



Ministry
of Justice



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Sir Graham Brady, Hannah Bardell, Dame Angela Eagle and Mrs Pauline
Latham
Co-Chairs
Public Bill Committee, Criminal Justice Bill
House of Commons

MoJ ref: SUB 111778

18 January 2024

Dear Sir Graham, Hannah, Dame Angela and Pauline,

CRIMINAL JUSTICE BILL: GOVERNMENT AMENDMENTS FOR COMMITTEE

We are writing to provide members of the Public Bill Committee with details of a third and final tranche of Government amendments we have tabled today for Committee stage.

The amendments cover the following issues.

“Spiking” offences (amendment to clause 77 and new clause “Administering etc harmful substances (including by spiking)”)

In December 2023, the Home Secretary announced, through the publication of the statutory report into the scale and nature of drink and needle spiking, a raft of new measures to tackle the crime type. Alongside a range of non-legislative measures, the Government committed to amend existing legislation to make clear that modern day spiking was behaviour captured within it.

This new clause will replace sections 23 to 25 of the Offences Against the Persons Act 1861 (OAPA). These provisions relate to the unlawful administration of poisons and noxious things, and therefore capture behaviour colloquially known as “spiking”. The new clause is intended to modernise the language in sections 23 and 24, without changing the scope of the offences themselves; it is accepted that the existing offences already capture all relevant behaviours associated with spiking (and certain other behaviours which it is important that the offences continue to capture). Therefore, the intention of the amendment is to address perceptions that the OAPA’s language is outdated, and that this may mean the public are not aware that spiking is a criminal offence.

Strengthening the criminal law on sexual activity in the presence of a child or person with mental disorder (new clause “*Sexual activity in presence of child etc*”)

This new clause seeks to criminalise sexual activity in the presence of a child or person with mental disorder where a person acts for the purpose of obtaining sexual gratification from the victim's presence but does not know, believe or intend for the victim to be aware that they are engaging in the sexual activity. Police and CPS have brought to the government's attention a number of cases in which a criminal charge under section 11 of the Sexual Offences Act was not possible because the defendant's sexual gratification appeared to be linked to the child's mere presence (not their awareness of the defendant's actions) and it could not be proved that the defendant knew or believed that the child was aware, or intended that the child be aware, of the sexual activity (which is currently a required element of the offence).

The new clause amends sections 11, 18, 32, 36 and 40 of the Sexual Offences Act 2003 to remove the requirement that for the purposes of obtaining sexual gratification, the defendant was engaged in sexual activity with the knowledge or belief that the child or person with a mental disorder was aware, or with the intention that they should be aware, that the defendant was engaging in sexual activity.

Magistrates' Courts Sentencing Powers (amendment to clause 78 and new clause “*Maximum term of imprisonment for certain offences on summary conviction*”)

This new clause is to make the magistrates' court maximum penalty apply in five specific triable either-way (TEW) offences which currently state that the maximum penalty that the magistrates' court can impose is “6 months” and so are not caught by an increase if magistrates' court sentencing powers if they are increased to 12 months. This can only be corrected by replacing “6 months” with “the general limit in a magistrates' court” via primary legislation.

When we increased magistrates' court sentencing powers for a single TEW offence in May 2022, the magistrates' courts increased sentencing powers were not exercisable in respect to these five TEW offences. To note, this will not increase magistrates' courts sentencing powers from 6 to 12 months, any increase of this kind would be done through separate legislation.

Non-criminal complaints against Police and Crime Commissioners (new clause “*Complaints about police and crime commissioners etc*”)

This new clause changes the responsibility for handling non-criminal complaints about PCCs from Police and Crime Panels to an independent person, such as a local authority monitoring officer. The details of who would handle the complaints would be provided for in secondary legislation, following further consultation and engagement with the Department for Levelling Up, Housing and Communities, the Welsh Government, and the relevant principal authorities. The Government's two-part Review into the role of PCCs heard evidence that the current complaints system against PCCs was not working as effectively as it could. This change, which is supported by the Association of Police and Crime Commissioners, will bring the system of complaints for PCCs more in line with those for other elected representatives (for example, directly elected mayors) and address concerns that non-criminal complaints about PCCs can be handled in a politically driven way.

The new clause will also provide for non-criminal complaints about PCCs to only be handled while the PCC is holding office. Non-criminal complaints about PCCs once they have left office will no longer be considered. Serious complaints about PCCs where there is an indication of a

criminal offence, even if they are no longer in office, will continue to be handled by the Independent Office for Police Conduct.

Regulations (amendment to clause 76)

This technical amendment provides that regulations under the Bill (other than regulations under clause 78) may make different provision for different areas as well as, as now, different provision for different purposes.

All the new clauses apply to England and Wales only.

We attach a supplementary ECHR memorandum.

We are copying this letter and enclosures to all members of the Public Bill Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Laura Farris'.

Laura Farris MP
Minister for Victims and Safeguarding

A handwritten signature in black ink, appearing to read 'Chris Philp'.

Rt Hon Chris Philp MP
Minister of State for Crime, Policing and Fire