I write to seek clarification on three aspects of the Anti-Social Behaviour, Crime and Policing Bill, which the Constitution Committee considered today. These concern clause 1, Schedule 8 and clause 151 of the Bill as brought from the Commons (HL Bill 52).

Clause 1 sets out when an injunction against nuisance or annoyance (IPNA) may be granted. The committee considers that the wording of clause 1 may not meet the constitutional requirement for legal certainty. In particular, it is unclear what conduct may be “capable” of causing “annoyance” to “any person”. The wide scope of clause 1 may make it difficult for individuals (including parents and guardians of minors) to predict whether certain conduct might attract an IPNA. These concerns about the looser test for granting an IPNA (as compared to an ASBO) are arguably compounded by the proposed reduction in the standard of proof from the criminal to the civil standard.

The committee would appreciate an explanation of the rationale for introducing the broad test for granting an IPNA. Why, for example, was it not considered appropriate for there to be an objective element to the test? Could you also please explain the justification for lowering the standard of proof for granting an IPNA compared with the standard for granting an ASBO?

Schedule 8 to the Bill makes amendments to Schedule 7 to the Terrorism Act 2000. While we do not object to the proposals in the Bill to ameliorate the exercise of the Schedule 7 power (including by reducing the maximum length of detention and permitting detainees to consult a solicitor), we note the observations of the Independent Reviewer of Terrorism Legislation that the amendments made by the Bill omit matters which “go to the heart of the exercise of the Schedule 7 power”.1 We also note the recent obiter remarks by Lords Neuberger of Abbotsbury and Judge, on behalf of a unanimous Supreme Court, in R v Gul expressing concerns about the breadth of the powers in Schedule 7.2 In the light of those comments, could you please explain why the Government are proceeding with the specific reforms in the Bill rather than undertaking a wider review of Schedule 7 to the Terrorism Act 2000?

2 [2013] UKSC 64, paras 63–64.
Clause 151 amends section 133 of the Criminal Justice Act 1988. Section 133 gave effect to the United Kingdom’s obligation under article 14(6) of the International Covenant on Civil and Political Rights to compensate those who have suffered a miscarriage of justice. In *R v Adams*\(^3\) the Supreme Court held that section 133 does not require a claimant for compensation to prove beyond reasonable doubt that he or she was innocent of the offence in question. It is sufficient to show that a new fact so undermines the case against the claimant that no conviction could possibly be based upon it. Clause 151 seeks to reverse the effect of that decision.

We have three questions about clause 151. First, in view of the constitutional importance of the presumption of innocence, could you please explain why it is necessary to impose what amounts to the criminal burden of proof on claimants for compensation for a miscarriage of justice, despite indications in the Supreme Court that this may not be desirable? Secondly, is it the Government’s intention to exclude from the definition of miscarriage of justice cases in which a new or newly discovered fact showed that the evidence against the defendant had been so undermined that no conviction could possibly be based on it? Thirdly, there is a question as to whether it is appropriate for Parliament to use its legislative supremacy to overrule a decision of the Supreme Court which was concerned with the application of a statutory provision giving effect to the United Kingdom’s international treaty obligations, especially where a ground for overruling the decision is that it results in too much expense. Would you please explain the constitutional basis upon which the Government consider it appropriate to invite Parliament to overrule a decision of the Supreme Court in these circumstances?

\(^3\) [2011] UKSC 18.

The Rt Hon. the Baroness Jay of Paddington
Chairman, Constitution Committee