal groups to function. The new offence was announced without any prior consultation by the Home Office, including with any of the professional groups such as lawyers and accountants who the Government says are amongst the principal targets of the new measure. The offence is very broadly drawn and on its face it would apply, for example, to legal professionals providing legal services to those suspected of involvement in serious organised crime.

1.41 We asked the Government why existing offences are not sufficient to deal with the problem, whether the offence is sufficiently tightly defined, and whether providers of legal services are intended to be caught.

1.42 Strong concerns have been expressed, not about the objective behind the provision, but about the uncertainty caused by the breadth of the offence as currently drafted. The Law Society, for example, was concerned by the uncertainty caused by the combination of the low threshold in the *mens rea* required for the offence ("reasonable cause to suspect") and the vagueness of the concept of helping an organised crime group to carry on criminal activities. It pointed out that it is not clear, under the offence as drafted, how far an individual must go to satisfy themselves that whatever service they are providing is not

25 Article 9.

26 Clause 44(1).

assisting criminal activities down the line somewhere. It is not clear, for example, what level of due diligence a solicitor would need to carry out to make sure that they could not be said to have turned a blind eye to criminal activity.

1.43 During the Bill's Committee stage, the Minister agreed to give further consideration to two aspects of the offence in the light of these concerns about the legal uncertainty caused by its breadth as currently drafted.[27] First, he agreed to give further consideration to ensuring that the *mens rea* (state of mind) of the person committing the offence is such that it does not capture the naïve or unwitting. Second, he acknowledged the importance of there being no anxiety amongst people, professionals and non-professionals alike, that they might be inadvertently captured by the participation offence, and he agreed to give further consideration to including in the Bill a general defence available to both professionals and non-professionals.

1.44 The Government now proposes to address the concerns expressed about the current vagueness of the new offence by changing the required *mens rea* of the person committing the offence from "has reasonable cause to suspect" to "reasonably suspects".[28] It says that this would require the prosecution to prove both the subjective test that the person genuinely suspected and the objective test that that suspicion was reasonable. This, the Government says, would ensure that the naïve and unwitting were not caught by the offence because they would not have suspected, even though they had reasonable grounds for doing so. However, the Government does not intend to amend the Bill to include any additional defence, having concluded that a general defence of "acting reasonably" would not offer any additional protection against over-criminalisation that is not already achieved by changing the *mens rea* of the offence as described above.

1.45 **We welcome the Government's preparedness to address concerns about the legal uncertainty caused by the breadth of the offence as currently drafted. However, we are not persuaded that the change from "reasonable cause to suspect" to "reasonably suspects" goes far enough to meet those concerns. We recommend that the Bill be amended to raise the threshold of the mens rea required above either "reasonable cause to suspect" (in the Bill as it currently stands) or "reasonably suspects" (as proposed in the Government's amendment), to "reasonably believes". This is a higher threshold, as the Government acknowledges in clause 11 of the Bill where it is reducing the threshold test for restraint orders from "reasonable cause to believe" to "reasonable grounds to suspect", and it would therefore go some way towards reducing the scope of this new criminal offence.**

1.46 **We also recommend a probing amendment which would provide for a general defence to be available where the defendant has acted reasonably in all the circumstances, to provide Parliament with the opportunity to explore in more detail the Government's reasons for rejecting the argument for a wider defence than the Bill currently provides.** The following amendment would give effect to these recommendations:

> Page 34, line 19, leave out 'has reasonable cause to suspect' and insert 'reasonably believes'.

27 Lord Taylor of Holbeach, HL Deb 8 July 2014 col 149.

28 Clause 44(2)

Page 35, line 10, insert 'or that the person acted reasonably in all the circumstances.'

Seizure and forfeiture of drug-cutting agents (Part 4)

1.47 Part 4 of the Bill creates bespoke search, seizure and forfeiture powers in relation to drug-cutting agents. The provisions serve the legitimate aim of plugging a current gap in investigative powers which arises because there is no underlying criminal offence of possession of drug-cutting agents.

1.48 We accept the Government's explanation of why the suite of proposed new powers of search, seizure and forfeiture appears to be both necessary and proportionate. However, we had one detailed question about the adequacy of the safeguards written in to the conditions for obtaining a warrant. As drafted, it is not absolutely clear on the face of the Bill that it is a precondition of the obtaining of a warrant that there must be reasonable grounds for suspecting, not only that a particular substance is on the premises, but that the substance is intended for use as a drug-cutting agent. We therefore asked the Government to clarify whether this is the Government's intention.

1.49 The Government's response was an unequivocal yes. Before a magistrate can issue a search and seizure warrant, he or she has to be satisfied that there are reasonable grounds to suspect that a substance (i) intended for such use is (ii) on the premises. The officer applying for the warrant must persuade the magistrate that he or she (the officer) has both a genuine and reasonable belief that both elements exist.

1.50 **We welcome the Government's clarification of its intention, in the light of which we are satisfied that the safeguards surrounding the proposed new powers are adequate. We also welcome the Government's amendments to Part 4 which would require notice to be given both to the person from whom the substance was seized and, if different, to the person to whom the substance belongs, which improve the procedural safeguards against the unnecessary or disproportionate use of these powers.**

Protection of children (Part 5)

Child cruelty (Clause 65)

1.51 Clause 65 of the Bill amends the definition of the offence of child cruelty in section 1 of the Children and Young Persons Act 1933 ("the 1933 Act"). Under section 1, it is an offence for a person over the age of sixteen, who has responsibility for a child under that age, wilfully to assault, ill-treat, neglect, abandon or expose that child in a manner which is likely to cause unnecessary suffering or injury to health.

Positive obligations to protect children from harm

1.52 The State has positive obligations to protect children from harm under ECHR Article 2 (the right to life), Article 3 (the prohibition of torture, cruel, degrading, or inhumane treatment), and Article 8 (the right to respect for private and family life). This means that the State must have adequate structures in place to protect children, including criminal

sanctions.[29] There is a similar requirement under the United Nations Convention on the Rights of the Child, which provides that States must take all appropriate legislative and other measures to protect children from all forms of physical or mental violence.[30] The United Nations Committee on the Rights of the Child has highlighted the importance of children's psychological integrity, and has called on States to recognise the impact of, and need to address, non-physical forms of harm to children.[31]

The right to respect for private and family life (Article 8 ECHR)

1.53 Parental rights and choices in the upbringing and education of children are central aspects of the right to respect for family life, which is guaranteed in Article 8 ECHR. The amendment to the definition of the offence of child cruelty must satisfy the requirements of legal certainty. It must also be necessary and proportionate. The Government states that it is satisfied that the provision is compatible with Article 8 ECHR on the basis that a parent's right to respect for family life is not affected by the imposition of criminal law sanctions for harming their child.[32]

Necessity

1.54 The explanatory memoranda to the Bill set out the Government's view that conduct which causes psychological suffering or injury to a child already falls within the scope of the current section 1 offence, explaining that the purpose of the proposed amendments is to make this position "absolutely clear",[33] without making any substantive changes to the current law.[34] We wrote to the Government to request further information to explain its view about the scope of the current section 1 offence and the necessity of the proposed amendments.[35]

1.55 In response, the Government explained its view that the current reference to "mental derangement" in section 1 would "by implication include psychological suffering or injury".[36] The Government also considers that this is clear from the case law interpreting the section 1 offence, and has been clear for many years: a case in 1938, *R v Whibley*,[37] in which the Court of Appeal held that section 1 concerns "the prevention of cruelty and exposure to moral and physical danger", makes clear that psychological suffering is already covered by section 1. Nor does the Government consider that there is anything in the case law on section 1 that would exclude such harm from the ambit of the offence. It acknowledges that in the *Sheppard* case,[38] it was held that child neglect under the section 1

29 *K.U. v. Finland*, no. 2872/02, 2 December 2008, para 46; *Kontrová v. Slovakia*, no. 7510/04, 31 May 2007, para 49; *X and Y v. the Netherlands*, no. 8978/80, 26 March 1985, para 27.

30 Article 19 UNCRC

31 UN Committee on the Rights of the Child, General Comment no. 13 (2011)

32 Serious Crime Bill, ECHR Memorandum by the Home Office and Ministry of Justice, para 36

33 Serious Crime Bill Factsheet, *Clarifying and updating the criminal law on child cruelty* by the Home Office and Ministry of Justice, June 2014, para 7; Serious Crime Bill, ECHR Memorandum by the Home Office and Ministry of Justice, para 35

34 Serious Crime Bill, ECHR Memorandum by the Home Office and Ministry of Justice, para 36

35 Letter from the Chair to the Lords Minister and Minister for Criminal Information, Lord Taylor of Holbeach CBE, 25 June, QQ 11–13

36 Letter from the Lords Minister and Minister for Criminal Information, Lord Taylor of Holbeach CBE, to the Chair, 15 July 2014, Q 11

37 (1938) 26 Cr. App R. 184

38 *R v Sheppard and another*, [1980] 3 All ER 899

offence concerns a child's physical needs, but points out that the judgment concerns only one of the five behaviours (neglect) that can constitute cruelty under section 1. The Government's view is that non-physical cruelty can be covered by other limbs of the offence, in particular ill-treatment. Government amendments have been tabled for Report stage to make this explicit on the face of the legislation, by inserting "whether physically or otherwise" after "ill treats" in the text of the section 1 offence.[39] The Government also cites Crown Prosecution Service ("CPS") and Sentencing Council guidelines that refer to psychological harm in the context of section 1 of the 1933 Act in order to support its view that the law already covers psychological as well as physical suffering or injury.[40]

1.56 The Government also provided information to explain why it considers the amendments to the current statutory offence to be necessary. It provides details of a "targeted engagement exercise" that it conducted with expert stakeholders in October 2013. The Government confirms that some of the respondents were concerned that the offence may currently be restricted to physical abuse.[41] The Government also refers to research conducted by the charity Action for Children, which found evidence to suggest that there is confusion among some frontline professionals, including, most significantly, the police, as to whether the existing offence covers non-physical harm.[42] Although the Government considers that it is difficult to say what the effect of such uncertainty might be, as it has not been provided with any clear evidence to suggest that cases involving psychological harm or suffering are currently not being taken forward, it considers it to be possible that "a few" cases which might not have been referred to the CPS may be pursued if the law is clarified. It concluded that the law may be easier to understand if the offence was clarified by making explicit that it covers psychological as well as physical suffering or injury and updated to remove some of the more archaic language from the provision. The Government also reiterates its view that it considers the change to be necessary due to the "strength of feelings to which the issue gives rise".[43]

1.57 **We are satisfied that the Government is legally correct that cruelty causing psychological harm to a child is already a criminal offence under the current section 1 of the Children and Young Persons Act 1933. Although there is only a slight evidential basis for the view that the scope of the current law is misunderstood, the evidence suggesting that many police officers and others may not appreciate that the current offence covers psychological harm is nonetheless particularly significant and does call into question whether the UK is adequately fulfilling its positive obligation to protect children from such harm. For this reason, we welcome the clarification of the law.**

Legal certainty and adequacy of safeguards to ensure proportionality

1.58 In view of the implications for the right to private life, family life and home, we wrote to the Government to ask it to explain its view that '"suffering of a psychological nature" satisfies the requirement of legal certainty, and, given the breadth and vagueness of that

39 Serious Crime Bill [HL], Amendments to be moved on Report, 8 October 2014;

40 Letter from the Lords Minister and Minister for Criminal Information, Lord Taylor of Holbeach CBE, to the Chair, 15 July 2014, Q 11

41 Ibid., Q12

42 Action for Children, *The criminal law and child neglect: an independent analysis and proposals for reform*, Feb 2013; Action for Children, *Keeping Children Safe: The case for reforming the law on child neglect*, April 2012

43 Letter from the Lords Minister and Minister for Criminal Information, Lord Taylor of Holbeach CBE, to the Chair, 15 July 2014, Q13

term, what threshold will be applied by police and prosecutors when deciding whether the offence has been committed. We also asked the Government for further information about safeguards to ensure that the amended offence does not lead to disproportionate interferences with the right to respect for private life, family life and home, and about the guidance that will be given to front line professionals about the implications of the amended offence.[44]

1.59 In response, the Government refers to the case of *R v Whibley*, which held that 'some small mental suffering or anxiety' would not constitute 'unnecessary suffering or injury'. The Government states that it expects the courts to apply this meaning in the same way to cases of psychological child cruelty. The Government states that it is satisfied that this provides a sufficient safeguard to ensure that "only behaviour that reaches a minimum level of severity is, and would be, covered". The Government also confirmed that it is liaising with the police, CPS and other frontline professionals about whether any updates or amendments to the relevant guidance would be necessary to ensure that relevant guidance is clear and applied appropriately.[45]

1.60 **The relevant guidance to front-line professionals will be key in ensuring that the requirements of legal certainty and proportionality are met when the amendments to the offence come into force. We welcome the Government's commitment to liaise with the Department for Education, the Crown Prosecution Service and the police about the changes that may be necessary to ensure that the amended offence is properly understood. We stress the need for effective cross-Government coordination on this issue to ensure that guidance is both understood and applied consistently across all departments and agencies. We also recommend that the Government consults widely with civil society on drafts of the relevant guidance, including with organisations which aim to enable children to be raised safely within their families and to avoid unnecessary removal of children into care.**

Protection for 16 and 17 year olds

1.61 We wrote to the Government to ask it to explain its justification for not extending the protection under the child cruelty offence to those aged 16 and 17.[46] This appears out of line with the UNCRC definition of a child and domestic child protection guidance, which both define a child as anyone under 18.[47] In response, the Government explains its view that "young people aged 16 or over are lawfully able to be married and are generally deemed capable of living independently of their parents. Those under the age of 16 are generally more vulnerable and dependent on those who care for them"[48] The Government thinks it is therefore right that the section 1 offence is focused on protecting under 16s. The

44 Letter from the Chair to the Lords Minister and Minister for Criminal Information, Lord Taylor of Holbeach CBE, 25 June, QQ 15–16

45 Letter from the Minister of State for Policing, Criminal Justice and Victims, the Rt Hon Damian Green MP, to the Christian Institute, 12 June 2014, QQ 15–16

46 Letter from the Chair to the Lords Minister and Minister for Criminal Information, Lord Taylor of Holbeach CBE, 25 June, Q17

47 Article 1 UNCRC; HM Government (2013) Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children; Welsh Assembly Government (2007) Safeguarding children: working together under the Children Act 2004; Northern Ireland (2003) Co-operating to safeguard children; Scottish Government (2010) National guidance for child protection in Scotland

48 Letter from the Lords Minister and Minister for Criminal Information, Lord Taylor of Holbeach CBE, to the Chair, 15 July 2014, Q 17

Government also states that "increasing the age of victims from 16 years to 17 years would mean that a young person under the age of 18 who commits an offence under section 1 could not be prosecuted."[49]

1.62 **We are not persuaded by the Government's justification for continuing to exclude 16 and 17 year olds from the protection of the child cruelty offence. The fact that a criminal offence protects those under the age of 18 does not mean that the offence cannot be committed by a person who is also under 18. In our view, it would be possible in principle to extend the scope of protection provided by the offence to those under 18 whilst preserving the possibility that those over 16 can commit the offence. This provision is the latest in a series of issues which have arisen in different contexts raising the wider question of the lack of a consistent legal definition of the age of a child in the UK, and we call on the Government to review this area of law.**

Possession of paedophile manuals (Clause 66)

1.63 Clause 66(1) creates a new offence to criminalise the possession of items containing advice or guidance about abusing children sexually, commonly referred to as "paedophile manuals". The Government's human rights memorandum states that the provision raises issues in respect of Articles 6, 7, 8 and 10 ECHR.[50] The Government also considers that the measure furthers its fulfilment of Article 34 UNCRC, which requires States to undertake to protect children from all forms of sexual exploitation and sexual abuse.[51] The Government's memorandum sets out that the aim of the new offence is to combat the commission of sexual offences against children.[52] A Factsheet on the provision, published by the Home Office, explains further that there is a potential gap in the law which does not cover the possession of written material that contains practical advice on how to commit a sexual offence against a child.[53]

1.64 **Based on the information provided by the Government, the creation of a new offence to criminalise the possession of "paedophile manuals" appears to be a necessary and proportionate measure in order to fulfil the positive obligation to protect children from harm.**

Female genital mutilation: extra territorial acts (Clause 67)

1.65 Clause 67 of the Bill amends the Female Genital Mutilation Act 2003 ("the 2003 Act") so that the extra-territorial jurisdiction, which currently applies to UK nationals and permanent UK residents, extends to female genital mutilation ("FGM") acts conducted outside the UK by a person who is habitually resident in the UK, irrespective of whether they are subject to immigration restrictions. It also amends the 2003 Act to ensure that the offence of FGM covers situations where the victim of the procedure is habitually resident in the UK.

49 Ibid.

50 Serious Crime Bill, ECHR Memorandum by the Home Office and Ministry of Justice, para 38

51 Ibid., para 45

52 Ibid., para 41

53 Home Office, Serious Crime Bill, Fact sheet: Paedophile manuals, June 2014, para 1

1.66 FGM is a violation of the human rights of girls and women. The UN Committee on the Elimination of All Forms of Discrimination against Women has issued a General Recommendation that calls upon States to take appropriate and effective measures with a view to eradicating the practice.[54] In February 2014, the Government issued a political declaration outlining a number of initiatives across various Departments to end FGM in the UK and abroad.[55] The provision in Clause 67 is one such measure. The extension of the extra-territorial effect of the FGM offences to a person who has his or her habitual residence in the UK is also in line with the requirements of the Council of Europe's Convention on preventing and combating violence against women and domestic violence.[56] **We welcome the proposed amendment to the Female Genital Mutilation Act 2003 as a human rights enhancing measure, which furthers the Government's positive obligation to protect women and girls from FGM.**

Preparation or Training Abroad for Terrorism (Part 6, clause 68)

1.67 The Bill provides for extra-territorial jurisdiction over two terrorism offences which currently have either no or only limited extra-territorial effect: preparation for terrorism and training for terrorism under ss. 5 and 6 respectively of the Terrorism Act 2006.[57] The effect of the provision is that a person who does anything outside of the UK which would constitute the offence of preparation for terrorism under s. 5 or training for terrorism under s. 6 of the 2006 Act could be tried for those offences in a UK court if they were to return to this country.

1.68 The rationale for the provision is that extra-territorial jurisdiction is appropriate for these offences because the places where training or preparation for terrorism are taking place are increasingly likely to be located abroad and it may allow for prosecutions of people preparing or training more generally for terrorism who have, for example, travelled from the UK to fight in Syria.[58]

1.69 **Extending the territorial reach of very broadly worded criminal offences has obvious implications for those who have legitimate reasons for travelling to areas of the world affected by armed conflict—for example to visit family, to deliver humanitarian aid, or simply on business. We are therefore surprised that the Government's ECHR memorandum does not consider the human rights implications of these significant provisions.**

1.70 We note that the recent UN Security Council Resolution on Foreign Terrorist Fighters requires States to take a number of actions in relation to their nationals or residents who go abroad to be involved in terrorism, including by ensuring that their domestic laws establish serious criminal offences sufficient to enable them to prosecute and penalise their nationals and others who travel abroad to other States for the purpose of the planning or preparation of terrorist acts or the providing or receiving of terrorist training.[59] We acknowledge that

54 UN Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation no. 14, 1990

55 https://www.gov.uk/government/publications/female-genital-mutilation-declaration

56 Articles 38 and 44(1)(e)

57 Clause 68, amending s. 17 Terrorism Act 2006.

58 EN para. 250.

59 UN SC Res S 2014 688 (24 September 2014).

clause 68 of the Bill can be seen as the UK's implementation of that particular obligation imposed by the UN Security Council Resolution. We also note, however, that the Resolution itself requires that the action taken by States to implement the obligations it imposes must be "consistent with international human rights law." We have therefore considered carefully whether this extension of the reach of the criminal law, which potentially interferes with a number of fundamental rights, is necessary, proportionate and sufficiently legally certain to be compatible with the UK's human rights obligations.

1.71 In response to our call for evidence on the Bill, we received a submission about this provision from CAGE, which describes itself as "an independent advocacy organisation working to empower communities impacted by the War on Terror."[60] CAGE questions whether the Government has shown the necessity for this provision extending the extra-territorial jurisdiction of these two terrorism offences. It argues that there has been no proper examination or assessment of the threat posed by travellers to Syria, no consideration of whether a gap in the law really exists, and no consideration of whether there are other practical alternatives to criminalisation, such as consulting and engaging with the communities from which people are travelling to Syria, or with the mainstream religious and scholarly leaders of those communities, which, CAGE says, would help the Government to understand the theological and other reasons why Muslims from this country travel abroad to help fellow Muslims.

1.72 CAGE also argues that there are legal objections to extending extra-territorial jurisdiction over these offences, and in particular that doing so will undermine the principle of legal certainty, given the pre-emptive nature of the offences in question, the potential breadth of what is caught by them, and the volatility of the situation on the ground in Syria and Iraq and the UK Government's responses to it, which inevitably leaves a very wide discretion to the enforcement authorities to decide who to prosecute.

1.73 CAGE also points to possible practical problems which may arise with the implementation of the provision. These include, in particular, the need to gather evidence from abroad or to obtain it from foreign governments or their agencies, which raises questions about the legal framework governing such information sharing, and what safeguards there will be to ensure that such information is not tainted by coercion or other illegality in the way it has been obtained. Finally, CAGE argues that the Government has not given sufficient consideration to the gravity of making criminal laws about terrorism apply extra-territorially, including the implications for international reciprocity and respecting the national sovereignty of other States.

Necessity

1.74 We asked the Government what evidence there is to demonstrate the necessity for this extension of extra-territorial jurisdiction, and for an indication of the approximate number and kinds of cases in which the law enforcement agencies have been unable to prosecute

60 http://www.parliament.uk/documents/joint-committees/human-rights/Submission_from_CAGE_on_Serious_Crime_Bill.pdf CAGE also wrote to us about the closure of their bank accounts by certain banks following the designation of their former outreach director, Moazzam Begg, under the Terrorist Asset Freezing Act 2010, on which we exchanged correspondence with the Commercial Secretary to the Treasury: see http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/terrorist-asset-freezing-act-2010/ . We consider the collapse of the prosecution of Moazzam Begg at paragraph 1.80 below.

those returning from abroad because the current law is inadequate. The Government response does not provide either, saying that it is difficult to provide a specific number of operational cases where the measure would have been used, because prosecution decisions about individuals are made in accordance with the laws in place at the time, and prosecution for preparation or training for terrorism abroad is not currently an available option where the preparation or training takes place solely overseas.

1.75 However, the Government says that the law enforcement agencies are satisfied that there are likely to be particular cases of UK-linked individuals travelling abroad, for example to Syria, to prepare and train for terrorism. The Government estimates there to be more than 400 "UK-linked individuals" in Syria, and believes that some people who travel from the UK to take part in jihadist fighting will pose a security threat to the UK when they return. Extending extra-territorial jurisdiction for these terrorism offences is therefore part of ensuring that the law enforcement agencies are equipped with the powers to deal with the security threat posed by those returning to the UK after fighting in Syria. The Government also says that recent cases show the operational significance of these offences, pointing out that the recent conviction of Mashudur Choudhury for engaging in conduct in preparation of terrorist acts in connection with the conflict in Syria was based on activities which took place in the UK, and his prosecution would not have been possible if his preparatory activity had taken place solely outside the UK.

1.76 We think the Government could have done more to demonstrate to Parliament the necessity of resorting to a significant extension of the reach of the criminal law and to explain what else is being done to address the threat posed to national security by those returning from areas of conflict such as Syria and Iraq. We have found it difficult to arrive at a reliable view of the scale of the threat posed by such returnees. We note that while ministers frequently refer to there being 400 or even 500 UK-linked people who have travelled to Syria in connection with the current conflict, the Government's own estimate of the likely number of prosecutions under the proposed new provision is relatively small: 3 a year for the offence of preparation for terrorism abroad and one every other year for the offence of training for terrorism abroad. We also note that cases such as that of Mashudur Choudhury demonstrate that successful prosecutions of those who have gone abroad to take part in terrorism can already be brought under the current law, and suggest that where individuals travel abroad for that purpose there will often be preparatory activity and evidence of their intention before they leave the UK.

1.77 However, despite the lack of concrete evidence in the form of actual cases that cannot be prosecuted, we find the Government's argument that there is a potential gap in the law plausible, and we therefore do not oppose in principle the extension of extraterritorial jurisdiction over these offences. We are particularly influenced by the Minister's statement during the Bill's Committee stage in the House of Lords, in response to a question about whether the Government had consulted the Director of Public Prosecutions, that the Government has worked closely with law enforcement partners, including the Crown Prosecution Service, in developing the measure, and that those partners fully support it and have suggested that it will be operationally useful.[61]

61 Lord Taylor of Holbeach, HL Deb 15 July 2014 col 560.

Legal certainty and proportionality

1.78 We also asked the Government whether the extension of extra-territorial jurisdiction over these broad terrorism offences makes it more urgent that the Government reconsider the breadth of the definition of 'terrorism' in s. 1 of the Terrorism Act 2000. The Government, however, does not acknowledge any difficulty in the breadth of the current statutory definition of terrorism. It says that it has been extensively debated in Parliament and has been the subject of extensive reviews, and points to a number of safeguards which it says ensure that in practice prosecutions are only pursued in appropriate cases.

1.79 The requirement of the Attorney General's express consent to prosecution where the offence relates to activity abroad is, as the Government rightly says, an important safeguard against the disproportionate use of prosecution for extraterritorial terrorism offences. The annual statutory review of the Terrorism Act 2000 by the Independent Reviewer of Terrorism Legislation, David Anderson QC, is also an important safeguard, as the Government suggests, but the Government does not refer to the fact that in his most recent review of the operation of the Terrorism Act 2000 in 2013 the Independent Reviewer was concerned about the breadth of the definition of terrorism.

1.80 Another safeguard invoked by the Government is that it can rely on the police and prosecution to make sure that prosecutions are only brought in appropriate cases. However, this looks like less of a reliable safeguard in light of the recent collapse of the proposed prosecution of Moazzam Begg on terrorism charges related to his activities in Syria, a collapse which occurred on the eve of his trial and following his detention for several months awaiting trial. Indeed, while there is so far very little information in the public domain about the reasons for the collapse of that prosecution, **the episode of Moazzam Begg's collapsed prosecution may demonstrate some of the difficulties involved in using the criminal law in relation to alleged terrorist activities abroad, and the legal uncertainty which is inherent in such a broad definition of terrorism when applied to such rapidly moving political events.**

1.81 **We are also concerned that the extension of extra-territorial jurisdiction over these offences may give rise to a number of difficulties in practice which may make it difficult to bring such prosecutions.** For example, information about an individual's activities abroad is likely to come from intelligence sources or from foreign governments or law enforcement agencies which may make it difficult to meet the high threshold of admissible evidence capable of sustaining a criminal conviction. In view of the current situation in Syria in particular, we think the Minister's view, that we can rely on established arrangements between our law enforcement agencies and the authorities in other countries for gathering evidence to be used in prosecutions,[62] is somewhat optimistic.

1.82 The complexity and fluidity of the situation in countries such as Syria and Libya also mean that the extension of extra-territorial jurisdiction over terrorism offences makes it likely that the breadth of the definition of "terrorism" in s. 1 of the Terrorism Act 2000 will increasingly be challenged by defendants who argue that they were not engaged in terrorism but rather in a just war against an oppressive despotic regime.[63] Since there is no requirement that the terrorism being prepared or trained for is directed at the UK,

62 Lord Taylor of Holbeach, HL Deb 15 July 2014 col 561

63 The argument considered by the Supreme Court in *R v Gul*.

extending extra-territorial jurisdiction over these offences also increases the risk that the UK will come under pressure from authoritarian regimes to pursue and prosecute their domestic political opponents who are in the UK.

1.83 The likely practical difficulties facing a prosecution for preparation or training for terrorism abroad, and the lack of detailed evidence from the Government demonstrating the scale or extent of any gap in the ability to prosecute returnees for terrorism offences, has also given rise to concerns that the Government's main objective in introducing this measure is to deter those thinking of travelling to conflict zones such as Syria, even for bona fide humanitarian purposes, by sending a message making them fear prosecution if and when they return, rather than to enable actual prosecutions to be brought. As the plight of British hostage Alan Henning reminds us, there are many motivations for travelling to Iraq and Syria which do not involve any support for or involvement in terrorism, and the criminal law ought not to be extended in such a way that it deters all travel to areas of the world where there is armed conflict taking place. There is also growing evidence suggesting that some of those who travelled to Syria or Iraq from the UK are now disillusioned with the direction events have taken and wish to return, but are deterred from doing so by the fear of criminal prosecution.

1.84 **In light of the Minister's clear assurance about the Government's assessment that the measure will be operationally useful and lead to prosecutions which cannot currently be brought, we do not oppose the inclusion of the provision extending extra-territorial jurisdiction over terrorism offences in the Bill. However, with reference to the various concerns expressed about the legal certainty, proportionality and desirability of doing so, we recommend that arrangements are made to report on and monitor the number of prosecutions brought as a result of this change in the law and the extent to which giving extra-territorial effect to the offences in question proves to be as operationally useful as the Government currently anticipates.**

2 The Criminal Justice and Courts Bill

Background

2.1 The Criminal Justice and Courts Bill was introduced in the House of Commons on 5 February 2014 and carried over to the current Session. It had its Second Reading in the Lords on 30 June and completed its Committee stage on 30 July.[64] Report stage in the Lords is scheduled to begin on 20 October, and to continue on 22 and 27 October.

2.2 We reported on the Bill on 11 June and recommended a number of amendments.[65] We also recommended a number of amendments to Part 4 of the Bill in our Report on Judicial Review.[66] Some of the amendments we recommended in those Reports have been debated during the passage of the Bill.

2.3 The Government has also published responses to both of our Reports. The Government response to our Report on Judicial Review was published on 15 July.[67] The Government's response to our legislative scrutiny Report on the Bill was published on 4 September.[68]

2.4 A number of provisions have been added to the Bill in the course of its passage which we did not have the opportunity to scrutinise before publishing our first scrutiny Report on the Bill. We wrote to the Lord Chancellor and Secretary of State for Justice on 16 July asking some further questions about some of the amendments. The Minister responded by letter received on 31 July 2014. The correspondence is available on our website.

2.5 Since the Bill is already at an advanced stage in its progress through both Houses, this second Report on the Bill focuses in particular on those issues which are most likely to be the subject of debate at the Bill's Report stage.

Information provided by the department

2.6 In our first Report on the Bill, we welcomed the usefulness of the Government's ECHR Memorandum, which was thorough and detailed and published at the same time as the Bill itself, in accordance with our recommendations for best practice by departments.[69] However, we regretted the lack of any equivalent prior analysis of the Bill's compatibility with the UN Convention on the Rights of the Child, despite the fact that Part 2 of the Bill in particular has significant implications for the rights of children.[70]

2.7 The Government provided a supplementary ECHR Memorandum on 18 June in relation to amendments which in the Government's view raise human rights issues. The

64 The Bill spent five days in Committee in the Lords, on 14, 21, 23, 28 and 30 July.

65 Fourteenth Report of Session 2013–14, *Legislative Scrutiny: (1) Criminal Justice and Courts Bill and (2) Deregulation Bill*, HL Paper 189/HC1293.

66 Thirteenth Report of Session 2013–14, *The implications for access to justice of the Government's proposals to reform judicial review*, HL Paper 174/HC 868.

67 Cm 8896.

68 CM 8928.

69 First Report, para. 1.3.

70 First Report, paras 1.4–1.7.

Memorandum is relatively full and detailed and has helped to focus our human rights scrutiny of the amendments on the most significant issues. The department has also responded fully and promptly to our questions in correspondence and has published full and timely responses to both the Committee's legislative scrutiny Report on the Bill and its Report on Judicial Review. **While we regret that the Government has not accepted any of our recommendations in relation to this Bill, and we remain concerned about the Government's willingness to conduct UNCRC compatibility assessments prior to a Bill's introduction, we commend the Ministry of Justice for its approach to providing us with the information we need to perform our function of scrutinising legislation for ECHR compatibility, which has continued to be in keeping with our recommendations for best practice.**

Review of whole life orders (clauses 2, 3 and 26)

2.8 In our first Report on the Bill we considered the human rights issue of whether UK law as it currently stands provides sufficient opportunity for review of a whole life order,[71] because the Bill brings some terrorism-related offences within the scope of possible whole life orders for the first time. The Bill now also provides, as a result of a Government amendment, that the murder of a police or prison officer in the course of their duty will be in the category of exceptionally serious cases in which the court should normally start by considering a whole life term.[72]

2.9 The Government's supplementary ECHR Memorandum acknowledges that this provision may result in the imposition of an increased number of whole life orders and considers whether this is compatible with Article 3 ECHR as interpreted by the European Court of Human Rights in Vinter v UK. It takes the view that there is no incompatibility with Article 3 ECHR because the Court of Appeal in the case of McLoughlin has "settled the domestic position" by setting out the mechanism for considering applications from whole life order prisoners for release in exceptional circumstances.

2.10 In our first Report on the Bill we recommended a probing amendment to the Bill to introduce more legal certainty into the domestic legal framework. Our recommended amendment was debated in the House of Lords on 14 July during the Bill's Committee stage.[73] It was supported by most speakers in the debate, including a number of former Law Lords/members of the Supreme Court, but not pressed to a vote. However, the Government's position remains that there is no need for any further action to give effect to the Vinter judgment because the position in domestic law is now clear after the decision of the Court of Appeal in the case of McLoughlin.[74]

2.11 **The amendment we recommended is in our view even more necessary than it was at the time of our first Report, in light of the new provision introduced by the Government to make a whole life order the usual term of imprisonment for murder of a police or prison officer, which is likely to lead to more whole life orders being imposed. We also draw to Parliament's attention the fact that, since our first Report on the Bill, a very recent judgment of the European Court of Human Rights on whole life**

71 First Report, paras 1.16–1.30.

72 Clause 26.

73 HL Deb 14 July 2014 cxx-xx.

74 Government response to the Committee's Report on the Bill, para. 13.

orders has come to our attention which clearly reinforces our reasoning in that Report about the need for more specific details about the review mechanism that is available in UK law. In a case against Hungary, the European Court said:[75]

> 1. Although the requisite review is a prospective event necessarily subsequent to the passing of the sentence, a whole life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence before he can raise the complaint that the legal conditions attaching to his sentence fail to comply with the requirements of Article 3 in this regard. This would be contrary both to legal certainty and to the general principles on victim status within the meaning of that term in Article 34 of the Convention. […] A whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought.

2.12 In the case itself, the Court was not persuaded that the institution of presidential clemency, without any law or regulation setting out specific guidance as to what kind of conditions or criteria are to be taken into account, or any accompanying eligibility for release on parole, would allow any prisoner to know what he or she must do to be considered for release and under what conditions.[76] The Court therefore found a violation of Article 3 of the Convention.

2.13 We also note that the Government has submitted a revised Action Report to the Committee of Ministers asking it to close its supervision of the case on the basis that the decision of the Court of Appeal in McLoughlin has resolved the issue. The Action Report was submitted to the Committee of Ministers on 27 June 2014 but makes no mention of our Report, published on 11 June 2014, in which we disagreed with the Government's analysis that no further general measures are necessary in order to give effect to the Vinter judgment and recommended an amendment to the current Bill to do so. **According to the principle of subsidiarity, which is an inherent part of the ECHR's regime following an adverse judgment by the Court, it is the national authorities, including Parliament, who have the primary responsibility to consider, discuss and decide precisely how to respond to such a judgment, subject to the supervision of the Committee of Ministers. We therefore expect the Committee of Ministers to be informed about any relevant parliamentary consideration of the issue, especially by Parliament's own human rights committee.**

2.14 We also note that the Government's Action Report to the Committee of Ministers does not say what the Government intends to do about the relevant Prison Service Order. Whether the Government intends to amend it, withdraw it, or simply leave it as it is, is highly relevant to any assessment of whether UK law now satisfies the requirements of the judgment in *Vinter*, but so far the Government has not answered directly our questions about its intentions in this respect. **We recommend that the Government make clear at the earliest opportunity whether, and if so how, it is proposing to amend the relevant Prison Service Order in light of the Vinter judgment.**

75 *Laszlo Magyar v Hungary* (App. No. 73593/10, 20 May 2014), at para. 53.

76 Ibid., paras 57–58.

2.15 **The issue of review of whole life orders having been extensively debated during the Bill's Committee stage, there is little to be gained from tabling another amendment to the same or similar effect at Report stage. We remain of the view that Parliament could remove the ongoing legal uncertainty about the availability of an adequate mechanism for the review of a whole life order by a relatively simple amendment of the existing statutory framework, but to become law that would require the Government's support which will clearly not be forthcoming. Notwithstanding the Government's commitment to the principle of subsidiarity, the matter will now have to be decided by the Committee of Ministers in its supervision of the UK's response to the *Vinter* judgment, and the Court in its judgment in the pending case of *Hutchinson v UK*. We expect the Government to bring to the attention of the Committee of Ministers in its next Action Report, and to the Court in its submissions in Hutchinson, the relevant parts of our Reports on this issue and the relevant parliamentary debates on the statutory amendment that we recommended.**

Mandatory sentencing for possession of a knife (clause 27)

2.16 Clause 27 is a new clause in the Bill, the result of a non-Government amendment which was made to the Bill at Report stage in the House of Commons.77 It provides for a minimum custodial sentence that must be imposed for a second (or further) conviction for possession of a knife or offensive weapon in public or on school premises. The minimum custodial term to be imposed will be 6 months imprisonment for those aged 18 or over when they commit the second offence, and a four month Detention and Training Order ("DTO") for those aged 16 or over but under 18 when they commit the second offence. As the Government indicated that it would not seek to remove the provision from the Bill, we asked the Government to provide its analysis of the human rights implications of the proposed mandatory custodial sentences.[78]

The right to liberty

2.17 The right to liberty (Article 5 ECHR) prohibits deprivation of liberty which is arbitrary in its motivation or effect. In response to our letter, the Government set out its view that the proposed mandatory sentencing is compatible with the right to liberty, stating that the court has the necessary discretion "to refuse to impose the minimum sentence if it considers, having regard to particular circumstances relating to the offender or the offence, that doing so would be unjust; in such a case the court can instead impose the sentence it considers appropriate."[79]

2.18 We note that the language in Clause 27 mirrors that used in section 142 of Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"), which introduced minimum sentences for anyone aged 16 and over convicted of using a knife to threaten or endanger others in a public place or school. Ministry of Justice statistics show that courts are continuing to impose both custodial and non-custodial sentences for the new offences

77 HC Deb 17 June 2014 col 1056

78 Letter from the Chair to the Lord Chancellor and Secretary of State for Justice, the Rt Hon Chris Grayling MP, 16 July 2014, Q.1

79 Letter to the Chair from the Lord Chancellor and Secretary of State for Justice, the Rt Hon Chris Grayling MP, 31 July 2014, Q.1

introduced by LASPO, which indicates that the provision allows adequate judicial discretion.[80]

2.19 **We are satisfied that, for the purposes of assessing the compatibility of the provision with the requirements of human rights law, there appears to be sufficient judicial discretion in relation to the proposed mandatory sentencing provision, and we therefore accept the Government's explanation of its compatibility with the right to liberty.**

Equality information

2.20 Under the Equality Act 2010, a public authority has to be able to demonstrate that it has paid due regard to its equality obligations.[81] We asked the Government to provide information to show that it has taken into account the potential implications, if any, of the proposed mandatory sentencing on groups of people with protected characteristics. In response, the Government provided information to show that there may be a disparate impact of the provision on black offenders and offenders aged 40 to 49. It further states that young offenders would not be disproportionately affected, and that no other minority ethnic communities would be disproportionately affected.[82]

2.21 The Government did not provide any reasons to explain why it considers the potential differential impact to be justified. In relation to the LASPO offences referred to above, the Government considered that the potential differential effects of the provision on groups of people with protected characteristics were justified given the seriousness of the offences.[83] We are grateful to the Government for providing some equality information in relation to the proposed mandatory sentencing. **However, we regret that the Government did not provide any further information to explain the justifications for the potential differential impacts that it has identified on black offenders and offenders aged 40 to 49.**

Use of force on children in secure colleges (Part 2 and Schedule 6)

2.22 In our first Report on the Bill we were concerned about the provision in the Bill[84] that provides the authority for a secure college custody officer, "if authorised to do so by secure college rules", to use reasonable force where necessary to ensure good order and discipline on the part of persons detained in a secure college.[85] In our view, any law, whether primary or secondary,[86] authorising the use of force on children and young people for the purposes

80 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319287/knife-possession-sentencing-brief-jan-mar-2014.pdf

81 *R (on the application of Brown) v Secretary of State for Work and Pensions and another*, [2008] EWHC 3158 (Admin)

82 Letter to the Chair from the Lord Chancellor and Secretary of State for Justice, the Rt Hon Chris Grayling MP, 31 July 2014, Q.1

83 Minimum sentences for the new offences of threatening with an article with a blade or point or offensive weapon in public or on school premises—Equality Impact Assessment, p 3

84 Schedule 6, para. 10, empowering a secure college custody officer, if authorised to do so by secure college rules, to use reasonable force where necessary in carrying out their functions, which include, under para. 8(c), the duty to ensure good order and discipline.

85 See First Report, paras 1.58–1.68.

86 The Bill itself does not expressly authorise the use of force to ensure good order and discipline, but expressly enables such provision to be made in secure college rules.This is immaterial to the human rights compatibility question: since the Bill is the source of legal authority for the use of force by a secure college custody officer, Parliament must consider whether it is being asked to authorise use of force which is incompatible with the requirements of human rights law.

of good order and discipline gives rise to a clear risk of incompatibility with Articles 3 and 8 ECHR. We recommended that the relevant provision in the Bill should be deleted and the Bill amended to make explicit that secure college rules can only authorise the use of reasonable force on children as a last resort; only for the purposes of preventing harm to the child or others; and only the minimum force necessary should be used.

2.23 In its response to our Report on the Bill the Government agreed with us that "in all cases force should only be used as a last resort, and only the minimum necessary and for the shortest time possible, and subject to strict conditions and safeguards."[87] The issue was also debated during the Bill's Committee stage in the Lords when amendments were proposed which would have given effect to our recommendation.[88] The conditions set out in the amendments, including those recommended by us, were accepted by the Government. The Minister, Lord Faulks, responding to the debate on the amendments, said:

> we agree with the conditions set out in these amendments that in all cases force should be used only as a last resort; that the minimum amount of force should be used for the minimum time possible; that only approved restraint techniques may be used; and that they should be used only by officers who have received training in those techniques.[89]

2.24 The Minister also recognised that the term 'good order and discipline' could be said to be too broad in this context, and that the term 'discipline" is perhaps not helpful, as it could imply some element of punishment, and the Government is "clear that any use of force for the purposes of disciplining and punishing is prohibited."[90]

2.25 However, the Government does not agree that all use of force to ensure good order and discipline in all situations where children are involved necessarily engages or infringes Articles 3 and 8 ECHR. It reads the Court of Appeal decision in *C v Secretary of State for Justice* more narrowly as a decision on its facts, namely that the particular system of restraint being used in Secure Training Centres to ensure good order and discipline at the time was unlawful in light of the particular restraint techniques used. In the Government's view, there may be some narrow situations in which the use of force for good order and discipline is necessary and justified, which are wider than instances where safety is involved.[91] These include, for example, where the young person's actions are detrimental to the "welfare" of themselves or others, or impact on the "stability" or "good order" of the setting.

2.26 The Government also points out, correctly, that the use of reasonable force for maintaining good order and discipline is provided for elsewhere in legislation, for example in schools. Section 93 of the Education and Inspections Act 2006 provides that members of staff in schools may use such force as is reasonable in the circumstances for the purpose of preventing a pupil from prejudicing the maintenance of good order and discipline at the school. We note that this statutory provision pre-dated the Court of Appeal's detailed

87 Government response to the Committee's Report on the Bill, para. 33.

88 HL Deb 21 July 2014 cols 1038–1048.

89 HL Deb 21 July 2014 col 1045.

90 Ibid, col. 1045.

91 Government response, para. 35.

consideration of the compatibility of the phrase with the child's rights under Article 3 and 8 ECHR in *C v Secretary of State for Justice* in 2008, and the statutory wording must now be read in the light of that judgment.

2.27 Although the Government appeared sympathetic to the motivation behind the amendments we recommended, it did not agree to any of them, nor did it offer to bring forward its own amendments at Report stage. On the contrary, the Government has indicated that it will be continuing with its public consultation on the secure college rules, including the Government's proposals relating to the use of force for the purposes of good order and discipline.

2.28 **We welcome the Government's unequivocal acceptance that any use of force for the purposes of disciplining and punishing is prohibited; that force should only ever be used as a last resort; and that the minimum amount of force should be used for the minimum time possible, and subject to strict conditions and safeguards. We are disappointed, however, that the Government has so far refused to amend the Bill to make this clear on the face of the Bill and to remove the legal uncertainty that would be created by the wording of the Bill as it currently stands, which expressly enables the making of secure college rules which authorise a secure college custody officer to use reasonable force where necessary to ensure good order and discipline.**

2.29 **We are concerned by the vagueness of the Government's references to "maintaining a stable environment" and protecting the "welfare" of the child and others as permissible justifications for the use of force. The law is clear that the use of force on children can only ever be justified in order to protect the child or others from harm, and can never be justified for the purposes of good order and discipline. We recommend that the Bill be amended to make this absolutely clear on the face of the legislation.** The following amendment would give effect to this recommendation:

> Page 97, line 28, leave out para. 10 and insert—
>
> A secure college custody officer may use reasonable force only as a last resort and to the minimum extent necessary for the purposes of preventing harm to the child or others.

Striking out personal injury claims involving fundamental dishonesty (clause 49)

2.30 At the Bill's Report stage in the Commons, Government amendments were agreed (without debate) which require a court to dismiss in its entirety a claim for damages for personal injury if it is satisfied, on the balance of probabilities, that the claimant has been "fundamentally dishonest" in relation to the claim, or a related claim.[92] If satisfied as to the claimant's fundamental dishonesty, the court "must" dismiss the whole claim, including any element in respect of which the claimant has genuinely suffered loss.[93] The court has a discretion not to dismiss the claim if "satisfied that the claimant would suffer substantial injustice if the claim were dismissed."[94]

92 Clause 49.

93 Clause 49(3).

94 Clause 49(2).

2.31 The clause effectively reverses a decision of the Supreme Court which held that the court has jurisdiction to strike out a claim for abuse of process even after the trial of an action but that, as a matter of principle, it should do so only in very exceptional circumstances.[95] The Supreme Court accepted that all reasonable steps should be taken to deter fraudulent claims, but did not accept that, unless such claims are struck out in their entirety, such claims will not be deterred. The Supreme Court considered there to be many ways in which deterrence can be achieved, such as ensuring that the dishonesty does not increase the award of damages, making orders for costs, reducing interest, bringing proceedings for contempt and criminal proceedings. The Government disagrees with this decision and amended the Bill to strengthen the law so that dismissal of the claim in its entirety should become the norm in such cases.

2.32 The Government's supplementary ECHR Memorandum rightly identifies the two human rights issues that this raises: compatibility with the right to peaceful enjoyment of possessions in Article 1 Protocol 1, and in particular the right not to be deprived of property without compensation; and compatibility with the right to a fair trial in Article 6 ECHR, and specifically whether the standard of proof required in relation to fundamental dishonesty should be the civil or the criminal standard. The Government accepts that the effect of the new rule will be to deprive the claimant of property, but it considers such deprivation to be justified by the public policy in deterring fraudulent claims and therefore compatible with Article 1 Protocol 1. It also considers that the civil standard is acceptable, because there is no quasi-criminal element to the proposal, which, in the Government's view, falls squarely on the "civil" side of the line.

2.33 As this clause in the Bill invites Parliament to take the constitutionally significant step of reversing a judgment of the Supreme Court on a matter concerning the fundamental right of access to court to obtain legal remedies, and the House of Commons was given no opportunity to debate the issue, we asked the Government for a more detailed explanation of why, in its view, the court's inherent jurisdiction to strike out a claim for abuse of process, and the availability of other criminal alternatives, are not sufficient to deal with the problem of dishonest claims.

2.34 In response, the Government said that it believes that the Supreme Court's approach of only striking out claims for abuse of process in very exceptional circumstances does not provide a sufficiently strong disincentive to deter people from bringing grossly exaggerated and dishonest claims. It considers that the law should be strengthened as proposed in clause 49 so that dismissal of the claim in its entirety becomes the default position in such cases.

> "The Government considers that the provisions of Article 1, Protocol 1, do not require that the power must only be confined to "very exceptional" circumstances and that the balance struck in this clause is fair and proportionate. The discretion provided under clause 49(2) not to dismiss the claim where this would cause substantial injustice to the claimant will ensure that the courts have the flexibility to apply the provisions fairly and proportionately in the particular circumstances of an individual case."

95 *Fairclough Homes Ltd. v Summers* [2012] UKSC 26.

2.35 **We welcome the Government's clarification that it intends the courts to retain the flexibility to apply the provisions "fairly and proportionately" in the particular circumstances of an individual case. We accept the Government's analysis of the compatibility of the clause with the right to peaceful enjoyment of possessions in Article 1 Protocol 1 in light of the Government's clarification of the purpose of the judicial discretion expressly preserved by clause 49(2).**

2.36 The Bill also makes express provision for any deprivation of damages to be taken into account by any subsequent sentencing court, to make sure, in the words of the supplementary ECHR Memorandum, that there is no risk of the claimant being "over-punished". In light of that recognition of the risk of double punishment, we also asked the Government for its justification for using the civil standard of proof in relation to fundamental dishonesty, when other provisions in the Bill implicitly acknowledge the criminal nature of the sanction of dismissal of the claim.

2.37 In reply, the Government merely repeated its analysis set out in its supplementary ECHR Memorandum, that a civil standard of proof is appropriate because the clause does not have a criminal or quasi-criminal element, and relied on the analogy of confiscation of the proceeds of crime, in which the accused is deprived of property which is the proceeds of criminal behaviour of which he has not been convicted.

2.38 **In our view, the Bill's explicit recognition, in clause 49(7), of the need to avoid double punishment is strongly indicative of the quasi-criminal nature of the sanction imposed by the dismissal of the claim. The criminal standard of proof (beyond reasonable doubt), and not the civil standard (balance of probabilities), should therefore apply to the question of whether the claimant has been fundamentally dishonest and we recommend that the Bill be amended accordingly. The following amendment would give effect to this recommendation:**

> Page 48, line 16, after 'satisfied' leave out 'on the balance of probabilities' and insert 'beyond reasonable doubt'

Revenge pornography

2.39 Non-government amendments were tabled at Lords Committee stage concerning 'revenge pornography'.[96] The term is used to describe the situation in which an individual publishes or distributes sexually explicit pictures of another person without their consent. The issue is whether there is a gap in the criminal law, which fails to provide adequate protection to the right to respect for private life of the victims of this practice, who are predominantly women.

2.40 In response to our letter asking the Government about this issue, the Secretary of State for Justice acknowledged that the behaviour in question can be very distressing, humiliating and damaging to the victim, and he confirmed that the Government is looking urgently at the best way to address the issue. He also promised to provide us with the Government's analysis of the human rights implications if a decision is taken to legislate on

96 HL Deb., 21 July 2014, cc. 968–979

the issue.[97] We note that in the meantime the Crown Prosecution Service has updated its legal guidance to explain how current legislation can be used to prosecute instances of revenge pornography.[98]

2.41 **We welcome the Government's commitment to giving further consideration to the need for specific legislation in order to provide better protection for the privacy of victims of the emerging practice of 'revenge pornography'. We agree with the Government that this requires detailed and careful consideration, and we welcome the Minister's assurance that we will be provided with the Government's analysis of the human rights implications of any new offence in due course.**

Contempt of Court

2.42 In our first Report on the Bill we expressed concern about the lack of safeguards on the face of the Bill against the arbitrary or disproportionate exercise of the Attorney General's power to require material to be taken down from websites or lose the benefit of the statutory defence to the strict liability rule for contempt of court.[99]

2.43 The Government subsequently removed the strict liability contempt provisions from the Bill, citing, amongst other things, our concerns about the clause set out in our Report on the Bill.[100]

2.44 **We welcome the removal of these provisions from the Bill and commend the former Attorney General for his willingness to listen to and act on reasoned concerns about the human rights compatibility of the provisions.**

Judicial review (Part 4)

2.45 In our Reports on Judicial Review and on the Bill we recommended a number of amendments to Part 4 of the Bill, in particular concerning three matters:

- The likelihood of a substantially different outcome for the applicant[101]
- Interveners and costs[102]
- Capping of costs.[103]

2.46 Most of our recommended amendments to Part 4 were tabled and debated both at Report stage in the Commons and Committee stage in the Lords. The Government resisted them all.

97 Letter to the Chair from the Lord Chancellor and Secretary of State for Justice, the Rt Hon Chris Grayling MP, 31 July 2014

98 CPS guidance, 6 October 2014

99 First Report, paras 1.75–1.76.

100 See Statement by the Attorney General, HC Deb 30 June 2014, and Government response to the JCHR Report on the Bill, para. 42, explaining the Government's reasons for removing the provisions from the Bill.

101 Clause 70; see paras 39–56 of JCHR Report on Judicial Review.

102 Clause 73; see paras 87–93 of JCHR Report on Judicial Review.

103 Clauses 74 and 75; see paras 95–105 of JCHR Report on Judicial Review.

2.47 In the Government's response to our Report on Judicial Review it continues to oppose our recommendations in relation to Part 4 of the Bill, with one exception, in relation to interveners and costs. On that matter, while the Government maintains its position and opposes our recommendation, it has indicated that it is "looking seriously at how to help make sure that interveners consider carefully the cost implications of intervening while not deterring those that intervene in appropriate cases."[104]

2.48 At Committee stage in the Lords, opposition to the judicial review clauses standing part of the Bill attracted widespread support from across the House, including from many retired judges on the cross benches, but the issue was not pressed to a vote.[105]

Procedural defects and substantive outcomes (clause 70)

2.49 We concluded in our Report on Judicial Review that the Government had failed to make out the case for changing the way in which courts currently exercise their discretion to consider, at both the permission and the remedy stage, whether a procedural flaw in decision-making would have made any difference to the outcome. We recommended that this clause[106] either be deleted from the Bill, or amended so as to reflect the current approach of the courts. The Government resisted those amendments at Report Stage in the Commons and continues to reject our recommendations in its response to our Report,[107] relying on the arguments it has previously made in support of this change to the law.

2.50 **The amendments to clause 70 that we recommended in our Report on judicial review to make it reflect the current approach of the courts have been tabled by Lord Pannick, Lord Woolf, Lord Carlile and Lord Beecham and we support those amendments for the reasons we gave in our earlier Report on Judicial Review.**

Interveners and costs (clause 73)

2.51 We were concerned in our Report on judicial review that the Bill's provisions on interveners and costs[108] will operate as a significant deterrent to interventions in judicial review cases because of the risk of liability for other parties' costs, regardless of the outcome of the case and the contribution to that outcome made by the intervention. We recommended that the relevant sub-clauses be deleted from the Bill, restoring the judicial discretion in relation to interveners and costs which currently exists.

2.52 The Government in its response to our Report said that it considers that the clause does not remove judicial discretion, and that it remains a matter for the court in an individual case to decide whether or not to make an order for costs against an intervener if it is in the interests of justice to do so.

2.53 **We do not agree with the Government that the clause as currently drafted leaves the court with a discretion to decide whether or not to make an order for costs against**

104 Government response to JCHR Report on Judicial Review, para. 73.

105 HL Deb 28 July 2014 col 1434ff.

106 Now clause 70.

107 Government response to JCHR Report on Judicial Review, paras 26–47.

108 Clause 73.

an intervener according to what the interests of justice require. The Bill as currently drafted imposes a statutory duty on courts to order an intervener to pay the costs incurred by other parties, unless there are "exceptional circumstances" that make it inappropriate to do so.[109]

2.54 We welcome the Government's acknowledgment of the disquiet that has been caused by this clause and its willingness to consider how to achieve its objectives without deterring those that intervene in appropriate cases. We note however, that no Government amendment has so far been forthcoming.

2.55 Lords Pannick, Woolf, Carlile of Berriew and Beecham have tabled an amendment for consideration at Lords Report stage which would replace the relevant parts of the provision currently made in clause 73 of the Bill with a clear and simple provision that would put beyond doubt that in judicial review proceedings in which an intervener is permitted by the court to intervene, the High Court and the Court of Appeal have a discretion to order the intervener to pay the costs of any other party to the proceedings, and to order any party to the proceedings to pay the intervener's costs.

2.56 **We support the amendment to clause 73 tabled by Lord Pannick, which would achieve the objective of our original recommendation by restoring the judicial discretion which currently exists.**

Capping of costs ('Protective Costs Orders') (clauses 74–75)

2.57 In our Report on Judicial Review, we welcomed the provisions in the Bill which put costs-capping (also known as 'protective costs orders') on a statutory footing, as a recognition, in principle, of the importance of the practice in order to ensure practical and effective access to justice in cases which raise issues of significant public interest.[110] We did not consider the Government to have produced any evidence to support the Lord Chancellor's assertion that protective costs orders had become "the norm rather than the exception", or that they are being too widely made by the courts. However, we considered the proposed new statutory code to be an accurate reflection of the common law principles developed by the courts in cases concerning protective costs orders, with one important exception: the new restriction that a costs-capping order may only be made by the court "if leave to apply for judicial review has been granted."[111] We considered this to be too great a restriction on the availability of cost-capping orders, which would undermine effective access to justice and we recommended that courts should continue to have the power to make such orders at any stage of judicial review proceedings, including at the permission stage.

2.58 The Government, in its response to our Report, rejects our recommendation.[112] It says that it recognises the value of cost-capping orders in exceptional cases where there is a strong public interest that the issues in the claim are resolved, but "remains strongly of the view that unmeritorious judicial review claims should not have the benefit of costs protection at the taxpayer's expense." In the Government's view, preventing the availability

109 Clause 73(4) and (5).

110 Report on Judicial Review, paras 95-–05.

111 Clause 74(3).

112 Government response to the JCHR Report on Judicial Review, paras 77–78.

of costs-capping orders until after permission is granted will place a proportionate burden on applicants to bear the pre-permission costs where permission is not granted. Where permission is granted, it argues, the costs-capping order will still apply to costs incurred during the permission stage, and in meritorious cases the applicant will therefore still benefit from the full protection of a costs-capping order.

2.59 The Government's argument that the taxpayer should not be expected to fund costs protection in unmeritorious cases has an attractive plausibility. However, the practical problem with restricting cost-capping orders to cases in which permission has been granted is that meritorious public interest cases will not be brought because applicants cannot take the risk of exposure to pre-permission costs. As the Bingham Centre for the Rule of Law made clear in the course of our inquiry into the Government's proposed judicial review reforms, pre-permission costs can be very substantial (as much as £30,000 in some cases), and the risk of exposure to such a substantial costs liability will mean that meritorious public interest challenges that would otherwise be brought will not be brought. That is why, in the relatively small number of public interest challenges in which a costs-capping order is sought by the applicant, an "interim" costs-capping order is often asked for by the applicant on the papers, as part of an application for interim relief, and this sometimes results in the making of a protective costs order before permission is granted, for example in cases where the application for permission is adjourned to an oral hearing. Before such an interim costs-capping order is made, the judge must still be satisfied that all of the relevant conditions for the making of such an exceptional order are met.

2.60 **We remain of the view expressed in our Report on judicial review that restricting the availability of costs-capping orders to cases in which permission has been granted would be a disincentive to meritorious public interest challenges being brought, and we maintain our recommendation that the Bill be amended to remove this restriction.**

2.61 In our Report we recommended an amendment to the Bill that would have removed the post-permission restriction and preserved the current position whereby the court can make a costs-capping order at any stage in the proceedings, including pre-permission. We note that an amendment has been tabled by Lords Pannick, Woolf, Carlile of Berriew and Beecham which would, amongst other things, remove clause 74(3) from the Bill altogether, which would have the same effect as our previous recommended amendment. **For the reasons explained above we support Lord Pannick's amendment removing clause 74(3) from the Bill, which would preserve the court's current power to make a costs-capping order at any stage of judicial review proceedings, including before permission is granted.**

2.62 We also expressed concern in our Report on Judicial Review about the 'Henry VIII clause' in the Bill which gives the Lord Chancellor the power, exercisable by affirmative order, to amend the Act by changing the matters to which the court must have regard when deciding whether proceedings are "public interest proceedings". We considered such a power to have serious implications for the separation of powers between the Executive and the judiciary and we recommended that the relevant clauses be deleted from the Bill.

2.63 The Government rejected our recommendation, arguing that the provision is "sensible and necessary for the practical application of the test of what are public interest

proceedings."[113] It says that the approach to when a costs-capping order should be made has been judicially developed, and the power to amend the list of matters to which the judiciary must have regard will enable the Lord Chancellor to respond quickly and flexibly, without the need for legislation, where changes are required. The Government "is clear that the power will not undermine the separation of powers", nor affect the judiciary's discretion to apply the criteria in practice.

2.64 We remain concerned about the implications for the separation of powers of giving the Lord Chancellor such a sweeping power to, in effect, re-define "public interest proceedings" by changing the matters to which courts must have regard. The Lord Chancellor and Secretary of State for Justice is himself often the defendant in judicial review proceedings, and is sometimes the subject of a costs-capping order in such proceedings. In the recent successful challenge to the lawfulness of the Lord Chancellor's residence test for legal aid,[114] for example, the High Court made a costs-capping order in favour of the Public Law Project which brought the proceedings and asked for the order on the grounds that without such costs protection it would be unable to proceed with the case because of the size of the costs risk.[115] The Henry VIII clause in the Bill would enable the Lord Chancellor to change the law, by order, to seek to prevent costs-capping orders being made against him in similar cases in the future, by seeking to influence what the courts consider to count as "public interest proceedings". Giving the Lord Chancellor such a power gives rise to the tensions with his duty to uphold the rule of law and protect the independence of the judiciary about which we expressed concerned in our Report on Judicial Review.

2.65 **We recommended that the relevant provisions of the Bill[116] which give the Lord Chancellor the power to redefine public interest proceedings be deleted. Lord Pannick has tabled an amendment which would do precisely that and we support that amendment.**

2.66 In our Report on Judicial Review, we also expressed concern about the Bill's provision[117] on reciprocal costs-capping, or "cross-capping", which imposes a mandatory requirement on courts to order a cross-cap when they make a costs-capping order in favour of an applicant for judicial review.[118] A cross-cap, or reciprocal costs cap, is an order limiting or removing the liability of the defendant to pay the applicant's costs if the judicial review succeeds. We were concerned in particular by the fact that the Bill makes it a duty on the court to make such an order, rather than introducing a presumption, and we recommended an amendment to the Bill which would preserve some judicial discretion when deciding what costs order to make in the circumstances of a particular case.

2.67 The Government rejected our recommendation, maintaining that it is right that, where an applicant for judicial review is protected from the full costs consequences of

113 Government response to JCHR Report on Judicial Review, para. 80.

114 *R (on the application of the Public Law Project) v The Lord Chancellor* [2014] EWHC Admin. The Lord Chancellor is appealing against the High Court's decision.

115 The costs-capping order, which was made on the papers, limited the defendant Lord Chancellor's recoverable costs to £6,175, and included a reciprocal costs cap limiting the applicant Public Law Project's recoverable costs" so as to permit recovery of reasonable solicitors' fees, and fees for leading counsel and two junior counsel at the Treasury counsel and Treasury Solicitor inter partes rates."

116 Now clause 74(9)–(11).

117 Now clause 75(2).

118 Report on Judicial Review, paras 104–105.

bringing a claim, the publicly funded defendant is also afforded "proportionate protection".[119] Significantly, the Government also clarified its intention behind the cross-capping provision in the Bill. It said that

> a mandatory cross cap for the defendant's costs does not remove the court's discretion over costs. The amount of the cap is not prescribed, and so remains a matter for the judge in the individual case who may choose to set the cross-cap at a much higher level to reflect the status and circumstances of the parties. The Government considers that this gives sufficient flexibility to address an imbalance in the parties' financial positions and preserves judicial discretion.

2.68 **We welcome the Government's clarification of the intention behind the mandatory cross-cap provision in the Bill. In particular we welcome the Government's acceptance that the relevant principle is proportionate protection for both parties, and that judicial discretion remains to set the cross-cap at a different level from the cap on the costs which can be recovered from the defendant, to reflect any imbalance in the parties' financial position. This clarification makes it unnecessary to proceed with the amendment that we previously recommended to this provision of the Bill.**

119 Government Response to JCHR Report on Judicial Review, paras 82–83.

3 Armed Forces (Service Complaints and Financial Assistance) Bill

Background

3.1 The Armed Forces (Service Complaints and Financial Assistance) Bill was introduced in the House of Lords on 5 June 2014.[120] It received its Second Reading on 23 June,[121] had its Committee stage on 9 July and its Report stage on 29 July. Its Third Reading in the Lords is scheduled for 20 October.

3.2 Lord Astor of Hever, Parliamentary Under-Secretary of State at the Ministry of Defence, has certified that in his view the Bill is compatible with the Convention rights.

3.3 The Bill introduces significant reforms of the service complaints system. It replaces the existing Service Complaints Commissioner with a Service Complaints Ombudsman with greater powers and more independence. It also sets out the framework for the redress of service complaints, including a reformed and streamlined appeals process.

3.4 **We welcome the Bill as a significant human rights enhancing measure.** The Service Complaints Commissioner has consistently reported to Parliament that the current system of service complaints is neither fair nor effective and that the armed forces are therefore failing in their duty of care towards its members. The concerns have included significant delays in the resolution of complaints and the reluctance of serving officers to come forward with complaints of bullying, harassment or sexual misconduct which might implicate those above the complainant in the chain of command.

3.5 These deficiencies in the current service complaints system have human rights implications. Where a service complaint concerns a right which is recognised as a "civil right" for the purposes of the right to a fair hearing in Article 6 ECHR, the guarantees of that provision apply, including the right to an independent and impartial tribunal and a determination within a reasonable time. The European Court of Human Rights has found violations of Article 6 by the UK in cases such as Crompton in which Article 6 was held to apply and the complaint was not determined within a reasonable time.

3.6 The availability of an adequate and effective procedure whereby members of the armed forces can make complaints about matters as serious as bullying, harassment and sexual misconduct also engages the State's positive obligation to provide a legal framework which provides adequate protection against such harms, as the ongoing controversy about the suicide of Anne-Marie Ellement and the deaths of trainees at Deepcut Barracks demonstrate.

3.7 The Bill largely gives effect to the recommendations made by the outgoing Service Complaints Commissioner, that her office should be changed into a fully-fledged Ombudsman role, which was endorsed by the House of Commons Defence Committee in 2013. The current Commissioner welcomed the changes when they were announced in

120 HL Bill 3.

121 HL Deb 23 June 2014 cols 1029–1057.

March 2014.[122] The Commons Defence Committee is conducting an inquiry into the Bill.[123] We therefore decided to focus on some very specific questions focusing on the independence of the proposed Ombudsman and the extent to which the Government continues to run the risk of breaching Article 6 in individual cases. We wrote to the Minister on 2 July and received a response dated 17 July.

Information provided by the department

3.8 A separate ECHR Memorandum, which is detailed and helpful, was published alongside the Bill in accordance with the best practice we recommend.[124] Our Legal Adviser met the Bill team on 19 June. The Minister responded promptly and fully to our questions in its letter. **We commend the Ministry of Defence for the exemplary way in which it has assisted us in our human rights scrutiny of this Bill.**

The independence of the Service Complaints Ombudsman (clause 1)

3.9 The Government stresses the importance of the independence of the proposed Ombudsman from the Government and the armed forces, but some provisions in and omissions from the Bill invite questions in this respect. We therefore asked the Minister a number of questions about the terms of the Ombudsman's appointment (e.g. their term of office and grounds/process for removal) and the Secretary of State's powers to direct the Ombudsman in certain respects.

3.10 The Government says that it entirely agrees that it is "of great importance" for the Ombudsman to be, and be seen to be, independent of both the Secretary of State and the Armed Forces. It states that the provisions in the Bill "closely resemble" those for the appointment of the Service Complaints Commissioner in the Armed Forces Act 2006, with the additional safeguard of appointment by the Queen, and notes that the current Commissioner has undoubtedly demonstrated her independence from the Government. The recruitment process will involve independent consultants and a Public Appointments Commission Assessor and there will be a pre-appointment hearing by the House of Commons Defence Committee. Additional safeguards for the new Ombudsman's independence, the Government says, will be a matter for agreement between the new Ombudsman and the Secretary of State. The Government has decided that the first Ombudsman will be appointed for a non-renewable five year term. The grounds and process for removal, however, have not been decided and "may well be the subject of discussion with the proposed candidate."

3.11 The Government does not consider it to be incompatible with the independence of the new Ombudsman for the Secretary of State to have the power to "direct" the Ombudsman to report on certain matters in their annual report, and to "require" them to report on certain matters. The Secretary of State's power is said to be a "supplementing" power not a "limiting" one: it does not affect the Ombudsman's broad discretion as to the

122 http://armedforcescomplaints.independent.gov.uk/linkedfiles/afcindependent/newsandpublications/sccrespondsto.pdf

123 http://www.parliament.uk/business/committees/committees-a-z/commons-select/defence-committee/news/new-inquiry-armed-forces-service-complaints-and-financial-assistance-bill/

124 https://www.gov.uk/government/publications/memorandum-to-the-jchr-on-the-armed-forces-service-complaints-and-financial-bill

matters to be included in a report. The Minister points out that the current Service Complaints Commissioner has not been inhibited in any way by the existence of similar provisions in the legal framework.

3.12 **The Government's response to our questions focuses more on whether there is likely to be actual interference with the Ombudsman's independence in practice, rather than the appearance of independence. Our work in relation to national human rights institutions, including most recently the reform of the Office of the Children's Commissioner, demonstrates the importance of the appearance of independence and of clear, legally enshrined institutional guarantees of independence to provide the necessary public confidence in the independence of the particular office holder. Safeguards for independence which are left to be "agreed" between the office holder and the Secretary of State and/or the Armed Forces, are not, by their very nature, "guarantees" of independence. Given that one of the purposes of the Bill is to increase the independence of the Ombudsman, in part in response to concerns about public confidence, we recommend that the Bill be amended to increase the appearance of independence of the Ombudsman.** The following amendments would give effect to this recommendation:

Page 1, line 13, insert new sub-clause:

( ) An appointment as the Ombudsman shall be for a non-renewable term of five years.

Page 11, line 24, leave out 'or the Secretary of State may direct'

Page 11, line 36, leave out 'require' and insert 'request'

Redress of service complaints (clause 2)

3.13 The other main human rights question—concerning the compatibility in practice of the new framework for the redress of service complaints with the right of service personnel to a fair determination of their civil rights—is whether the Government is doing enough to reduce the risk of there being a breach of Article 6 ECHR in individual cases which may arise.

3.14 In response to the *Crompton* judgment, the Government introduced regulations which provide that an independent member (a person who is neither a member of the armed forces nor a civil servant) is required for all service complaint panels dealing with certain complaints, including any alleging bullying, discrimination, other improper behaviour or bias.[125] The Bill empowers the Secretary of State also to make regulations requiring *all* members of a service complaint panel to be independent.[126] According to paragraph 26 of the Government's ECHR Memorandum, however, the Secretary of State does not intend to use this enabling power to make such regulations to prescribe the types of matter where there should always be an independent panel because "the case law is insufficiently developed." Such regulations will only be made should the case law develop in this area and in the Government's view "the absence of regulations at this stage does not

125 Armed Forces (Redress of Individual Grievances) Regulations 2007.

126 New s. 340E(2)(a) Armed Forces Act 2006.

render the redress framework Article 6 incompatible." We wrote to the Minister asking why, if the Government accepts that Article 6 will apply in some service complaints, such provision should not be made in advance in regulations requiring wholly independent panels to be appointed in such cases.

3.15 In its response, the Government reiterates that it accepts that there are cases, such as *Crompton*, where the risk of a finding of incompatibility with the right to a fair hearing in Article 6 ECHR would be much reduced by ensuring that an independent, quasi-judicial body makes the findings of fact, and that those factual findings should be binding. However, the Government says that there is still insufficient guidance about what those cases might be to enable the legal requirements to be set out in regulations made by the Secretary of State. It says that the only case-law about service complaints in the last few years has served to confirm which matters do not engage Article 6, rather than those which do. In the absence of such legal guidance, the Government says, regulations requiring all members of a service complaint panel to be independent cannot be made. The Defence Council will continue to decide, on a case-by-case basis, when an independent element is required on an appeal panel.

3.16 **We accept that the Government is, strictly speaking, correct that the absence of regulations enabling the appointment of a wholly independent service complaint panel does not render the redress framework incompatible with Article 6 ECHR. However, in our view, the continued absence of such regulations does carry the risk of breaches of Article 6 arising in individual cases, because of the likely delay that would be involved in establishing an independent panel to determine the complaint in a case (such as Crompton) where Article 6 clearly applied. Since there currently appears to be no power to empanel a wholly independent panel (as opposed to a panel with an independent element), it would be necessary for the Secretary of State to make such regulations first before such a panel could be convened, which will inevitably delay the determination of the complaint. We recommend that, in order to minimise the risk of breaches of the right to a fair hearing in future cases where the resolution of a service complaint determines a civil right within the meaning of Article 6 ECHR, the Minister undertake to make, within a specified time, the necessary regulations enabling the appointment of a wholly independent panel.**

Conclusions and recommendations

Serious Crime Bill

Information Provided by the Government

1. We welcome the observance of good practice by the Home Office and the Ministry of Justice in their provision of information in relation to this Bill. (Paragraph 1.6)

2. The lateness of the Government's response to our questions has therefore not assisted our reporting before the Bill's Report Stage begins. (Paragraph 1.7)

3. We remind the Government that we have previously expressed our concern at the short timescale often afforded for scrutiny of legislation, and at delays in Government responses to requests for information hindering the timely publication of Committee Reports. (Paragraph 1.8)

4. We also remind departments of both (i) the importance of observing the dates by which responses to correspondence are requested and (ii) the responsibility on parliamentary business managers to allow scrutiny by committees to proceed to a conclusion within a reasonable timescale before moving on to the very last stage of a Bill in any one House at which amendments can be considered. (Paragraph 1.8)

Proceeds of crime (Part 1)

5. Restraint orders, which freeze a suspect's assets, can have a serious impact not only on the individual concerned but on that person's dependants and on their business, and the proposed lowering of the threshold for the obtaining of such orders therefore reduces the safeguards against such interferences with the peaceful enjoyment of possessions and with the right to respect for private and family life being disproportionate. However, we are satisfied that the Government has demonstrated by evidence that the current approach gives rise to a real, practical risk that assets will be dissipated or otherwise shielded from possible confiscation orders. As the Government points out, other safeguards already exist in the statutory framework: for example, the court has the power to vary or discharge a restraint order if it is not satisfied that the investigation is progressing satisfactorily. In addition to the safeguards expressly provided for in the legislation, other implied safeguards have been read into the statutory framework by the courts pursuant to their obligation to read legislation compatibly with Convention rights. (Paragraph 1.14)

6. In view of the existence of these other safeguards, we are satisfied that the Government has adequately justified the lowering of the threshold for restraint orders from "reasonable cause to believe" to "reasonable cause to suspect". We consider below whether the opportunity should be taken in this legislation to write the judicially implied safeguards into the statutory framework so that the law is clear on its face and there is no room for doubt about the safeguards which exist to ensure that restraint orders are only used where necessary and proportionate. (Paragraph 1.15)

7. We are puzzled by this response, which is based on a misunderstanding of our questions. Section 3 of the Human Rights Act requires all legislation to be interpreted compatibly with Convention rights so far as it is possible to do so, and this makes it unnecessary for any Bill to include an express requirement to the same effect. Neither we nor our predecessors has ever recommended that a Bill be amended to include an express requirement that it be interpreted in accordance with the ECHR, and nothing in the questions asked by us in our letter suggests that we had this in mind. (Paragraph 1.18)

8. In our view the Bill provides an opportunity to bring greater legal certainty to the legal regime governing the proceeds of crime by inserting into the statutory framework express language which would give clear effect to the judgment of the Supreme Court in Waya. We recommend that the Bill be amended to give clear statutory force to the qualification on the duty to make a confiscation order that has been "read in" to the POCA by the Supreme Court. The following amendment would give effect to this recommendation: (Paragraph 1.23)

9. We look forward to being informed about the outcome of this review and expect the Government to make clear to Parliament precisely how it proposes to respond to the Supreme Court's judgment in Ahmad. (Paragraph 1.25)

10. We accept the Government's explanation in its supplemental ECHR memorandum that its amendment is compatible with the privilege against self-incrimination in Article 6 ECHR in light of the express provision that no information given by a person under the new provision is admissible in evidence in proceedings against that person for an offence. (Paragraph 1.27)

Computer misuse offence (Part 2, clause 40)

11. We regard as highly significant the fact that the Government is not aware of any other criminal offences which have "damage to the environment", "damage to the economy" or "damage to national security" as an ingredient of the offence. The use of such broad concepts without further definition in other statutory contexts is one thing but, as the Government itself acknowledges, it is quite another in the context of criminal sanctions. Legal certainty requires that criminal offences are precisely defined so that individuals know how to avoid such sanctions. Vagueness is not permissible in the definition of criminal offences. (Paragraph 1.35)

12. We do not doubt the need to ensure that the criminal law provides adequate protection against cyber-attacks on critical infrastructure. We doubt, however, whether the concepts of "damage to the environment", "damage to the economy" or "damage to national security" are sufficiently certain in their meaning to justify their inclusion as an ingredient of a criminal offence carrying maximum sentences of 14 years and life imprisonment. The broad and vague definition of the new offence of computer misuse appears to be without precedent, and the Bill therefore appears to cross a significant line by using these unsatisfactory concepts in the definition of a serious criminal offence carrying a lengthy sentence. We recommend that the Bill be amended to remove these particular elements of the new computer hacking offence. (Paragraph 1.38)

Participating in the activities of an organised crime group (Part 3, clause 44)

13. We welcome the Government's preparedness to address concerns about the legal uncertainty caused by the breadth of the offence as currently drafted. However, we are not persuaded that the change from "reasonable cause to suspect" to "reasonably suspects" goes far enough to meet those concerns. We recommend that the Bill be amended to raise the threshold of the mens rea required above either "reasonable cause to suspect" (in the Bill as it currently stands) or "reasonably suspects" (as proposed in the Government's amendment), to "reasonably believes". This is a higher threshold, as the Government acknowledges in clause 11 of the Bill where it is reducing the threshold test for restraint orders from "reasonable cause to believe" to "reasonable grounds to suspect", and it would therefore go some way towards reducing the scope of this new criminal offence. (Paragraph 1.45)

14. We also recommend a probing amendment which would provide for a general defence to be available where the defendant has acted reasonably in all the circumstances, to provide Parliament with the opportunity to explore in more detail the Government's reasons for rejecting the argument for a wider defence than the Bill currently provides. (Paragraph 1.46)

Seizure and forfeiture of drug-cutting agents (Part 4)

15. We welcome the Government's clarification of its intention, in the light of which we are satisfied that the safeguards surrounding the proposed new powers are adequate. We also welcome the Government's amendments to Part 4 which would require notice to be given both to the person from whom the substance was seized and, if different, to the person to whom the substance belongs, which improve the procedural safeguards against the unnecessary or disproportionate use of these powers. (Paragraph 1.50)

Protection of children (Part 5)

16. We are satisfied that the Government is legally correct that cruelty causing psychological harm to a child is already a criminal offence under the current section 1 of the Children and Young Persons Act 1933. Although there is only a slight evidential basis for the view that the scope of the current law is misunderstood, the evidence suggesting that many police officers and others may not appreciate that the current offence covers psychological harm is nonetheless particularly significant and does call into question whether the UK is adequately fulfilling its positive obligation to protect children from such harm. For this reason, we welcome the clarification of the law. (Paragraph 1.57)

17. The relevant guidance to front-line professionals will be key in ensuring that the requirements of legal certainty and proportionality are met when the amendments to the offence come into force. We welcome the Government's commitment to liaise with the Department for Education, the Crown Prosecution Service and the police about the changes that may be necessary to ensure that the amended offence is properly understood. We stress the need for effective cross-Government

coordination on this issue to ensure that guidance is both understood and applied consistently across all departments and agencies. We also recommend that the Government consults widely with civil society on drafts of the relevant guidance, including with organisations which aim to enable children to be raised safely within their families and to avoid unnecessary removal of children into care. (Paragraph 1.60)

18. We are not persuaded by the Government's justification for continuing to exclude 16 and 17 year olds from the protection of the child cruelty offence. The fact that a criminal offence protects those under the age of 18 does not mean that the offence cannot be committed by a person who is also under 18. In our view, it would be possible in principle to extend the scope of protection provided by the offence to those under 18 whilst preserving the possibility that those over 16 can commit the offence. This provision is the latest in a series of issues which have arisen in different contexts raising the wider question of the lack of a consistent legal definition of the age of a child in the UK, and we call on the Government to review this area of law. (Paragraph 1.62)

19. Based on the information provided by the Government, the creation of a new offence to criminalise the possession of "paedophile manuals" appears to be a necessary and proportionate measure in order to fulfil the positive obligation to protect children from harm. (Paragraph 1.64)

20. We welcome the proposed amendment to the Female Genital Mutilation Act 2003 as a human rights enhancing measure, which furthers the Government's positive obligation to protect women and girls from FGM. (Paragraph 1.66)

Preparation or Training Abroad for Terrorism (Part 6, clause 68)

21. Extending the territorial reach of very broadly worded criminal offences has obvious implications for those who have legitimate reasons for travelling to areas of the world affected by armed conflict—for example to visit family, to deliver humanitarian aid, or simply on business. We are therefore surprised that the Government's ECHR memorandum does not consider the human rights implications of these significant provisions. (Paragraph 1.69)

22. However, despite the lack of concrete evidence in the form of actual cases that cannot be prosecuted, we find the Government's argument that there is a potential gap in the law plausible, and we therefore do not oppose in principle the extension of extraterritorial jurisdiction over these offences. We are particularly influenced by the Minister's statement during the Bill's Committee stage in the House of Lords, in response to a question about whether the Government had consulted the Director of Public Prosecutions, that the Government has worked closely with law enforcement partners, including the Crown Prosecution Service, in developing the measure, and that those partners fully support it and have suggested that it will be operationally useful. (Paragraph 1.77)

23. The episode of Moazzam Begg's collapsed prosecution may demonstrate some of the difficulties involved in using the criminal law in relation to alleged terrorist activities

abroad, and the legal uncertainty which is inherent in such a broad definition of terrorism when applied to such rapidly moving political events. (Paragraph 1.80)

24. We are also concerned that the extension of extra-territorial jurisdiction over these offences may give rise to a number of difficulties in practice which may make it difficult to bring such prosecutions. (Paragraph 1.81)

25. In light of the Minister's clear assurance about the Government's assessment that the measure will be operationally useful and lead to prosecutions which cannot currently be brought, we do not oppose the inclusion of the provision extending extra-territorial jurisdiction over terrorism offences in the Bill. However, with reference to the various concerns expressed about the legal certainty, proportionality and desirability of doing so, we recommend that arrangements are made to report on and monitor the number of prosecutions brought as a result of this change in the law and the extent to which giving extra-territorial effect to the offences in question proves to be as operationally useful as the Government currently anticipates. (Paragraph 1.84)

Criminal Justice and Courts Bill

Information provided by the Department

26. While we regret that the Government has not accepted any of our recommendations in relation to this Bill, and we remain concerned about the Government's willingness to conduct UNCRC compatibility assessments prior to a Bill's introduction, we commend the Ministry of Justice for its approach to providing us with the information we need to perform our function of scrutinising legislation for ECHR compatibility, which has continued to be in keeping with our recommendations for best practice. (Paragraph 2.7)

Review of whole life orders (clauses 2, 3 and 26)

27. The amendment we recommended is in our view even more necessary than it was at the time of our first Report, in light of the new provision introduced by the Government to make a whole life order the usual term of imprisonment for murder of a police or prison officer, which is likely to lead to more whole life orders being imposed. We also draw to Parliament's attention the fact that, since our first Report on the Bill, a very recent judgment of the European Court of Human Rights on whole life orders has come to our attention which clearly reinforces our reasoning in that Report about the need for more specific details about the review mechanism that is available in UK law. In a case against Hungary, the European Court said: (Paragraph 2.11)

28. According to the principle of subsidiarity, which is an inherent part of the ECHR's regime following an adverse judgment by the Court, it is the national authorities, including Parliament, who have the primary responsibility to consider, discuss and decide precisely how to respond to such a judgment, subject to the supervision of the Committee of Ministers. We therefore expect the Committee of Ministers to be informed about any relevant parliamentary consideration of the issue, especially by Parliament's own human rights committee. (Paragraph 2.13)

29. We recommend that the Government make clear at the earliest opportunity whether, and if so how, it is proposing to amend the relevant Prison Service Order in light of the Vinter judgment. (Paragraph 2.14)

30. The issue of review of whole life orders having been extensively debated during the Bill's Committee stage, there is little to be gained from tabling another amendment to the same or similar effect at Report stage. We remain of the view that Parliament could remove the ongoing legal uncertainty about the availability of an adequate mechanism for the review of a whole life order by a relatively simple amendment of the existing statutory framework, but to become law that would require the Government's support which will clearly not be forthcoming. Notwithstanding the Government's commitment to the principle of subsidiarity, the matter will now have to be decided by the Committee of Ministers in its supervision of the UK's response to the Vinter judgment, and the Court in its judgment in the pending case of Hutchinson v UK. We expect the Government to bring to the attention of the Committee of Ministers in its next Action Report, and to the Court in its submissions in Hutchinson, the relevant parts of our Reports on this issue and the relevant parliamentary debates on the statutory amendment that we recommended. (Paragraph 2.15)

Mandatory sentencing for possession of a knife (clause 27)

31. We are satisfied that, for the purposes of assessing the compatibility of the provision with the requirements of human rights law, there appears to be sufficient judicial discretion in relation to the proposed mandatory sentencing provision, and we therefore accept the Government's explanation of its compatibility with the right to liberty. (Paragraph 2.19)

32. However, we regret that the Government did not provide any further information to explain the justifications for the potential differential impacts that it has identified on black offenders and offenders aged 40 to 49. (Paragraph 2.21)

Use of force on children in secure colleges (Part 2 and Schedule 6)

33. We welcome the Government's unequivocal acceptance that any use of force for the purposes of disciplining and punishing is prohibited; that force should only ever be used as a last resort; and that the minimum amount of force should be used for the minimum time possible, and subject to strict conditions and safeguards. We are disappointed, however, that the Government has so far refused to amend the Bill to make this clear on the face of the Bill and to remove the legal uncertainty that would be created by the wording of the Bill as it currently stands, which expressly enables the making of secure college rules which authorise a secure college custody officer to use reasonable force where necessary to ensure good order and discipline. (Paragraph 2.28)

34. We are concerned by the vagueness of the Government's references to "maintaining a stable environment" and protecting the "welfare" of the child and others as permissible justifications for the use of force. The law is clear that the use of force on children can only ever be justified in order to protect the child or others from harm,

and can never be justified for the purposes of good order and discipline. We recommend that the Bill be amended to make this absolutely clear on the face of the legislation. (Paragraph 2.29)

Striking out personal injury claims involving fundamental dishonesty (clause 49)

35. We welcome the Government's clarification that it intends the courts to retain the flexibility to apply the provisions "fairly and proportionately" in the particular circumstances of an individual case. We accept the Government's analysis of the compatibility of the clause with the right to peaceful enjoyment of possessions in Article 1 Protocol 1 in light of the Government's clarification of the purpose of the judicial discretion expressly preserved by clause 49(2). (Paragraph 2.35)

36. In our view, the Bill's explicit recognition, in clause 49(7), of the need to avoid double punishment is strongly indicative of the quasi-criminal nature of the sanction imposed by the dismissal of the claim. The criminal standard of proof (beyond reasonable doubt), and not the civil standard (balance of probabilities), should therefore apply to the question of whether the claimant has been fundamentally dishonest and we recommend that the Bill be amended accordingly. The following amendment would give effect to this recommendation: (Paragraph 2.38)

Revenge pornography

37. We welcome the Government's commitment to giving further consideration to the need for specific legislation in order to provide better protection for the privacy of victims of the emerging practice of 'revenge pornography'. We agree with the Government that this requires detailed and careful consideration, and we welcome the Minister's assurance that we will be provided with the Government's analysis of the human rights implications of any new offence in due course. (Paragraph 2.41)

38. We welcome the removal of these provisions from the Bill and commend the former Attorney General for his willingness to listen to and act on reasoned concerns about the human rights compatibility of the provisions. (Paragraph 2.44)

Judicial review (Part 4)

39. The amendments to clause 70 that we recommended in our Report on judicial review to make it reflect the current approach of the courts have been tabled by Lord Pannick, Lord Woolf, Lord Carlile and Lord Beecham and we support those amendments for the reasons we gave in our earlier Report on Judicial Review. (Paragraph 2.50)

40. We do not agree with the Government that the clause as currently drafted leaves the court with a discretion to decide whether or not to make an order for costs against an intervener according to what the interests of justice require. The Bill as currently drafted imposes a statutory duty on courts to order an intervener to pay the costs incurred by other parties, unless there are "exceptional circumstances" that make it inappropriate to do so. (Paragraph 2.53)

41. We support the amendment to clause 73 tabled by Lord Pannick, which would achieve the objective of our original recommendation by restoring the judicial discretion which currently exists. (Paragraph 2.56)

42. We remain of the view expressed in our Report on judicial review that restricting the availability of costs-capping orders to cases in which permission has been granted would be a disincentive to meritorious public interest challenges being brought, and we maintain our recommendation that the Bill be amended to remove this restriction. (Paragraph 2.60)

43. For the reasons explained above we support Lord Pannick's amendment removing clause 74(3) from the Bill, which would preserve the court's current power to make a costs-capping order at any stage of judicial review proceedings, including before permission is granted. (Paragraph 2.61)

44. We recommended that the relevant provisions of the Bill which give the Lord Chancellor the power to redefine public interest proceedings be deleted. Lord Pannick has tabled an amendment which would do precisely that and we support that amendment. (Paragraph 2.65)

45. We welcome the Government's clarification of the intention behind the mandatory cross-cap provision in the Bill. In particular we welcome the Government's acceptance that the relevant principle is proportionate protection for both parties, and that judicial discretion remains to set the cross-cap at a different level from the cap on the costs which can be recovered from the defendant, to reflect any imbalance in the parties' financial position. This clarification makes it unnecessary to proceed with the amendment that we previously recommended to this provision of the Bill. (Paragraph 2.68)

Armed Forces (Service Complaints and Financial Assistance) Bill

Background

46. We welcome the Bill as a significant human rights enhancing measure. (Paragraph 3.4)

Information provided by the Department

47. We commend the Ministry of Defence for the exemplary way in which it has assisted us in our human rights scrutiny of this Bill. (Paragraph 3.8)

The independence of the Service Complaints Ombudsman (clause 1)

48. The Government's response to our questions focuses more on whether there is likely to be actual interference with the Ombudsman's independence in practice, rather than the appearance of independence. Our work in relation to national human rights institutions, including most recently the reform of the Office of the Children's Commissioner, demonstrates the importance of the appearance of independence and of clear, legally enshrined institutional guarantees of independence to provide

the necessary public confidence in the independence of the particular office holder. Safeguards for independence which are left to be "agreed" between the office holder and the Secretary of State and/or the Armed Forces, are not, by their very nature, "guarantees" of independence. Given that one of the purposes of the Bill is to increase the independence of the Ombudsman, in part in response to concerns about public confidence, we recommend that the Bill be amended to increase the appearance of independence of the Ombudsman. (Paragraph 3.12)

Redress of service complaints (clause 2)

49. We accept that the Government is, strictly speaking, correct that the absence of regulations enabling the appointment of a wholly independent service complaint panel does not render the redress framework incompatible with Article 6 ECHR. However, in our view, the continued absence of such regulations does carry the risk of breaches of Article 6 arising in individual cases, because of the likely delay that would be involved in establishing an independent panel to determine the complaint in a case (such as Crompton) where Article 6 clearly applied. Since there currently appears to be no power to empanel a wholly independent panel (as opposed to a panel with an independent element), it would be necessary for the Secretary of State to make such regulations first before such a panel could be convened, which will inevitably delay the determination of the complaint. We recommend that, in order to minimise the risk of breaches of the right to a fair hearing in future cases where the resolution of a service complaint determines a civil right within the meaning of Article 6 ECHR, the Minister undertake to make, within a specified time, the necessary regulations enabling the appointment of a wholly independent panel. (Paragraph 3.16)

50. We accept that the Government is, strictly speaking, correct that the absence of regulations enabling the appointment of a wholly independent service complaint panel does not render the redress framework incompatible with Article 6 ECHR. However, in our view, the continued absence of such regulations does carry the risk of breaches of Article 6 arising in individual cases, because of the likely delay that would be involved in establishing an independent panel to determine the complaint in a case (such as Crompton) where Article 6 clearly applied. Since there currently appears to be no power to empanel a wholly independent panel (as opposed to a panel with an independent element), it would be necessary for the Secretary of State to make such regulations first before such a panel could be convened, which will inevitably delay the determination of the complaint. We recommend that, in order to minimise the risk of breaches of the right to a fair hearing in future cases where the resolution of a service complaint determines a civil right within the meaning of Article 6 ECHR, the Minister undertake to make, within a specified time, the necessary regulations enabling the appointment of a wholly independent panel. (Paragraph 3.16)

Declaration of Lords' Interests

Serious Crime Bill

Baroness O'Loan

Chair, Daniel Morgan Independent Panel

Criminal Justice and Courts Bill

Baroness Berridge

Member, London Policing Ethics Panel

Armed Forces (Service Complaints and Financial Assistance) Bill

No Lords Members present declared any interests.

A full list of members' interests can be found in the Register of Lords' Interests: http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/

Formal Minutes

Wednesday 15 October 2014

Members present:

Baroness Berridge, in the Chair

Mr Virendra Sharma	Baroness Buscombe
Sarah Teather	Baroness O'Loan

Draft Report (Legislative Scrutiny: (1) Serious Crime Bill, (2) Criminal Justice and Courts Bill (second Report) and (3) Armed Forces (Service Complaints and Financial Assistance) Bill), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be now considered.

Paragraphs 1.1 to 3.16 read and agreed to.

Resolved, That the Report be the Second Report of the Committee to each House.

Ordered, That Mr Virendra Sharma make the Report to the House of Commons and that the Report be made to the House of Lords.

[Adjourned till Wednesday 22 October at 9.30 am

List of Reports from the Committee during the current Parliament

Session 2014–15

First Report	Legal aid: children and the residence test	HL Paper 14/HC 234
Second Report	Legislative Scrutiny: (1) Serious Crime Bill, (2) Criminal Justice and Courts Bill (second Report) and (3) Armed Forces (Service Complaints and Financial Assistance) Bill	HL Paper 49/HC 746

Session 2013–14

First Report	Human Rights of unaccompanied migrant children and young people in the UK	HL Paper 9/HC 196
Second Report	Legislative Scrutiny: Marriage (Same Sex Couples) Bill	HL Paper 24/HC 157
Third Report	Legislative Scrutiny: Children and Families Bill; Energy Bill	HL Paper 29/HC 452
Fourth Report	Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill	HL Paper 56/HC 713
Fifth Report	Legislative Scrutiny: Transparency of Lobbying, Non-party Campaigning, and Trade Union Administration Bill	HL Paper 61/HC 755
Sixth Report	Legislative Scrutiny: Offender Rehabilitation Bill	HL Paper 80/HC 829
Seventh Report	The implications for access to justice of the Government's proposals to reform legal aid	HL Paper 100/HC 766
Eighth Report	Legislative Scrutiny: Immigration Bill	HL Paper 102/HC 935
Ninth Report	Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill (second Report)	HL Paper 108/HC 951
Tenth Report	Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011	HL Paper 113/HC 1014
Eleventh Report	Legislative Scrutiny: Care Bill	HL Paper 121/HC 1027
Twelfth Report	Legislative Scrutiny: Immigration Bill (second Report)	HL Paper 142/HC 1120
Thirteenth Report	The implications for access to justice of the Government's proposals to reform judicial review	HL Paper 174/ HC 868

Session 2012–13

First Report	Draft Sexual Offences Act 2003 (Remedial) Order 2012: second Report	HL Paper 8/HC 166
Second Report	Implementation of the Right of Disabled People to Independent Living: Government Response to the Committee's Twenty–third Report of Session 2010–12	HL Paper 23/HC 429
Third Report	Appointment of the Chair of the Equality and	HL Paper 48/HC 634

	Human Rights Commission	
Fourth Report	Legislative Scrutiny: Justice and Security Bill	HL Paper 59/HC 370
Fifth Report	Legislative Scrutiny: Crime and Courts Bill	HL Paper 67/HC 771
Sixth Report	Reform of the Office of the Children's Commissioner: draft legislation	HL Paper 83/HC 811
Seventh Report	Legislative Scrutiny: Defamation Bill	HL Paper 84/HC 810
Eighth Report	Legislative Scrutiny: Justice and Security Bill (second Report)	HL Paper 128/HC 1014
Ninth Report	Legislative Scrutiny Update	HL Paper 157/HC 1077

Session 2010–12

First Report	Work of the Committee in 2009–10	HL Paper 32/HC 459
Second Report	Legislative Scrutiny: Identity Documents Bill	HL Paper 36/HC 515
Third Report	Legislative Scrutiny: Terrorist Asset-Freezing etc. Bill (Preliminary Report)	HL Paper 41/HC 535
Fourth Report	Terrorist Asset-Freezing etc Bill (Second Report); and other Bills	HL Paper 53/HC 598
Fifth Report	Proposal for the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010	HL Paper 54/HC 599
Sixth Report	Legislative Scrutiny: (1) Superannuation Bill; (2) Parliamentary Voting System and Constituencies Bill	HL Paper 64/HC 640
Seventh Report	Legislative Scrutiny: Public Bodies Bill; other Bills	HL Paper 86/HC 725
Eighth Report	Renewal of Control Orders Legislation	HL Paper 106/HC 838
Ninth Report	Draft Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2010—second Report	HL Paper 111/HC 859
Tenth Report	Facilitating Peaceful Protest	HL Paper 123/HC 684
Eleventh Report	Legislative Scrutiny: Police Reform and Social Responsibility Bill	HL Paper 138/HC 1020
Twelfth Report	Legislative Scrutiny: Armed Forces Bill	HL Paper 145/HC 1037
Thirteenth Report	Legislative Scrutiny: Education Bill	HL Paper 154/HC 1140
Fourteenth Report	Terrorism Act 2000 (Remedial) Order 2011	HL Paper 155/HC 1141
Fifteenth Report	The Human Rights Implications of UK Extradition Policy	HL Paper 156/HC 767
Sixteenth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill	HL Paper 180/HC 1432
Seventeenth Report	The Terrorism Act 2000 (Remedial) Order 2011: Stop and Search without Reasonable Suspicion (second Report)	HL Paper 192/HC 1483
Eighteenth Report	Legislative Scrutiny: Protection of Freedoms Bill	HL Paper 195/HC 1490
Nineteenth Report	Proposal for the Sexual Offences Act 2003 (Remedial) Order 2011	HL Paper 200/HC 1549

Twentieth Report	Legislative Scrutiny: Terrorism Prevention and Investigation Measures Bill (Second Report)	HL Paper 204/HC 1571
Twenty-first Report	Legislative Scrutiny: Welfare Reform Bill	HL Paper 233/HC 1704
Twenty-second Report	Legislative Scrutiny: Legal Aid, Sentencing and Punishment of Offenders Bill	HL Paper 237/HC 1717
Twenty-third Report	Implementation of the Right of Disabled People to Independent Living	HL Paper 257/HC 1074
Twenty-fourth Report	The Justice and Security Green Paper	HL Paper 286/HC 1777