

Standing Committee for Youth Justice and Prison Reform Trust Joint Briefing on the Offensive Weapons Bill

House of Lords, Committee Stage,
6 February 2019

Introduction

- The Offensive Weapons Bill started in the House of Commons, completing its progression there in November 2018. The Bill had its second reading in the House of Lords on 7 January 2019, and its committee stage began on 28 January 2019.
- The Bill creates a number of new laws around the sale, possession and intended use of knives, firearms, and corrosive substances.
- Amendments introduced by the government in committee create a new knife crime prevention order (Amendments 73A-U).
- We are extremely concerned about the government's proposals for a knife crime prevention order. We all want to prevent violent behaviour, but believe the measures are disproportionate and ineffective:
 - The new orders can be imposed on the balance of probability and are highly likely to be net-widening, labelling, disproportionately impact BAME communities, and impose more criminal sanctions on vulnerable children and young people.
 - There is no evidence that orders like these are effective at tackling harmful behaviour, or will address the root causes of knife carrying.
 - They risk vulnerable children as young as 12 being sent to prison for up to 2 years for breach of requirements.
 - They will increase BAME disproportionality and further damage trust between communities and the police, and in the justice system overall.
- We were encouraged by many parts of the Serious Violence Strategy that seem to acknowledge evidence that punitive responses do not work, and carefully consider appropriate responses. The strategy has many parts that we would agree with. However, this punitive Bill being part of the strategy is contradictory to the approach taken by the rest of the strategy, and is likely to undermine the good work the strategy puts in place. This is especially true given that the intervention and preventative measures outlined in the strategy are not

sufficiently resourced and may not materialise, meaning the new legislation could end up being the overriding response to serious violence.

- We favour: educating children and young people and funding wider preventative work in the community. Where justice measures are deemed necessary, these should be in the community. Interventions to reduce weapon carrying etc. should take into account that many children and young adults have been victims of violence and trauma.

Key amendments and new clauses

After Clause 31

Amendments 73A-U – Knife crime prevention orders

Key points:

- **We urge Peers to oppose Amendments 73A-U**
- We are extremely concerned that these proposed orders are civil orders which will be imposed on children as young as 12 on the basis of probability rather than a criminal standard of proof. This is despite the severe, lengthy and potentially unlimited restrictions which could be imposed as part of an order, and the punitive criminal sanctions for breach of up to 2 years in custody.
- As such, these “knife crime ASBOs” are highly likely to be net-widening, labelling, disproportionately impact BAME communities, and impose more criminal sanctions on vulnerable children and young people.
- Sarah Jones MP, the chair of the all-party parliamentary group (APPG) on knife crime, has expressed strong reservations about the proposed orders, describing them as “flawed” and “completely disproportionate”. She said: “It risks criminalising a generation of young people who have grown up unsupported and who often turn to carrying weapons out of fear.”ⁱ
- There is no evidence that orders like these are effective at tackling harmful behaviour, or will address the root causes of knife carrying. The Ministry of Justice has acknowledged this lack of evidence on effectiveness of such orders, with Justice Secretary David Gauke originally opposing the proposals on these grounds. He stated that he did not want to see large numbers of young people sent to custody for breaches of civil orders, and any new measures must be “preventative, proportionate, and affordable”.ⁱⁱ
- Knife carrying is not the cause of serious violence, it is a symptom of wider social issues. Interventions should be evidence-based and take this context into account. New offences and sanctions are unlikely to be effective in tackling the root causes of behaviour, nor act as a deterrent.
- Children and young people carry weapons for numerous and complex reasons, often including the perception it is necessary for self-protection.ⁱⁱⁱ Where a child is carrying a weapon because of fear for their own safety, and especially if they perceive other forms of protection such as the police to be unavailable to them, punitive orders and the threat of custody will not discourage them from carrying a knife.
- More children and young people will end up with criminal records, further marginalising them and preventing them from accessing legitimate mainstream employment opportunities.

- We believe there are intervention options available that could be developed without having to resort to restrictive and criminalising orders. Many youth offending teams (YOTs) already have knife programmes and the Youth Justice Board is currently considering how to develop and share best practice. YOTs report interventions through outreach with children to be more engaging and effective than when enforced. It would be better to invest in and support YOTs to use these interventions, which will educate and support the children.
- We are very concerned that these orders would further exacerbate racial disparity in the criminal justice system. BAME people in the criminal justice system are subjected to conscious and unconscious biases, which means they may be disproportionately impacted by the introduction of more subjective tests, such as orders imposed on the basis of likelihood of someone carrying a weapon. The introduction of these orders is likely to damage already strained relations between BAME communities and the police, and damage trust in the justice system. Despite these concerns, the government has not published any equality impact assessment of the proposals.
- There is no detail on how the proposed orders are going to be resourced or how much they will cost. The Police Federation of England and Wales has questioned the capacity of the police to enforce the orders given the impact of cuts to police budgets and resources. Its chair John Apter said: “How the home secretary thinks we have the officers available to monitor teenagers’ social media use or check they are at home at 10pm when we are struggling to answer 999 calls is beyond me.”^{iv} The cost of the likely increase in custody numbers due to order breaches is also not factored in.
- The proposals have not been subject to any kind of meaningful public consultation. Key stakeholders, including the Youth Justice Board, the Association of Youth Offending Team Managers, the Children’s Commissioner, the prison service, local government and children’s services do not appear to have been given any kind of input on the proposals.

Our concerns in relation to the specific provisions of the proposed orders are as follows:

- Twelve is far too young for the imposition of such an order. It is also inconsistent with the other provisions in the bill, which start at 16.
- There is no mention of the importance of safeguarding child welfare. In each case there should be the equivalent of a pre-sentence report and all children should be assessed to check that they have not been subject to grooming/exploitation before an order is imposed.
- There is no detail given on the evidence base required for the imposition of an order, given it can be imposed on a balance of probabilities. This is particularly concerning given the lengthy “relevant period” of two years over which evidence can be considered. This is likely to lead to orders being imposed on a subjective and unspecified basis.
- Requirements are not specified but left carte blanche on face of the bill. This leaves individuals subject to a potentially unlimited and unspecified number of potentially unreasonable and disproportionate requirements over a lengthy duration of up to two years. Examples of requirements are included in the accompanying ECHR Memorandum. To ensure proper transparency and oversight, these should be specified in the legislation.

- Sentence of imprisonment for breach is not appropriate for children. However, there is no distinction made between the penalty for breach by a child or adult. We are firmly of the position, in line with the UN Convention on the Rights of the Child, that custody must only be used as a last resort. Before depriving a child of their liberty, placing them in custodial establishments that are deemed largely unsafe at high costs to the taxpayer, there must be clear evidence that everything else has been tried and has not built sufficient desistance.
- More generally, we do not believe a criminal sanction of up to two years in prison is a proportionate sanction for breach of a civil order. Custody is not rehabilitative, and is harmful to children and adults. The damage that custody does is clear: the poor state of custodial conditions; lack of education provision and trauma-informed care; impact of overcrowding; the disruption that a custodial sentence causes through lost accommodation, interrupted education, emotional distress and loss through separation from friends and family.
- The guidance which will be issued to accompany the new order will be advisory and not statutory. This risks Parliament's proper function in the oversight and scrutiny of the orders, meaning there will be little accountability for how the orders operate in practice.

New clauses

Amendment 76

Insert the following new Clause— “Impact assessment of section 31 (1) Section 31 may only come into force if a Minister of the Crown has laid before Parliament an assessment of its impact on different racial groups as defined in section 9 of the Equality Act 2010 (race). (2) The impact assessment must be conducted by a body independent of the Government following consultation with representatives of different racial groups.”

This new Clause would require an independent assessment of the impact of searches in schools and further education premises on different racial groups.

Key points:

- **We urge Peers to support Amendment 76.**
- The impact of the Bill on Black and Minority Ethnic (BAME) children and young adults cannot be ignored. Corrosive substances, along with knives and other offensive weapons, are likely to be discovered via stop and search. BAME children are significantly more likely to be stopped and searched and therefore more likely to be prosecuted and mandatorily imprisoned for possession of corrosive substances, whether or not they are more likely than their White counterparts to be carrying a weapon.
- Clauses 6 and 8, accompanied by expanded stop and search powers are likely to exacerbate BAME disproportionality, and the lack of clarity and loose nature of the offence is likely to damage already strained relations between BAME children and the police, and to decrease trust in the justice system.

New Clause 77

Insert the following new Clause— “Knife Crime Prevention Orders (1) The Secretary of State must within the period of three months beginning with the day on which this Act is passed publish a draft Bill consisting of provisions for the creation of knife crime prevention orders. (2) The draft Bill must contain provisions similar to other regimes for preventing criminal offences being committed such as sexual harm prevention orders.”

This new Clause would ensure that the Government published draft legislation for the creation of knife crime prevention orders.

Key points:

- **We urge Peers to oppose New Clause 77.**
- While we are seeking more information on the intended nature of the proposed order before we are able to fully form our view, we are concerned many of the issues we highlight in relation to Amendments 73A-U also apply to New Clause 77.
- We accept that the new clause promises to bring forward a draft bill, which would provide opportunities for further consultation unlike amendments 73A-U.

New clause 87

Insert the following new Clause—

“Report on the causes behind youth violence with offensive weapons
(1) The Secretary of State must, within 6 months of the passing of this Act, lay a report before Parliament on the causes behind youth violence with offensive weapons.
(2) The report under subsection (1) must consider, but is not limited to—
(a) the effect of the reduction in police numbers on the levels of youth violence with offensive weapons;
(b) the effect of the reduction in public spending on—
(i) children’s services,
(ii) Sure Start,
(iii) state-maintained schools,
(iv) local authorities,
(v) youth offending teams,
(vi) Border Force, and
(vii) drug treatment programmes; on use of offensive weapons in youth violence.
(3) The report under subsection (1) and the considerations under subsection (2) must consider the benefits of the public health approach to reducing youth violence with offensive weapons. (4) The report must contain all departmental evidence held relating to subsections (2) and (3).”

This new Clause would require the Secretary of State to review the causes behind youth violence with offensive weapons.

Key points:

- **We urge Peers to support New Clause 87.**
- The government's serious violence strategy recognises the importance of investment in preventative measures in tackling serious violence, including early intervention, education, trauma-informed and public health responses.
- Therefore, it would be helpful for the government to review the legislation six months after it receives Royal Assent in order to assess whether the government has achieved an appropriate balance between prevention and enforcement.

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ⁱ <https://www.theguardian.com/uk-news/2019/jan/31/sajid-javid-introduces-knife-prevention-orders>

ⁱⁱ <https://www.thetimes.co.uk/article/sajid-javid-plan-for-knife-asbos-is-blocked-by-justice-chief-david-gauke-l6fj86dt6>

ⁱⁱⁱ Palasinski, M., and Riggs, D. (2012) Young White British Men and Knife-Carrying in Public: Discourses of Masculinity, Protection and Vulnerability Damien Riggs

<http://www.damienriggs.com/blog/wpcontent/uploads/2013/09/Young-white-British-men.pdf>

^{iv} <https://www.independent.co.uk/news/uk/crime/knife-crime-prevention-orders-children-violence-home-secretary-sajid-javid-new-law-a8755031.html>