



**Criminal Justice Bill**

**House of Commons**

**Second Reading**

**Briefing**

**November 2023**

**For further information contact**

Ailsa McKeon, Interim Criminal Lawyer

Email: [amckeon@justice.org.uk](mailto:amckeon@justice.org.uk)

JUSTICE, 2nd Floor Lincoln House, 296-302 High Holborn, London, WC1V 7JH

email: [admin@justice.org.uk](mailto:admin@justice.org.uk) website: [www.justice.org.uk](http://www.justice.org.uk)

1. JUSTICE is a cross-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of a UK justice system that is fair, accessible, and respects the rights of all, and which reflects the country's international reputation for upholding and promoting the rule of law.
2. This headline briefing outlines some of JUSTICE's major concerns in relation to the Criminal Justice Bill (the "**Bill**"). In short, the Bill is essentially an omnibus bill which inappropriately treats legislation as a panacea for a range of socio-economic issues, rather than addressing the underlying issues. We are deeply concerned that this Bill's measures, if enacted would be both ineffective and contrary to the rule of law for the reasons set out below.
3. **First, new offence provisions such as clauses 1 and 3 are over-broad and challenge the rule of law by reversing the burden of proof.** The clauses create new offences relating to things used in serious crime, theft or fraud, and provide that the court may assume that the accused possessed the relevant thing unless they can show they did not know of its presence or that they had no control over it. It is fundamental that any burden of proof should lie on the State, with its greater resources (which ought accordingly to fund police sufficiently to allow proper investigation) rather than with the individual. The presumptions of possession are particularly problematic for innocent persons in shared properties or vehicles: if suspicions are held about a particular individual, then it should be for the State to prove the beyond reasonable doubt where liberty is at stake.
4. **Secondly, the creation of new offences for knife crime risks causing further confusion and will not create sustainable solutions.** Offences relating to knife crime are currently spread out across several pieces of legislation. Clause 9 would create a further new offence for a person to have in their possession a relevant weapon with the intention to use unlawful violence against another person. As currently drafted, this would include enabling someone else to cause another person to believe that unlawful violence will be used against them or someone else. This provision is unclear and impracticable. Moreover, we agree with other experts that creating new offences which overlap with existing offences will create confusion for law enforcement bodies and will not solve the underlying drivers of knife crime – which requires earlier intervention outside of the criminal justice system.

5. **Similarly, JUSTICE is concerned by any reductions in scrutiny over investigative agencies,** as proposed by clauses 18 and 19. Steps should be taken to improve the functionality of magistrates' courts to provide warrants (where appropriate) more quickly, such as increasing funding and employing more district judges, rather than decreasing accountability. More should also be done to inhibit supply of knives with no legitimate purpose in the first place.
  
6. **A statutory power to require individuals facing a life sentence to attend sentencing hearings is at best unnecessary and at worst, when backed by force, dangerous.** Courts already have the power to direct a defendant's attendance and address failure to do so as contempt, so clause 41A adds nothing.<sup>1</sup> Clause 41B puts both prisoners and custody officers at risk – and is not limited to those facing a life sentence. Moreover, established data on disproportionality in the use of force mean that offenders from racialised minorities<sup>2</sup> are at greater risk in the case of any excesses. It is arguably more important to provide victims and families with greater support outside the criminal justice process than to expect that they will achieve closure via sentencing, particularly if the offender does not wish to be present and chooses to express this at court.
  
7. **JUSTICE is particularly concerned about the proposal in clauses 25 to 29 to transfer individuals to prisons which are rented abroad.** Bearing in mind the positive links between community ties and rehabilitation, public safety is likely to be compromised by these provisions. There are also insufficient safeguards over the human rights of prisoners and their families, particularly absent any restrictions on the territories to which prisoners may be sent. The Government must not abdicate its responsibilities and the rights to due process for those within UK prisons.
  
8. **Insufficient evidence has been provided to support the increased use of electronic monitoring requirements for those subject to Serious Crime Prevention Orders.** The use of electronic monitoring constitutes a significant intrusion upon a person's private life. Our report on Behavioural Control Orders found that there is a lack of evidence to "*quantify the scale of the impact* [of electronic monitoring and polygraph testing] *on reoffending and*

---

<sup>1</sup> See e.g. *Santiago* [2005] EWCA Crim 556; *Collins* [2016] EWCA Crim 682.

<sup>2</sup> See e.g. HMPPS, *Equality Analysis: Use of Force* (2019), available at <http://prisonreformtrust.org.uk/wp-content/uploads/2022/02/Use-of-Force-Equality-Analysis.pdf>; HM Chief Inspector of Prisons, *Thematic Review: The Experiences of Adult Black Male Prisoners and Black Prison Staff* (2022), available at <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2022/12/The-experiences-of-adult-black-male-prisoners-and-black-prison-staff-web-2022.pdf>, Section 4.

*public safety*.<sup>3</sup> The utility of these measures have been the subject of academic debate.<sup>4</sup> JUSTICE is particularly concerned about proposals to impose Serious Violence Reduction Orders, and therefore, electronic monitoring, on those who have been acquitted by the courts.<sup>5</sup> All too often, Behavioural Control Orders are being used to “*obtain prosecution by the backdoor*”.<sup>6</sup> Basing the test for imposition on whether or not an Order may “*restrict*”, “*prevent*” or “*disrupt*” “*involvement*” in a crime<sup>7</sup> is ambiguous, overly broad and may lead to inconsistent enforcement across the country.<sup>8</sup>

**9. The provisions regarding “*nuisance begging*” and “*nuisance rough sleeping*” are discriminatory and dehumanising and will fail to address anti-social behaviour.**

Homelessness is a symptom of systemic failures to address housing, poverty and related social issues such as inadequate mental health provision. Criminalisation will not resolve homelessness, nor reduce anti-social behaviour. Our report found that those experiencing homelessness are significantly more likely to be victims of anti-social behaviour than perpetrators of it.<sup>9</sup> We are deeply troubled by the expansive nature of the suggested measures – which we consider will draw vulnerable persons further into the criminal justice system and make it significantly easier to discriminate against this population. The penalty for breaching the measures contained in clause 38-64 is one month’s imprisonment. Not only are short-term prison sentences costly, but they are also ineffective and can have an adverse impact on re-offending. Given the shortages in prison space, there are serious questions as to the workability of these measures. Moreover, the new measures proposed in clauses 38-56 merely duplicate and extend existing powers that local authorities and the police have available to them to tackle a range of anti-social behaviours, e.g., Dispersal Powers,<sup>10</sup> Community Protection Notices,<sup>11</sup> and Public Spaces Protection Orders.<sup>12</sup>

---

<sup>3</sup> In the context of including polygraph testing and electronic monitoring as positive requirements within Sexual Risk Orders and Sexual Harm Prevention Orders, see Home Office, ‘Impact Assessment: Police, Crime, Sentencing and Courts Bill’ (30 June 2021), p.51

<sup>4</sup> See for example, Scottish Government ‘Electronic monitoring: uses, challenges and successes’, (April 2019)

<sup>5</sup> See Clause

<sup>6</sup> JUSTICE, “[Lowering the Standard: A Review of Behavioural Control Orders in England and Wales](#)”, (October, 2023), para 3.17, 3.20; 3.26 – 3.27

<sup>7</sup> See Clause 37 of the Bill which inserts a new section 19A into the Serious Crime Act 2007

<sup>8</sup> JUSTICE, “Lowering the Standard: A Review of Behavioural Control Orders in England and Wales” see n.6, para 3.11 and para 3.14 – 3.15

<sup>9</sup> Ibid, para 3.71

<sup>10</sup> Section 35 of the Anti-Social Behaviour, Crime and Policing Act 2014

<sup>11</sup> Section 43 of the Anti-Social Behaviour, Crime and Policing Act 2014

<sup>12</sup> Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014

10. **The extension of existing Behavioural Control Orders, such as Community Protection Notices and Public Spaces Protection Orders will lead to worse outcomes for vulnerable individuals and impose greater burdens on under-resourced local authorities.** Clause 65 – 71 of the Bill expands the use of these powers by giving the Police the power to enforce Public Spaces Protection Orders, expand the maximum period of Dispersal Powers from 48 hours to 72 hours, and lowers the age at which someone can become subject to a Community Protection Notice, to 10. We reiterate the position set out in our response to the Home Office Anti-Social Behaviour Plan, that such powers must be clarified and narrowed. Community Protection Notices, Public Spaces Protection Orders, and Dispersal Orders are too often inappropriately used in ways that cause harm to those experiencing mental ill-health or who are otherwise protected under the Equality Act 2010.<sup>13</sup> We echo the statements made by youth experts, including the Youth Justice Board, that coercion tactics do not work on children and criminalising them will only increase the likelihood of re-offending. The use of these powers has been proven to make matters worse and can actually trigger anti-social behaviour.<sup>14</sup> Training amongst local authorities is poor and many local authorities simply do not have the resources or funding to ensure conditions and requirements imposed by them, can be enforced. This means that such measures are enforced inconsistently across the country, creating a “postcode lottery” for victims with little prospect of creating meaningful change for those subject to them.
11. **JUSTICE is troubled by the “reasonable excuse” defence contained in new clause 66AA(5)** (see schedule 2). This would allow a police officer to take or record an intimate photo of a person without their consent “*where it was necessary [...]for the purpose of investigating a crime*”.<sup>15</sup> If the aim of this defence is to protect against innocent capture in the course of surveillance, then the better approach is to require specific intent in the offence (“*A intentionally takes a photograph, or records a film, which A intends to capture another person (B) in an intimate state,*”), rather than to create a broad defence. Public confidence, and particularly that of women, is likely to be significantly undermined by the current approach.

---

<sup>13</sup> JUSTICE, “Lowering the Standard: A Review of Behavioural Control Orders in England and Wales” see n.6, para 3.69 – 3.70

<sup>14</sup> Ibid, para 3.101 – 3.106

<sup>15</sup> Criminal Justice Bill, ‘[Explanatory Notes](#)’, (14 November 2023).

12. **JUSTICE is concerned that the “*duty of candour*” on police introduced in clause 73 falls far short of the proposals called for by bereaved families and survivors<sup>16</sup> and is unlikely to combat institutional defensiveness and denial.**<sup>17</sup> The clause places a requirement on the College of Policing to issue a code of practice setting out actions that should be taken by a chief officer of police to ensure police under their control act ethically, including acting in an open and transparent way. The Bill leaves it to the College of Policing to determine what acting ‘in an open and transparent way’ entails, and how this is to be achieved. Additionally, it is not clear from the Bill how the purported duty of candour would be enforced. There is no suggestion in the Bill of consequences for either chief officers or their subordinates if they fail to act openly and transparently. We are concerned that this Bill would allow the police themselves to define the parameters of the duty of candour, as well as its enforcement.

**JUSTICE**

**27 November 2023**

---

<sup>16</sup> c.f. the proposals for a duty of candour in [Hillsborough Law](#).

<sup>17</sup> See, for instance, Baroness Casey, [An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service](#) (2023), p. 13; The Right Reverend James Jones KBE, [‘The patronising disposition of unaccountable power’ A report to ensure the pain and suffering of the Hillsborough families is not repeated](#) (2017).