Dear Margaret,

Anti-social Behaviour, Crime and Policing Bill

Further to my letter of 11 November, I am now able to respond to the Constitution Committee’s questions about the provisions in the Bill in respect of the Injunction to Prevent Nuisance and Annoyance and the amendments to Schedule 7 to the Terrorism Act 2000.

Injunction to Prevent Nuisance and Annoyance (clause 1).

The “nuisance or annoyance” test is well known in the civil courts in the contexts of Anti-Social Behaviour Injunctions (ASBIs). ASBIs were introduced section 152 of the Housing Act 1996. The test was subsequently amended under the Anti-Social Behaviour Act 2003 to include: “conduct capable of causing nuisance or annoyance...”. The test has since been applied in the civil courts as an established legal test, supported by a good body of case law to guide frontline professionals and the courts. The Government is satisfied that this part of the test for the injunction under Part 1 of the Bill is not arbitrary, but rather, it satisfies the common law principle of legal certainty and human rights law. Furthermore, in considering an application for an injunction, the court will have regard to the principles of proportionality, reasonableness and fairness in deciding whether it is “just and convenient” to grant the injunction.

The Government therefore does not accept that the “nuisance or annoyance” test will make it difficult for individuals (including parents or guardians of minors) to predict whether certain conduct might attract an injunction as suggested in your letter. Moreover, page 24 of the draft guidance for front line
professionals published alongside the Bill makes clear the circumstances where an IPNA can be used. The relevant extract is as follows:

"The IPNA can be used to deal with a wide range of behaviours, many of which can cause serious harm to victims and communities. This can include vandalism, public drunkenness, irresponsible dog ownership, noisy or abusive behaviour towards neighbours or bullying. However, in deciding what constitutes ‘nuisance or annoyance’, applicants must be mindful that this route should not be used to stop reasonable, trivial or benign behaviours that have not caused, and are not likely to cause harm, to victims or communities." For example, children simply playing in a park or outside, or young people lawfully gathering or socialising in a particular place may be ‘annoying’ to some, but are not in themselves anti-social. Agencies must make proportionate and reasonable judgements before applying for an injunction. Failure to do so will increase the likelihood that an application will not be successful."

In our view, there is an objective element in the “nuisance or annoyance” test. This was introduced under the 2003 Act to which I have already referred. It is “…conduct capable of causing nuisance or annoyance to any person”. This means that the conduct need not cause any nuisance or annoyance to a specific individual but it is sufficient that it is capable of having that effect. In other words, it is not necessary to prove whether or not the conduct actually did cause nuisance or annoyance, rather a judge or practitioner can objectively consider whether the threshold has been passed. This is a fairer approach because the same threshold is set for all anti-social behaviour, rather than reliance on a variable standard based on how much a victim can take before they are subjectively annoyed or feel they have been subjected to nuisance.

As to your concerns about the civil standard of proof for the IPNA, this also mirrors the position with the ASBL. Organisations such as the Social Landlords Crime and Nuisance Group and the Chartered Institute of Housing have consistently advised us that the ‘nuisance or annoyance’ test and civil standard of proof means that frontline professionals can obtain injunctions quickly, on a preventative basis, to deal with problems before they escalate – which is good for victims and communities who are suffering the misery of anti-social behaviour. Ultimately, the court will decide if the test has been met and will decide whether there is sufficient evidence before issuing an injunction. I would add that the court would apply the criminal standard of proof in the context of contempt proceedings in respect of an alleged breach of an IPNA.

Finally, it is worth acknowledging the views of the Law Society on this issue. In a recent statement they have said:

"The Law Society supports retaining the legal test for the Injunction to Prevent Nuisance and Annoyance (IPNA) as currently drafted in the Anti Social Behaviour Crime and Policing Bill. We do not agree with
those who claim the test is too weak and should be strengthened by imposing conditions such as “seriousness” or “malice”. Some are worried that the test is too weak and could result in preachers, buskers and even carol singers finding themselves subject to an injunction but the Law Society do not agree with this interpretation.

The test was introduced by the Anti Social Behaviour Act in 2003 and, in the housing context, is widely understood and applied appropriately by the Judiciary and without malice. The second part of the test, which gives the Judge a wide discretion to consider all relevant factors before imposing an injunction, acts as a safeguard.

The Society strongly suggests that the test is retained and that Judges are allowed to exercise their discretion and considerable experience in dealing with these matters. The test is already familiar to the courts and other partners working with families and offenders.”

**Schedule 7 to the Terrorism Act 2000**

The Government conducted a public consultation on the operation of Schedule 7 to the Terrorism Act 2000 (‘Schedule 7’) over the course of twelve weeks in the Autumn of 2012. The consultation process, which also included a number of public engagement events, invited views on potential amendments to the port and border control powers contained in Schedule 7. In proposing the amendments to Schedule 7 included in the Anti-social Behaviour, Crime and Policing Bill we carefully considered the responses to the consultation and wide ranging views expressed in public meetings. In his report on the Terrorism Acts in 2012, the Independent Reviewer of Terrorism Legislation, David Anderson QC did indicate that there were, in his opinion, three issues not addressed in the consultation paper. Those were: the power to stop without reasonable suspicion, compulsion to answer questions, and copying and retention of electronic data.

In relation to the power to stop without reasonable suspicion, the Government believes that the introduction of a reasonable suspicion test for Schedule 7 would limit the capability of the police to detect and prevent individuals of interest passing through the UK border. Examinations are not simply about the police talking to people at ports and airports they know or suspect are involved in terrorism. They are about talking with people travelling to and from places where terrorist activity is taking place or emerging, to determine whether those individuals are or have been involved, whether knowingly involved or unknowingly duped; whether they are going to be involved or are at risk of becoming involved. I welcome the conclusion of the Joint Committee on Human Rights, in its scrutiny report on the Bill, that “the Government has clearly made out a case for a without suspicion power to stop, question and search travellers at ports and airports, given the current nature of the threat from terrorism, the significance of international travel in the overall threat picture, and the evidence seen by the Independent Reviewer demonstrating the utility of non-suspicion stops at ports in protecting national security. The retention of a without suspicion power in Schedule 7 of
the Terrorism Act 2000 is therefore not inherently incompatible with Articles 5
and 8 ECHR.”

David Anderson also said in his report that “compulsion to answer questions
under Schedule 7 is of the essence of the power, its utility beyond question
when it comes not only to identifying people as terrorists but to gathering
intelligence.” If there were no such compulsion the power would be far less
effective. Individuals’ answers given under compulsion are generally not
admissible in criminal proceedings. Indeed, in the recent case of Sylvie
Beghal v the Director of Public Prosecutions [2013] EWHC 2573 the High
Court urged consideration of an amendment to legislation to establish a
statutory bar against introducing admissions made in a Schedule 7
examination into evidence in a subsequent criminal trial. We are considering
this. In relation to the copying and retention of electronic data under Schedule
7, paragraph 11 of Schedule 7 already makes express provision for the
detention of property obtained in an examination to determine whether a
person is or has been concerned in terrorism. Ahead of David Anderson
publishing his report we had introduced an amendment in the Bill (see now
paragraph 4 of Schedule 8 to the Bill) which is in line with his observation that
“it is of vital importance that the copying and retention of data from mobile
phones and other devices should be provided for by a law that is clear,
accessible and foreseeable.”

I am copying this letter to those who spoke at Second Reading.

[Signature]

Lord Taylor of Holbeach CBE