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**THE HUMAN RIGHTS IMPLICATIONS OF SERIOUS CRIME PREVENTION
ORDERS: SUPPLEMENTAL OPINION**

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THE HUMAN RIGHTS IMPLICATIONS OF SERIOUS CRIME PREVENTION ORDERS: SUPPLEMENTAL OPINION

I. INTRODUCTION AND EXECUTIVE SUMMARY

1. On 8 September 2023, King & Spalding provided to JUSTICE an Advisory Opinion on the Human Rights Implications of Behavioural Control Orders (“**BCOs**”, the “**BCO Opinion**”). The BCO Opinion set out certain cross-cutting human rights implications of BCOs generally and addressed in detail the human rights implications of three specific BCOs, namely, Knife Crime Prevention Orders, Sexual Risk Orders, and Public Space Protection Orders.
2. In February 2025, JUSTICE instructed King & Spalding to provide a supplemental opinion addressing the human rights implications of Serious Crime Prevention Orders (“**SCPOs**”), both under the original 2007 Serious Crime Act¹ (the “**2007 Act**”) and under the proposed amendments to the 2007 Act in the 2025 Border Security Asylum and Immigration Bill² (the “**2025 Bill**”). Our findings are set out below, with reference to the underlying analysis in the BCO Opinion.
3. In summary:
 - 3.1 SCPOs under the unamended 2007 Act give rise to a number of human rights implications and potential violations of the European Convention on Human Rights (the “**Convention**”).³ These are common to many other BCOs, as set out in the BCO Opinion. Most significantly:
 - 3.1.1 The conditions imposed under an SCPO may, in substance, be equivalent in character and severity to the consequences of a criminal conviction. As such, and notwithstanding the characterisation of

¹ <https://www.legislation.gov.uk/ukpga/2007/27/contents> [accessed 28.03.2025 16:13]. The 2007 Act also contains provisions relevant to Scotland and Northern Ireland. For purposes of this opinion, we have only considered England and Wales.

² <https://bills.parliament.uk/bills/3929> [accessed 30/03/2025 22:39].

³ https://www.echr.coe.int/documents/d/echr/convention_ENG [accessed 30/03/2025 21:26].

proceedings relating to SCPOs as “civil” under the 2007 Act, we consider that the more protective safeguards applicable in criminal proceedings (for example in relation to the standard of proof and rules of evidence) should apply in proceedings relating to SCPOs. Adherence to the less protective civil standards would potentially give rise to a breach of Article 6. This is the case notwithstanding the 2023 Supreme Court judgment in *Jones*, which must be confined to its particular facts and the statutory regime governing the BCO in question in that case, which is distinct from (and offers fewer safeguards) than the regime governing SCPOs;

3.1.2 Such characterisation also entails that the conditions imposed under an SCPO, which may effectively create an individualised criminal penal code, must be drafted in such a way as to meet the quality of law requirements under Article 7;

3.1.3 Moreover, as the Government recognises in the 2025 Bill materials, the conditions imposed by SCPOs may give rise to *prima facie* infringements of a number of qualified Convention rights, in particular under Article 8. These can only be justified where the measures are for a legitimate purpose, necessary and proportionate and where adequate safeguards against arbitrariness are in place. However, given the breadth of the powers afforded to decision makers, there are concerns that this is not the case with respect to SCPOs.

3.2 The position is *a fortiori* with respect to the amended SCPO regime envisaged under the 2025 Bill. In particular:

3.2.1 The introduction of a power to impose electronic monitoring conditions introduces an additional and highly intrusive form of infringement on a person’s liberty and privacy. Not only does this further support the characterisation of SCPOs as essentially criminal in nature, thus necessitating the more protective safeguards under Articles 6(2) and 6(3), such measures would also require particularly stringent safeguards

against arbitrariness and compelling justification for their necessity and proportionality. However, there are no such additional safeguards built into the statutory regime;

3.2.2 Given our findings on the criminal equivalence of certain SCPOs, the availability of Interim SCPOs (“**ISCPO**”s) on an *ex parte* basis gives rise to an incompatibility with Article 6 of the Convention. A person liable to be subject to such severe and punitive measures as may be imposed under an SCPO must have the benefit of the minimum standards available under Articles 6(2) and 6(3). A retrospective right to challenge the IPCSO in court, with vague and indeterminate timeframes, does not suffice and also gives rise to a potential breach of the reasonable time requirement under Article 6(1);

3.2.3 Expanded and mandatory notification requirements envisaged under the 2025 Bill also give rise to additional Article 8 considerations.

II. BACKGROUND – LEGISLATIVE SCHEME FOR SCPOS

A. SCPOs under the 2007 Act

4. This section sets out the legislative scheme applicable to SCPOs under the 2007 Act, including (1) the power to make an SCPO and relevant standard of proof, (2) the prohibitions, restrictions and requirements that may be imposed under an SCPO, (3) the variation, discharge and breach of SCPOs and (4) the limits on SCPOs imposed by the 2007 Act.

(1) Power and Basis for Making an SCPO and Applicable Standard of Proof

5. Section 1(1) of the 2007 Act empowers the High Court in England and Wales to make an SCPO if – (a) it is satisfied that a person has been involved in serious crime (whether in England and Wales or elsewhere); and (b) it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales.

6. Section 1(5) confirms that an SCPO means an SCPO under Section 1(1) or under

Section 19 of the 2007 Act. Pursuant to Section 19, a Crown Court may make an SCPO in respect of a person who has been convicted before by a magistrates' court of having committed a serious offence in England and Wales and has been committed to the Crown Court, or has been convicted by or before the Crown Court of having committed a serious offence in England and Wales. Again, an SCPO may only be made if the court has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales. An order must not be made except in addition to a sentence imposed for the offence, or in addition to a conditional discharge order.

7. Section 2(1) defines what it means for a person to have “*been involved in serious crime in England and Wales*” and includes – (a) having committed a serious offence, (b) having facilitated the commission by another person of a serious offence; and (c) having conducted himself in such a way that it was likely to facilitate the commission by himself or another person of a serious offence, whether or not the offence was committed.
 - 7.1 A “*serious offence*” means an offence under the law of England and Wales that – (a) is specified or falls under Part 1 of Schedule 1; or (b) is one which, in the circumstances, the court considers to be sufficiently serious to be treated for the purpose of the application as if it were so specified.
 - 7.2 “*Involvement*” in a serious crime includes – (a) commission of a serious offence, (b) conduct that facilitates the commission by another person of a serious offence, or (c) conduct which is likely to facilitate the commission by himself or another person of a serious offence, whether or not the offence was committed.
8. Part 1 of Schedule 1 refers to a broad range of offences including (a) offences concerning the production and supply of drugs, (b) offences under the Modern Slavery Act 2015, (c) offences relating to unlawful immigration and trafficking, (d) terrorism, (e) offences under the Firearms Act 1968, (f) offences under the Sexual Offences Act 2003, (g) armed robbery, (h) offences under the Proceeds of Crime Act 2002, including concealment and use of criminal property, (i) theft, (j) fraud, (k) tax evasion, (l) bribery,

(m) forgery and counterfeiting, (n) computer misuse, (o) copyright infringement, (p) participation in organised crime, (q) breaches of sanctions and freezing orders. Part 2 of the 2007 Act also covers inchoate offences or encouraging or assisting crime.

9. Section 4 of the 2007 Act states that (1) when considering if a person has committed a serious offence, (a) a court must decide that the person has done so if (i) he has been convicted and (ii) the conviction has not been quashed and the person has not been pardoned, but (b) the court must not otherwise decide if the person has committed the offence. Further, (2) in deciding whether a person facilitates the commission by another person of a serious offence, and (3) conducts himself in a way that is likely to facilitate the commission by himself or another person of a serious offence, the court must ignore (a) any act that the respondent can show to be reasonable in the circumstances, and (b) subject to this, his intentions, or other aspect of his mental state, at the time.
10. Section 35 and 36 of the 2007 Act state that proceedings in the High Court and Crown Court relating to SCPOs are civil proceedings and that, by way of consequence, the “*standard of proof to be applied by the court in such proceedings is the civil standard of proof.*” In the Crown Court, further consequences are provided, namely that the court (a) is not restricted to considering evidence that would have been admissible in criminal proceedings in which the person was convicted and (b) may adjourn proceedings even after sentencing the person.

(2) Prohibitions, Restrictions and Requirements That May Be Contained In An SCPO

11. Section 1(3) states that an SCPO may contain – (a) such prohibitions, restriction or requirements; and (b) such other terms; as the court considers appropriate for the purposes of protecting the public by preventing, restricting or disrupting involvement by the person concerned in serious crime.
12. Section 5 contains examples of the types of provisions that may be made by SCPOs, without limitation. These include prohibitions, restrictions or requirements on individuals relating to *e.g.*, (a) financial, property or business dealings or holdings, (b) working arrangements, (c) means by which a person communicates or associates with

others, or the persons with whom they communicate or associate, (d) premises to which a person has access, (e) use of premises and (f) travel. Further examples of requirements that may be imposed include orders (a) to answer questions or provide information, or (b) produce documents, at a time, at a place, in a form and manner to a law enforcement officer. Section 5(6) confirms that SCPOs may include orders concerning a person's private dwelling.

(3) Variation, Discharge and Breach and SCPOs

13. In terms of Section 17, a court can, on application, vary an SCPO if it has reasonable grounds to believe that the terms of the order would protect the public by preventing, restricting or disrupting involvement by the person who is the subject in serious crime in England and Wales. In terms of Section 18, a court can, on application, discharge an SCPO.
 - 13.1 In terms of both Section 17 and 18, an application may be made by the “*relevant applicant authority*” or (a) the person who is subject to the order or (b) any other person.
 - 13.2 A court may not consider an application from the subject of the order “*unless it considers that there has been a change of circumstances affecting the order.*” Although both sections refer to “*any other person*”, it is clarified that the person must be significantly adversely affected by the order and one of the following conditions A or B is met. Further, in respect of variation orders, the application must not be for the purpose of making the SCPO more onerous. Conditions A and B are as follows: (A) the person has, under Section 9, been given an opportunity to make representations or has made an application under that section in earlier proceedings, and there has been a change of circumstances affecting the order; or (B) the person has not made an application in earlier proceedings and it was reasonable in all the circumstances for the person not to have done so.
14. The Crown Court also has the power to vary an SCPO on conviction; and to vary or replace an SCPO on breach. Under Section 22E, if a person subject to an SCPO is

charged with a serious offence or breach of the SCPO, the Crown Court on application of the “*relevant applicant authority*” may vary the SCPO so it continues until one of a number of events occur, including (a) conviction of the offence, (b) acquittal of the offence, (c) the charge is withdrawn, (d) proceedings are discontinued or an order is made for the charge to lie on the file.

15. Decisions of the High Court to make an SCPO, to vary or not vary, or to discharge or not discharge an SCPO may be appealed to the Court of Appeal by any person who was given an opportunity to make representations in the proceedings concerned. Decisions of the Crown Court to make or vary an SCPO may also be appealed with leave to the Court of Appeal.
16. Breach of an SCPO is an offence under Section 25(1) of the 2007 Act. A person is liable (a) on summary conviction, to imprisonment not exceeding 12 months or a fine not exceeding the statutory minimum or to both; (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.

(4) Limits on SCPOs

17. Section 1(4) states that the powers of the court are subject to the safeguards in sections 6 to 15 of the 2007 Act. In summary, the safeguards are:
 - 17.1 SCPOs can only be made in respect of persons 18 years or older;
 - 17.2 SCPOs in England and Wales can only be made on application by the DPP, the Director of the SFO or a Chief Officer of the police provided that, in respect of the police, the application is terrorism-related and the Chief Officer has consulted the DPP;
 - 17.3 A court must give a person, on application, an opportunity to make representations in proceedings about an SCPO, the variation of an SCPO and/or discharge of an SCPO if it considers that the making of the order / variation / discharge would be likely to have a significant adverse effect on that person;
 - 17.4 A person is only bound by an SCPO if he is represented at the proceedings where the SCPO or variation was made, or a notice setting out the terms of the

order or variation has been served on him; and

17.5 An SCPO may not require a person to answer questions or provide information orally. An SCPO may also not require a person to disclose privileged information or documents, or answer any privileged questions. A statement in response to a requirement may also not be used in criminal proceedings against that person unless certain conditions are met.

18. SCPOs must specify when they come into effect and cannot be in force for longer than 5 years (although a court may make a new order to the same or similar effect if the order ceases to be in force).

B. Overview of proposed changes to SCPOs pursuant to the 2025 Bill

19. The 2025 Bill was introduced in the House of Commons on 30 January 2025 with the objective of solidifying border security measures and tackling organised immigration crime in the UK. However, Part 3 of the 2025 Bill also seeks to amend the statutory regime for SCPOs, which can be used in a wide variety of cases (which are by no means restricted to cases concerning unauthorised immigration).

20. Parliamentary debates relating to the 2025 Bill indicate that the Government considers SCPOs as a “*tool that is underused at the moment*”⁴ and capable of filling gaps to facilitate quick and effective intervention by law enforcement authorities. Accordingly, the 2025 Bill attempts to strengthen the SCPO regime through amendments to the 2007 Act. Key amendments are briefly outlined here, with the analysis of the potential human rights implications of these changes set out below at Part IV:

20.1 Introduction of new powers strengthening the operation of SCPOs by giving courts an express power to impose **electronic monitoring as a condition of an SCPO** (Clause 48 of the 2025 Bill, proposing introduction of new Sections 5B – 5D of the 2007 Act). Electronic monitoring had been omitted from the

⁴ House of Commons Parliamentary Debates on the Border Security, Asylum and Immigration Bill, Second Sitting, 27 February 2025.

conditions previously available under the 2007 Act;

- 20.2 Introduction of **ISCPOs** to enable preventative action whilst the courts consider a full application (Clause 49 of the 2025 Bill proposing the introduction of a new Section 5E and Section 5F of the 2007 Act). These amendments would provide courts with the power to impose immediate restrictions or requirements by preventing, restricting or disrupting the person’s involvement in serious crime pending the determination of a full SCPO application, including through *ex parte* applications; and
- 20.3 Introduction of new **notification requirements** where SCPOs are imposed, requiring that a person provides certain personal information to the relevant authorities within three days of an order coming into force (Clause 51 of the 2025 Bill, proposing introduction of Section 15A of the 2007 Act).
21. Clause 50 of the 2025 Bill also extends the scope of applicants for an SCPO to include the Director General of the National Crime Agency, the Commissioners of His Majesty’s Revenue and Customs; Chief Officer of Police, the Chief Constable of the British Transport Police, the Chief Constable of the Ministry of Defence Police, who are empowered to make an SCPO application after consulting with the Director of Public Prosecutions.

III. HUMAN RIGHTS IMPLICATIONS OF SCPOS UNDER THE 2007 ACT

22. The following section sets out the key human rights implications of SCPOs under the existing (*i.e.*, unamended) SCPO regime provided for in the 2007 Act.
- A. Civil / criminal nature of SCPOs – standard of proof, evidential matters and legal certainty under Articles 6 and 7 of the Convention**
23. In the BCO Opinion, we conclude that: “*even where a measure (such as a Behavioural Control Order) is characterised as civil under domestic law, the recipient may nevertheless be entitled to the heightened, criminal safeguards afforded under Article 6(2) and 6(3) in circumstances where the measure in question is sufficiently serious and / or where the general character of the rule and the purpose of the penalty suffice*

*to show that the measure in question is, in substance, criminal in nature. Where the measure deprives the recipient of their liberty, this will ordinarily be the case. However, this is not a pre-requisite and, where the character of a measure is both deterrent and punitive, such as to be treated as criminal in nature, it will also attract the higher criminal safeguards.”*⁵ The same principle applies equally in relation to SCPOs.

24. In this context, we note that the 2007 Act expressly states that proceedings in the High Court and Crown Court relating to SCPOs are “*civil proceedings*” and that, as a consequence, the civil standard of proof shall apply.⁶ Moreover, in the Crown Court, the legislation stipulates that the court is not restricted to considering evidence that would have been admissible in criminal proceedings in which the person was convicted,⁷ thus providing the basis for the admissibility of hearsay or other evidence in cases relating to SCPO applications which would ordinarily not be permitted in a criminal case (or only permitted pursuant to special procedural safeguards).
25. However, the conditions which can be imposed as part of an SCPO are severe and far-reaching. For example, according to the CPS Precedent Library for SCPOs, they may include: restriction on use of mobile telephones, computers, specific instant messaging services or the internet; restrictions on possession of cash; restrictions on bank accounts; restriction on business activities; prohibition on the performance of certain professions; prohibition on use and ownership of certain means of transport; and non-association with particular persons.⁸
26. We recall that the fact that a person is not handcuffed, put in a cell or otherwise physically restrained is not determinative of whether there has been a deprivation of liberty for the purposes of the Convention (see paragraph 70 of the BCO Opinion); and that, when taken in context, a range of measures, including prohibitions on use of computers and other communications devices, may amount to a deprivation of liberty

⁵ The BCO Opinion ¶ 19 and ¶¶ 9 to 18 setting out the underlying authorities.

⁶ The 2007 Act, ss 35 and 36.

⁷ The 2007 Act, s 36(3)(a).

⁸ https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/SCPO-precedent-library.pdf [accessed 30/03/2025 21:58].

(see paragraph 71 of the BCO Opinion and the authorities cited therein). Accordingly, we consider that some of the conditions which might be imposed under an SCPO (whether individually or cumulatively), could effectively result in an effective loss of liberty.

27. Moreover, breach of any one of these conditions is a criminal offence under Section 25(1) of the 2007 Act which may lead to imprisonment for a term of up to five years (Section 25(2)(b)).

28. We note that:

28.1 In the course of the passage of the Serious Crime Bill in both Houses of Parliament in 2007, the government stated that SCPOs were not intended, and would not be used as "*a soft alternative to prosecution ... there has been much mistaken comment about these orders being a way for law enforcement agencies to get round troublesome prosecutions ... that is not the intention*".⁹

28.2 The CPS Guidance on SCPOs¹⁰ (the "**CPS Guidance**") states that SCPOs do not amount to a "*punishment*" or "*penalty*".

29. However, in our view, the ability of a judge to impose an SCPO on application without conviction for an offence as well as the fact that highly restrictive conditions can be imposed under SCPOs negates the view that SCPOs are purely preventative. They are at least capable of having a punitive, as well as preventative, function.

30. Accordingly, notwithstanding the classification of proceedings relating to SCPOs as "*civil*" under the 2007 Act, proceedings relating to an SCPO may more appropriately be characterised as criminal, such that the subject benefits from the more protective safeguards under Articles 6(2) and 6(3) of the Convention.

31. It is clear that the CPS has previously taken the same view and anticipates that a

⁹ Baroness Scotland 7 February 2007 Hansard HL col. 728.

¹⁰ <https://www.cps.gov.uk/legal-guidance/serious-crime-prevention-orders> [accessed on 27 March 2025 at 16:31].

criminal standard of proof will be applied in proceedings relating to SCPOs:

- 31.1 *“Although the standard of proof is to be the civil standard, in the context of anti-social behaviour orders and civil proceedings, the House of Lords held in R v Manchester Crown Court ex parte McCann [2002] UKHL 39, that the standard of proof to be applied in deciding whether anti-social behaviour had taken place was equivalent to the criminal standard of beyond reasonable doubt. The court stated, “the standard of proof to be applied to a defendant’s conduct was the criminal standard. There were good reasons, in the interests of fairness, for applying that higher standard where allegations were made of criminal or quasi-criminal conduct which, if proved, would have serious consequences for the person against whom they were made.”*
- 31.2 *It must be anticipated that the same standard will apply in proceedings for a SCPO, where the consequences may be even more restrictive and severe.”*
32. The CPS Guidance was last updated in April 2022 and refers to the case of *McCann*.¹¹ Since then, the Supreme Court handed down its judgment in *Jones*¹² in which it criticised the judgment in *McCann* and rejected an appeal that the higher, criminal standard of proof should be applied to gang injunctions under Section 34 of the Policing and Crime Act 2009. However, as set out at paragraph 26 of the BCO Opinion, our view is that *Jones* must be confined to its facts and the specific legislative regime which governs the imposition of gang injunctions (which imposes a number of safeguards and restrictions which limit the severity of the measures which can be imposed under a gang injunction and which do not necessarily apply in the context of SCPOs). Therefore, in our view, the CPS Guidance remains apposite, notwithstanding the later judgment in *Jones*.
33. In summary, the application of a civil standard of proof and the more relaxed rules of evidence applicable to SCPOs as specified in the 2007 Act are potentially incompatible

¹¹ [2002] UKHL 39.

¹² [2023] UKSC 27.

with a person's rights under Article 6 of the Convention.

34. With respect to evidence, specifically, Article 6(3)(d) of the Convention provides a person who is criminally charged the right “*to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.*” As noted in the BCO Opinion, in the McCann case, the House of Lords deferred to the lower court's categorisation of proceedings as civil and permitted admission of hearsay evidence for the imposition of the order. However, the Court was mindful to state (as the lower court did too) that “[*t*]he weight of such evidence might be limited. On the other hand, in its cumulative effect it could be cogent. It all depends on the particular facts.” Therefore, the use of evidence that would not be admissible in criminal proceedings must be treated with caution to avoid a breach of Article 6.
35. The criminal character of an SCPO would also entail that Article 7 is engaged. Under the 2007 Act, courts are given broad powers to craft conditions, restrictions and requirements that will apply under an SCPO. The CPS Guidance acknowledges that: “*it is clear this gives a very wide discretion to the judge, limited only by the requirement that the conditions or requirements must be directed and appropriate to the statutory purpose.*” This gives rise to a concern that the conditions themselves, which may amount in substance to a personalised criminal penal code, will not always meet the quality of law requirements (particularly in relation to foreseeability) under Article 7 of the Convention.

B. Conditions imposed under SCPOs and potential infringements of Articles 5, 8, 9, 10 and 11 of the Convention

36. Possible restrictions or requirements that can be imposed under SCPOs on individuals are wide-ranging and may relate to *e.g.*, (a) financial, property or business dealings or holdings, (b) working arrangements, (c) means by which a person communicates or associates, or the persons with whom they communicate or associate, (d) premises to which a person has access, (e) use of premises and (f) travel. Section 5(6) of the 2007 Act confirms that SCPOs may include orders concerning a person's private dwelling (including where a person may reside).

37. However, this is a non-exhaustive list. The 2007 Act leaves significant discretion to decision makers, which creates the potential for a wide and unpredictable range of conditions.

38. The imposition of such conditions may result in a *prima facie* infringement of various Convention rights, namely:

38.1 Article 5. For Article 5 to be engaged there needs to be a deprivation of liberty. However, this does not necessarily involve incarceration. For example, as set out in *Secretary of State for the Home Department v. JJ*¹³ and *Secretary of State for the Home Department v. AP*¹⁴, a lengthy curfew coupled with other intrusive measures which are considered so severe as to be destructive of a person's liberty, is likely to engage Article 5.

38.2 Article 8. Article 8 protects the right to respect for private life, family life, home and correspondence. Any interference with Article 8 rights must be, *inter alia*, in accordance with the law *i.e.*, clear, foreseeable and adequately accessible. A number of the possible conditions would give rise to a *prima facie* infringement of Article 8, including restrictions on where a person can live, who they can associate with, where they can go, and SCPOs ordering a person to report and/or make disclosures to *e.g.*, a police officer. However, as we noted in the BCO Opinion:

38.2.1 Article 8 cannot be relied on in order to complain of personal, social, psychological and economic suffering which is a foreseeable consequence of one's own actions, such as the commission of a criminal offence or similar misconduct;

38.2.2 Decisions on the validity of conditions in respect of Article 8 depend on all of the available evidence. For example, in *R (on the application of F)*

¹³ [2007] UKHL 45.

¹⁴ [2010] UKSC 24.

*v. Secretary of State for the Home Department*¹⁵, the Supreme Court found that the Sexual Offences Act was incompatible with Article 8 in that it subjected sex offenders (sentenced for 30 months or more) to notification requirements for the rest of their lives without the opportunity of review. However, in *R (on the application of Irfan) v. Secretary of State for the Home Department*¹⁶, a 10-year notification requirement for an offender convicted of a terrorism offence was deemed to be “light touch” and not disproportionate given the unique threat of even a single act of terrorism.

38.2.3 Further, in respect of SCPOs, in *R v Oki*¹⁷ the Court of Appeal endorsed the approach of passing consecutive sentences for further offences arising from the breach of the SCPO. In relation to a new SCPO, the court held that special justification was required for any interference with what was considered to be an essential item in the home – *i.e.*, in this case, a computer. However, where the nature of the offences was to use computers to inflict harm, the judge had been entitled to conclude that the balance between Oki's interests and the wider interests of society should be decided in favour of a prohibition on the possession or use of computers in the home.

39. Articles 9, 10 and 11. Articles 9, 10 and 11 enshrine the rights to freedom of thought, conscience and religion, freedom of expression and the freedom of peaceful assembly and association, respectively. Depending on the particular facts of a case, a number of the conditions which may be imposed under an SCPO could infringe one or more of these rights.
40. In order to be lawful, any infringement of a qualified right (*i.e.*, in this context, under Articles 8, 9, 10 or 11 of the Convention) must be lawful, necessary and proportionate.

¹⁵ [2010] UKSC 17.

¹⁶ [2013] EWCA Civ 1471.

¹⁷ 06 July 2016, unreported.

As noted in the BCO Opinion, this entails, *inter alia*, that:

- 40.1 The infringement is compatible with the law, which in turn imposes certain quality of law requirements *i.e.*, that the law is clear, foreseeable and adequately accessible;¹⁸ and
- 40.2 Any discretion afforded to public authorities to interfere in these rights must be defined with reasonable clarity as to the scope and manner of the exercise of the relevant discretion to ensure that individuals are afforded the protection of the rule of law.¹⁹
- 41. Given concerns relating to the breadth of the powers afforded to the State and the wide discretion afforded to decision makers, we have concerns that SCPOs under the 2007 Act regime may not always meet these requirements. These concerns are exacerbated by certain amendments proposed under the 2025 Bill, as set out further below.

IV. HUMAN RIGHTS IMPLICATIONS OF SCPOS UNDER THE 2025 BILL

- 42. The section below examines the human rights implications of certain amendments to SCPOs which are proposed under the 2025 Bill, namely: electronic monitoring, ISCPOs, and notification requirements.

A. Electronic Monitoring

(1) Procedural and substantive amendments to the 2007 Act – Electronic Monitoring

- 43. The CPS Guidance specifically notes that, in the course of the 2007 Act’s passage through Parliament, the Government indicated that the use of tagging as a condition of an SCPO was not envisaged. It seems that the Government has since changed its mind.
- 44. Clause 48 of the 2025 Bill would introduce Section 5B titled “*electronic monitoring requirements*”. This provides that an SCPO may require an individual to “*submit to*

¹⁸ The BCO Opinion ¶ 81 and authorities cited therein.

¹⁹ The BCO Opinion ¶ 81 and authorities cited therein.

electronic monitoring of their compliance with prohibitions, restrictions or other requirements imposed by the order.”

45. While the clause does not provide a working definition of “*electronic monitoring*”,²⁰ the Ministry of Justice in its Electronic Monitoring Strategy has defined electronic monitoring in England and Wales to include the wearing of ankle tags (curfew tags, GPS tags, alcohol tags) overseen by a “*supporting service*”.²¹
46. Notably, while an electronic monitoring requirement under SCPOs can only be imposed for a 12-month period, the Court is empowered to extend this period for 12 months at a time. However, the 2025 Bill does not specify the grounds on which such extensions may be made.
47. Section 5C details the conditions under which a Court would be able to impose an electronic monitoring requirement. An electronic monitoring requirement cannot be imposed in the absence of the person subject to an SCPO and any other person whose consent may be required to carry out the electronic monitoring conditions. Section 5C also covers the designation of “*relevant police area*” for the purposes of availability of monitoring arrangements. Such monitoring arrangements can either include a prohibition against entering a specified area or a requirement for a person to remain at a specified area as directed under an SCPO.
48. Section 5D requires the establishment of a Code of Practice relating to the processing of data as an outcome of electronic monitoring arrangements. However, the 2025 Bill does not put in place any remedial measures against a violation of the Code of Practice as Section 5D(2) states that “*any failure to act in accordance with a code issued under this section does not of itself make a person liable to any criminal or civil proceedings.*”

(2) Human rights implications of electronic monitoring

49. **Article 8 and electronic monitoring:** Electronic monitoring is a particularly intrusive

²⁰ Explanatory Notes to the BSAI, 2025.

²¹ Electronic Monitoring in Criminal Justice System, Ministry of Justice, June 2022, PDF p 6.

form of infringement on an individual's right to privacy.²²

50. In *R.E v The United Kingdom*, the ECtHR confirmed its approach that the more information that is disclosed about an individual's conduct by a surveillance measure, the more intrusive the infringement on that individual's right to privacy.²³ In the context of electronic monitoring, the imposition of ankle tags and continuous surveillance – allowing the State to monitor an individual's every movement in real time – encroaches significantly upon personal autonomy and the private sphere, representing a severe infringement. To be justifiable, any interference with privacy rights must demonstrate a clear, necessary, and proportionate response to the threat it seeks to mitigate.
51. The UK Government contends that electronic monitoring serves the legitimate aim of crime prevention.²⁴ There may well be specific cases where this is true. For example, where there is clear and cogent evidence that an individual poses a serious and immediate threat to the physical safety of another person. In such circumstances, it might be possible for the Government to discharge its burden of demonstrating that the infringement caused by imposition of electronic monitoring is necessary and proportionate. As such, the inclusion of such a power in the legislation is not necessarily violative of Article 8. However, there will be many other cases in which an SCPO is applied for and this is not the case. The provision in the 2025 Bill of such a broad power, without any statutory limitations or safeguards on its use, in circumstances where it could be applied to a person who has never been convicted (or even charged with) a crime, gives rise to a significant risk that individual SCPOs ordering electronic monitoring would fall short of the necessity and proportionality requirements and therefore violate Article 8. The requirement that a Court consider these factors before imposing an SCPO goes some way to mitigating this risk, given that the Court is required to act in accordance with Article 8 pursuant to Section 6 of the Human Rights Act. However, there remains considerable scope for discretionary decision making

²² See for example *ADL & Ors v The Secretary of State for the Home Department* [2024] EWHC 994.

²³ *R.E. v The United Kingdom* App no 62498/11 (ECtHR, 2015) ¶ 129.

²⁴ Border Security, Immigration and Asylum Bill, European Convention on Human Rights memorandum, ¶ 171.

which could give rise to inconsistent application of the power by the Courts.

52. In this context, it is notable that under the 2007 Act, the Government previously declined to provide a power to impose electronic monitoring and that the CPS explicitly guided prosecutors not to apply for SCPOs which imposed electronic monitoring requirements.
53. To address the risk of a violation of Article 8, additional statutory conditions for the imposition of electronic monitoring could be built into the 2025 Bill, for example setting a minimum threshold for the gravity of the risk that must be posed in order to justify a pre-conviction electronic monitoring order. Further, as and when the CPS Guidance is updated, it could provide further details on the circumstances in which electronic monitoring might be deemed necessary and proportionate.

B. Interim SCPOs

(1) Procedural and substantive amendments to the 2007 Act – ISCPOs

54. Clause 49 of the 2025 Bill proposes to insert Section 5E, which would allow an application for an ISCPO to be made when an application for a full SCPO is pending and awaiting an outcome in the High Court in England and Wales (or in the appropriate courts of Scotland or Northern Ireland in the case of terrorism-related SCPOs).
55. An application for an ISCPO may be made in the absence of any notice to the person subject to an ISCPO under Section 5F. In the case of such an application, this Section also provides such a person with the opportunity to make representations about the order either at a reasonably practicable time or in a hearing notified by the Court.
56. In relation to the above sections, Section 10 deals with notice requirements and its procedures. Accordingly, an ISCPO is not binding unless the person against whom such order or variation is represented at the proceedings or is served notice no later than 7 days after the date on which the order is made. For the purposes of serving notice, any authorised person is permitted to enter and search premises to look for the subject provided there are reasonable grounds for such search and entry. Further, Section 10(4) also allows other methods of serving notice in the event a notice cannot be served in

person.

(2) Human rights implications of ISCPOs

57. The Government acknowledges that the imposition of ISCPOs on an *ex parte* basis could engage Article 6(1) of the Convention. It justifies such imposition on the basis that it serves a legitimate public purpose and is proportionate.²⁵ However, it is unclear which specific protection under Article 6(1) the government contends to be qualified or on what basis.
58. Moreover, this analysis rests squarely on the civil character of the proceedings. As set out above in section III.A, we consider the character of an SCPO to be potentially equivalent to a criminal charge (particularly if the proposed amendment allowing electronic monitoring is introduced), meaning that the enhanced safeguards under Articles 6(2) and 6(3) would apply. These include that a suspect should have the following minimum safeguards:
- 58.1 *“to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
- 58.2 *to have adequate time and facilities for the preparation of his defence; and*
- 58.3 *to defend himself in person or through legal assistance of his own choosing [..]”*
59. These minimum safeguards are absolute; they cannot be qualified by necessity.
60. An individual subject to an application for an interim SCPO would benefit from none of them. On this basis, we do not consider the proposal for granting ICSPOs on an *ex parte* basis to be compatible with Article 6 of the Convention.
61. Further, whether an SCPO is deemed to be equivalent to a criminal charge or not, *ex parte* ISCPOs may violate the right under Article 6(1) of the Convention to a hearing within a reasonable time. While the 2025 Bill acknowledges the subject’s right to make

²⁵ Border Security, Immigration and Asylum Bill European Convention on Human Rights Memorandum, p. 28.

representations after the imposition of an *ex parte* ISCPO, it provides ambiguous timelines, lacking the clarity or urgency required in relation to such consequential proceedings. The 2025 Bill stipulates that if a court issues an ISCPO without notice, the person concerned (‘P’) must be given an opportunity to make representations about the order (a) as soon as reasonably practicable, and (b) at a hearing for which P has been notified in accordance with court rules.²⁶ However, in the interim, P will be subject to the IPCSO, possibly including conditions which severely curtail their liberty and other fundamental rights under the Convention. Therefore, putting aside the question of the criminal character of an SCPO and the attendant minimum safeguards, to ensure compatibility with Article 6(1) as well as the requirements for necessary procedural safeguards under Article 8 and the other qualified rights, the 2025 Bill should propose a strict timeline for holding hearings to allow individuals to present their case, rather than offering the current and indeterminate timelines.

C. Notification requirements

(1) Procedural and substantive amendments to the 2007 Act – Notification Requirements

62. The 2007 Act provides illustrative examples of notification requirements under SCPOs, highlighting potential obligations for individuals to provide information and produce documents at specified times, places, and manners to law enforcement officers.
63. The regime proposed by the 2025 Bill would formalise the notification requirements and mandates that a subject would be required to:
 - 63.1 Notify a specified person within three days of an SCPO coming into force about “*notifiable information*” which may encompass names, addresses, contact details, social media handles, motor vehicle information, financial details, identification documents, and employer information;
 - 63.2 Notify within three days of any changes to the notifiable information.

²⁶ The 2025 Bill, Clause 49 (Section 5F).

64. The 2025 Bill proposes to establish offences for non-compliance with notification requirements, with penalties including fines and imprisonment up to 5 years for breach of the notification requirements.

(2) Human rights implications of the new notification requirements

65. A mandatory obligation to provide specified information to the State, including in circumstances where the person in question may not have been charged, still less convicted of any crime, gives rise to a clear, *prima facie* infringement of an individual's private life under Article 8.
66. The Government's justification is that the notification requirements serve the legitimate aim of "*prevention of crime*" and that there are safeguards ensuring proportionality, namely that the subject has the right to apply to discharge the SCPO. However, neither justification bears much weight:
- 66.1 The prevention of crime may be a legitimate aim, in general, but it is necessary to demonstrate on a case-by-case basis that the specific information which an individual must notify is necessary in order to achieve such aim;
- 66.2 Moreover, the ability subsequently to discharge an SCPO and the related notification requirements does not provide any meaningful safeguard against the infringement of Article 8. By the point at which an SCPO is successfully discharged, the subject will already have had to hand over sensitive material to the State. This cannot subsequently be taken back.
67. Unless notification requirements can be justified on the basis of necessity and proportionality in the specific context of an individual application, they have the potential to violate Article 8 of the Convention.