

Standing Committee for Youth Justice and Prison Reform Trust Joint Briefing on Knife Crime Prevention Orders

Offensive Weapons Bill, House of Commons,
Consideration of Lords Amendments, 26 March 2019

Key points:

- **We urge MPs to oppose Lords Amendments 6-25 introducing knife crime prevention orders.ⁱ**
- 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.
- The new orders have not been subject to any kind of meaningful public consultation. Key stakeholders, including the Youth Justice Board, the Children’s Commissioner, the prison service, magistrates, local government and children’s services do not appear to have been given any kind of input on the development of the proposals. The new orders were not included as part of the government’s serious violence strategy.
- A wide coalition of professional bodies and voluntary sector organisations working for and on behalf children and young people in the criminal justice system have expressed strong reservations about the proposed orders, including the Magistrates’ Association,ⁱⁱ the Association of Youth Offending Team Managers,ⁱⁱⁱ the Local Government Association,^{iv} the Probation Institute,^v and the Children’s Society.^{vi}
- Strong objections have also been made to the proposed orders on human rights grounds, including by the respected charities Liberty^{vii} and Justice. The Parliamentary Joint Committee on Human Rights has written to the Home Secretary expressing concern “that the proposed amendments may criminalise children who have no previous criminal convictions, not for carrying a knife (which is already against the law), but for breaching

requirements which could be imposed in ways which prevent them conducting a normal life.”^{viii}

- 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”.^{ix}
- Children and young people carry weapons for numerous and complex reasons, often including the perception it is necessary for self-protection.^x 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.
- There are intervention options already available that could be developed without having to resort to restrictive and criminalising orders. Many youth offending teams (YOTs) already have programmes to address knife carrying 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 Local Government Association has raised concerns about the ability of local authorities to resource the new orders. 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.”^{xi} The cost of the likely increase in custody numbers due to order breaches is also not factored in.

A number of specific concerns in relation to the proposed new orders remain unaddressed:

1. Risks to children subject to knife crime prevention orders

- Twelve is far too young for the imposition of such an order and there is no separate and distinct provision for children.
- There is no mention of the importance of safeguarding child welfare in relation to defendants who are under 18. This is in contrast to the youth justice system where welfare is a principle underpinning both policy and practice.
- A number of reports, including by the Children’s Commissioner^{xii} and the National Crime Agency^{xiii}, have recently warned of the scale of children being groomed into criminal activity. Ofsted^{xiv} recently reported that for children at risk of knife carrying, “*the highest level of risk is for those children who have been groomed into gangs, for the purposes of criminal exploitation.*” These reports should serve as a warning not to pursue additional powers that risk criminalising these children without sufficient safeguards being in place to protect them.
- The current requirement that a person seeking to impose an order on an individual who is under 18 must “consult” with the local youth offending team is not a sufficient safeguard to ensure that the full circumstances are taken into account, including any safeguarding and/or welfare concerns, including any risks of exploitation of the young person.
- Furthermore, there is no requirement for an applicant or court to “consult” with a youth offending team prior to the introduction of an interim order. This may lead to situations where interim orders are imposed on children which actively put their welfare at risk. For instance, a curfew restriction could be imposed which increases the risk of a child’s exposure to abuse or neglect in the home.
- Anti-social behaviour orders contained a similar duty as the proposed new orders for applicants to consult with youth offending teams in cases where the defendant is aged under 18. However, in practice, YOTs were not routinely consulted.
- The Home Affairs Committee, for example, in its 2005 inquiry on anti-social behaviour, noted that, “*There is a clear need for youth offending teams to be involved in the response to young people who behave anti-socially—especially when formal measures are used. We were concerned to learn that Youth Offending Teams are not always consulted by those taking out an ASBO. We believe that they should be consulted as a matter of course before an application for an ASBO is made: not as a veto, but to ensure that sufficient thought has been given to support needs and to ensure that other measures are also taken if appropriate.*”^{xv}
- In each case, the court should require a pre-injunction report and all children should be assessed to check that they have not been subject to grooming or exploitation before an order could be imposed.
- Under the current proposals there is no requirement for an assessment of the young person, an analysis of their circumstances and risks and the involvement of parents and carers in those circumstances, plus any

background to the concerns around knives and the circumstances of the young person that may be considered relevant.

- There is also no provision for an assessment of any need for a referral to children’s social care services for an assessment under the Children Act 1989; and for an assessment of any need for a referral to the National Referral Mechanism for an assessment under the Modern Slavery Act 2015.
- Furthermore, there is no provision for a youth offending team to be consulted on the content of requirements.
- The applicant and the Court must have as much information as possible to assist them in making important decisions about individual young people when faced with making a decision on whether or not to impose such an order.

- **House of Lords Third Reading**

At House of Lords Third Reading, the Labour Peer Lord Ponsonby tabled a number of amendments to address concerns in relation to the lack of sufficient involvement of youth offending teams in cases where the defendant is under 18 (Amendments 1 to 7 on the Marshalled List for House of Lords Third Reading).^{xvi}

- The amendments were not selected for debate as they were ruled outside of the rules for Third Reading. However, the Minister of State Baroness Williams responded to the amendments in a letter.^{xvii}
- While the minister stated that she did not consider the amendments to be necessary, she gave the following commitments:
 - “we will state in the guidance that we expect the police and the CPS to share with the court the outcome of any consultation with the YOT if requested.”
 - “In addition, we will reinforce the message during the pilots that we will run before the legislation is rolled out to all police forces.”
- Given the previous experience with similar orders regarding the lack of effective engagement with YOTs, and the particular safeguarding and welfare needs associated with children involved in knife possession, included risks of criminal exploitation, we remain of the view that it would be better to require a statutory mechanism for ensuring proper engagement with YOTs rather than on relying on guidance and “messaging”.

2. 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.

3. Requirements imposed by KCPOs are unspecified and who will monitor them remain completely unaddressed

- Requirements are not specified but left carte blanche on face of the bill. This leaves children subject to a potentially unlimited and unspecified number of unreasonable and disproportionate requirements over a lengthy duration of up

to two years. To ensure proper transparency and oversight, these should be specified in the legislation.

- Responsibility for who monitors compliance with the requirements is not specified, and can be assigned to “an individual or an organisation”. This could include children’s and youth services and voluntary sector organisations delivering interventions for children and young people. It is also unclear whether this could be assigned to the local youth offending service.
- It is unclear when, how and by whom the decision would be taken as to who the “individual or organisation” would be chosen and how their work would be funded.
- The new orders could place the providers of interventions for children and young people in the invidious position of having to police and monitor children and young people for compliance with the new orders. This will seriously undermine the trust which is crucial to effective engagement with children and young people.

4. Sentence of imprisonment for breach is not appropriate for children or young adults

- Sentence of imprisonment for breach is not appropriate for children. There is no distinction made in the legislation between the penalty for breach by a child or adult.
- In line with the UN Convention on the Rights of the Child, 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 all other available options have been tried and have not built sufficient desistance.
- A criminal sanction of up to two years in prison is not a proportionate sanction for breach of a civil order. Custody is not rehabilitative and is harmful to children and young 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.

5. The long-lasting damage of KCPOs risks extending beyond the orders themselves through disclosure on criminal records checks

- KCPOs could be disclosed by police on enhanced criminal records checks, if they are deemed relevant.
- Children who are given a KCPO because they are suspected of carrying a knife could also have these orders disclosed on enhanced checks throughout their lives, even if they have never having been convicted of any offence.
- Breach of restrictions and requirements mean that more children and young people will end up with criminal records, further marginalising them and preventing them from accessing legitimate mainstream employment opportunities.

6. The government has assured that interim orders will only be imposed in “exceptional circumstances” but there is no provision in the legislation to ensure this will be the case

- We are concerned about the prospect of individuals being subject indefinitely to the requirements of interim orders.
- Interim orders can be imposed on individuals where the court considers it to be “necessary” or “just” without any requirements to meet an evidential test.
- Despite this, interim orders can impose serious restrictions on an individual's liberty including geographical restrictions or restrictions on activity. Breach of these requirements could result in the individual being sent to prison for a period of up to two years.
- At House of Lords Third Reading, Lord Ponsonby tabled an amendment to limit the length of an interim knife crime prevention order to a period not longer than 28 days, Under the proposed amendment, an interim order could be renewed after this period under the existing provisions of section 27.
- In her letter responding to the amendment, Baroness Williams assured that “An interim order would only be issued in exceptional circumstances, when there is an urgency to manage the defendant to protect the community or the defendant himself or herself and the Bill provides that a full hearing must always take place.”
- However, there is no provision in the legislation to ensure that interim orders are only issued in “exceptional circumstances”, and so it is unclear how the minister intends to make good on her assurance.

7. The proposal to pilot the new orders is not a sufficient safeguard against the severe negative impacts of the proposals

- The government made a last-minute decision to pilot the proposed orders prior to national rollout at House of Lords report stage. However, under this arrangement Parliament could do nothing to alter the legislation or prevent the roll out of the orders even if the results of the pilot were negative.
- The amendment simply requires the government to produce a report on the pilot and lay it before Parliament. There is no provision for Parliament to review or alter the legislation or to influence the decision on the roll out of the proposed orders on the basis of the pilot and the report.
- This decision to pilot the orders puts the cart before the horse, and merely serves to highlight the failure of the government to follow an evidence-based approach in the development of the proposals. There ought to have been proper consideration of the evidence and a thorough process of consultation on the proposed orders prior to introducing them as statute.
- The government conducted a public consultation on the development of domestic abuse protection orders and is allowing Parliament to consider them as part of a draft domestic abuse bill. It is unclear why it has not adopted a similar approach to the development of KCPOs.
- 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.

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ⁱ https://publications.parliament.uk/pa/bills/cbill/2017-2019/0363/363_offensive_LA.1-7.html

ⁱⁱ https://www.magistrates-association.org.uk/system/files/05%20MA%20statement%20on%20Knife%20Crime%20Prevention%20Orders_HL%20Committee%20Stage%20of%20Offe...pdf

ⁱⁱⁱ <http://aym.org.uk/news/>

^{iv} <https://www.local.gov.uk/sites/default/files/documents/06022019%20Offensive%20Weapons%20Bill%20HL.pdf>

^v <https://www.thetimes.co.uk/edition/comment/times-letters-importance-of-beauty-in-new-developments-zr90smw7r>

^{vi} <https://www.childrenssociety.org.uk/sites/default/files/knife-crime-prevention-orders-parliamentary-briefing.pdf>

^{vii} <https://www.libertyhumanrights.org.uk/news/blog/knife-crime-prevention-orders-would-only-harm-fight-against-violent-crime>

^{viii} <https://www.parliament.uk/documents/joint-committees/human-rights/correspondence/2017-19/Home-Office-Minister-Offensive-Weapons-Bill.pdf>

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

^x 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>

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

^{xii} <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2019/02/CCO-Gangs.pdf>

^{xiii} <http://www.nationalcrimeagency.gov.uk/news/news-listings/1586-nearly-7-000-potential-victims-of-slavery-and-trafficking-reported-in-2018>

^{xiv} https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785055/Knife_crime_safeguarding_children_and_young_people_110319.pdf

^{xv} <https://publications.parliament.uk/pa/cm200405/cmselect/cmhaff/80/80.pdf>

^{xvi} <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0162/18162-I.pdf>

^{xvii} http://data.parliament.uk/DepositedPapers/Files/DEP2019-0369/Baroness_Williams_to_Lord_Ponsonby-Offensive_Weapons_Bill_3rd_reading.pdf