JUSTICE

Crime and Policing Bill

House of Commons Committee Stage Briefing 2 – Parts 2 to 14

23 April 2025

Introduction

1. JUSTICE is a cross-party law reform and human rights organisation working to strengthen the UK justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.

2. This briefing addresses provisions within Part 2 - 14 of the Crime and Policing Bill ("the Bill") relating to Offensive Weapons; Retail Crime; Child Criminal Exploitation Prevention Orders; Public Order; Police Powers and Youth Diversion Orders. In our view, effective scrutiny of the Bill must place its provisions within the context of the current realities of our criminal justice system. In particular:

    a. The prison system is currently facing an **overcrowding crisis** which has necessitated emergency early release provisions[2] and prompted the Lord Chancellor to commission an Independent Sentencing Review, chaired by the Rt Hon David Gauke (the **"Sentencing Review"**). Part 1 of the Sentencing Review's final report, published in February 2025, warns that *"Without serious intervention, the current prison capacity crisis will persist and escalate far beyond manageable levels."* and urges a departure from the dominant *"tough on crime"* narrative in favour of a *"coherent and evidence-based approach to sentencing reform that considers system-wide impacts – particularly on victims..."*.[5] It also identifies a number of factors driving the projected increase in the prison population, including: a growth in police charging and prosecutorial activity resulting in increased flows into the criminal courts and the increased use and length of custodial sentences

    b. At the same time, the **Crown Court now faces its highest ever backlog on record**, with 73,105 cases outstanding as of September 2024.[6] The consequences of Crown Court delays can be severe for victims, witnesses and defendants alike. In response to the backlog, the Lord Chancellor has appointed Sir Brian Leveson to carry out an Independent Review of the Criminal Courts (the "**Criminal Courts Review**") with the purpose of achieving a more efficient criminal court system and improved timeliness for victims, witnesses and defendants, without jeopardising the requirement for a fair trial.[9]

3. The Ministry of Justice's impact assessment estimates that the Bill would lead to ca. 5,000 additional police recorded crimes per year, leading to more than 400 prosecutions and 300

convictions per year. According to the impact assessment, this would create a demand for at least 13 to 55 additional prison places.[10] JUSTICE strongly urges an approach to Bill scrutiny which is consistent with the aims of both the Sentencing Review and the Criminal Courts Review, and which is careful not to exacerbate unnecessarily the crises which have necessitated them.

4. We are also gravely concerned by the proliferation of new types of Behavioural Control Order such as Child Criminal Exploitation Prevention Orders ("**CCEPOs**") and Youth Diversion Orders ("**YDOs**"). Not only do they pose a serious threat to rights under the European Convention on Human Rights ("**the Convention**"), including the right to a fair trial,[1] but there is little to no evidence that they work. For example, in our 2023 working party report which explored the effectiveness of behavioural control orders at preventing harm,[2] we identified systemic issues relating to the fairness of Behavioural Control Orders; their potential incompatibility with human rights, the inconsistent approaches adopted by the Police, Crown Prosecution Service and the Courts when dealing with orders and the inability of the Police to properly monitor or respond to breaches of Behavioural Control Orders due to capacity issues.[3] This creates postcode lotteries for victims and undermines the rule of law by making enforcement of the law depend on the victims' location rather than circumstances.[4]

5. A lack of data and insufficient monitoring or evaluation also makes it impossible to determine the success rate of orders like CCEPOs and YDOs when it comes to actually preventing harmful behaviour or their cost-effectiveness when compared to other interventions e.g., injunctions where breach is contempt of court with a power of arrest attached or, in the case of children, informal education and psychology- centred interventions.[5] In particular, it is unclear what evidence-base the Government has used, and what consultation that it has undertaken, to determine that the creation of CCEPOs or YDOs will achieve their intended outcome of protecting children.[6]

Part 2 – Offensive Weapons (Clauses 10 – 13)

6. Clause 10 of the Bill creates a new offence of possession of a weapon with intent to use it for unlawful violence. The maximum sentence for the offence is four years' imprisonment, which is equivalent to that for both the offences of having a bladed article or offensive weapon in a public place[21] and threatening with a bladed article or offensive weapon in a public place.[22] Clause 11 of

---

[1] See independent legal advice sought by JUSTICE in 2023 and 2025: King and Spalding, *The Human Rights Implications of Behavioural Control Orders* (2023); and King and Spalding, *The Human Rights Implications of Serious Crime Prevention Orders: Supplemental Opinion* (2025).

[2] JUSTICE, *Lowering the Standard: a review of Behavioural Control Orders in England and Wales* (2023).

[3] *Ibid.*

[4] *Ibid.,* para 3.15.

[5] *Ibid.*, para 4.20.

[6] *Ibid.,* para 4.20.

the Bill increases the maximum sentences for offences relating to the possession and sale of offensive weapons and knives.[7]

7. JUSTICE recognises the importance of the Bill's aim of delivering on the Government's Safer Streets Mission to halve knife crime in a decade. However, we would strongly urge the Government to take an evidence-based approach and adopt solutions which have been shown to be more effective than punitive or carceral measures. Scotland, for example, has taken a pioneering approach to addressing knife crime, with enormous success. Through the formation of Scotland's Violence Reduction Unit ("**SVRU**") violence has been treated not as a law and order matter but as a public health issue, caused by factors such as poverty and inequality.[23] The SVRU placed an emphasis on prevention and engaging with young people. In 2019, the Civil Service Quarterly reported that: *"The impact in Scotland has been profound. All the key indicators point towards a sustained long-term reduction in levels of violence.... Scotland's Crime and Justice Survey showed that violent crime...reduced by nearly half in the [previous] decade."*[24] Moreover, between 2006-7 and 2017-8, Scotland saw a 65% decrease in crimes of handling offensive weapons (not used in crimes against the person).[25]

8. Any response to knife crime must have a coherent strategy with regard to children in particular, given that they make up a significant proportion of those found to have committed knife or weapons offences. For example, Ministry of Justice figures for July to September 2024 showed that 17.8% of knife or offensive weapons offences dealt with by the criminal justice system were committed by children.[8] JUSTICE is concerned that clause 10 will impact vulnerable young people who carry a knife out of a belief that they need to do so for their own protection. In our 2021 report T*ackling Racial Injustice: Children and the Youth Justice System*[9], we noted that a common reason expressed by children for carrying knives is due to a fear of being attacked, rather than to carry out attacks. A 2024 report by the Ben Kinsella Trust, *Keeping Young People Safe: Dismantling belief systems through education to prevent knife carrying* highlighted findings that nearly 24% of young people surveyed were of the view that carrying a knife would protect them.[10] There is, however, highly encouraging and effective work being done to address these issues and help prevent vulnerable young people coming into contact with the criminal justice system unnecessarily. The

---

[7] JUSTICE observes that the sentences which are ultimately imposed for this offence will in practice depend on the sentence range set out by the Sentencing Council in any sentencing guideline published in relation to this offence. The sentence range for simple possession of a bladed article, for example, runs from between a fine and 2 years 6 months' custody; for threatening with a bladed article in a public place the range is 6 months' custody - 3 years' custody. It may well be that the upper end of the sentence range for the offence created by clause 10 falls between 2 years 6 months' and 3 years' custody.

[8] Ministry of Justice, HYPERLINK "https://www.gov.uk/government/statistics/knife-and-offensive-weapon-sentencing-statistics-july-to-september-2024/knife-and-offensive-weapon-sentencing-statistics-july-to-september-2024#overall---knife-and-offensive-weapon-sentencing"*Knife and Offensive Weapon Sentencing Statistics: July to September 2024*

[9] JUSTICE, *Tackling Racial Injustice: Children and the Youth Justice System* (2021), para. 2.37

[10] Ben Kinsella Trust, *Keeping Young People Safe: Dismantling belief systems through education to prevent knife carrying* (2024), p. 10.

Ben Kinsella Trust, for example, has developed a Choices & Consequences programme to educate young people about the dangers and legal consequences of knife crime which has thus far reached 30,000 young people in Barking & Dagenham, Islington and Nottingham.[11] Amongst young people who have completed the programme, less than 6% said that carrying a knife would protect them – a reduction of roughly 18 percentage points compared to the baseline figure.[12]

9. JUSTICE firmly echoes the recommendation made in our 2021 report that the police automatically consider the possession of a knife by a child as a safeguarding concern rather than as an indicator of a potential threat.[13] Effective and proportionate responses could be designed that acknowledge that it is not normal for any child to carry a knife and that, if they are, the starting point should be to consider whether it is because they are either vulnerable and/or being exploited. A multi-agency safeguarding response, including social care and education, as opposed to a criminal response could help to protect children from becoming more vulnerable to exploitation and offending. We consider that this would improve outcomes and reduce violence.[14] Whilst clause 10 is concerned with unlawful violence (as opposed to lawful self-defence), there is in our view a clear risk that the Bill will entrench penal rather than public health or safeguarding based approaches to knife crime and draw more young people into the criminal justice system rather than diverting them away from it and ensuring their protection.

10. JUSTICE is concerned that the introduction of the new offence may lead to increased sentences for those who would previously have been convicted of simple possession of a bladed article (or other offensive weapon) in a public place. Such an increase is likely to exacerbate the existing prison overcrowding crisis, notwithstanding the fact that it is far from clear that the increased use of custody (including longer custodial terms) leads to a reduction in crime.[15] The Overarching Impact Assessment accompanying the 2020 Government White Paper *A Smarter Approach to Sentencing* noted, for example, that: *"Serving longer periods in custody may mean family breakdown is more likely, affecting prisoner mental ill health and subsequent reoffending risk".*[16]

11. We therefore urge the Bill committee to remove clauses 10 and 11.

---

[11] Ibid, p. 4

[12] Ibid., p. 12

[13] JUSTICE, *Tackling Racial Injustice: Children and the Youth Justice System* (2021), para. 2.37

[14] *Ibid*.

[15] See, e.g. Sentencing Council, *The Effectiveness of Sentencing Options on Reoffending*, (2022)

[16] Ministry of Justice, *A Smarter Approach to Sentencing – Overarching IA*, (2020)

Clause 10

Clause 10, page 18, line 17, leave out Clause 10

Explanatory Statement

This amendment removes the provision creating the offence of possession of a weapon with intent to use unlawful violence etc.

Clause 11

Clause 11, page 19, line 12, leave out Clause 11

Explanatory Statement

This amendment removes the provision increasing the maximum sentence for offences relating to the possession and sale of offensive weapons and knives

Part 3 - Retail Crime (Clauses 14 - 16)

Assault of a retail worker

12. Clause 14 would introduce a specific offence of assaulting a retail worker at work. We appreciate concerns about the significant- and unacceptable - increase in abuse and violence experienced by retail workers. However, **we remain convinced that this offence would not achieve the Government's aims.**

13. First, **common assault is already a criminal offence[26] and committing that offence against those providing a service to the public, including retail workers, is already an aggravating factor.**[27] Further, the chair of the National Police Chiefs' Council, Chief Constable Gavin Stephens, has previously indicated that the creation of a new offence would make *"no difference"* to the police's operational response and investigation conducted by the police in the initial stages after a report of an assault.[28] The previous government has also assessed that the introduction of the offence was not required or likely to result *"in the most positive impact"*.[29]

14. Second, the Explanatory Notes invoke the lack of separate recording of assaults against retail workers as a reason for the introduction of a specific offence.[30] However, it is not clear to us why such incidents cannot be recorded without the creation of a new offence, particularly in light of assault on a person providing a service to the public already forming an aggravating factor.

15. In our view, the seriousness of an offence ought not to be dependent on the employment status of the victim: all individuals have a right not to be subject to an assault regardless of their profession and whether they were at work at the relevant time.

16. Clause 15 would make it mandatory to impose a Criminal Behaviour Order ("**CBO**") in cases concerning assaults on retail workers. This is unnecessary and again risks creating a differing system for victims, depending on their occupation at the time of the offence which is contrary to the Rule of Law.

17. Currently, a CBO can be imposed on any person, including children, following conviction for any criminal offence which includes any form of assault. In terms of its use against young people, CBOs should only be imposed in *"exceptional circumstances"* according to Guidance and case law. This reflects the severe impact of CBOs on a person's life, including their convention rights. Making them mandatory undermines their proportionality and therefore the potential lawfulness of the infringements they cause. The imposition of a CBO should not depend on the occupation of the victim but the impact that imposing a CBO is likely to have in preventing the perpetrator from conducting further harm. We consider that this is best achieved by preserving the current discretion afforded to judges to determine when is best, in light of specific circumstances, to impose an order.

18. Our Behavioural Control Order report identified a risk that CBOs are disproportionately being imposed on children and young people, including Black boys, and we oppose any provision to extend the reach of CBOs further until safeguards have been put in place to fully investigate and/or address this problem.[31]

19. We therefore urge the Bill Committee to remove Clause 14 and Clause 15.

Clause 14

Clause 14, page 23, line 25, leave out Clause 14

Explanatory Statement

This amendment removes the provision creating the offence of assault of a retail worker.

Clause 15

Clause 15, page 24, line 14, leave out Clause 15

Explanatory Statement

This amendment removes the provision mandating the imposition of a Criminal Behaviour Order in cases concerning assaults on retail workers.

Theft from shop triable either way

20. Clause 16 would repeal section 22A of the Magistrates' Courts Act 1980 thereby allowing for low-value shop theft offences of under £200 to be sent for trial or sentence in the Crown Court (with a maximum custodial sentence of seven years' imprisonment) instead of being dealt with summarily in the magistrates' court.[17] Whilst we appreciate that shop-theft including low-value theft can cause real harm to businesses, we are **concerned that this provision is unlikely to be effective at reducing low-value shop theft and will disproportionately impact women and those experiencing poverty or other vulnerabilities.**

21. Per the Explanatory Notes to the Bill, clause 16 is intended to respond to the perception that the effect of section 22A of the Magistrates' Courts Act 1980 has been to down grade police response to low-value shop theft.[18] There is, however, little evidence to support this perception. Police forces have repeatedly indicated that attendance at the scene for retail crime is not prioritised based on value of goods.[19] It is therefore questionable whether this provision will have an impact on the extent to which these sorts of offences are pursued by the police in practice.

22. Moreover, even if clause 16 were to be impactful in this regard, in so far as this measure is aimed at encouraging longer custodial sentences to be imposed in the Crown Court, this is not an effective way of tackling this type of offending behaviour. Social factors, such as poverty or addiction often drive low value shop theft.[20] The impact criminalisation has on already vulnerable individuals is substantial. Those convicted risk losing their jobs and access to future employment opportunities, as well as housing and access to rehabilitative support in the community, increasing the likelihood of reoffending.[21] Whilst JUSTICE recognises concerns about organised criminal gangs exploiting vulnerable people, including children, into acquisitive crime,[22] making low value shop-lifting triable

---

[17] Note that currently defendants can elect a Crown Court trial for low value shop theft, in which case the offence will be sent to the Crown Court. However, the magistrates' court cannot send the offence to the Crown Court.

[18] Crime and Policing Bill: Explanatory Notes, p.14.

[19] National Police Chiefs' Council, *Retail Crime Action Plan* (2023); see also, Susan Dungworth Northumbria Police and Crime Commissioner, 'PCC Susan Dungworth busts myth that police won't prosecute shoplifting of goods under £200' (October 2024); Police and Crime Commissioner for Hertfordshire, 'Myth of £200 shoplifting limit busted during PCC's accountability meeting' (August 2024); Paul Jacques, 'PCC says £200 shoplifting minimum for police investigation 'categorically untrue'' (August 2024).

[20] See evidence of Professor Emmeline Taylor to the House of Lords Justice and Home Affairs Committee's inquiry into tackling shoplifting. Corrected oral evidence: Tackling shoplifting, Evidence Session No. 2 (2024); see also recognition from National Crime Agency that "cost of living pressures have almost certainly led to an increase in offences targeting businesses." National Crime Agency, National Strategic Assessment of Serious and Organised Crime 2024 (2024).

[21] Ministry of Justice, *Analysis of the impact of employment on re-offending following release from custody, using Propensity Score Matching* (2013); employment is a risk factor in actuarial tools to predict risk of reoffending see Ministry of Justice, *Revalidation: Risk of recidivism tools, An evaluation of the actuarial instruments developed to assess recidivism risk in England and Wales* (2024).

[22] See evidence of Professor Emmeline Taylor to the House of Lords Justice and Home Affairs Committee's inquiry into tackling shoplifting. Corrected oral evidence: Tackling shoplifting, Evidence Session No. 2 (2024). Centre for Social Justice, *Desperate for a fix: Using shop theft and a Second Chance Programme to get tough on causes of prolific drug-addicted offending* p.14 (2018)

either way targets the individuals subject to exploitation, and is not likely to impact those higher up the chain.

23. JUSTICE is concerned that women, are likely to be disproportionately impacted by this provision; women have been shown to be more likely to be involved in offences associated with poverty, including shop theft [23] and are more likely to receive a custodial sentence for this kind of non-violent, low-level offending.[24]

24. Finally, for this provision to increase police response to low-value shop theft and result in increased custodial sentences, significant additional resource will be required from the police, the CPS and the court, including the Crown Court at a time where there are significant court backlogs. It may also have an impact on the already vastly overstretched prison estate. The resource required to make Clause 16 workable would be better spent on initiatives designed to tackle the root causes of low-value shop theft. For instance, programmes such as the Wakefield Retail Triage Scheme[25] or the Offender to Rehab Programme,[26] both of which have been recognised as successful ways of combating shop theft.[27] We therefore **urge the Bill committee to remove Clause 16.**

Clause 16

Clause 16, page 25, line 12, leave out Clause 16

Explanatory Statement

This amendment removes the provision making shop theft a triable either way offence irrespective of the value of the goods.

Part 4 - Child Criminal Exploitation Prevention Orders to Prevent Harm (Clauses 18 – 30 and Schedule 4)

[23] All Party Parliamentary Group on Women in the Penal System, *Arresting the entry of women into the criminal justice system* (2019).

[24] House of Commons Justice Committee, *Women in Prison* (2022).

[25] Where a woman was detained in a store for shop theft, the store called a dedicated phone line for the scheme. Women were not arrested but instead diverted to the West Yorkshire 'Liaison and Diversion' service and a programme of intervention developed. Once completed, the police were notified, and no further action was taken. All Party Parliamentary Group on Women in the Penal System, *Arresting the entry of women into the criminal justice system* (2020).

[26] The scheme identified individuals with substance misuse issues and referred them to residential rehab facilities. West Midlands Police and Crime Commissioner, 'Shops save £800k thanks to police scheme that tackles shoplifting' (February 2023).

[27] West Midlands Police and Crime Commissioner, 'Shops save £800k thanks to police scheme that tackles shoplifting' (February 2023); Nottinghamshire Police, 'How ex-shoplifter helps businesses to reduce crime after rehabilitation with support of police scheme' (November 2024); West Yorkshire Police and Crime Commissioner, 'PCC recognises Wakefield retail triage scheme success.'

Overlap with Other Types of Behavioural Control Orders

25. Clauses 18 to 30 and Schedule 4 of the Bill create Child Criminal Exploitation Prevention Orders ("**CCEPOs**") – a type of Behavioural Control Order which can be imposed on persons aged 18 or over by the Magistrates Court, the Crown Court or the Court of Appeal, depending on the circumstances.[28]

26. As with other types of Behavioural Control Orders, CCEPOs impose conditions on a person with the intention of preventing various behaviours – in this case, to prevent adults from exploiting children to commit crime. Despite being civil in nature, breach of a prohibition or requirement within an order is a criminal offence.

27. We are particularly concerned by the potential overlap between CCEPOs and Serious Crime Prevention Orders – another order that is currently undergoing amendment via the Border Security, Asylum and Immigration Bill.[29]

28. Serious Crime Prevention Orders are also designed to protect against situations when one person contributes towards another person committing or potentially committing an offence. For example, they can be imposed where 1) a person commits a serious offence, 2) has facilitated the commission by another person of a serious offence or 3) "*conducted themselves in such a way that is likely to facilitate the commission by … another person of a serious offence, whether or not the offence was committe*d."[30]

29. As demonstrated in our 2023 report, the over-lap between Behavioural Control Orders causes significant operational challenges for the Police and for the Crown Prosecution Service when determining when to impose an order and which order to use. This causes delays and results in orders being used inappropriately – or not at all. In addition to Serious Crime Prevention Orders, JUSTICE considers that there are likely to be other types of order that CCEPOs over-lap with, due to their broad nature including Criminal Behaviour Orders.

30. **We therefore urge the Bill Committee to give consideration to 1) how CCEPOs can be piloted before coming into force and 2) clarifying how CCEPOs interact with other types of Behavioural Control Order, including Serious Crime Prevention Orders and Gang Injunctions, and to put in place measures within the Bill to prevent over-lap.**

Violation of European Convention on Human Rights

[28] See Clause 18(2) / Schedule 4, Clause 1, 358A(1).

[29] Border Security, Asylum and Immigration Bill 2025, Part 3.

[30] Serious Crime Act 2007, s2(1).

31. Becoming subject to a CCEPO is a significant, life-altering event, notwithstanding that CCEPOs can be imposed without a person ever having been convicted of an offence. For example:

a. CCEPOs provide the State with unfettered discretion to prohibit or require the individual to *"do anything described in the order"* (Clause 19(1)(a) / Schedule 4, Clause 358B(1)(a))

This means that CCEPOs can impose prohibitions/requirements to restrict an individual's ability to socialise, reside with certain persons, be present in particular areas, reside in certain properties, own particular possessions, access the internet and take part in particular activities. The Government also envisages that curfews may be imposed via CCEPOs and we note the absence of any protections against the use of pervasive requirements such as electronic monitoring.[31] There are no limits to the type or number of prohibitions/requirements that can be imposed.

b. CCEPOs can also impose Notification Requirements, requiring that a person provides certain personal information to the relevant authorities within three days of an order coming into force (Clause 24 / Schedule 4, Clause 358C)

c. CCEPOs must be in place for a minimum of 2 years or 5 years (where it is made on conviction) but can be extended indefinitely (Clause 19(5) / Schedule 4, Clause 358B(5))

d. Breach of a prohibition/requirement can lead to imprisonment for up to 5 years (Clause 27(2)(b) / Schedule 4, Clause 358G(2)(b))

e. The imposition of a CCEPO is also likely to attract significant stigma and could create barriers for a person accessing employment or other opportunities.

32. For these reasons and based on independent legal advice obtained by JUSTICE in 2023 and 2025 which analysed the potential violations of Convention rights caused by various types of Behavioural Control Order including Serious Crime Prevention Orders,[32] we consider that CCEPOs give rise to several human rights implications under the European Convention on Human Rights. This is also acknowledged by the Government in its Human Rights Memorandum.[33] However, we disagree with the Government's position that CCEPO's do not risk exposing them to legal challenge for reasons provided in proceeding sections. In particular, we consider that further safeguards are required to protect against the arbitrary infringement on qualified rights such as Article 8 to 11 of the

[31] Home Office/ Ministry of Justice/ Ministry of Defence, European Convention on Human Rights Memorandum (February 2025), para 79.

[32] See independent legal advice sought by JUSTICE in 2023 and 2025: King and Spalding, *The Human Rights Implications of Behavioural Control Orders* (2023); and King and Spalding, *The Human Rights Implications of Serious Crime Prevention Orders: Supplemental Opinion* (2025).

[33] Home Office/ Ministry of Justice/ Ministry of Defence, European Convention on Human Rights Memorandum (February 2025), para 70 onwards.

Convention. We also consider that the Bill risks violating the absolute protections afforded by Article 6.

Article 6 and the Right to a Fair Trial

33. The conditions imposed under a CCEPO may, in substance, be equivalent in character and severity to the consequences of a criminal conviction. Despite the Government's position that the CCEPO is not a penalty,[34] their impact is punitive. As such, and notwithstanding the characterisation of CCEPOs as *"civil"*,[35] we consider that they are essentially criminal in nature.[36] This is the case notwithstanding the 2023 Supreme Court judgment in *Jones*, referred to by the Government,[37] which must be confined to its particular facts and the statutory regime governing the Gang Injunctions in question in that case, which is distinct from (and offers more safeguards) than the regime governing CCEPOs.[38]

34. This means that those subject to a CCEPO should benefit from the full protections provided for under Article 6 of the Convention. This includes having the case in favour of imposing an order made out to the criminal standard of proof; rules being in place to prohibit the admission of hearsay; adequate time and facilities being provided to prepare a defence to a CCEPO; being provided with the opportunity to defend against the imposition of an order in person or through legal assistance and provision being made to examine or cross-examine witnesses. As currently drafted, this is not the case.

Amendments to Current Provisions

35. In the light of these concerns, JUSTICE urges the Committee to consider making the following amendments to the Bill, which we consider will ensure that CCEPOs operate fairly and in line with the Convention.

Child Criminal Exploitation Orders (otherwise than on Conviction) Clause 18 – 29

Summary of Clauses 18 – 29

[34] *Ibid.,* para 75.

[35] Ministry of Justice, *Crime and Policing Bill: Child Criminal Exploitation and Cuckooing Factsheet* (February 2025).

[36] 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 Behavioural Control Order in question in that case, which is distinct from (and offers further safeguards) than the regime governing CCEPOs.

[37] Home Office/ Ministry of Justice/ Ministry of Defence, European Convention on Human Rights Memorandum (February 2025).

[38] *Jones v Birmingham CC and Secretary of State for the Home Department* [2023] UKSC 27.

36. Clause 18(1)-(3) provides that a magistrates court, crown court or the court of appeal can impose a CCEPO where it is *"satisfied"* on the balance of probabilities, e.g., on the civil standard of proof,[39] that a person has either "*either*" *engaged in conduct associated with causing children to engage in criminal conduct"* or has been found to have done the act charged against them in respect of any offence but is *"under a disability*" or has been found not guilty of an offence under Clause 17 by reason of insanity (Clause 18(3)), regardless of whether the conduct or offence occurred before the coming into force of the Bill. The second branch of the test requires the court to be satisfied that there is a risk that the person will seek to cause children to engage in criminal conduct; and that they feel it is *"necessary"* to make the order to protect children from being caused to engage in criminal conduct.

37. "*Conduct associated with causing children to engage in criminal conduct*" is not defined in the Bill although it stipulates that it can include grooming children with the intention that they will engage in criminal conduct (Clause 18(6)). This means that CCEPOs can be imposed on individuals without them ever having been convicted of an offence.

38. CCEPOs must be imposed for a minimum of two years and can be imposed indefinitely e.g., "*until further order"* (Clause 19(5)(b)). Clause 19(1) provides that a CCEPO can probit or require a person to do or not do *"anything described in the order",* which includes complying with Notification Requirements imposed by Clause 24.

39. Clause 21 provides for applications for CCEPOs to be made without notice i.e. without the person who may be subject to the order present, following which the court may grant an Interim CCEPO (Clause 22). These are the same as full CCEPOs and the only difference is that the only requirements they can impose are Notification Requirements, yet can contain any prohibition. Interim CCEPOs can be imposed "until the determination of the application" for a full CCEPO (Clause 22(2)).

40. In the light of the severe consequences of a CCEPO, referred to at para 34, and our position that CCEPOs are essentially criminal in nature, we do not consider that CCEPOs should be imposed on individuals who have not been found guilty of an offence or who have been acquitted of an offence (Clause 18(1)(a) and (b)). Procedural safeguards inherent within the criminal law must not be usurped by allowing judges to impose CCEPOs and determine someone's involvement in crime, upon a weaker standard of proof and using evidence that would be otherwise inadmissible in a criminal trial. To do so would be in violation of Article 6(2) and 6(3) of the Convention.

[39] UK Parliament, *Crime and Policing Bill Explanatory Notes* (February 2025), para 368; Home Office/ Ministry of Justice/ Ministry of Defence, European Convention on Human Rights Memorandum (February 2025), para 71.

41. Where the police consider that an individual is at risk of committing child criminal exploitation, they should pursue criminal justice interventions, including the provisions at Clause 17, which reflects the seriousness of the offence and provides the police with powers to take urgent action.

42. Moreover, as currently drafted, Clause 18(1)(b) would allow for a judge to determine that a CCEPO should be imposed in circumstances where a person has just been acquitted by a jury of an offence related to child criminal exploitation. It is unclear how this would ever be reasonable for a judge to effectively overrule the decision of a jury in this manner.

43. We also question the rationale and practicality (not to mention fairness) of imposing a CCEPO on a person who is found to be not guilty of an offence by reason of insanity or is experiencing a disability to the extent that they are unfit to be tried.[40] Our report on Behavioural Control Orders found that persons subject to orders find them notoriously difficult to understand and confusion about how to comply with an order, rather than a specific intention to not comply with it, was one of the most frequently cited reasons for breach.[41] Imposing CCEPOs on persons who are insane or unfit to stand trial is setting them up to fail.

44. The broad range of prohibitions and requirements that can be imposed by a CCEPO, including prohibitions and requirements which engage Articles 8 to 11 of the Convention, exacerbates the unfairness of imposing CCEPOs on individuals who have not committed an offence or are otherwise found not guilty.

45. Similarly, the ability to impose an Interim CCEPO in a person's absence is procedurally unfair and 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 a CCEPO must have the benefit of the minimum standards available under Articles 6(1), 6(2) and 6(3). A retrospective right to appeal an Interim CCEPO in court, with vague and indeterminate timeframes for appeal, does not suffice the requirement that a person faced with criminal charges is entitled to a hearing within a reasonable time under Article 6(1).[42]

46. In light of all of the concerns referred to above, including those at paras 32 - 34, we consider that CCEPOs should not be imposed in these circumstances. We also call upon the Committee to amend the Bill to require the court to explain the impact of receiving a CCEPO.

---

[40] UK Parliament, *Crime and Policing Bill Explanatory Notes* (February 2025), para 324.

[41] JUSTICE, *Lowering the Standard: a review of Behavioural Control Orders in England and Wales* (2023), para 4.50.

[42] Clause 22(1) allows the court to grant a CCEPO following a without notice application and clause 22(2) allows this interim CCEPO to last "until the determination of the application". The duration between the issue of an ISCPO without notice and the "determination of the application" is ambiguous.

47. We therefore urge the Bill Committee to amend the Bill as follows:

Clause 18 - 29

Clause 17(3)(b), page 26, after line 29, leave out –

"Child criminal exploitation prevention orders made otherwise than on conviction"

Page 26, line 31, leave out Clause 18

Page 27, line 29, leave out Clause 19

Page 28, line 16, leave out Clause 20

Page 28, line 33, leave out Clause 21

Page 29, line 5, leave out Clause 22

Page 29, line 21, leave out Clause 23

Page 30, line 9, leave out Clause 24

Page 31, line 9, leave out Clause 25

Page 32, line 12, leave out Clause 26

Page 33, line 13, leave out Clause 27

Page 33, line 29, leave out Clause 28

Page 34, line 2, leave out Clause 29

Explanatory Statement:

This amendment removes the provision to make child criminal exploitation prevention orders otherwise than on conviction.

Child Criminal Exploitation Prevention Orders (on Conviction) Clause 30 and Schedule 4

48. Clause 30 amends Part 11 of the Sentencing Code to make provision for Child Criminal Exploitation Prevention Orders to be imposed on persons aged 18 or over following a conviction. Schedule 4 inserts new Clauses 358A – E into Part 11 of the Sentencing Code.

49. Breach of a prohibition or requirement imposed by a CCEPO is a criminal offence – punishable by fine or imprisonment up to 5 years or both (Clause 358G(2)).

Test for imposing an order (Clause 358A)

50. CCEPOs on conviction can be imposed by any court dealing with an offender where it is "*satisfied,*" (again on the balance of probabilities)[43] that a person has either "*engaged in conduct associated with causing children to engage in criminal conduct",* or has been found guilty of a child criminal exploitation offence under Clause 17. Again, a court must be satisfied that 1) there is a risk that the person will seek to cause children to engage in criminal conduct; and 2) that it is *"necessary"* to make the order to protect children from being caused to engage in criminal conduct.

51. "*Conduct associated with causing children to engage in criminal conduct*" includes "*grooming children (or encouraging others to with the intention that they will, in future engage in criminal conduct"* (Clause 358A(6), whilst *"criminal conduct"* is defined in Clause 358I(1) as any conduct which constitutes an offence in England and Wales or would constitute an offence if the conduct had taken place in the UK.

52. Given our position that CCEPOs are essentially criminal in nature, and to satisfy the requirements of Article 6 of the Convention, JUSTICE considers that the Bill should be amended to require that the court be satisfied *beyond reasonable doubt* that the test for imposing a CCEPO on conviction is met.

53. Moreover, to ensure that CCEPOs on conviction are proportionate, we consider that the Bill must be amended to require that a CCEPO can only be imposed where a person has been found guilty of a child criminal exploitation offence under Clause 17 or has been found guilty of a "*child criminal exploitation- related offence*". The latter should be defined as "*any offence, the commission of which involved conduct relating to child criminal exploitation"*. Doing so ensures that CCEPOs can only be imposed in relation to offences that have involved an aspect of child criminal exploitation – even

[43] UK Parliament, *Crime and Policing Bill Explanatory Notes* (February 2025), para 368; Home Office/ Ministry of Justice/ Ministry of Defence, European Convention on Human Rights Memorandum (February 2025), para 71.

if it did not form part of the formal charge. This ensures that CCEPOs can be imposed following a trial where evidence was admissible relating to child criminal exploitation but also prevents against CCEPOs being imposed in the absence of a person having been convicted of an offence which did not involve child criminal exploitation or is reasonably far removed from child criminal exploitation.

54. The third branch of the test should also be amended to require that a court considers it "*necessary and proportionate"* to make an order to protect children, rather than "*necessary".* Doing so gives expression to the Government's intention, as set out in the Explanatory Notes and the Human Rights Memorandum, that CCEPOs only be imposed where it is necessary *and* proportionate to do so.[44] It is also consistent with the approach taken for other types of Behavioural Control Order and is in-keeping with the recommendations made within the legal advice obtained by JUSTICE.[45]

55. Moreover, Clause 358A(7) provides that the conduct triggering/justifying the making of a CCEPO can have occurred prior to the coming into force of the Bill, making it retrospective in nature. We consider that this is likely to breach Article 6 (1) of the Convention and Article 7. Article 6(1) provides that in the determination of one's civil rights or criminal charge against them, everyone has the right to a hearing within a reasonable time. As currently drafted, the passage of time between the individual's conduct and the implementation of Clause 17 could span months or even years. Ongoing court backlogs could exacerbate the passage of time between the conduct and a hearing, thereby impact one's ability to create an effective defence by, for example, impairing one's ability to recollect events and locate witnesses.

56. Article 7 of the Convention stipulates that no one should be held guilty of a criminal offence for an action or omission that did not constitute a criminal offence under national law at the time it was committed. As explained in paragraph 34, we believe that CCEPO's are criminal in nature because of their punitive impact. Issuing orders that are criminal in nature based on conduct that is only retrospectively problematic would consequently constitute a breach of the Article 7 right to know the legal criminal consequences of their actions.

57. Finally, based on findings of our report that persons subject to orders do not understand them nor what will happen if a prohibition or requirement is breached, we recommend that judges must be under a duty to explain what a CCEPOs is and what the impact will be if a person does not comply with it.

---

[44] UK Parliament, *Crime and Policing Bill Explanatory Notes* (February 2025), paras 770-771 ; Home Office/ Ministry of Justice/ Ministry of Defence, European Convention on Human Rights Memorandum (February 2025), para 84.

[45] King and Spalding, *The Human Rights Implications of Serious Crime Prevention Orders: Supplemental Opinion* (2025).

Clause 358A

Clause 358A(3)(a), page 161, line 23, after "satisfied" insert "beyond reasonable doubt".

Explanatory Statement:

This amendment requires that the criminal standard of proof applies to the imposition of child criminal exploitation orders.

Clause 358A

Clause 358(A), page 161, line 31, after "necessary" insert "and proportionate".

Explanatory Statement:

This amendment amends the test for imposing a child criminal exploitation order to require the court to be satisfied that it is necessary and proportionate to make the order for the purpose of protecting children from being caused to engage in criminal conduct.

Clause 358A

Clause 358(A), page 162, line 7, after "force." insert –

"(8) On making a child criminal exploitation order the court must, in ordinary language, explain to the respondent the effects of the order."

Explanatory Statement:

This amendment imposes a requirement upon the court to explain to the respondent what a child criminal exploitation order is and its effect on the person.

Prohibitions and Requirements (Clause 358B)

58. Clause 358B provides that a CCEPO can probit or require a person to do or not do *"anything described in the order"* (Clause 358B(1)(a)), which includes complying with Notification Requirements imposed by Clause 358C. Any prohibition or requirement that is imposed must, insofar as practicable, avoid interfering or conflicting with times of work or education, the person's religious beliefs and any other court order or injunction (Clause 358B(3)) and may be included only if the court considers it *"necessary"* (Clause 358B(2)).

59. As stated at para 33, we are concerned that the wide discretion of the court to impose *any* prohibition or requirement risks breaching several Convention rights.

Article 5 – deprivation of liberty

60. The Government has repeatedly referred to the ability of CCEPOs to impose curfews and we note the absence of any restriction limiting the use of Electronic Monitoring. There is a risk that doing so could amount to a deprivation of liberty under Article 5, despite the Government stating otherwise at para 76 of the Human Rights Memo.[46] This is because the Government failed to consider more recent case law which found that a lengthy curfew, coupled with other intrusive measures, is likely to engage Article 5.[47] We consider that the ability to impose other measures, including Notification Requirements and potentially electronic monitoring (provided that there are no safeguards in the Bill against this), could mean that this threshold is reached.

Article 8, 9, 10 and 11

61. The Government recognises that Articles 8 (right to respect for private and family life), 9 (freedom of thought, religion and belief), 10 (freedom of expression) and 11 (freedom of assembly and association) are restricted by CCEPOs. However, the Government states that the potential breaches can be justified on the basis that the measures are for a legitimate purpose, necessary and proportionate, with adequate safeguards against arbitrariness are in place. However, the test for imposition of an order and for the inclusion of a prohibition or requirement only refers to "*necessity*".

62. Given that Articles 8 to 11 of the Convention will be engaged, the test of "*necessity*" should be expanded to "*necessary and proportionate*". This makes it explicit that the courts must assess both the necessity and proportionality of any prohibitions or requirements that it seeks to impose. In its Human Rights Memorandum, the Government states that the proportionality assessment which must be undertaken by the courts is a safeguard to the unlawful infringement of a person's Article 8 to 11 Convention rights.[48] Therefore, it is pertinent that this is reflected on the face of the Bill.

63. We also recommend that the Bill be amended to provide that the prohibitions and requirements must not interfere with the ability of the person to access vital support services, including alcohol and drug services, peer support networks and mental health facilities. Including this provision aligns with the intention that the conditions imposed by CCEPOs are proportionate and do not unduly interfere with a person's right to family and private life. It also ensures that CCEPOs are not counter-

---

[46]

[47] King and Spalding, *The Human Rights Implications of Serious Crime Prevention Orders: Supplemental Opinion* (2025), para 38.1; see also *Secretary of State for Home Department v JJ* [2007] UKHL 45 and *Secretary of State for Home Department v AP* [2010] UKSC 24.

[48] Home Office/ Ministry of Justice/ Ministry of Defence, European Convention on Human Rights Memorandum (February 2025), para 84.

productive in preventing person's from accessing support services that may help address their underlying behaviour.

64. We also encourage the Committee to replicate the system provided for in Clause 1(D1(2) – (3) of the Bill, in relation to Respect Orders, and in relation to Criminal Behaviour Orders under Part 11 of the Sentencing Code.[49] In particular, when considering what conditions and prohibitions to include, the court must receive evidence about their suitability and enforceability and assess the compatibility of requirements. This will address problems with existing orders and/or injunctions whereby prohibitions and requirements are imposed that contradict one another and/or are inappropriate. As reflected in our report, poorly drafted and thought-out prohibitions and requirements set people up to fail.[50]

65. Finally, the Bill provides that a CCEPO can be imposed for an indefinite duration e.g., "*until further order*" (Clause 358B(5), although it must be in place for a minimum of 5 years. 5 years is an unduly long time to be subject to an order. Moreover, it also leads to an unfair situation whereby an individual can be subject to a criminal sentence with a defined term, whilst also being subject to an indefinite CCEPO – with no consideration of how they interact with one another. If sentences must have a defined end date, then so should CCEPOs, particularly given the interference that they can have with Convention rights including the right to liberty, discussed above. Doing so will ensure that CCEPOs are proportionate, as per the Government's intention.

66. We also urge the Committee to consider imposing an automatic review of the prohibitions/requirements imposed by CCEPOs given their extensive lifespan. This is in keeping with the approach taken with other types of Behavioural Control Order and aligns with the legal advice provided to JUSTICE.

67. We therefore urge the Bill Committee to amend the Bill as follows:

Clause 358B

Clause 358B(3), page 162, after line 27, insert –

"(d) any interference with the respondent's attendance at any support service or health service".

Explanatory Statement

This amendment requires that prohibitions and requirements imposed by child criminal exploitation prevention orders must avoid, as far as practicable, interfering with the person's ability to access to support services.

[49] Sentencing Act 2020, Part 11, Chapter 1 re Criminal Behaviour Orders.

[50] JUSTICE, *Lowering the Standard: a review of Behavioural Control Orders in England and Wales* (2023), para 1.13.

Clause 358B

Clause 358B(5), page 162, line 32, replace ", or" with "."

Clause 358B(5), page 162, line 33, remove (b) "state that it has effect until further order,"

Explanatory Statement

This amendment clarifies that child criminal exploitation prevention orders must specify the period for which it has effect and removes the provision that they can be in place until further order.

Clause 358B

Clause 358B(7), page 162, after line 38, insert –

"(8) For the purpose of assessing the necessity and proportionality of a prohibition or requirement under subsection (2), a court must consider the cumulative effect of (a) the requirements and prohibitions it seeks to impose, including a requirement to comply with Clause 358C, (b) the prohibitions and requirements of any other court order or injunction to which the defendant is subject and c) the terms of the sentence imposed in respect of the offence giving rise to an order under this Part."

Explanatory Statement

This amendment requires that in determining the necessity and proportionality of prohibitions and requirements in a youth diversion order, the court must consider the cumulative impact of all of the prohibitions and requirements imposed and their impact on any other order or criminal sentence imposed.

Clause 358B

Clause 358B(7), page 162, after line 38, insert –

"(9) Before including a prohibition or requirement, the court must receive evidence about its suitability and enforceability.

(10) Before including two or more prohibitions or requirements, the court must consider their compatibility with each other."

Explanatory Statement

This amendment requires the court to receive evidence on the suitability and enforceability of each prohibition and requirement and to properly consider their compatibility to ensure the child criminal exploitation prevention order is fit for purpose.

Procedural powers where no application is made (Clause 358D)

68. Clause 358D sets out the procedure for CCEPOs including in respect of the evidence that the court can consider in determining whether to impose an order. Clause 358D(2) states that it does not matter if the evidence considered would have been admissible or not in the aforementioned criminal proceedings.

69. Given our position that CCEPOs are equivalent to a criminal charge, the criminal rules of evidence should apply e.g., evidence that is inadmissible in criminal proceedings should not be admissible for applications for CCEPOs. Failure to do so risks breaching Article 6 of the Convention.

70. We therefore urge the Bill Committee to amend the Bill as follows:

Clause 358D

Clause 358D, page 164, line 10, replace –

(2) "It does not matter whether the evidence would have been admissible in the proceedings for the offence for which the offender is being dealt with."

with

"(2) Evidence that would not have been admissible in the proceedings for the offence for which the offender is being dealt with, will not be admissible in proceedings under this section."

Explanatory Statement

This amendment clarifies that evidence that is inadmissible in criminal proceedings is inadmissible in proceedings dealing with child criminal exploitation orders under section 18(1)(b), (c) or (d).

Variation and Discharge (Clause 358E)

71. Clause 358E provides that either a person subject to a CCEPO or a chief police officer can apply to a relevant court to vary or discharge the order. Considering ongoing issues with court backlogs, we propose that unless a person subject to an order requests an in-person hearing, the application to

vary a CCEPO should be capable of being decided without an in-person hearing, e.g., on the papers. This is conditional upon support, including legal assistance, being provided to a person subject to an order, to enable them to submit and respond to such an application. Allowing applications to be reviewed without an in-person hearing, should prevent a person who is subject to an order, having to endure long delays in having their order varied to make it more appropriate to their circumstances. This is particularly important given that orders can interfere with Convention rights, as previously discussed.

72. Clause 358E(4) provides that the power to vary an order includes the ability to impose new prohibitions or requirements, or to extend the duration of existing ones as well as the duration of the original order. This means that it only allows for the variation of orders insofar as they make the orders more restrictive. Not only do we consider this draconian, but it also undermines the rationale for imposing an order in the first place. Orders are imposed where there is a "*risk*" to the public and where such prohibitions/requirements are necessary based on the risk at the time of application. Therefore, it is only fair and logical that the prohibitions and requirements in an order are capable of being increased or decreased, to reflect the current risk posed by the person subject to it. This also ensures that the conditions imposed by the CCEPO, and the CCEPO itself, are necessary and proportionate – as repeatedly emphasised by the Government.

73. We therefore propose that the Bill be amended to also include the power to remove or reduce the duration of restrictions and prohibitions as well as the power to reduce the period for which the order itself has effect. We also propose that safeguards are inserted in Clause 358E so that the duration of any new prohibitions or requirements do not extend beyond the duration of the original order itself.

74. Finally, Section 358E(7)(a) explains that a court is unable to discharge an order before the end of the period of five years, without the consent of both the person subject to the order and chief officer of police for the area in which the offender lives. Although there may be legitimate reasons why consent may be withheld, we are concerned that this power could be abused e.g., consent being unreasonably withheld or the person subject to an order being denied an opportunity to challenge the reasons for consent being withheld. We maintain that a court is best placed to determine whether the test for imposing a CCEPO under Clause 358A(4) e.g., the risk posed by the person subject to the order, is still met, upon hearing all of the evidence available to it. For that reason, we propose that the Bill be amended to remove the requirement that a police officer must consent. This does not undermine the ability of the police to state their case or have their evidence heard by the court and indeed a court should have all available evidence in order to properly assess the necessity, proportionality and risk associated with imposing, varying or discharging a CCEPO. It does, however, mitigate the risk of unfair power imbalances.

75. We therefore urge the Bill Committee to amend the Bill as follows:

Clause 358E

Clause 358E, page 165, after line 15, insert –

(4) (d) remove prohibitions and requirements;

(e) reduce the period for which a prohibitions or requirement has effects;

(f) reduce the period for which the order has effect.

Explanatory Statement This amendment provides the power to amend child criminal exploitation prevention orders to remove prohibitions and requirements from the order, as well as reducing the time limit for specific prohibitions and requirements and/or the duration of the order itself.

Clause 358E

Clause 358E, page 165, after line 15, insert –

"(5) Where an order has been varied by the court, the court must ensure that the varied requirements do not extend beyond the duration of the original order (unless this too has been varied)."

Explanatory statement

This amendment provides a safeguard to ensure that any variations applied to an order do not extend beyond the period for which the order has effect.

Clause 358E

Clause 358E, page 165, line 25, delete "the chief officer of police for the police area in which the offender lives" and "where the application is made by a chief officer of police, that chief officer."

Explanatory Statement

This amendment removes the requirement for consent to be obtained from the chief officer of the police in the area that the person subject to the order resides or the chief officer who made the application, in order for the court to discharge a child criminal exploitation prevention order within 5 years.

Appeals (Clause 358F)

76. Clause 358F provides that a decision made by a court to vary or discharge an order on an application under section 358E can be appealed in court including by the person subject to the order or by the police. Clause 358F(4) states that the court may make any orders it deems necessary to give effect to its determination of the appeal, and further that it can made any *"incidental and consequential orders"* as appear to it to be appropriate.

77. We are concerned that the Bill, as currently drafted, does not provide for a right of appeal against the determination of an application for a CCEPO (on conviction) under Clause 358A but only for a right to appeal against a determination for an application to vary or discharge under Clause 358E. It is imperative that this right is extended to apply to determinations of the original applications for CCEPOs and made explicit on the face of the Bill in order to avoid a possible breach of Article 6. We note that such a right is available under Clause 26 for CCEPOs (no conviction) and should be replicated in Clause 358F.

78. **We therefore urge the Bill Committee to give consideration to a right of appeal against a decision made on an application for a CCEPO.**

Offence of providing false information (Clause 358H)

79. Clause 358H provides that it is an offence for a person subject to a CCEPO and Notification Requirements under Clause 358C, to provide false information to the police. To do so is punishable with up to 5 years imprisonment.

80. As breach of a Notification Requirement is a breach of a CCEPO, punishable in itself by up to 5 years imprisonment, it is not clear how this provision would work in practice e.g., whether a person providing false information to the police in breach of Clause 358C and 358G would be charged with 2 offences e.g., the offence of providing false information and the breach of a CCEPO. For clarity and to ensure fairness, JUSTICE proposes that the Bill be amended to state that providing false information constitutes a breach of the Notification Requirement under Clause 358C and therefore

breach of the CCEPO itself. This provides legal certainty and prevents against disproportionate punishment.

81. Therefore, we urge the Bill Committee to amend the Bill as follows:

Clause 358H

Clause 358H(1), page 166, after line 32 insert –

(2) If a person, in purported compliance with that section, notifies the police of any information which the person knows to be false, such person commits a breach of a CCE prevention order."

Explanatory Statement

This amendment clarifies that providing false information to the police under Clause 358C constitutes breach of a child criminal exploitation prevention order and is to be treated as such.

Clause 358H

Clause 358H, page 166, line 33, leave out Clause 358H (2)

Clause 358H, page 166, line 36, leave out Clause 358H (3)

Explanatory Statement

This amendment is conditional upon the amendment above. It removes the provision that providing false information to the police under Clause 358C constitutes a separate offence.

Part 9 – Public Order (Clauses 86 – 91)

82. Part 9 of the Bill introduces three new public order offences: concealing identity at protests (clause 86), possession of pyrotechnic articles at protests (clause 89) and climbing war memorials (clause 90).

83. JUSTICE has serious reservations about these provisions, particularly clauses 86 and 90. The existing public order legal framework under provisions such as section 60AA of the Criminal Justice and Public Order Act 1994 (the "**CJPOA 1994**") (which gives police the authority to request removal of items concealing identity) and those contained in the Police, Crime, Sentencing and Courts Act 2022 (the "**PCSCA 2022**") (which criminalise and impose restrictions on a range of protest-related activity) is already excessive and constitutes a disproportionate interference with the exercise of the

rights to freedom of expression and freedom of assembly protected by Articles 10 and 11 of the European Convention on Human Rights **("the Convention").** The Joint Committee on Human Rights, for example, has stated that the changes introduced by the PCSCA 2022, together with the Public Order Act 2023 (the "**POA 2023**") may have a *"chilling effect"* on peaceful protest and *"threaten the overall balance struck between respect for the right to protest and protecting other parts of the public from disruption".*[51] In such circumstances, we consider Part 9 of the Bill to be unnecessary and overly restrictive, risking further erosion of freedoms without clear justification.

84. We have further concerns about the scope of clause 86 in particular. The offence is incredibly broad and would criminalise even those who do not intend to conceal their identity. This breadth is underscored by the a narrow range of defences available, limited to wearing or using the item for: (a) health purposes; (b) religious purposes; or (c) work-related purposes. There are a number of other legitimate purposes for concealing one's identity which the provision does not protect, such as privacy, safety (e.g. for LGBTQ+ individuals), cultural expression or practical considerations such as protection from the weather. There is a risk that clause 86 will criminalise those engaging in innocuous behaviour such as wearing a scarf or sunglasses during a lawful assembly. Further, anonymity is often essential for protesters critiquing oppressive regimes or facing surveillance threats, for example. Preventing such protesters from remaining anonymous is likely to have a chilling effect on their rights under Articles 10 and 11 of the Convention.

85. The offence under clause 86 will only be committed if a person is in a locality designated under clause 87. Clause 87 empowers a police constable of or above the rank of inspector to designate a locality in the police area for a specified period not exceeding 24 hours if they *"reasonably believe"* a protest may take place there which is likely to involve or has involved the commission of offences and that designating the locality is *"expedient, in order to prevent or limit the commission of offences".* We consider this provision to be overly broad and grants police wide discretion without clear limits or safeguards, inviting potential misuse or inconsistent application. No minimum threshold of offences is specified, for example. JUSTICE has concerns that the broad wording risks discriminatory enforcement.

86. Clause 90, which creates a new offence of climbing specified war memorials, is aimed at conduct which is *"disrespectful"*[37] as opposed to the causing of criminal damage (which is already an offence under section 50 PCSCA 2022). Criminalising 'disrespect' as opposed to damage raises concerns about the curtailment of freedom of expression. It should be acknowledged, however, that the inclusion of the 'good reason' defence is to be welcomed, given that the courts will be required to interpret its scope in a way which is compliant with the Convention[38]

[51] Joint Committee on Human Rights, *Legislative Scrutiny: Public Order Bill: Government Response to the Committee's First Report* (Second Special Report of Session 2022–23, HC 286, HL Paper 60), paras 15-17

87. In light of the above, JUSTICE recommends the following amendments:

Clauses 86 - 88

Clause 86, page 97, line 30, leave out Clause 86

Clause 87, age 98, line 13, leave out Cause 87

Clause 88, page 99, line 13, leave out Clause 88

Explanatory statement

This amendment removes the offence of concealing identity at protests and related clauses.

Clause 90

Page 100, line 23, leave out Clause 90

Explanatory statement

This amendment removes the offence of climbing war memorials.

New Clause

To move the following Clause –

"Review of existing protest framework

(1) The Secretary of State must appoint an independent reviewer to prepare a review of the operation of the Acts mentioned in subsection (4).

(2) The independent reviewer must send to the Secretary of State a report on the outcome of the review no later than twelve months from the day on which this Act is passed.

(3) On receiving the report under subsection (2) the Secreaty of state must lay a copy of it before Parliament.

(4) The Acts are –

(a) the Public Order Act 1986

(b) the Criminal Justice and Public Order Act 1994

(c) the Police, Crime, Sentencing and Courts Act 2022;

(d) the Public Order Act 2023;

(5) The review must have particular regard to the impact of the Acts in subsection (4) on -

(a) the exercise of the rights under Articles 9, 10 and 11 of the Convention and

(b) *individuals who have protected characteristics within the meaning of the Equality Act 2010"*

Explanatory statement

This new clause would require an independent review of the existing statutory framework related to protest

Part 10 – Powers of the Police Etc (Clauses 92 – 101)

88. Clauses 93 and 94 of the Bill introduce a power for the police to enter and search private or public premises without a warrant where stolen goods have been electronically tracked to the premises and the police have reasonable grounds to believe that (i) the goods are on the premises and (ii) it is not reasonably practicable to obtain a warrant to enter the premises. The measure also empowers the police to seize stolen goods and evidence of theft offences.

89. While JUSTICE understands the importance of responding to thefts within the "Golden Hour" following a robbery, we oppose the conferral of entry and search powers with no judicial oversight on the police and **recommend amending the provision to introduce a requirement for the police to obtain a search warrant.**

90. Clause 93 facilitates a **far-reaching intrusion into the inviolability of the home,** a foundational principle guarding against excessive intrusion on individual liberties.[9] As the human rights assessment accompanying the Bill acknowledges, empowering the police to enter a private abode is a very serious interference with Art.8 of the Convention right to respect for one's home.[39] To ensure such extensive intrusions are proportionate, we would expect the Bill to contain safeguards ensuring that premises are entered only where strictly necessary.

91. Clauses 93 **does not** contain such safeguards. Firstly, it is premised on authorising entry in reliance on electronic data indicating the items are on the premises. However, **GPS tracking data is unreliable in dense urban environments**[40] – with multiple recorded incidents[41] of reliance on electronic trackers leading to police mistakenly raiding the homes of innocent people. Such

mistaken entries could lead to police forces being exposed to costly claims for compensation. They could also erode the police's operational credibility and public trust.

92. Despite relying potentially flawed evidence, the clause **does not contain a requirement for the intrusion to be authorised by impartial magistrates** whose involvement could promote proportionality and necessity in police searches.[42] The broad powers granted under Clauses 93 and 94 **deviate sharply from safeguards under other frameworks regulating police powers** – for instance, while Police and Criminal Evidence Act 1984[43] limits warrantless entry to serious, indictable offences tied to arrests, the proposed clauses extend such powers to lesser crimes like theft.

93. The resulting expansive search and seizure discretion, checked only by internal police processes, contains no safeguards against abuse – the need for which is illustrated by recent scandals involving Wayne Couzens and David Carrick, coupled with HM Inspectorate's 2021/22 findings that most police forces struggle to tackle corruption effectively.[44]

94. We consider that **the presence of a warrant requirement is essential for ensuring that Clause 93 does not lead to disproportionate impacts on innocent people.** To ensure that the police can effectively respond to thefts, we recommend that rather than expanding warrantless powers, the Government should heed the Law Commission's 2017 recommendations to **improve the efficiency of issuing search warrants** by increasing magistrate hearing slots, standardising templates, and improving training.[45]

95. We therefore urge the Bill Committee to amend the Bill as follows:

Clause 93-94

Clause 93, page 101, line 20, leave out Clause 93

Clause 94, page 104, line 1, leave out Clause 94

Explanatory Statement

This amendment removes the provisions which grant powers to the police and the armed forces to enter and search private or public premises without a warrant where stolen goods have been electronically tracked to the premises

Part 14 - Youth Diversion Orders (Clauses 110-121)

Effectiveness of Coercion Tactics on Children and Young People and need for Safeguarding Approach and Early Interventions

96. JUSTICE considers that Youth Diversion Orders ("**YDOs**"), like CCEPOs, are equivalent to a criminal charge and engage several Convention rights, including the full extent of Article 6, for the reasons already set out at para 34 of this briefing. In particular, YDOs impose wide ranging restrictions on children as young as 10 which includes curfews, prohibiting access to electronic devices and restrictions on who a child can communicate with and their means of communication. YDOs last for 12 months (although they can be extended) and can lead to a child being incarcerated despite them never having been found guilty of a criminal offence.

97. Our Working Party report found that Behavioural Control Orders such as YDOs have a disproportionate impact on children and young people who experience the restrictions more severely than adults for a variety of reasons set out at paras 115 - 119.[52] In particular, the discriminatory impact that orders have on children, and especially those with intellectual disabilities or those who are neurodivergent is well documented in relation to Anti-Social Behaviour Orders ("**ASBOs**").[53] Despite referring to the legitimate purpose of protecting national security, we do not consider that the Government has given adequate attention to the unique impact that criminal-sanctioned requirements and prohibitions have on children, when compared to adults, nor have they provided adequate safeguards to prevent against arbitrariness. We also note the absence of any discussion concerning the Convention on the Rights of the Child in the Government's Human Rights Memo or briefings accompanying the Bill. It is not clear how YDOs will interact with rights enshrined therein, nor what steps the Government has taken to ensure compliance with that Convention.[54]

98. This is all the more concerning, given the lack of robust evidence to suggest that coercive measures such as Behavioural Control Orders, are effective at preventing children from participating in harmful behaviours. For example, in the context of the now-abandoned, Knife Crime Prevention Orders – which were specifically designed for use on children – youth justice experts, enforcement officers, organisations established to prevent youth violence and child psychiatrists we spoke to felt that the use of Behavioural Control Orders against children and young people evidenced a lack of understanding of the root causes of serious violence amongst children.

---

[52] JUSTICE, *Lowering the Standard: a review of Behavioural Control Orders in England and Wales* (2023), paras 3.31 and 3.58-3.67.

[53] Studies have demonstrated the discriminatory impact that ASBOs had on children, young people, individuals from economically disadvantaged backgrounds, and neurodivergent persons, including those with Autism. For example, see, P. Squires 'The Politics of Anti-Social Behaviour', British Politics, (2008), pp. 300-323; see also the British Institute for Brain Injured Children ("BIBIC") (2007), 'BIBIC research on ASBOs and young people with learning difficulties and mental health problems', referenced in House of Commons Committee of Public Accounts, 'Tackling Anti-Social Behaviour, Forty-fourth Report of Session 2006-07', (July 2007). See also case studies provided by the Select Committee on Home Affairs Memorandum submitted by Napo 'Anti-Social Behaviour Orders – Analysis of the first six years' (2005).

[54] In particular Article 37 which states: *"the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time"*

99. In particular, the view that the threat of prosecution would motivate children not to commit unwanted behaviour was felt to be more of an assumption than a position supported by evidence. For examples, statistics on ASBOs show that 68% of all ASBOs issued to children since 2000 had been breached, undermining their effectiveness at *"prevention"*.[55] Moreover, our report highlighted that many children who become involved in crime are first victims of it,[56] whilst others get involved in offending behaviours or associate with gangs via grooming and a false perception that they are *"safer"* or offered a form of protection as a result. In their written evidence to Parliament, the Youth Justice Board set out their position on Knife Crime Prevention Orders clearly:

> *"The operational perspective from youth offending team (YOT) practitioners supports the argument that children are not fearful or influenced by the risk of conviction, detention or criminal justice intervention and so legislating to create new offences is unlikely to act as a deterrent. Contact with the criminal justice system can have a negative effect on children and can increase their likelihood of reoffending."*[57]

100. Whilst we recognise the Government's claim that YDOs are not a criminal justice intervention, we strongly disagree. The reality is that a child who has never been convicted of an offence, can find themselves subject to severely restrictive prohibitions and requirements which, if breached, will lead to their imprisonment. Despite the reference to YDOs being rehabilitative, there is no reference on the face of the Bill to safeguarding, risk assessments, requirements to look at alternative informal interventions, nor rehabilitative programmes – in stark contrast to the regime set out for Respect Orders in Part 1 of the Bill and recommended by the Youth Offending Teams in respect of other orders aimed at children.[58] Whilst referred to as non-criminal in nature, it is deeply troubling that the only agencies referred to in Part 14 are actors of the criminal justice system. Apart from a reference to a weak consultation requirement with Youth Offending Teams in Clause 113, the Bill provides no other opportunities for child and youth justice experts to intervene.

101. As with CCEPOs, there is a risk that YDO's will overlap with several orders already in existence, including Criminal Behaviour Orders and Serious Violence Reduction Orders. CBOs are specifically designed to be imposed in respect of serious and persistent offending and to prevent conduct which causes harassment, alarm or distress – which presumably includes conduct referred to in Part 14 of the Bill.[59] Serious Violence Reduction Orders were introduced to *"prevent"* young

---

[55] Prison Reform Trust, 'Prison Reform Trust consultation submission, More effective responses to anti-social behaviour' (2011)

[56] The Youth Justice Board for England and Wales, 'Written evidence submitted by The Youth Justice Board for England and Wales (BYC007)' (2019).

[57] The Youth Justice Board for England and Wales, 'Written evidence submitted by The Youth Justice Board for England and Wales (BYC007)' (2019).

[58] Youth Justice Legal Centre, 'Criminal Behaviour Orders' (February 2021).

[59] See Sentencing Act 2020, Part 11, Chapter 1, ss330-337.

people aged 18 or over from participating in serious violence and following a pilot, have recently been announced, as of 17th April 2025, to be rolled out nationally.[60]

102. Finally, we agree with the range of experts committed to preventing child offending, that the focus should be on early intervention, safeguarding and expert-led education rather than on criminalising children who have never been found guilty of an offence. The starting point should be to consider whether it is because the child is vulnerable and/or being exploited; thereafter a multi-agency safeguarding approach should be adopted instead of a criminal justice response.[61]

103. For all of these reasons, we strongly urge the Committee to remove Clauses 110 - 121 of the Bill.

Clause 110

Clause 110, page 128, line 20, leave out Clauses 110 - 121.

Explanatory Statement

This amendment removes provisions relating to the creation of Youth Diversion Orders.

Amendments to Current Provisions

104. Despite our recommendation that YDOs should be removed from the Bill, if they are to be imposed then we urge that further consideration must be given by the Committee to ensuring that YDOs do not violate Convention rights, nor long standing principles of natural justice, fairness and the Rule of Law. We also urge the Committee to require the Government to adopt an approach of maximum diversion and much earlier non-criminal intervention to prevent a child or young person from becoming involved in terrorism behaviours. **We also repeat our calls made in paras 99 - 102 that YDOs should be piloted before coming into force and consideration given to how they interact and overlap with other orders.**

Test for imposing a Youth Diversion Order (Clause 110)

105. Clause 110 provides the test for imposing a YDO on a child or young person. As the Bill is currently drafted, a court can impose a YDO on a person between the ages of 10-21, where it is "*satisfied*" on the balance of probabilities that: (i) the child or young person has committed a terrorism offence; (ii)

[60] Police, Crime, Sentencing and Court Act 2022; Crown Prosecution Service, 'Hundreds of Court Orders secured during successful knife crime pilot on Merseyside' (April 2025).

[61] JUSTICE, Tackling Racial Injustice: Children and the Youth Justice System, 2021., p.34. See also, R. Dean, 'Knife ASBOs won't cut crime- but they will harm vulnerable young people', The Guardian, (February 2019).

the child or young person has committed an offence with a terrorist connection; or (iii) the child or young person has engaged in conduct likely to facilitate the commission (by the young person or anyone else) of a terrorism offence, and where the court considers it necessary to make the order for the purpose of protecting members so the public from a risk of terrorism or other serious harm.

106. Given our position that YDOs, as with CCEPOs, are essentially criminal in nature, requiring only the civil standard of proof to be met to impose a YDO (Clause 110(2)(a) and allowing civil standards of evidence to apply would inevitably breach Article 6 given the severe consequences of having a YDO imposed and the long-standing adverse impacts it can have on a child's future. For example, it is unclear what set of events or domino effect a YDO might trigger and we are concerned about a lack of safeguards to prevent the imposition of a YDO being used to justify further surveillance or criminal justice measures.

107. However, whilst we would ordinarily request that the Bill be amended to require that the court be satisfied "*beyond reasonable doubt*" i.e., to the criminal standard of proof, that a child or young person has committed the conduct set out at Clause 110(2)(a), given that the conduct to be proven is an offence in itself – we also consider that this approach is unworkable. For all intents and purposes, it would mean that a child could be found to have committed an offence without ever being subject to a criminal charge, criminal investigation or trial.

108. We consider these concerns to be insurmountable and further support out position that YDOs, as currently drafted, are completely unworkable, risk violating Convention rights and are procedurally unsound. We repeat our call for the Committee to remove them from the Bill or consider how the framework for their use can be altered to address these problems.

109. However, despite these concerns, if YDOs are to remain in the Bill, at a minimum we consider that the second branch of the test should be amended to require that a court considers it "*necessary and proportionate*" as opposed to just "*necessary*" to make an order against a child or young person. As highlighted at para 54 for CCEPOs, this amendment will ensure a consistent approach with other types of Behavioural Control Order and serves to ensure that the Government's intention to act proportionately, as set out in the Human Rights Memorandum, is explicit on the face of the Bill.[62]

110. Finally, the stated purpose of YDOs is to prevent youth involvement in terrorist activity. This has been repeatedly referred to by the Government as justification for the serious nature of the orders and their impact on children. Given the intention on terrorism prevention, we do not consider it appropriate to include prevention of "*serious harm*" as a reason to enforce a YDO. Inclusion of "*serious harm*" needlessly broadens the category of behaviour for YDOs, incorporating conduct such as damage to buildings or for reasons of health and safety, and seems to undercut the

[62] Home Office/ Ministry of Justice/ Ministry of Defence, European Convention on Human Rights Memorandum (February 2025), para 366.

requirement to prove any intention related to terrorism. This risks YDOs being imposed in circumstances not involving terrorism which therefore undermines the Government's argument that the contraventions of Convention rights are proportionate to national security risks.

111. Given the severe consequences for children and young people, YDOs must only be used exceptionally and for their stated purpose – terrorism prevention.

112. We therefore urge the Bill Committee to amend the Bill as follows:

Clause 11

Clause 110, page 128, line 36, after "necessary" insert "and proportionate".

Explanatory Statement:

This amendment amends the test for imposing a youth diversion order to require the court to be satisfied that it is necessary and proportionate to make the order for the purpose of protecting and preventing children and young persons from being engaged in terrorism.

Clause 110

Clause 110, page 128, line 38, remove "serious harm".

Explanatory Statement:

This amendment removes the provision allows the court to make a youth diversion order for the purpose of protecting members of the public from serious harm.

Clause 111

Clause 111, page 129, line 32, leave out Clause 111.

Explanatory Statement

This amendment is consequential to amendments relating to Clause 110. It removes the provision defining "serious harm".

Content of Youth Diversion Orders (Clause 112)

113. As with CCEPOs, Clause 112 provides that a YDO can prohibit or require the child or young person to do or not do anything described in the order. The Bill explicitly states that this includes, but is not limited to, restrictions on who a child or young person can associate or communicate with; the manner in which they communicate and prohibitions on their access to electronic devices. The Bill

also provides that YDOs can require a child or young person to attend appointments or participate in activities, provide information or be subject to a curfew requirement (Clause 112(3)(a)-(c)).

114. As stated at para 32, we are concerned that the wide discretion of the court to impose any prohibition or requirement risks breaching several Convention rights, specifically Articles 8-11. We note the Government's position that any interference will be justified in pursuing the legitimate aim of protecting national security.[63] However, for reasons set out at para 40, we are concerned that orders can be imposed on children whom have never been found guilty of a criminal offence, but have instead been assessed on a weak standard of proof and upon evidence that would not otherwise be inadmissible in criminal proceedings.

115. We are particularly concerned about the impact and arbitrariness of YDOs, in light of findings within our 2023 report about how Behavioural Control Orders disproportionately affect children and young people. For example:

a. **Setting children to fail** – our research found that children and young people are considerably more likely to breach prohibitions and requirements in orders because they do not understand the purpose of the order, the nature of the prohibition or requirement and are more likely to breach the order due to having under-developed executive functioning, being ambivalent of the consequences and forgetfulness.[64]

b. **Isolating children from support networks** – we are particularly concerned that the ability to use orders to prevent children and young people from associating with certain persons, or using electronic devices, may inadvertently undermine their positive relationships and support. As currently drafted, the prohibitions set out at Clause 112(2) lack precision and could easily function in such a way that makes communicating with care-givers and other responsible persons, more difficult. Removing the ability of a child to communicate via electronic means also sets them apart from their peer group. It is well-established that extremism and fundamentalism thrives on social isolation and we are deeply concerned that without proper consideration, such restrictions could be counter-productive. Furthermore, the use of restrictive non-association conditions and the lack of individual support and supervision was one of the main factors leading to high breach rates of ASBOs in the 2000s.[65]

---

[63] Home Office/ Ministry of Justice/ Ministry of Defence, European Convention on Human Rights Memorandum (February 2025).

[64] Blakemore, and S. Choudhury, Journal of Child Psychology and Psychiatry 'Development of the adolescent brain: implications for executive function and social cognition', (February 2006)

[65] Prison Reform Trust, 'Prison Reform Trust consultation submission, More effective responses to antisocial behaviour' (2011), p.3;

c. **Punitive not rehabilitative** – we do not consider that the provisions made in Clause 112(3) of the Bill relating to activity requirements are sufficient to make YDOs rehabilitative, rather than punitive. Despite their label, research shows that rehabilitative programmes and/or activity requirements currently provided for under the order regime are poorly thought out and often inappropriate.[66] A lack of resources, poverty, social and cultural differences and personal factors such as low self-esteem and confidence all present barriers to children's effective participation in such programmes. More planning and careful consideration is required to overcome this.

d. **Curfews and electronic monitoring** - we are concerned about the Government's reference to curfew and how these will be enforced in practice. We note that the Bill does not currently prevent the use of electronic monitoring. Curfews and electronic monitoring amounts to a very serious interference with a person's article 8 rights, and when coupled with other restrictions could lead to an infringement with Article 5 as referred to at para 60, above. As stated in our report, we consider it wholly inappropriate and unnecessary to impose such requirements on children, not least on the basis that it is stigmatising and will only push children further into the criminal justice system leading to worse future outcomes and increasing the risk of re-offending – as repeatedly warned against via youth justice experts.[67]

116. Finally, vague prohibitions and conditions requiring children to "*provide information*" in Clause 112(3)(b), without setting out the scope of such a provision and whether or not it is a Notification Requirement, is problematic from both a privacy and Article 8 perspective but also in terms of the ability of such requirements to be enforced inconsistently across the country. We consider that this provision must be narrowed in scope to bring it in line with other orders provided for in the Bill, e.g., Respect Orders and CCEPOs.

117. For these reasons, we propose that the Bill should be amended to:

a. Require that the test in Clause 112(4) be expanded to ensure that prohibitions and requirements are only imposed where they are "*necessary and proportionate*". Doing so provides an essential protection against the arbitrary imposition of prohibitions and requirements that risk breaching convention rights. It makes it explicit that the courts must assess the necessity and the proportionality of each prohibition or requirement they seek to impose. The Government confirms this position in its Human Rights memorandum, stating

---

[66] Ben Kinsella Trust, *Keeping Young People Safe: Dismantling belief systems through education to prevent knife carrying* (2024); JUSTICE, *Lowering the Standard: a review of Behavioural Control Orders in England and Wales* (2023), para 3.113.

[67] L. McAra, and S. McVie, Criminology & Criminal Justice, 'Youth crime and justice: Key messages from the Edinburgh Study of Youth Transitions and Crime',(2010).

"the court must tailor measures to the particular harms they seek to prevent on a case-by-case basis, ensuring proportionality."[68] This ought to be reflected on the face of the bill.

b. Provide that prohibitions and requirements must not interfere with the ability of the child or young person to access vital support services, including counselling and health services. As currently drafted, the Bill states that any prohibition or requirement that is imposed must, as far as practicable, avoid interfering or conflicting with times of work or education, the person's religious beliefs and any other court order or injunction that the person is subject to. Including this provision ensures that YDOs do not prevent a child from accessing support services that may help address their underlying behaviour.

c. Require the court to hear evidence of the suitability and enforceability of prohibitions and requirements. This is provided for in Clause 1(D1(2-3)) of the Bill in relation to Respect Orders under Part 1 but is absent from Part 14, despite YDOs highly sensitive nature and life-altering impact on the lives of young people. In particular, we consider that courts should hear evidence from experts such as Youth Offending Teams and individuals involved in the child's education and care to make sure that prohibitions and requirements are fit for purpose.

d. Expressly prohibit the use of Electronic Monitoring on children and young people subject to YDOs.

118. **We therefore urge the Bill Committee to amend the Bill as follows:**

Clause 112

Clause 112 (4), page 130, after line 26, insert –

"(5) For the purpose of assessing the necessity and proportionality of a prohibition or requirement under subsection (2), a court must consider the cumulative effect of (a) the requirements and prohibitions it seeks to impose, (b) the prohibitions and requirements of any other court order or injunction to which the relevant person is subject."

Explanatory Statement

This amendment requires that in determining the necessity and proportionality of prohibitions and requirements in a youth diversion order, the court must consider the cumulative impact of all of the prohibitions and requirements imposed and their impact on any other order or criminal sentence imposed.

[68] Home Office/ Ministry of Justice/ Ministry of Defence, European Convention on Human Rights Memorandum (February 2025).

Clause 112

Clause 112 (4), page 130, line 26, remove "other serious harm."

Explanatory Statement

This amendment is consequential to amendments relating to Clause 110. It removes the provision allowing the court to impose prohibitions and restrictions for the purpose of protecting members of the public from a risk of serious harm.

Clause 112

Clause 112 (5), page 130, after line 32, insert –

"(d) any interference with the respondent's attendance at any support service or health service".

Explanatory Statement

This amendment requires that prohibitions and requirements imposed by youth diversion orders must avoid, as far as practicable, interfering with the child or person's ability to access to support services.

Clause 112

Clause 112, page 130, after line 22, insert –

"(5) An order may not -

(a) impose an electronic monitoring requirement."

Explanatory Statement

This amendment prohibits to imposition of an electronic monitoring requirement as a condition of a youth diversion order.

Clause 112

Clause 112(5), page 130, after line 32, insert –

"(6) Before including a prohibition or requirement, the court must receive evidence about its

suitability and enforceability. The court must hear evidence from (where applicable) –

(a) Youth Offending Teams;

(b) individual's involved in the child's education;

(c) child services;

(d) mental health services;

(d) such other services as the court considers appropriate.

(7) Before including two or more prohibitions or requirements, the court must consider their compatibility with each other."

Explanatory Statement

This amendment requires the court to consider a wider range of evidence before imposing a youth diversion order and to consider the compatibility of prohibitions and requirements to ensure that the order is fit for purpose.

Duty to consult (Clause 113)

119. We support the requirement for the police to consult local Youth Offending Teams ahead of making an application for a YDO. However, we consider it should be strengthened beyond a mere obligation for the police to "*consider*" the views of the Youth Offending Teams. As we observed in our 2023 report, the police must be required to set out the reasons why they have diverted from the opinions of the Youth Offending Team, where applicable.[69] Moreover, it is not clear on the face of the Bill or from the Explanatory Notes that the views of the Youth Offending Team must be shared with the court at all. If the purpose of the consultation is to encourage reasoned decision-making, this is undermined by not ensuring that the court has access to the information provided by the Youth Offending Teams.

120. Given the life-altering impact of a YDO on a young person, it is imperative that the views of the youth offending teams are represented to the court ahead of any determination whether to impose a YDO and whether or not a YDO is necessary. We also consider that the views of the Youth Offending Team must be sought when determining the types of requirement and prohibitions imposed under Clause 112.

[69] JUSTICE, *Lowering the Standard: a review of Behavioural Control Orders in England and Wales* (2023), paras 3.67-3.68.

121. Further, we recommend expanding the requirement to be in line with current statutory guidance for Criminal Behaviour Orders.[70] This guidance recommends that an applicant for an order against a child "*should consult local organisations that have come into contact with a child before a decision to seek an order is made.*"[71] This includes examples such as schools, colleges, social services, mental health services and housing providers. We consider that such an approach should be applied to the YDO regimes as this will ensure the interests of the child are prioritised throughout the application process.

122. Finally, as stated at para 101, we are concerned by the lack of provision for risk assessments to be carried out before imposing YDOs. As provided for in Part 1 of the Bill in relation to Respect Orders, it is imperative that a child or young person's vulnerabilities and alternative informal interventions are considered before determining that a YDO is the most appropriate option. Moreover, we note the absence of any reference to the body or person suitable for supervising YDOs, unlike with Respect Orders in Part 1 of the Bill. It is imperative that appropriate persons be appointed to support a child or young person subject to a YDO.

123. **We therefore urge the Bill committee to amend the Bill as follows to give urgent consideration to the adoption of a framework for risk assessments and supervision for YDOs, similar to that provided in Part 1 of the Bill for Respect Orders.**

Clause 113

Clause 113, page 131, line 4, replace "under the age of 18" with "under the age of 21."

Explanatory Statement

This amendment extends the duty to consult to be in respect of any child or young person under the age of 21 who may be subject to a YDO ahead of the police making an application.

Clause 113

Clause 113, page 131, after line 5, insert after 'the local youth offending team' –

"(1) (a) individuals involved in the respondent's education; child services; mental health services; housing providers."

Explanatory Statement

[70] Home Office, *Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory guidance for frontline professionals* (2023), para 41.

[71] Youth Justice Legal Centre, 'Criminal Behaviour Orders' (February 2021).

This amendment requires the police to consult relevant groups and organisations that have come into contact with a child or young person ahead of making an application for a YDO.

Clause 113

Clause 113, page 131, after line 15, insert –

"(3) Following consultation, a chief officer of police must present the conclusions of any youth justice teams to the court when making an application for a youth diversion order or the variation or discharge or such an order."

Explanatory Statement

This amendment requires the police to present the findings of any consultations with youth justice experts to the court to strengthen the effectiveness of the duty to consult before imposing a youth diversion order.

Applications without Notice and Interim Youth Diversion Orders (Clause 114 and 115)

124. As with Respect Orders and CCEPO, YDOs can be made without notice (Clause 114) and Interim YDOs can be made following a without notice application to the court (Clause 115). Interim YDOs are nearly identical to full YDOs in that they can impose any prohibition but may only impose a requirement for a child or young person to provide information under Clause 112(3)(b). Unlike other types of Behavioural Control Orders, such as Serious Crime Prevention Orders, there is no provision giving an individual subject to an interim YDO the opportunity to make representations about the imposition of the order following notification.[72]

125. The need for robust procedural safeguards is all the more important given that YDOs can be imposed on children as young as 10. Allowing for applications to be made without notice and without allowing a child or young person to have their evidence heard risks breaching Article 6(1)-(3) of the Convention for reasons set out at para 45 and provided for in the legal advice obtained by JUSTICE.[73] These minimum safeguards are absolute; they cannot be qualified by necessity - yet a young person subject to an application for an Interim YDO benefits from none of them. Moreover,

[72] Serious Crime Act 2007, Part 1, Section 9 re Serious Crime Prevention Orders.

[73] This includes the right to: "be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; to have adequate time and facilities for the preparation of his defence; and to defend himself in person or through legal assistance of his own choosing [..]".

despite the Government's contention, such violations can not be remedied by allowing an appeal – not least when no time-frame for such an appeal is provided – all the while a child's rights are being curtailed.

126. This lack of procedural safeguards could lead to the mis-use of Interim YDOs. For example, we are concerned that some applicants might be incentivised to apply for an Interim Order without notice, knowing that it will be easier to obtain than a full YDO Order and knowing that they are unlikely to impose positive requirements anyway due to resource constraints. Moreover, there is no indication from the Government about when Interim YDOs might be sought. This is in contrast to the position relating to CCEPOs, whereby the Government at least sets out its intention that Interim orders will only be imposed in exceptional or urgent circumstances.[74] Considering the severe and life-altering impact that being subject to a YDO can have on a child, YDOs must not be seen as a quick solution to a complex problem. Nor must they be used to obtain a prosecution by the backdoor.[75]

127. We therefore urge the Bill Committee to consider how to limit the use of YDOs in exceptional or urgent cases and thereafter, to also amend the Bill as follows:

Clause 114

Clause 114, page 131, line 25, leave out Clause 114.

Explanatory Statement

This amendment removes the provision permitting youth diversion orders to be applied for without notice.

Clause 115

Clause 115, page 132, line 2, leave out Clause 115.

Explanatory Statement

This amendment removes the provision creating interim youth diversion orders.

Variation and Discharge of Youth Diversion Orders (Clause 116)

[74] Home Office/ Ministry of Justice/ Ministry of Defence, European Convention on Human Rights Memorandum (February 2025), para 81.

[75] JUSTICE, *Lowering the Standard: a review of Behavioural Control Orders in England and Wales* (2023), para 3.17.

128. Clause 116 provides that a relevant person can apply to a court to vary or discharge a YDO. For the same reasons set out at paras 71 - 73 we consider that an application to vary or discharge a YDO should be capable of being decided remotely on the papers, where the child or young person (or their legal representative) requests it.

129. Clause 116 only expressly allows for the variation of orders insofar as they make orders more restrictive e.g., by adding requirements/prohibitions and/or extending their duration. We propose that the Bill be amended to also include the power to remove prohibitions and requirements; reduce the duration of requirements and prohibitions as well as the power to reduce the period for which the order itself has effect. We also propose that safeguards are inserted in Clause 116 so that the duration of any new prohibitions or requirements do not extend beyond the duration of the original order itself.

130. Finally, Clause 116(5) provides that an applicant may not make a further application to vary or discharge an order, if an application has already been dismissed, without consent from the court and the agreement of the other relevant person. We do not consider it appropriate for any party other than the court, which is impartial and has the benefit of reviewing all evidence available to it, to make this determination.

131. We therefore urge the Bill committee to amend the Bill as follows:

Clause 116

Clause 116, page 132, after line 31, insert –

"(4) (d) remove prohibitions and requirements;

(e) reduce the period for which a prohibitions or requirement has effects;

(f) reduce the period for which the order has effect."

Explanatory statement

This amendment includes the power to remove prohibitions and requirements and to reduce the period for which they have effect.

Clause 116

Clause 116, page 132, after line 33, insert –

"(5) Where an order has been varied by the court, the court must ensure that the varied requirements do not extend beyond the duration of the original order (unless this too has been varied)."

Explanatory statement

This amendment provides a safeguard to ensure that any variations applied to an order do not extend beyond the period for which the order has effect.

Clause 116

Clause 116, page 132, line 37, delete "the agreement of the other relevant person."

Explanatory Statement

This amendment removes the provision requiring the agreement of the other relevant person following a further application to vary or discharge.

Appeal against Youth Diversion Orders (Clause 117)

132. Clause 117 provides that a relevant person may appeal against a decision made by a court on an application for a YDO or an application to vary or discharge a YDO.

133. In respect to both the hearing to impose a YDO and any subsequent appeal hearing, it is unclear on the face of the Bill what legal support would be available to children and young people in these proceedings. Given the significant impact of a YDO and the potentially severe criminal outcomes that they have for young people, it is imperative that there is appropriate access to legal aid for those affected.

134. As we raised in our 2023 report, several experts working with those affected by Behavioural Control Orders noted the difficulty people faced in accessing the necessary legal representation. The level of legal aid must be revisited to ensure that it is financially viable for those with civil legal aid contracts to represent young people in respect of YDOs (and all Behavioural Control Orders generally) and thus to ensure that individuals can access the essential legal advice.[76]

135. **We therefore urge the Bill Committee to give consideration to the provision of legal aid.**

Guidance (Clause 119)

[76] JUSTICE, *Lowering the Standard: a review of Behavioural Control Orders in England and Wales* (2023), paras 4.61-4.63.

136. Clause 119 provides that the Secretary of State *may* issue guidance to chief officers of the police about the exercise of their function in respect of YDOs. Whilst we welcome the provision of guidance setting out how YDOs should be used, we consider that the Bill should be amended to ensure that it is mandatory for the Secretary of State to do so, rather than optional.

137. As currently drafted, we are concerned that there is no specification for the Secretary of State to consult any youth or children's rights organisations, most notably Youth Offending Teams or Children's Services. As per the Government's Human Rights Memorandum, the intention behind YDOs is to divert young people away from terrorist offending and further to divert them from the wider criminal justice system, including prosecution. With this in mind, the Secretary of State must seek out expertise from groups and individuals who have a broader understanding of diversion, safeguarding and working directly with children and young people, including those with additional support needs, as opposed to solely consulting authorities that are representatives of the criminal justice system.

138. Further, we note that there is currently no provision addressing data monitoring and evaluation for YDOs. Not only is it impossible to discern the effectiveness of orders without the collection of data, but it also prevents any assessment of trends arising out of their imposition, enforcement and breach – including any disproportionate impacts. Indeed, without data on YDOs or even a provision to gather data, as we have seen with other orders, it is unclear how the Government will ensure adequate compliance with the Public Sector Equality duty. We consider that the Secretary of State must include guidance setting out how the police and other authorities should collect, publish and monitor data on YDOs. This includes the manner and form by which authorities must collect data, requirement that such data must include information relating to the protected characteristic or vulnerabilities of those subject to YDOs; and a requirement for the relevant authorities to publish data relating to YDOs.

139. **We therefore urge the Bill Committee to amend as follows and give consideration to a framework for data monitoring and evaluation for youth diversion orders:**

Clause 119

Clause 119 (1), line 10, replace "*may*" with "*must*".

Explanatory Statement

This amendment requires the Secretary of State to issue guidance on youth diversion orders.

Clause 119

Clause 119 (3), after line 23, insert –

"(3) Before issuing or revising any guidance, the Secretary of State must consult –

(h) persons representing the interest of children including;

(i) child psychologists;

(j) child services;

(k) education providers;

(l) the Youth Offending Teams;

(m) legal practitioners specialising in child law;

(n) such other persons as the Secretary of State considers appropriate ."

Explanatory Statement

This amendment requires the Secretary of State to consult a wider range of persons and bodies before issuing guidance on youth diversion orders.

For more information, please contact:

Stephanie Needleman, Legal Director, JUSTICE: sneedleman@justice.org.uk

JUSTICE, 23 April 2025