Dr Hywel Francis MP  
Chair  
Joint Committee on Human Rights  
Committee Office  
House of Commons  
7 Millbank  
London SW1P 3JA  

18 DEC 2013  

Dear Hywel  

Anti-social Behaviour, Crime and Policing Bill  

I am writing further to my letter of 11 November setting out the Government response to the Joint Committee’s report on the Bill and to our subsequent correspondence about clauses 1(5) and 21(9). We have today tabled a number of amendments that I hope address some of the concerns that the Committee raised. The text of the amendments is enclosed but I have set out the key issues below.  

Injunction to prevent nuisance and annoyance (clause 1)  

The Committee recommended in its report that the test for the new injunction under Part 1 be amended to provide greater legal certainty. The proposed amendment was subsequently tabled by Lord Faulks during Committee stage. It has always been the Government’s position that the court would be under a general duty to consider reasonableness in determining an application for an injunction. However, having considered further the Committee’s report, the related debate and the views of the Constitution Committee, we accept that there would be merit in including an explicit test of ‘reasonableness’ in the first limb of the test for an injunction. Although the wording of our amendment is slightly different from that proposed by the Committee, I believe it achieves what the Committee intended nonetheless.  

Absolute right to hold religious beliefs (clauses 1 and 21)  

In your letter of 20 November, you referred to the Committee’s recommendations on clauses 1(5) and 21(9), which require a court, so far as practicable, to avoid any conflict between the prohibitions and requirements in an injunction or criminal behaviour order and the respondent’s religious beliefs. As I said in my previous letter on this point, we accept that the right to hold religious beliefs is absolute; the provisions are intended to protect the manifestation of those beliefs. However, we have reviewed whether it is necessary to provide such protection explicitly in the Bill. In light of the protections available under the Human Rights Act, we have tabled amendments to remove clauses 1(5)(a) and 21(9)(a).
Similar provisions exist in other legislation and you also asked about our wider approach. The formulation has been used in legislation passed over several decades, including many pieces of legislation passed after the commencement of the Human Rights Act 1998. We are not aware of any concerns being raised as to its application, and believe that the intention that it refers to the manifestation or observation of religious beliefs is widely understood. It is therefore difficult to see what would be gained by repealing or amending all such provisions now to justify the risk of confusion arising from making the change. However, we will take the Committee’s views into account in drafting future legislation.

Dispersal powers (Part 3)

We have also considered carefully concerns raised about the potential use of the dispersal power against those engaged in peaceful protest. In order to use the power, a police officer must be satisfied that the conduct meets the test of ‘harassment, alarm or distress’ and we think it likely that this would provide sufficient protection to protests and assemblies not covered by clause 33(4). However, given the importance of the rights in question and the fact that the power is exercised out of court, we have accepted the Committee’s recommendation that we make clearer that the dispersal power is intended to tackle anti-social behaviour and should not be used to target peaceful assemblies. Accordingly, we have tabled amendments to clauses 32 and 34, which explicitly require an officer to have particular regard to the rights of freedom of expression and assembly under Articles 10 and 11 of the European Convention on Human Rights. While our approach to drafting differs from the Committee’s, I hope you will agree that the intention and effect of this amendment is to ensure that the power is not used to interfere with legitimate peaceful protest.

In addition, the question of whether the new public spaces protection order (PSPO) could be used to prohibit peaceful protest was also raised in debate at Lords Committee stage. Again, we do not believe that peaceful protest would meet the test for the order. However, for the avoidance of doubt, new clause Convention rights, consultation, publicity and notification similarly requires a local authority to have particular regard to the rights of freedom of expression and freedom of assembly before making a PSPO. I would like to thank you and the Committee once again for your thorough scrutiny of the Bill’s provisions.

I am copying this letter to the Secretary of State for Justice.

Yours sincerely

Norman Baker MP
Minister of State