Dear Mr Francis

Thank you for your letter of 26 June to the Home Secretary regarding the Anti-social Behaviour, Crime and Policing Bill. In your letter you ask a number of questions regarding the provisions in the Bill. We provide answers to each of these in turn.

**Q.1:** I would be grateful if you could provide the Committee as soon as possible with a memorandum setting out the Government’s analysis of the compatibility of Part 1 to 6 and 9 of the Bill with the UNCRC.

- It would be helpful if you could include in the memorandum the Government’s analysis of the relevance to parts 1 to 6 of the bill of any reports of the UN Committee on the rights of the child, including its general comment No. 10 (2007) on children’s rights in juvenile justice and its 2008 concluding observations on the UK, and of any other international standards the Government considers relevant such as the UN standard minimum rules for the administration of juvenile justice (“the Beijing Rules”)

An analysis of any rights under the UNCRC engaged by Parts 1 to 4 of the Bill are contained in the ECHR Memorandum already provided to the JCHR (see paragraphs 10, 55 and 56).

The Government acknowledges the relevance of Article 16 of the United Nations Convention on the Rights of the Child (UNCRC) to Part 5 of the Bill, as a child’s right to respect for his family life and his or her home will be affected by an eviction. Article 16(1) states that no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.
Any interference, however, by the provisions of Part 5 with a child’s rights under Article 16 will be in accordance with the law and in pursuit of the legitimate aims of the protection of the rights and freedoms of others, the prevention of disorder and crime, and public safety.

There will be clear provision in primary legislation about the additional circumstances in which landlords will be able to seek possession, and the landlord will only be able to gain possession of the property by obtaining an order for possession from the court.

In addition, in *Manchester City Council v Pinnock* the Supreme Court held that any person who risked losing his home in possession proceedings involving a public authority had a right to raise Article 8 of the European Convention on Human Rights and have the matter determined by an independent tribunal.

This is significant in terms of Article 16 of the UNCRC, as in making a proportionality assessment under Article 8 the best interests of the child must be a primary consideration. When a child's Article 8 rights are engaged, they must be looked at in the context of the UNCRC, or as it has been put “through the prism of Article 3(1)” of the UNCRC.

Finally, it is important to note that the new ground for possession for riot related anti-social behaviour committed anywhere in the UK is a discretionary ground. This means that the court will only be able to grant possession where it considers it reasonable to do so. Reasonableness has been held to require the judge to take into account all relevant circumstances as they exist at the date of the hearing in a broad commonsense way. It is the Government’s view that this will ensure that any interference with a child’s rights under Article 16 of the UNCRC will be taken into account at the time that the order is made.

The Government is, therefore, satisfied that the provisions in Part 5 are compliant with Article 16.

The Government considers that the provisions in Part 9 are fully compatible with the UN Convention on the Rights of the child, and indeed that they enhance the rights contained within that Convention.

Pursuant to clause 104(3), “marriage” means any religious or civil ceremony of marriage, whether or not legally binding. This includes marriages where one party is a child, and therefore incapable of entering into a valid marriage. For this purpose, please note section 2 of the Marriage Act 1949, which confirms that a marriage where one party is under 16 will be considered void. In this way, the forced marriage offences in section 104(1) and (2) cover cases where a child is forced into marriage.
The Government’s view is that the offences in section 104 afford protection to child victims of forced marriage, which is entirely consistent with the principle in Article 3 of the UNCRC that in all actions concerning children, the best interests of the child shall be a primary consideration.

Article 16(2) of the UNCRC confirms that a child has the right to the protection of the law against any unlawful interference with his right to privacy and family life. In the Government’s view, this extends to the scenario of a forced marriage where the interference with the child’s right to respect for private life and family life is caused by the actions of their parents or other family members. The criminalization of forced marriage and the enforcement of these criminal offences by the state affords the child the protection of the law against that interference.

Article 19(1) of the UNCRC requires states to take all appropriate measures (including legislative measures) to protect the child from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation, including sexual abuse, while in the care of parents or other persons who have the care of the child. Article 19(2) states that these protective measures include (inter alia) prevention, investigation and judicial involvement.

Clause 104(1) will criminalize the use of violence, threats, or other forms of coercion for the purpose of causing another person (including a child) to enter into a marriage. This measure is compatible with Article 19(1) because forced marriage can involve physical and mental violence, injury and abuse. This abuse specifically extends to sexual abuse, given that where a child is forced into marriage, they may also be forced into sexual acts to which they do not consent, which may constitute rape or other sexual offences. The introduction of the offences in section 104 constitutes a protective measure for the purposes of Article 19(2), because such offences will be investigated and prosecuted. The involvement of the courts in making forced marriage protection orders also arguably falls within the reference to “judicial involvement” in Article 19(2).

Article 24(3) of the UNCRC requires state parties to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. The Government’s view is that forced marriage can be characterized as a traditional practice for this purpose, and one which is prejudicial to the health of children, both in terms of their physical health (due to the risk that they may be physically assaulted) and in terms of their mental health, due to the risk that being forced into marriage will adversely affect their mental health, for example a child victim of forced marriage might suffer depression or anxiety in the aftermath of the forced marriage. The Government’s intention is that the criminalization of forced marriage may contribute to the abolition of the practice of forced marriage by acting as a strong deterrent, and thus dissuading the communities who practice it from continuing to do so.
Article 34 of the UNCRC requires state parties to undertake to protect children from all forms of sexual exploitation and sexual abuse. It also requires state parties to take all appropriate measures to prevent children being coerced to engage in unlawful sexual activity. Forcing a child into marriage can lead to their being raped or sexually assaulted once they are married, and therefore the criminalization of forced marriage contributes to the objective behind Article 34.

Article 35 of the UNCRC requires state parties to take all appropriate national, bilateral and multilateral measures to prevent the abduction of children for any purpose or in any form. Clause 104(2) criminalizes the practicing of deception with the intention of causing another person to leave the UK. Forced marriage can involve child abduction, in that a child victim of forced marriage may be forced against their will to travel abroad to be married in another country, or may be deceived or lured into doing so. In fact, clause 104(2) aims to implement the obligation in Article 37 of the Istanbul Convention to criminalise the intentional luring of an adult or a child into the territory of a state in which they do not reside, with the purpose of forcing them to enter into marriage.

Finally, Article 36 of the UNCRC requires state parties to protect the child against all other forms of exploitation prejudicial to any aspect of their welfare. Forced marriage can involve the exploitation of a child, for example, the child may be exploited for their immigration status as a UK national where the intention is that the spouse will derive a benefit in terms of their immigration status from the marriage. Forced marriage can be deeply prejudicial for the welfare of the child victim, for the reasons addressed at above.

Q.2: What is the Government’s justification for making injunctions to prevent nuisance and annoyance available children as young as 10?

- Bearing in mind that the punishment for breach of such an injunction includes imprisonment, and children cannot be imprisoned until they reach the age of 14, will the Government consider the raising the minimum age in clause 1 (1) of the Bill from 10 to 14?

Children aged between 10 and 17 can be arrested and taken to court if they commit a crime. We therefore consider it is right that they should be held equally responsible if they commit anti-social behaviour – much of which is actually crime, from graffiti on people’s walls, public drunkenness on our streets or harassment and intimidation of members of the public. The Government expects that, in the main, agencies will continue to use informal interventions to deal with young people who behave anti-socially and we will make this clear in the accompanying guidance.
Where informal approaches have been tried and have not worked we want agencies to have effective powers, backed up with tough sanctions on breach to deal with the minority of offenders who persistently engage in anti-social behaviour. However, as a purely civil remedy, with civil sanctions, there is no risk of criminalising a young person if they breach a condition in their injunction – unlike Anti-Social Behaviour Orders.

As identified imprisonment is only one option available. For those under 14 but over the age of 10 there are other options available to encourage compliance with the injunction such as a supervision order.

Q.3: Please explain why the Government is satisfied that defining the threshold for an injunction in terms of “conduct capable of causing nuisance and annoyance” in clause 1(2) of the Bill is sufficiently precise to satisfy the requirement of both the common law principle of legal certainty and human rights law, that any interferences with rights must be defined with sufficient precision to enable individuals to anticipate the consequences of their actions?

The “nuisance and annoyance” test is taken from the current test for the Anti-Social Behaviour Injunction, which is well known in the county court and is supported by 15 years of case law in our civil legal system. It is for these reasons we are content that the threshold for the injunction is not arbitrary, but rather it satisfies the common law principle of legal certainty and human rights law.

- What in the Government’s view would be the disadvantage of defining “anti-social behaviour” as conduct causing or likely to cause harassment, alarm or distress, rather than conduct capable of causing nuisance or annoyance?

The disadvantage would be that the adoption of the “harassment, alarm and distress” anti-social behaviour test would make the evidence gathering process for injunction applications more onerous for agencies and would cause needless delay in stopping problems and protecting victims.

Moreover, as mentioned, the “nuisance and annoyance’ test is based on the current statutory test for the Anti-social Behaviour Injunction that has worked well in the housing sector. It is readily understandable by the courts and practitioners and will allow agencies to act quickly to protect victims and communities from more serious harm and the Government is keen not to interfere with this existing expertise.
Q.4: Does the Government envisage that the court, when deciding under clause 1(2) whether, on the balance of probabilities, the person has engaged or threatens to engage in anti-social behaviour, will apply a flexible civil standard of proof, depending on the seriousness of the behaviour alleged?

No. Whilst this is a decision for the courts, the civil standard of proof is used in Anti-Social Behaviour Injunctions which the courts have issued against anti-social individuals for over a decade and we are content that the civil standard of proof should apply to the IPNA on this basis. Also, breach of the new injunction will not be a criminal offence (unlike the Criminal Behaviour Order) and that is why we in the Government’s view the normal the civil standard of proof for applications for the injunction applies.

Q.5: Although paragraph 1(6) of Schedule 2 gives procedural effect to the requirement in Article 37(b) UNCRC that the imprisonment of a child shall be used only as a measure of last resort, is the substance of that requirement undermined by the breadth of the Bill’s definition of anti-social behaviour because it may lead to children being imprisoned for breach of the terms of the injunction imposed in respect of conduct falling far short of criminal behaviour because it may lead to children being imprisoned for breach of the terms of injunctions imposed in respect of conduct falling far short of criminal behaviour.

The Bill explicitly says that the court can only imprison a young person for breaching an injunction if satisfied that "In view of the severity or extent of the breach, no other power available to the court is appropriate". Such an assessment requires the court to consider in detail the individual circumstances of both the conduct and the child’s personal circumstances. In relation to the conduct, the court will take into account its severity, and where the power to detain seems appropriate, in many cases the conduct will not fall short of criminal behaviour or at least come very close to it. Alternatively or additionally, the conduct will often have been extremely persistent and non-responsive to other types of intervention. These are matters for the court to consider carefully. It is also worth noting that the higher, criminal standard of proof applies to breach proceedings for the injunction. For these reasons, the Government does not believe that the substance of the requirement in Article 37(b) of the UNCRC is undermined.

Additionally, an important point is that a young person will not be criminalised if they breach their injunction which was supported by the Home Affairs Select Committee (HASC) in its report following pre-legislative scrutiny of the draft Anti-social Behaviour Bill, where it stated that it welcomed the move away from the automatic criminalisation for breaching the injunction.
Q.6: In view of the express requirement in the ECHR that all interferences with the rights protected by Articles 6, 9, 10 and 11 of the Convention must be “necessary”, what is the justification for making the second condition in clause 1(3) of the Bill that the court considers it “just and convenient”, rather than “necessary”, to grant the injunction?

- **What in the Government’s view would be the disadvantage of requiring the court to be satisfied that an injunction is “necessary” for the purpose of preventing the respondent from engaging in anti-social behaviour, rather than “just and convenient”?**

It is already incumbent on the courts to exercise their functions compatibly with Convention rights (section 6 of the Human Rights Act 1998). It therefore does not follow that the word “necessary” must be used in the legislative tests. In particular, it is possible that even where a court determines that Convention rights are either not engaged or are engaged and are not infringed, it may nonetheless conclude that it is not “just or convenient” to grant an injunction.

Q.7: Bearing in mind the breadth of the Bill’s definition of “anti-social behaviour”, why is the Government satisfied that the broad and open-ended definition of the prohibitions and requirements that may be included in an injunction, in clause 1(4) of the Bill, satisfies the requirement of both the common law principle of legal certainty and human rights law, that any interference with rights must be defined with sufficient precision to enable individuals to anticipate the consequences of their actions?

- **What are the Government’s reasons for not taking the same approach as it has taken in the Terrorism Prevention and Investigation Measures Act, by including in the legislation an exhaustive list of the types of prohibitions and requirements that can be included in an injunction to prevent nuisance and annoyance?**

The purpose of the Terrorism Prevention and Investigation Measures Act was to abolish control orders and introduce a new regime to protect the public from terrorism, whereas the purpose of our anti-social behaviour reforms is to improve agencies’ response to problems by giving them more effective powers to better protect victims and communities and reduce breaches of formal orders in the long term. The anti-social behaviour measures in the Bill take forward many of the aspects of previous powers that have worked well.

The aim of the injunction is to prevent someone from engaging or threatening to engage in anti-social behaviour and the Government considers that it is important that the court should be allowed to include a range of prohibitions in the injunction to stop the behaviour. The court could also include positive requirements in an injunction to get an individual to address the underlying causes of their anti-social behaviour. The guidance that will accompany the Act will set out examples of
prohibitions and positive requirements that could be included in an injunction. However, the Government considers it important that the Bill is not proscriptive so that the restrictions or requirements can be tailored to the individual circumstances of a case and take account of new innovative means of tackling anti-social behaviour. All requirements will be made following an order of the court, empowered to do so by legislation. They are therefore in accordance with the law. Such orders must have as their aim the purpose of preventing an individual from engaging in anti-social behaviour. As such, the range of requirements and prohibitions can be reasonably anticipated and must be justifiable. The Government does not consider that any issue as to a lack of legal certainty arises here. The absence of a definitive list of prohibitions in respect of the Anti-social Behaviour Order and the Anti-social Behaviour Injunction has been the subject of a successful challenge.

Q.8: Please explain in more detail than is provided in the Explanatory Notes to the Bill or the ECHR memorandum, the purpose of the selective restrictions in clause 1(5) on the scope of the prohibitions and requirements that may be included in an injunction.

- Specifically, is clause 1(5) (a) of the Bill compatible with Article 9 of the Convention, which permits justifiable interferences with the freedom to manifest one’s religion or belief but does not permit interferences with religious beliefs as such.

Clause 1(5), as originally introduced, sets out factors which are difficult or impossible to work around when implementing a prohibition or requirement. Freedom to hold one’s religious belief under Article 9 is an absolute right and the Government is obliged to adhere to this. However, the manifestation of one’s religious beliefs is a qualified right and can be subject to certain restrictions that are “in accordance with law” and “necessary in a democratic society”, for example, to protect the public from crime and disorder, requirements at work at certain times or to carry out certain tasks. As mentioned above, the courts are bound to exercise their functions compatibly with Convention rights and will approach clause 1(5) accordingly.

- Is practicability (in clause 1(5)) the appropriate standard by which a court should judge whether prohibitions and requirements in an injunction are justifiable interference with convention rights?

We believe that practicability under clause 1(5) is a sufficiently high threshold for the courts in deciding whether limitations on the exercise of individuals’ beliefs are justifiable in order to protect victims and communities from harm. As mentioned above, the courts are bound to exercise their functions compatibly with Convention rights and will approach clause 1(5) accordingly.

The purpose of the injunction is to stop and prevent negative behaviour. Therefore we want, as far as is possible, individuals subject to an injunction to be able to comply with the terms of their injunction.
Q.9: What is the justification for confining the scope of the power in clause 12, to exclude a person from their home in cases of violence or risk of harm, to tenants of a local authority or a housing provider?

This power is restricted on the basis that it should only apply in exceptional circumstances involving the relationship between landlords and their tenants. On one view, only local authorities and social housing providers should be able to exclude tenants in clause 12 of the Bill because excluding individuals from their homes could lead to an inappropriate use of the power with unintended legal consequences if they were excluded by an agency other than the landlord. For instance, if a tenant does not occupy the residence as their main or principal accommodation this could be a breach of their tenancy agreement and thus we would need to consider carefully what the implications were to other agencies able to obtain injunctions excluding tenants from their homes. That said, following the debate on this clause in Public Bill Committee the Government has undertaken to consider further whether to extend the power in this clause to cover other forms of tenure, in particular the private rented sector.

Q.10: Is it the Government’s intention that the power in clause 12 to include a provision in an injunction excluding a person from their own home should only be available to the court where it is satisfied that there has been violence or threatened violence against someone who lives in the premises, or someone who lives in the premises is at significant risk of harm from the person, as the Government’s ECHR memorandum suggests at paragraph 20?

- If so will the Government amend clause 12(1) to make this explicit on the face of the legislation and so ensure that this extraordinary power to interfere with the right to respect for home in Article 8 ECHR is “tightly drawn and proportionate” as the Government intends.

The Memorandum describes one situation where clause 12 might be engaged (where the violence, threat of violence or risk of significant harm relates to a person in the premises). However, it is possible to exercise the power where such conduct occurs in respect of a victim or person at risk outside the premises. This is for the clear policy imperative to address anti-social behaviour caused by a person which affects neighbours. As mentioned, the local authorities (and courts reviewing decisions made) are bound to exercise their powers compatibly with Article 8 of the Convention.

We are satisfied that clause 12 is adequately drafted and proportionate and does not need amending as far its intent is concerned. However, under the current Anti-Social Behaviour Injunction, social landlords are able to exclude people from their own homes if there is, or is likely to be, a threat of violence or a significant risk of harm to others. This can include those in the locality who are not tenants (for instance neighbours in the private rented sector or owner occupiers) where their behaviour
prevents the social landlord from carrying out their ‘housing management function. We have only given the power to exclude in clause 12 to social landlords, but following the debate in committee we are considering extending the power to include anti-social individuals who live in privately rented accommodation in exceptional cases where there is a threat of violence or significant risk of harm to others.

Q.11: What is the justification for disapplying the usual restrictions on reporting legal proceedings in which children are concerned for the purpose of injunctions to prevent nuisance and annoyance (clause 17)?

- Please explain why in the Government’s view the disapplication of the usual presumption against reporting is compatible with the child’s right to respect for privacy in Article 8 ECHR and Article 16 UNCRC and, in the case of proceedings relating to breach of an injunction, the State’s obligation under Article 40(2)(vii) UNCRC to ensure that the child’s privacy is fully respected at all stages of proceedings in which the child is alleged to have infringed the penal law.

- Should the best interests of the child be the primary consideration when a court decides whether or not to allow reporting of proceedings concerning children under Parts 1 and 2 of the Bill?

The Government acknowledges that reporting information in cases involving young offenders, such as their name, address or school, is a sensitive issue. The Committee has noted, the Bill provides that the normal automatic reporting restrictions established by section 49 of the Children and Young Persons Act 1933, do not apply. However, section 39 of that Act does apply, which gives the court the discretion to prohibit the publication of certain information that would identify the child or young person. In other words, it will be for the court to decide what information should be reported. So while the Bill does disapply the usual presumption against reporting of young people, the court is still left with the ability to prohibit publication of information relating to young person.

Though decisions to allow reporting in cases with young people are likely to be rare, there are some circumstances when it may be appropriate. This could include: to provide local people with the information they need to identify and report breaches; to reassure the public about their safety and that action will be taken if they report anti-social behaviour; as well as being a deterrent to the subject of the order not to breach the order as the details are in the public domain.

During pre-legislative scrutiny the Home Affairs Select Committee recommended that it should be for the court to decide whether it is right to name a young person when issuing an order. The Government has accepted this recommendation which will allow the court to decide what is best on a case by case basis. The best interests
of the child will of course require very careful consideration, but should be weighed up against the needs of the victims and the community. The court will have in mind its obligations under Article 8 of the ECHR when considering this issue.

Q.12: If the Government’s intention is that the court must be satisfied to the criminal standard of proof (i.e. beyond all reasonable doubt) that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress, as the Explanatory Notes (para. 108) suggest, is there any reason why this should not be made explicit in clause 21(3) of the Bill?

It is the Government’s intention that the fact of anti-social behaviour having taken place will, in practice, have to be established beyond reasonable doubt. The Criminal Behaviour Order is a civil order, and generally, the civil standard of proof is on the balance of probabilities rather than beyond reasonable doubt. However, it would be expected that the courts would follow the reasoning in the McCann case of 2002, when considering the evidence before them, and apply the criminal standard.

In the McCann case, the Law Lords held that the criminal standard should be applied because the facts needed to be demonstrated were of a criminal or quasi-criminal nature and there were serious implications for the individual if an ASBO was imposed. It is expected that the same will hold true for the criminal behaviour order which shares many characteristics with the ASBO on conviction. In contrast, a breach of the injunction to prevent nuisance and annoyance will not be a criminal offence, hence we have applied the civil standard of proof for applications for it.

With the Injunction to Prevent Nuisance and Annoyance (Part 1), which is a newer type of power to deal with anti-social behaviour, it was felt important to make clear the applicable standard on the face of the Bill (including having regard to the fact that breach is not a criminal offence, unlike the breach of an order under section 1 of the Crime and Disorder Act 1998, which the injunction replaces). Because of the similarity of the criminal behaviour order with the ASBO on conviction, there isn’t a need to include within the legislation the applicable standard of proof; the courts are able to take into account relevant case law to make their own judgment on the applicable standard of proof.

Q.13: In view of the express requirement in the ECHR that all interferences with the rights protected by Articles 8, 9, 10 and 11 of the Convention must be “necessary”, what is the justification for making the second condition in clause 21(4) of the Bill that the court considers that making a criminal behaviour order “will help” in preventing the offender from engaging in behaviour that caused or was likely to cause harassment, alarm or distress, rather than is “necessary” to prevent such behaviour?

- What in the Government’s view would be the disadvantage of requiring the court to be satisfied that a criminal behaviour order is “necessary” for the purpose of preventing such behaviour?
The disadvantage to using “necessary” instead of “will help” is a question of the time it takes gathering evidence to prove necessity to a court. Front line professionals have told us that securing an ASBO can be a slow, bureaucratic and expensive process. The level of evidence needed to prove necessity is disproportionately time consuming. Dropping the level of the test for an order to help instead of necessary as is the case with ASBOs will speed up the application process. Practitioners have welcomed this change to the test telling us that it will allow them to act quickly to protect victims and communities.

Q.14: Please answer Q8 above in relation to clause 21(9).

Please see the response to question 8.

Q.15. Please answer Q11 above in relation to clause 22(8).

Please see the response to question 11.

Q.16. Is it the Government's intention that the authorising officer must have objective grounds for his view that the statutory condition for authorising the use of the dispersal power is met?

- If so, will the Government amend clause 32(2) of the Bill to make clear that the authorising officer's belief that the condition is met must be “reasonable”?

The question raises an important point and we will consider the inclusion of “reasonable” in clause 32(2) in advance of Report.

Q.17. What is the justification for providing in clause 32(3) that an authorisation can be made if the authorising officer considers that use of the dispersal powers “may be necessary” rather than “is necessary”.

- Why has the Government not taken the same approach to defining the threshold for authorising this exceptional power as it has taken to the exceptional power to stop and search without reasonable suspicion in s.47A of the Terrorism Act 2000?

It is intended that an authorisation can be given to use the dispersal power in an area where there may be problems with anti-social behaviour, crime or disorder. The dispersal power is intended to be used preventatively, and ‘may be necessary’ offers more flexibility than determining whether it is necessary to use the power before granting the authorisation. To restrict the authorisation to an area where it ‘is necessary’ to use the dispersal power would imply that the authorising officer definitely expects the power to be used.

As currently drafted, use of the dispersal power involves a three-part test:
• The authorising officer must consider that use of the powers may be necessary.

The officer giving the direction also needs to satisfy two conditions:

• first, to have reasonable grounds to suspect that the behaviour is likely to contribute to harassment, alarm or distress or the occurrence of crime or disorder in the locality; and

• second, that the direction is necessary to remove or reduce the likelihood of that behaviour.

The dispersal may be used in relation to behaviour that is occurring or is likely to occur. We consider this to be a proportionate test when issuing a direction.

Section 47A of the Terrorism Act 2000 allows stop and search powers to be used where there is no reasonable suspicion of the presence of articles which could be used in connection with terrorism. The authorisation under section 47A therefore requires a higher test: that the person giving the authorisation reasonably suspects an act of terrorism will take place and considers the powers are necessary to prevent such an act. Stop and search powers require an officer of at least the rank of assistant chief constable to authorise use of the power.

We do not consider that this level of authorisation is required for the use of the dispersal power. We have built a number of safeguards into the power, in particular:

• The officer must have reasonable grounds to believe that the person concerned are causing, or likely to cause, harassment, alarm or distress, crime or disorder,

• The dispersal is targeted at the time when the behaviour is occurring and a direction can be given for a maximum of 48 hours,

• The dispersal should be given in writing, but in exceptional circumstances it can be given orally, and

• The person given a direction cannot be prevented from having access to the place where they live, attending their place of employment, education or training, medical treatment, or a place they are required to attend by a court order or tribunal.

Q.18. Please explain why the description in clauses 40 and 55 of the Bill of “unreasonable conduct having a detrimental effect on the quality of life of those in the locality” is sufficiently precise to satisfy the requirement of both the common law principle of legal certainty and human rights law, that any interferences with rights must be defined with sufficient precision to enable individuals to anticipate the consequences of their actions.

Litter, graffiti, public drunkenness and other forms of environmental anti-social behaviour can have a devastating effect on communities, especially when targeted
and persistent. The definition of this behaviour in the tests for both the community protection notice (CPN) and public spaces protection order (PSPO) reflects this and is designed to allow professionals maximum flexibility to determine on a case by case basis what behaviour is having a detrimental effect on the quality of life of those in the locality. The wording broadly reflects that used in legislation relating to the litter clearing notice which was introduced through the Clean Neighbourhoods and Environment Act 2005 and the graffiti removal notices established by section 48 of the Anti-social Behaviour Act 2003. Both have been used effectively for a number of years and have been used and interpreted by frontline professionals and the courts without difficulty. In the Government’s view, the description used in clauses 40 and 55 uses language which is readily understandable, clear and precise enough for the public to understand what type of behaviour might result in a CPN or PSPO being imposed. In particular, the word “unreasonable” is a commonly used word which frontline professionals and the courts are used to interpreting, and imports a necessary degree of discretion into the decision making process. Moreover, the remaining words “detrimental effect on the quality of life in the locality” are sufficiently precise and understandable words and phrases to satisfy the requirement of legal certainty.

Q.19: In the absence of any requirement that there be a connection between the particular dwelling-house and the riot-related offence, please explain why in the Government’s view the new riot-related grounds for possession introduced by clause 91 do not amount to a punishment rather than a means of preventing harm to others.

The Government believes that it is right that landlords should have the powers to seek to evict a tenant where they or a member of their household chooses to inflict damage, not only in their own neighbourhood, but also in other people’s communities. The intention is that the proposal will send a strong signal and carry a deterrent effect to potential rioters who are tenants or members of their household. This proposal found a significant level of support from social landlords who responded to the consultation on this proposal. They in particular felt that this was an appropriate sanction for rioting and looting and would send out a clear message that this sort of behaviour would not be tolerated wherever it took place.

However, responses to the consultation from landlords also suggested that, whilst the messaging was important, seeking possession against those convicted of rioting beyond the local area was only likely to happen exceptionally. The riot-related ground is discretionary, in that the court must be satisfied that it is reasonable to grant possession (see section 84 of and Schedule 2 to the Housing Act 1985 and section 7 of and Schedule 2 to the Housing Act 1988). The absence of any connection between the dwelling/house and the riot-related offence will be a factor for the court in exercising its discretion.
It is worth noting that the existing discretionary ground for possession for anti-social behaviour (Ground 2 in the Housing Act 1985 and Ground 14 in the Housing Act 1988) is drafted in broad terms. It enables landlords to seek possession if the tenant, a member of the tenant’s household or a visitor has been convicted of an indictable offence in, or in the locality of, the dwelling-house. Other than the location of the offence, there need be no connection between the dwelling-house and the offence. We are not aware that this has been used inappropriately.

Q.20: Where possession of a dwelling-house is ordered on the ground that the tenant or a person living there has been convicted of a riot-related offence, what is the justification for interfering with the Article 8 rights of other family members, including children, who live in the home?

The riot-related ground for possession pursues the legitimate aim of the prevention of disorder, and public safety. As explained above, it is intended to act as a deterrent to potential rioters.

It is the Government’s view that, as the new ground is discretionary, the requirement on the court to consider whether it is reasonable to grant possession will ensure that any interference with the Article 8 rights of other family members, including children, will be taken into account by the court at the time that the possession order is made.

In considering whether it is reasonable to grant possession the duty of the judge is to take into account all relevant circumstances as they exist at the date of the hearing in a broad, commonsense way giving such weight as he or she thinks right to the various factors in the situation (Cumming v Danson [1942] 3 All ER 653. It has been held that the consideration of proportionality in relation to Article 8 is unlikely to cause the courts to reach substantially different decisions from those which they reach in considering reasonableness (Lambeth LBC v Howard [2001] EWCA Civ 468).

Q.21. Please provide the Government’s analysis of the compatibility of the “householder exemption” in clause 98(2)(b) with the UK’s obligation to ensure that its criminal law provides adequate protection for the right to life in Article 2 ECHR and the right to physical integrity in Article 8 ECHR.

The “householder exemption” in clause 98(2)(b) reflects the current status quo, namely that there is currently no offence committed under section 3 of the Dangerous Dogs Act 1991 when a dog attacks a trespasser on private property where the dog has a right to be. We are extending protection for non-trespassers but in not doing so for trespassers (save for in grossly disproportionate circumstances) we are balancing the trespasser’s human rights with the householder’s Article 8 ECHR right to peaceful enjoyment of his or her dwelling. In making this assessment the Government has taken into consideration the protection of the trespasser’s Article 2 and 8 ECHR rights by the availability of alternative routes to prosecution, such as the Offences Against the Person Act 1861 should the
dog be set on the trespasser with intent to injure. The Dogs Act 1871 also offers an alternative civil remedy, namely the destruction of a dangerous dog.

Q.22: In drafting of clause 102, what consideration has been given to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials?

The development of a British Transport Police armed capability was announced in a written ministerial statement in May 2011. This armed capability has been in place since February 2012, when the first operational patrols were conducted. In putting that capability in place, the British Transport Police have adopted a series of Standard Operating Procedures which reflect the UN Basic Principles, including on recruitment and selection, management and training, deployment, rules of engagement and command arrangements, incident management and reporting.

Although it has been possible to develop that capability, progress has been hampered by the current firearms licensing arrangements, which place British Transport Police officers in a different position to that enjoyed by officers from the territorial police forces in England and Wales and the Police Service of Scotland. Clause 102 amends section 54(1) of the Firearms Act 1968 in order to bring British Transport Police officers (and employees of the British Transport Police Authority under the control of the Chief Constable of British Transport Police), within the definition of a “Crown servant”, putting them in the same position as other police officers in relation to certification requirements for firearms under the Firearms Act 1968. This addresses the current anomaly, removing burdensome and unnecessary bureaucracy. The Clause simply defines the licensing process to be followed.

Q.23: Before the change in clause 102 comes into force, will British Transport Police receive the same training in the use of firearms as other police forces, including training in the relevant human rights standard contained in Article 2 ECHR, as interpreted by the European Court of Human Rights, and the UN Basic Principles?

Extensive discussions were undertaken with the then National Policing Improvement Agency regarding the requirements for setting up, operating and maintaining a firearms capability for the British Transport Police prior to the operational deployment of British Transport Police firearms officers by the British Transport Police Authority.

The British Transport Police seconded firearms experts from the Metropolitan Police Service, Essex Police and the National Policing Improvement Agency to assist with the creation of the firearm unit and to staff the British Transport Police Firearms Training and Development Unit.

Recruitment of British Transport Police firearms officers was undertaken using approved national guidelines which have since been set out in a “Standard Operating Procedure”. During the original recruitment phases eleven experienced
firearms officers were recruited from Home Office forces, five of whom were also experienced Operational Firearms Commanders, Firearms Instructors and Tactical Advisors.

The initial training for British Transport Police firearms officers was sourced from Cheshire Police. All the training was delivered in exactly the same way as Cheshire Police delivers training to its own staff under its firearms training license. Refresher training for British Transport Police firearms officers has been delivered by City of London Police Firearms instructors and has been signed off by the City of London Police Chief Firearms Instructor.

The BTP has now established an in house firearms training capability, with a bespoke in-house training unit, staffed with accredited firearms trainers. The College of Policing, who set the standards for the police service on training, development, skills and qualifications, has awarded BTP a provisional license. The provisional licence is the standard starting point and provides for assessment oversight of the training programme by the College of Policing before the final award of a full licence. The award of a provisional licence is confirmation that all policies and procedures are in now in place as required by the Authorised Professional Practice – Armed Policing, the National Police Firearms Training Curriculum and the Home Office Codes of Practice on the Police Use of Firearms and Less Lethal Weapons.

Q.24. Please identify the evidence the Government relies upon to demonstrate that criminalisation will enhance effectiveness and what steps the Government intends to take to ensure this measure is not counter-productive for victims.

The Government wanted to be absolutely certain that any changes made were in the best interests of victims. The consultation was launched to consider all of the evidence afresh and the majority view expressed was that forced marriage should be criminalised. In addition to the outcome of the consultation, the Government has also taken into account the legislative provisions required to enable the UK to ratify the Istanbul Convention (see note at Annex A).

In order to enhance effectiveness, the civil remedy will continue to exist alongside a new criminal offence. This means that a victim could choose to take the civil route, or go to the police (as they can now). If they choose to go to the police and the police refer the case to the CPS, it will then be for the CPS to decide whether to proceed with the prosecution.

We know that legislation alone is not enough, but it sends a clear message that this brutal practice is totally unacceptable and will not be tolerated in the UK. We will also work with communities to ensure they understand that should a forced marriage occur, there will be severe penalties for doing so.

We have already carried out a first phase nationwide engagement programme focused and education and prevention, through a series of regional road shows and
debates. The agreed outcomes from these events will inform how we engage with communities ahead of and following enactment of the new law on forced marriage. Practitioners will also continue to receive additional awareness training, enabling them to utilise both the civil remedies and criminal sanctions more effectively and we will continue to work with our partners to strengthen the message within all communities that forced marriage is unacceptable and will not be tolerated in the UK.

Q.25: Bearing in mind that most appeals against information notices issued by the IPCC under clause 118 are likely to take the form of complaints that request for information is not a necessary, proportionate or justified interference with the right to respect for private life in Article 8 ECHR, and that “in accordance with the law” is a term of art with a particular meaning in the context of Article 8 ECHR, will the Government consider defining the ground of appeal against an information notice differently to avoid the risk of it being interpreted too narrowly?

The provision in clause 118 (specifically in new paragraph 19ZC of Schedule 3 to the Police Reform Act 2002) relating to the right of appeal against an information notice reflects the existing provision in section 49 of the Data Protection Act 1998 and section 58 of the Freedom of Information Act 2000. In each case, the Tribunal can allow an appeal against an enforcement or other notice (under the 1998 Act) or a decision notice (under the 2000 Act) and shall allow it if, amongst other things, the notice against which the appeal is brought is not in accordance with the law. We have been mindful that the appeal rights in each case relate to notices which may be given to a person in respect of the disclosure (or non-disclosure) of information (like the appeal right in clause 118), and are correspondingly likely in each case to relate to appeals about the lawfulness of the notice under Article 8 of the ECHR.

We are, therefore, satisfied that the prescribed appeal right in new paragraph 19ZC in clause 118 is appropriate and consistent with established appeal rights in other parallel statutory schemes which govern the disclosure of information. However, to ensure that there can be no doubt whatsoever about the scope of the new appeal right, we will update the Explanatory Notes relating to this clause to the effect that the appeal right is based on the wider meaning of the wording, namely an error of law which includes but is not limited to a breach of Article 8.

Q26: Why has the Government not published its summary of responses to its consultation on the reform of Schedule 7, or its response to the consultation, more than 6 months after that consultation closed and before introducing its reforms in this bill?

The Government published its response to the public consultation on the operation of Schedule 7 on 11 July. Ahead of that the focus of work had been on bringing forward legislative proposals at the earliest opportunity.
Q27: When will the summary of consultation responses and the Government’s response to the consultation be published?

The Government’s response was published on 11 July and is available at https://www.gov.uk/government/consultations/review-of-the-operation-of-schedule-7.

Q28: In addition to publishing the summary of responses, will the Government now place in the public domain, in full not in summary form, the responses to its consultation for which confidentiality was not claimed by the respondent? If not please explain why not.

Publication of a summary is in line with Cabinet Office Guidance. In this case some responses received from police officers contain operationally sensitive details that it would be inappropriate to publish.

Q29: In view of the significance of the human rights issues raised by the powers in Schedule 7, reflected in the attention they have received from the independent Reviewer, why has the Government not afforded a better opportunity for thorough pre-legislation scrutiny before introducing the measures in Schedule 6 to the bill?

The consultation provided the opportunity for comment on indicative proposals. To raise awareness of the consultation we wrote to a wide range of community, faith and interest groups. Alongside the consultation, with the help of the police and local authorities we undertook a series of community engagement events throughout the UK – in Birmingham, Bradford, Gatwick, Manchester, Rotherham, Stirling, Tower Hamlets and Westminster.

These public meetings and the consultation provided for public scrutiny of the operation of Schedule 7 to the Terrorism Act 2000 and potential changes to the legislation ahead of Parliament’s scrutiny of the proposals contained in the Bill.

Q30: Even after the changes made by the bill to the Schedule 7 powers, are there any powers to stop, question, search and detain UK citizens without reasonable suspicion which are wider in scope than, or comparable to these powers. If so please specify.

No. However Schedule 7 is a key part of the UK’s border security arrangements, helping counter the threat from terrorism and protect public safety by allowing the police to question individuals travelling through ports and airports to determine if they are or have been involved in terrorism.

People are aware that without reasonable suspicion they are potentially subject to being searched by port security when intending to travel, to being examined by an immigration officer on arrival or to being examined by police under Schedule 7 when they enter a port with the intention of travel or on arrival.
The powers in Schedule 7 are considered necessary and proportionate given the current terrorist threat, in relation to which numerous terrorist plots have involved individuals undertaking, or planning to undertake, international travel to plan and prepare for acts of terrorism.

Schedule 7 powers are unusually wide ranging but the importance of protecting the UK borders from national security threats means that their use is both necessary and proportionate.

Q31: What is (are) the main purpose(s) of the powers in Schedule 7?

- Is gathering intelligence, which is useful in the fight against terrorism, one of the purposes relied on by the Government to justify the powers?

Schedule 7 powers may only be used to determine whether a person is or has been involved the commission, preparation or instigation of terrorism. This can result in the obtaining of intelligence relevant to the individual concerned or more generally about the terrorist threat to the UK or UK interests abroad. The Government considers that this is an important purpose justifying the powers.

Q32: How useful in practice are stops based on risk factors rather than specific intelligence?

Examinations that are based on risk factors rather than specific intelligence are a valuable tool in the detection of ‘clean skins’. These are people who have the intention to travel prepare for or to carrying out an act of terrorism but about whom the police have no prior knowledge. There may be an absence of specific intelligence in relation to a person who is travelling on a specific route when there is specific intelligence about that route. Or there may be no specific intelligence in relation to a person who is a travelling companion of a person in respect of whom there may be specific intelligence. Individuals’ behaviour is also a factor that is assessed as a reason to undertake an examination. Such examinations have identified individuals with links to terrorism.

Q33: What proportion of examinations culminate in an intelligence report being compiled? Please provide a breakdown of this answer as between ports and airports.

It is a long standing principle that the Government does not comment on intelligence matters.
Q34: What is the Government’s justification for saying that each of the following powers is necessary without reasonable suspicion:

- **A power to stop and question**

  Against the background of the threats posed by international terrorism and Northern Irish related terrorism, the power to stop and question individuals at ports without reasonable suspicion is necessary to detect individuals travelling through our ports and borders who are or have been involved in terrorism and who may be travelling for the purposes of involvement in terrorism; to deter people from travelling for the purposes of involvement in terrorism; to obtain information about persons who are or have been involved in terrorism who are travelling through our borders, and – most importantly – to protect the public from terrorism.

- **A power to detain**

  The power to detain enables the examination of individuals who do not wish to be examined, and who insist on leaving the examination. The provisions in the Bill would, for the first time, ensure that all detained individuals will have the right to consult a publicly funded solicitor privately and the right to have person informed of their detention.

- **A power to compel answers to questions on pain of imprisonment,**

  Compulsion to answer questions put in examination is critical to the utility of the Schedule 7 powers identifying individuals who are or have been engaged in terrorism. If there were no such compulsion the power would be fruitless. Individuals’ answers given under compulsion would not generally be admissible in criminal proceedings.

- **A power to search the person and items of property including mobile phones?**

  The ability to undertake searches of persons and their property, as part of an examination, is likewise critical to the utility of the Schedule 7 in identifying individuals who are or have been engaged in terrorism.

  The Bill would introduce further safeguards. Before undertaking a strip search, an examining officer will require reasonable grounds to suspect that the person may be concealing something which may be evidence that the person is involved in terrorism and require the prior authority of a supervising officer. The current power to conduct intimate searches would be repealed by the Bill.
Q35: Why after a person has been examined for one hour under the Schedule 7 power, is there no requirement of reasonable suspicion before they can be detained for the purposes of ascertaining whether they appear to be a person involved in terrorism?

Introducing a reasonable suspicion test for Schedule 7 would reduce the capability of the police to detect and deter individuals travelling to and from the UK to plan, train and raise funds to carry out or otherwise engage in terrorism. That, in turn, would place the public at an increased risk from acts of terrorism.

Requirements for an examination to extend beyond an hour can include language or interpretation issues, evasive responses about the purpose of travel, inconsistencies in the information provided requiring clarification, and need to examine property. Those requirements for prolonging the examination may not directly amount to a reasonable suspicion of involvement in terrorism.

Q36: Are there any equivalent provisions to that in Schedule 7, requiring people to answer questions on pain of imprisonment, in other contexts?

There is, for example, the investigation powers available to the Director of the Serious Fraud Office under section 2, Criminal Justice Act 1987.

- What is the justification for such an unusual power in this particular context?

The justification for that power in Schedule 7 to the Terrorism Act 2000 is at question 34, third bullet.

Q37: Is it the Government's view that answers provided under such legal compulsion can be relied upon in proceedings such as TPIMS or asset freezing proceedings?

It is the Government’s view that material gathered through the lawful exercise of Schedule 7 powers is in principal admissible in TPIM or asset freezing proceedings. These are not criminal proceedings but administrative proceedings conducted in the High Court analogous to judicial review. It would be a matter for the senior judge hearing the case whether or not to admit such material and, if so, to decide how much weight to place upon it.

Q38: When will the new draft code of practice be available?

An initial draft of a Code of Practice for examining officers reflecting the amendments to the powers contained in the Bill will be finalised ahead of Report Stage.
Q39: Will the Code of Practice make clear that the scope of questioning must be limited to the purpose of it, namely to ascertain whether the person appears to be a person involved in terrorism?

Yes.

Q40: Will the Code of Practice make clear that the searches of the person must also be confined to the purpose of the power, namely to ascertain whether the person appears to be a person involved in terrorism?

Yes.

Q41: What is the justification for the period of detention being as long as 6 hours?

The vast majority of all examinations (97%) are completed in one hour. Sampling indicates that of those examinations most (60%) are completed within fifteen minutes. However, in rare cases, the examining officers may consider it necessary to search a large volume of property including material on electronic devices. The provisions in the Bill reduce the current statutory maximum period of examination by a third, from nine hours.

Q42: What is the reason for the Bill providing that intervals at which detention under Schedule 7 is periodically reviewed will be specified in the Code of Practice, rather than on the face of the legislation itself, as it is in para. 21 of Schedule 8 for reviews of detention under s41?

Currently Schedule 7 does not provide for review of detention. The Bill introduces review of detention under Schedule 7 and for the periods of review to be specified in the statutory Code of Practice. This approach was taken in view of the degree of operational detail involved, to include setting out the review periods and the role of the reviewing officer.

Q43: What is the justification for distinguishing between Schedule 7 interviews at a police station and those at a port for the purposes of audio or video-taping the interview?

Interview facilities at ports and airports do not replicate those at police stations. Currently there are very limited capabilities for recording interviews at ports and airports. The Government is exploring with the police where the introduction of recording facilities would have most impact.
Q44: Is the power in paragraph 8 of Schedule 7 to search anything the person being examined has with them, or belonging to them, the lawful authority relied upon to authorise copying the contents of the person’s mobile phone? If not what other lawful authority is relied upon?

The relevant provisions are paragraphs 5 (a) and (d) of Schedule 7 which respectively require a person under examination to give the examining officer any information or document in his possession which the officer requests. Under paragraph 8 an examining officer may conduct a search of the person under examination, a search of anything the person has with him that is on, has been or is likely to be on an aircraft, ship or train.

Q45: Does the Government consider that copying the contents of a mobile phone SIM card during a Schedule 7 stop is compatible with Article 8 ECHR? If so please explain the Government’s reasons for its view.

Yes. The Government accepts that the copying of information from a mobile phone SIM card is capable of constituting an interference with a person’s right to respect for private life. However that interference is justified by the need to protect the public from terrorism and that the power is only exercised when necessary and proportionate to do so. Information is now largely stored electronically on mobile devices rather than on paper as it would have been in the recent past. Without the power to examine the contents of a SIM card, the police would be severely curtailed in their ability to determine whether or not a person appears to be or has been involved in terrorism. Information obtained in this way would be subject to the provisions of the Data Protection Act and the statutory Code of Practice on the Management of Police Information. Paragraph 11 of Schedule 7 already makes express provision for the detention of property obtained in an examination to determine whether a person or goods being examined is or has been concerned, or used in terrorism. New paragraph 11A of Schedule 7 to the 2000 Act added to the Bill in Committee, makes express provision for the copying and retention of information from examined property ensuring such interference with convention rights is more clearly in accordance with law that is adequately accessible and foreseeable.

Q46: Will the training to be received by designated officers in the exercise of Schedule 7 powers be co-ordinated by ACPO and uniform across all the officers with the authority to use them?

Schedule 7 training will be required to meet a national standard to be agreed with and co-ordinated by the National Police lead for counter-terrorism and the College of Policing.
47: Will the Government agree to share the Schedule 7 training materials with the EHRC and permit the EHRC to witness the training itself?

Government officials and police officers have met with the EHRC to discuss Schedule 7 training. Sharing of training materials and witnessing of training will be possible subject to safeguarding of sensitive operational techniques and matters of national security.

Rt. Hon Damian Green MP    Jeremy Browne MP
Minister of State for Policing    Minister of State for Crime
and Criminal Justice            Prevention