

Criminal Justice and Immigration Bill

COMMONS AMENDMENTS AND REASONS

[The page and line references are to HL Bill 16, the bill as first printed for the Lords.]

Clause 10

LORDS AMENDMENT NO. 9

9 Leave out Clause 10

COMMONS DISAGREEMENT AND AMENDMENT

The Commons disagree to Lords Amendment 9, but propose the following Amendment to the words restored to the Bill –

9A Page 8, line 33, at end insert –

“(2) After that section insert –

“189A Power to suspend the operation of section 189(1A) and (1B)

- “(1) The Secretary of State may by order suspend the operation of subsections (1A) and (1B) of section 189, so that the power to suspend a sentence of imprisonment becomes exercisable again in relation to summary offences committed after the order comes into force.
- (2) Where the operation of those subsections has been suspended, the Secretary of State may by order revoke the order under subsection (1) so that those subsections again have effect (in relation to summary offences committed after the order under this subsection comes into force).
- (3) The powers conferred by this section may each be exercised once only.”
- (3) In section 330(5) of that Act (orders subject to affirmative procedure) insert, at the appropriate place, “section 189A”.”

Clause 29

LORDS AMENDMENT NO. 28

28 Page 22, leave out lines 13 and 14

COMMONS AGREEMENT WITH CONSEQUENTIAL AMENDMENT

The Commons agree to Lords Amendment 28, and propose the following consequential Amendment to the Bill –

28A Page 22, line 25, leave out subsection (4)

Clause 105

LORDS AMENDMENT NO. 86

86 Page 71, line 3, at end insert –

“() After subsection (1) (designation of non-legal staff) insert –

“(1A) A person designated under subsection (1) shall only be permitted to carry out any legal activity as defined by section 12 of the Legal Services Act 2007 if he has been authorised so to do by a body which is designated as an approved regulator by Part 1 of Schedule 4 to that Act or under Part 2 of that Schedule (or both) and whose regulatory arrangements are approved for the purposes of that Act.””

COMMONS DISAGREEMENT AND AMENDMENT IN LIEU

The Commons disagree to Lords Amendment 86, but propose the following Amendment in lieu –

86A Page 71, line 29, at end insert –

“() After subsection (7) insert –

“(8) As from 1 May 2011 nothing in this section confers on persons designated under this section –

- (a) any rights of audience, or
- (b) any right to conduct litigation,

for the purposes of Part 3 of the Legal Services Act 2007 (reserved legal activities).

(9) As from that date the following provisions of that Act accordingly do not apply to persons designated under this section –

- (a) paragraph 1(3) of Schedule 3 (exemption for persons with statutory rights of audience), and
- (b) paragraph 2(3) of that Schedule (exemption for persons with statutory right to conduct litigation).

(10) The Attorney General may by order make such modifications in the application of any enactment (including this section) in relation to persons designated under this section as the Attorney General considers appropriate in consequence of, or in connection with, the matters provided for by subsections (8) and (9).

- (11) The Attorney General may also by order amend subsection (2)(a)(ii) so as to omit the words “or offences which are punishable with imprisonment in the case of persons aged 21 or over”.
- (12) The power to make an order under subsection (10) or (11) is exercisable by statutory instrument, but a statutory instrument containing such an order may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

LORDS AMENDMENT NO. 88

- 88** Page 71, leave out lines 5 and 6 and insert –
- “(a) in paragraph (a)(ii), after “trials” insert “of offences triable either way or offences which are punishable with imprisonment”;
 - (b) after paragraph (a)(ii) insert – ”

COMMONS AGREEMENT WITH AMENDMENT

The Commons agree to Lords Amendment 88 with the following Amendment –

- 88A** Line 3, at end insert “in the case of persons aged 21 or over”

LORDS AMENDMENT NO. 89

- 89** Page 71, line 12, at end insert –
- “(c) for paragraph (b) substitute –
 - “(b) any powers of a Crown Prosecutor that do not involve the exercise of such rights of audience as are mentioned in paragraph (a) above but are exercisable in relation to the conduct of –
 - (i) criminal proceedings in magistrates’ courts other than trials of offences triable either way or offences which are punishable with imprisonment, or
 - (ii) applications or proceedings falling within paragraph (a)(iii) or (iv).”

COMMONS AGREEMENT WITH AMENDMENT

The Commons agree to Lords Amendment 89 with the following Amendment –

- 89A** Line 8, leave out from beginning to “or” in line 10

After Clause 129

LORDS AMENDMENT NO. 115

- 115** Insert the following new Clause –

“Data protection: additional offences

- (1) After section 55 of the Data Protection Act 1998 (c. 29) insert –

“55A Data protection: additional offences

- (1) A data controller must not—
 - (a) intentionally or recklessly disclose information contained in personal data to another person,
 - (b) repeatedly and negligently allow information to be contained in personal data to be disclosed, or
 - (c) intentionally or recklessly fail to comply with duties under section 4(4).
 - (2) Subsection (1)(a) does not apply if the data controller can show that the disclosure—
 - (a) was necessary for the purpose of preventing or detecting crime,
 - (b) was required or authorised by or under any enactment, by any rule of law, or by the order of a court, or
 - (c) was justified in the particular circumstances as being in the public interest.
 - (3) This section shall apply whether or not the data controller is—
 - (a) a relevant authority under section 29, or
 - (b) exercising a relevant function under section 31.
 - (4) A data controller who contravenes subsection (1) is guilty of an offence.”
- (2) Section 63(5) of that Act ceases to have effect in relation to government departments other than the Crown Estate Commissioners.”

COMMONS DISAGREEMENT AND AMENDMENT IN LIEU

The Commons disagree to Lords Amendment 115, but propose the following Amendment in lieu –

115A Page 140, line 33, at end insert the following new Clause:—

“Power to require data controllers to pay monetary penalty

- (1) After section 55 of the Data Protection Act 1998 insert—

*“Monetary penalties***55A Power of Commissioner to impose monetary penalty**

- (1) The Commissioner may serve a data controller with a monetary penalty notice if the Commissioner is satisfied that—
 - (a) there has been a serious contravention of section 4(4) by the data controller,
 - (b) the contravention was of a kind likely to cause substantial damage or substantial distress, and
 - (c) subsection (2) or (3) applies.
- (2) This subsection applies if the contravention was deliberate.
- (3) This subsection applies if the data controller—
 - (a) knew or ought to have known—

- (i) that there was a risk that the contravention would occur, and
 - (ii) that such a contravention would be of a kind likely to cause substantial damage or substantial distress, but
- (b) failed to take reasonable steps to prevent the contravention.
- (4) A monetary penalty notice is a notice requiring the data controller to pay to the Commissioner a monetary penalty of an amount determined by the Commissioner and specified in the notice.
- (5) The amount determined by the Commissioner must not exceed the prescribed amount.
- (6) The monetary penalty must be paid to the Commissioner within the period specified in the notice.
- (7) The notice must contain such information as may be prescribed.
- (8) Any sum received by the Commissioner by virtue of this section must be paid into the Consolidated Fund.
- (9) In this section—
 - “data controller” does not include the Crown Estate Commissioners or a person who is a data controller by virtue of section 63(3);
 - “prescribed” means prescribed by regulations made by the Secretary of State.

55B Monetary penalty notices: procedural rights

- (1) Before serving a monetary penalty notice, the Commissioner must serve the data controller with a notice of intent.
- (2) A notice of intent is a notice that the Commissioner proposes to serve a monetary penalty notice.
- (3) A notice of intent must—
 - (a) inform the data controller that he may make written representations in relation to the Commissioner’s proposal within a period specified in the notice, and
 - (b) contain such other information as may be prescribed.
- (4) The Commissioner may not serve a monetary penalty notice until the time within which the data controller may make representations has expired.
- (5) A person on whom a monetary penalty notice is served may appeal to the Tribunal against—
 - (a) the issue of the monetary penalty notice;
 - (b) the amount of the penalty specified in the notice.
- (6) In this section, “prescribed” means prescribed by regulations made by the Secretary of State.

55C Guidance about monetary penalty notices

- (1) The Commissioner must prepare and issue guidance on how he proposes to exercise his functions under sections 55A and 55B.

- (2) The guidance must, in particular, deal with—
 - (a) the circumstances in which he would consider it appropriate to issue a monetary penalty notice, and
 - (b) how he will determine the amount of the penalty.
- (3) The Commissioner may alter or replace the guidance.
- (4) If the guidance is altered or replaced, the Commissioner must issue the altered or replacement guidance.
- (5) The Commissioner may not issue guidance under this section without the approval of the Secretary of State.
- (6) The Commissioner must lay any guidance issued under this section before each House of Parliament.
- (7) The Commissioner must arrange for the publication of any guidance issued under this section in such form and manner as he considers appropriate.
- (8) In subsections (5) to (7), “guidance” includes altered or replacement guidance.

55D Monetary penalty notices: enforcement

- (1) This section applies in relation to any penalty payable to the Commissioner by virtue of section 55A.
- (2) In England and Wales, the penalty is recoverable—
 - (a) if a county court so orders, as if it were payable under an order of that court;
 - (b) if the High Court so orders, as if it were payable under an order of that court.
- (3) In Scotland, the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (4) In Northern Ireland, the penalty is recoverable—
 - (a) if a county court so orders, as if it were payable under an order of that court;
 - (b) if the High Court so orders, as if it were payable under an order of that court.

55E Notices under sections 55A and 55B: supplemental

- (1) The Secretary of State may by order make further provision in connection with monetary penalty notices and notices of intent.
- (2) An order under this section may in particular—
 - (a) provide that a monetary penalty notice may not be served on a data controller with respect to the processing of personal data for the special purposes except in circumstances specified in the order;
 - (b) make provision for the cancellation or variation of monetary penalty notices;
 - (c) confer rights of appeal to the Tribunal against decisions of the Commissioner in relation to the cancellation or variation of such notices;

- (d) make provision for the proceedings of the Tribunal in respect of appeals under section 55B(5) or appeals made by virtue of paragraph (c);
 - (e) make provision for the determination of such appeals;
 - (f) confer rights of appeal against any decision of the Tribunal in relation to monetary penalty notices or their cancellation or variation.
- (3) An order under this section may apply any provision of this Act with such modifications as may be specified in the order.
 - (4) An order under this section may amend this Act.”
- (2) In section 67 (orders, regulations, rules) –
 - (a) in subsection (4) insert at the appropriate place –
 - “section 55E(1),”; and
 - (b) in subsection (5) after paragraph (c) insert –
 - “(ca) regulations under section 55A(5) or (7) or 55B(3)(b),”.

Clause 148

LORDS AMENDMENT NO. 117

- 117** Page 106, line 33, after “conditions” insert “as specified in section (*Provisions that orders may contain*)”

COMMONS DISAGREEMENT AND AMENDMENTS IN LIEU

The Commons disagree to Lords Amendments 117 and 127, but propose Amendments 127A to 127E in lieu –

After Clause 151

LORDS AMENDMENT NO. 127

- 127** Insert the following new Clause –

“Provisions that orders may contain

- (1) The order may contain prohibitions, restrictions or conditions preventing the offender –
 - (a) from going to any specified premises or any other specified place (whether at all, or at or between any specified time or times);
 - (b) from attending any specified event;
 - (c) from having any, or any specified description of, contact with any specified individual.
- (2) Any of the prohibitions, restrictions or conditions imposed by a violent offender order may relate to conduct in Scotland or Northern Ireland (as well as to conduct in England and Wales).
- (3) In this section “specified” means specified in the order.
- (4) The Secretary of State may amend subsection (1).

- (5) Any order made under subsection (4) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.”

COMMONS DISAGREEMENT AND AMENDMENTS IN LIEU

The Commons disagree to Lords Amendments 117 and 127, but propose Amendments 127A to 127E in lieu –

127A Page 106, line 33, after “conditions” insert “authorised by section (*Provisions that orders may contain*)”

127B Page 109, line 20, at end insert the following new Clause: –

“Provisions that orders may contain

- (1) A violent offender order may contain prohibitions, restrictions or conditions preventing the offender –
- (a) from going to any specified premises or any other specified place (whether at all, or at or between any specified time or times);
 - (b) from attending any specified event;
 - (c) from having any, or any specified description of, contact with any specified individual.
- (2) Any of the prohibitions, restrictions or conditions contained in a violent offender order may relate to conduct in Scotland or Northern Ireland (as well as to conduct in England or Wales).
- (3) The Secretary of State may by order amend subsection (1).
- (4) In this section “specified” means specified in the violent offender order concerned.”

127C Page 110, line 8, at end insert –

“(5A) References in subsection (5) to prohibitions, restrictions or conditions are to prohibitions, restrictions or conditions authorised by section (*Provisions that orders may contain*).”

127D Page 110, line 32, at end insert –

“(3A) The reference in subsection (3) to prohibitions, restrictions or conditions is to prohibitions, restrictions or conditions authorised by section (*Provisions that orders may contain*) in the case of a violent offender order.”

127E Page 141, line 23, at end insert –

“() an order under section (*Provisions that orders may contain*),”

After Clause 190

LORDS AMENDMENT NO. 173

173 Insert the following new Clause –

“Police and prison service pay: Secretary of State’s power to make regulations

Regulations made by the Secretary of State –

- (a) specified in section 62 of the Police Act 1996 (c. 16) (functions of the board with respect to regulations) which do not follow the recommendations of the Police Negotiation Board as established by section 16 of that Act, or
 - (b) under section 128 of the Criminal Justice and Public Order Act 1994 (c. 33) (pay and related conditions) which do not follow the recommendations of the Prison Service Pay Review Board as established by that section,
- may not be made until laid before, and approved by resolution of, the House of Commons.”

COMMONS DISAGREEMENT AND REASON

The Commons disagree to Lords Amendment 173 for the following Reason –

- 173A** *Because it affects the arrangements relating to the making of payments out of public funds, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.*

Schedule 26

LORDS AMENDMENT NO. 285

- 285** Page 269, line 19, at end insert –

“13A After section 29J insert –

“29JA Protection of freedom of expression (sexual orientation)

In this Part, for the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred.””

COMMONS DISAGREEMENT AND REASON

The Commons disagree to Lords Amendment 285 for the following Reason –

- 285A** *Because it makes unnecessary provision.*

Schedule 35

LORDS AMENDMENT NO. 301

- 301** Page 317, line 32, leave out paragraph 8

COMMONS DISAGREEMENT AND AMENDMENT

The Commons disagree to Lords Amendment 301, but propose the following Amendment to the words restored to the Bill –

- 301A** Page 317, line 43, at end insert –

“(4) The Secretary of State may by order suspend the operation of subsections (1A) and (1B) of section 189 of the Criminal Justice Act 2003 as they apply to a relevant service court (by virtue of this section and section (Effect of amendments to criminal justice provisions applied for

purposes of service law) of the Criminal Justice and Immigration Act 2008), so that the power to suspend a sentence of imprisonment becomes exercisable again in relation to offences mentioned in subsection (3)(a) above committed after the order comes into force.

- (5) Where the operation of those subsections as they apply to a relevant service court has been suspended, the Secretary of State may by order revoke the order under subsection (4), so that they again have effect (in relation to offences mentioned in subsection (3)(a) committed after the order under this subsection comes into force).
- (6) The powers conferred by subsections (4) and (5) may each be exercised once only.”
- (2) In section 373(3) (orders etc. subject to affirmative procedure), after paragraph (c) insert—
“(ca) an order under section 196(4) or (5),”.

Schedule 37

LORDS AMENDMENT NO. 327

327 Page 338, line 11, leave out paragraph 8

COMMONS DISAGREEMENT AND AMENDMENT

The Commons disagree to Lords Amendment 327, but propose the following Amendment to the words restored to the Bill –

327A Page 338, line 14, after “10” insert “(1)”