JUSTICE

Crime and Policing Bill

House of Commons - Second Reading

Briefing

March 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. 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 summer 2024, the prison system was brought *"dangerously close to total collapse"*[1] by capacity pressures, necessitating emergency early release provisions[2] and prompting 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:

> "*Supply growth is not expected to keep pace with the demand for prison places. Without serious intervention, the current prison capacity crisis will persist and escalate far beyond manageable levels. It is imperative that this imbalance is addressed to ensure the system remains sustainable long term*".[3]

3. The report 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 notwithstanding the long-term trends suggesting overall crime in England and Wales may be decreasing and **evidence suggesting custodial sentences have the highest reoffending rates.**[4] In particular, the report urges a departure from

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[1] Independent Sentencing Review, *History and Trends in Sentencing,* 2025, p. 9

[2] Press release: Lord Chancellor sets out immediate action to defuse ticking prison time bomb, available here: https://www.gov.uk/government/news/lord-chancellor-sets-out-immediate-action-to-defuse-ticking-prison-time-bomb

[3] Independent Sentencing Review, *History and Trends in Sentencing,* 2025, p. 10

[4] *Ibid*., pp. 10-11, p. 18

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]

4. 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, including:

   a. A diminution in the quality of evidence relied upon at trial on behalf of the prosecution and/or defence;

   b. Victims and witnesses withdrawing from the process, increasing the likelihood that there will be insufficient evidence to allow the prosecution to proceed with the case;

   c. Individuals held on remand whilst awaiting trial (and so have not been found guilty of an offence) face longer periods in custody, even though they may well go on to be acquitted or given a non-custodial sentence even if convicted.[7] Significant racial disproportionately has consistently been found to exist with respect to who is held on remand.[8]

5. 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]

6. 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

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[5] Ibid., p. 23

[6] Criminal courts - Courts data - Justice Data ; National Audit Office, Reducing the backlog in the Crown Court

[7] In December 2022, Fair Trials reported that: *"In 2021, more than 1 in 5 people (21%) were not sent to prison after being held on remand, and 1 in 10 people held on remand were subsequently acquitted at trial"* See: Fair Trials, Highest number of people on remand in England and Wales for over 50 years, November 2022

[8] In 2021, for example, 47% of black defendants were remanded in custody during Crown Court proceedings compared to 37% of white defendants, despite the fact that they were more likely to be acquitted and less likely to receive an immediate custodial sentence if convicted. Of the group of black defendants remanded in custody in 2021, 14% were acquitted and 24% did not receive an immediate custodial sentence - the corresponding figures for white people on remand were 8% and 19% respectively. See: Fair Trials, Highest number of people on remand in England and Wales for over 50 years, November 2022. Fair Trials reports that the same disproportionate rates of remand, acquittal and sentencing present in 2021 were also found in 2019 and 2020.

[9] https://www.gov.uk/guidance/independent-review-of-the-criminal-courts

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.

The Effectiveness of Behavioural Control Orders to Prevent Harmful Behaviour

7. Behavioural Control Orders are civil orders that impose conditions on a person with the intention of preventing various forms of harmful conduct, ranging from anti-social behaviour to terrorism. Breach of one of these orders is a criminal offence. The Bill creates new Behavioural Control Orders as well as amends existing orders.

8. Changes to **existing** Behavioural Control Orders include:

    a. extending the duration of **Dispersal Orders**;

    b. increasing the amount payable under a Fixed Penalty Notice for **Breaching a Community Protection Notice** ("CPNs") and **Public Spaces Protection Orders ("PSPOs")** (Clause 4)

    c. making it compulsory for a court to impose a **Criminal Behaviour Order** in respect of retail assault (Clause 15); and

    d. making **Stalking Protection Orders ("SPOs")** available upon acquittal (Clauses 69 – 71).

9. In addition to reforming the existing Behavioural Control Orders, the Bill also creates several new orders: **Respect Orders** (Clauses 1-2) aimed at preventing anti-social behaviour; **Child Criminal Exploitation Prevention Orders** (Part 4, Clauses 17-31); and **Youth Diversion Orders ("YDOs")** (Part 9, Clauses110 – 121). These orders are all imposed on the civil standard of proof, but breach is a criminal offence.

Overarching concerns

10. We have previously identified a number of serious and systemic problems with the use of Behavioural Control Orders which we are concerned will be worsened by the addition and expansion of orders in Part 1, 3, 4 and 9 of the Bill.

11. ***Inability to determine whether Behavioural Control Orders are the most effective tool to reduce harmful conduct –*** A lack of data and insufficient monitoring or evaluation makes it impossible to

[10] Ministry of Justice, Crime and Policing Bill: Criminal Law Measures Impact Assessment, February 2025, p.2

determine the success rate of Behavioural Control Orders when it comes to preventing harmful conduct or their cost-effectiveness when compared to other interventions.[11]

12. ***Inconsistent use of orders across the country*** - There is significant variation in the use of Behavioural Control Orders across the country in terms of the volume of orders imposed, the type of orders used for any given situation and the conditions imposed. 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.

13. ***A lack of resources, training and infrastructure to monitor and enforce orders*** - Police and Local Authorities do not have the capacity or resources to provide the necessary training and to establish robust systems for monitoring the use of existing orders, leading to orders being imposed in unsafe circumstances,[12] or in the case of SPOs, not imposed at all.[13] Without investment, the addition of new orders will only cause further resource burdens.

14. ***Overlap with other orders and offences cause operational challenges for the Police and Local Authorities*** - Conduct covered by a Behavioural Control Order often falls within the remit of several other orders and offences. This causes confusion in determining when to pursue a criminal offence; when to impose an order and which order to use. This inevitably causes delays and leads to orders being used inappropriately e.g. the wrong order being used or an order not being imposed at all.

15. ***High breach rates –*** Lack of resources also makes it difficult for enforcement bodies to monitor and respond to breaches of orders. Breaches of conditions are common.[14] For example, orders under the 2014 Act might be breached up to 15 or more times before enforcement action is taken.[15] The Super-Complaint by the Suzy Lamplugh Trust also emphasised that responses to breaches of SPOs were poor, often leaving victims vulnerable and emboldening the perpetrator.[16]

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[11]Even where pilots are conducted, data from the pilots have been compromised due to the failure to establish criteria by which the success of orders should be measured against.

[12]A victim of domestic abuse was subject to enforcement action for "crying too loudly" in her home; the family of an autistic child was criminalised for allowing them to "close the door too loudly"; those experiencing homelessness including veterans are routinely criminalised despite being at more risk of becoming victims to anti-social behaviour than perpetrators, buskers are routinely fined despite guidance prohibiting this. Whilst shocking, these instances are not rare and will continue until the Government increases accountability and increases resources for training and monitoring.

[13]JUSTICE, 'Lowering the Standard: a review of Behavioural Control Orders in England and Wales' (2023), p10.

[14] Albeit, difficult to assess situation fully due to lack of data.

[15] Arose out of discussions at justice roundtable on 06th March.

[16]Suzy Lamplugh Trust, 'Super-complaint submitted on police reponse to stalking' (November 2022).

16. ***No resources for positive requirements –*** Despite Behavioural Control Orders providing for positive interventions by requiring individuals to take part in activities, positive requirements are rarely imposed. Years of public funding cuts mean that there are simply not enough services to fulfil them. Moreover, there is no standardised register of appropriate services/activities at either local or national levels, meaning that the process to identify relevant services or activities in an area is ad hoc and depends on the resources or efforts of different enforcement bodies to identify them.

17. ***Drawing vulnerable people into the Criminal Justice System and discriminatory impacts*** – Children, those with mental ill-health and those with intellectual disabilities are disproportionately impacted by Behavioural Control Orders, leading to worse outcomes further downstream and increased likelihood of re-offending. They are more likely to breach orders due to difficulties understanding them and for other reasons outside of their control, leading to the sense they are being set up to fail. In addition, our Behavioural Control Order report also identified that there are insufficient safeguards to prevent discrimination. For example, our report found that individuals who are experiencing homelessness, as well as Black boys and young people, are more likely to be subject to certain orders due to bias and racial prejudice.[17]

18. ***Procedural fairness, human rights and proportionality*** – Most Behavioural Control Orders can be imposed using a lower standard of proof and by relying on hearsay evidence, despite breaches amounting to a criminal offence which often result in imprisonment. This is also notwithstanding their ability to impose life-altering conditions which limit a person's ability to socialise, travel or own certain possessions for the lifetime of the order including electronic monitoring and notification requirements – all of which impact on the right to a private and family life; the right to freedom of expression and association and the right to and which can last for an indefinite duration. Our report identified inconsistent approaches to determining the fairness and proportionality of the measures, meaning that orders have been imposed in ways that risk breaching human rights. Because the process for imposing an order is civil in nature, accessing legal aid is challenging; thereby meaning that many individuals are not represented until such time as an order is breached whereby it is dealt with as a criminal matter.

[17]JUSTICE, 'Lowering the Standard: a review of Behavioural Control Orders in England and Wales' (2023), p53.

Part 1 – Anti-social behaviour

Respect Orders

19. Clauses 1 and 2 introduce **Respect Orders** (Clauses 1-2). A local authority, police or housing provider can apply to the court for a Respect Order where an individual has engaged in or has threatened to engage in antisocial behaviour. The order can impose restrictions including excluding someone from their home. The test must be proven to the civil standard of proof. However, breach of an Respect Order is a criminal offence punishable by unlimited fine or up to 2 years imprisonment.

20. In addition to the overarching issues with Behavioural Control Orders identified above, Respect Orders **are unnecessary, replicate powers already available within the 2014 Act and will not, on their own, reduce anti-social behaviour**.[18] We have spoken to representatives from local authorities, the police, social housing providers and community safety experts expressed concern during our ASB Roundtable, that Respect Orders were being introduced without any formal review of existing powers having taken place. The unanimous view of practitioners that we have spoken to is that the Government should be working to streamline existing orders and address the problems with them, rather than creating more.

21. The Government must also invest in infrastructure to **improve data collection, data-sharing and partnership working** between local authorities, the police, housing providers and community safety, public health and youth justice experts.

22. Finally, in order to truly facilitate "early interventions", there must be adequate funding for public services that address the underlying causes of anti-social behaviour.

Dispersal Powers

23. Dispersal Orders allow officers to require individuals to leave an area for 48 hours. Failure to comply with a dispersal direction is a criminal offence. Clause 3 extends the period that a dispersal direction can be in place from 48 hours to 72 hours. We oppose measures to increase the duration of dispersal directions given that they can prevent individuals from accessing critical services like foodbanks and medical facilities and are currently used inappropriately, for example a disabled man in a wheelchair who has handing out food to the homeless was issued with a dispersal order.[19]

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[18]The Explanatory Notes make frequent reference to ROs being used against individuals drinking in public parks or creating noise nuisance despite such conduct already being covered by CPNs and PSPOs.

[19] https://manifestoclub.info/wp-content/uploads/2016/02/Dispersal-Powers-Briefing-Document.pdf

Community Protection Notices (CPNs), Public Spaces Protection Orders (PSPOs)

24. Clause 4 will increase the amount payable under a Fixed Penalty Notice for breaching a CPN and PSPO from £100 to £500. This is disproportionate and should be abandoned. **Increasing fines will not be a deterrent to perpetrators** given that fines often go unpaid. Moreover, research shows a significant proportion of CPNs and PSPOs are being imposed in inappropriate circumstances, either upon individuals who are experiencing homelessness or mental illness or in cases where the behaviour complained off falls far below the threshold for antisocial behaviour.[20] Furthermore, there is a worrying trend of local authorities outsourcing the enforcement of orders to private companies who are paid commissions on a target-basis, leading to concerns that CPNs and PSPOs are being issued for income-generating and commercial purposes rather than being used to tackle antisocial behaviour.

25. Moreover, we do not consider that it is necessary to extend the power to impose PSPOs to partners under the Community Safety Accreditation Scheme given that the legislation already provides local authorities with the ability to delegate authority.

Part 2 – Offensive Weapons

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

27. 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. In other words,

[20] Manifesto club, 'PSPOs: the use of 'busybody' powers in 2022' (July 2023).

[21] Criminal Justice Act 1988, section 139; Prevention of Crime Act 1953, section 1(1)

[22] Criminal Justice Act 1988, section 139AA(1); Prevention of Crime Act 1953, section 1A

it 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.

28. JUSTICE understands the need for the Government to address knife crime. However, we would invite the Government to consider other more effective ways of addressing this pressing issue. 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 was 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]

Part 3 – Retail Crime

29. 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.**

30. Firstly, **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

[23]Civil Service Quarterly, A radical approach to tackling knife crime in Scotland, July 2019, available here: https://quarterly.blog.gov.uk/2019/07/04/a-radical-approach-to-tackling-knife-crime-in-scotland/

[24] *Ibid*.

[25] *Ibid*.

[26] Criminal Justice Act 1988, section 39

[27] See s.156 Police, Crime, Sentencing, and Courts Act 2022; Sentencing Council sentencing guideline on *Common Assault/ Racially or religiously aggravated common assault/ Battery/ Common assault on emergency worker*, available here: https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/common-assault-racially-or-religiously-aggravated-common-assault-common-assault-on-emergency-worker/

[28]https://hansard.parliament.uk/commons/2023-12-12/debates/139c57e0-f6dc-469a-908a-11cf1e798195/CriminalJusticeBill(FirstSitting)#contribution-C61B8E08-D60F-4AF6-9644-D5DFB2220181

government has also assessed that the introduction of the offence was not required or likely to result *"in the most positive impact*".[29]

31. Secondly, 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.

32. Clause 15 would make it mandatory to impose a CBO in cases concerning assaults on retail workers. This is unnecessary and risks creating a differing system for victims, depending on their occupation at the time of the offence.

33. Currently, a CBO can be imposed following conviction for any criminal offence which includes any form of assault. 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.

34. 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]

Theft from shop triable either way

35. Clause 16 would repeal section 22A of the Magistrates' Courts Act 1980 allowing for low-value shop theft offences of under £200 to be sent for trial in the Crown Court (with a maximum custodial sentence of seven years' imprisonment) instead of being tried summarily in the magistrates' court. Whilst we appreciate that shop-theft including low-value theft can cause real harm to businesses, we are concerned that this provision would exacerbate the already critical Crown Court backlog, worsen the prison capacity crisis, and disproportionality impact women and those experiencing poverty or other vulnerabilities.

[29] https://petition.parliament.uk/archived/petitions/647093

[30] Crime and Policing Bill, Explanatory Notes, para. 37.

[31] JUSTICE, 'Lowering the Standard: a review of Behavioural Control Orders in England and Wales' (2023), p49.

36. The Crown Court backlog currently stands at a record high of 73,000.[32] By enabling theft offences to be sent to the Crown Court this provision is likely to significantly add to this, leading to more delays, including in the prosecution of the most serious crimes. Moreover, insofar as this provision allows for higher sentences to be passed for low-value theft, it risks leading to more and longer custodial sentences, for comparatively minor offences, at a time where prisons are already at breaking point.

37. In addition to the strain this provision would place on the justice system, we are also concerned that it fails to recognise or address the social factors, such as poverty or addiction, that often drive low value shop theft. Women have been shown to be more likely to be involved in offences associated with poverty, including shop theft,[33] and are more likely to receive a custodial sentence for this kind of non-violent, low-level offending.[34] The impact of this, on an already vulnerable group, is substantial. Criminal convictions and time in custody create vast barriers for finding employment or secure housing and perpetuates the experiences of poverty that led people to offend in the first place. Whilst low-value shop theft does need to be addressed, resources spent prosecuting these offences would, in a large number of cases, be better spent on initiatives, such as the Wakefield District retail triage, which divert vulnerable offenders to specialist services designed to tackle the causes of offending. [35]

Part 6 – Stalking

38. Currently Stalking Protection Orders only be issued on application by the police to the magistrates' court. Clause 69 and 70 would allow the criminal courts to impose Stalking Protection Orders following acquittal or conviction of any offence. Before making an SPO, the court must be satisfied that the defendant has engaged in acts associated with stalking, poses a risk of stalking, and that the order is necessary to protect an individual from such a risk. SPOs must be imposed for a minimum of 2 years and breach can result in imprisonment up to 5 years, a fine or both.

39. Whilst we support more effective use of Stalking Protection Orders, the issuing of more of these orders alone will not be sufficient to protect victims. It is crucial that the Government provide resources to the police for training and resources to ensure that they are properly understood, monitored and breaches reacted to immediately. There are examples of victims with Stalking Protection Orders in place being told

[32] 'Justice denied: Govt failing to take urgent action on crown court backlogs, PAC warns' (March 2025).

[33] APPG, 'Arresting the entry of women into the criminal justice system' (September 2019).

[34] House of Commons Justice Committee, 'Women in Prison' (July 2022).

[35] PCC (West Yorkshire), 'PCC recognises Wakefield retail triage scheme success' (October 2020).

that the there is no such thing as a Stalking Protection Order when they have reported breaches.[36] Specialist-led training that is targeted and relevant to the role of different actors within the police is required. There must also be efforts to streamline existing orders to make it clear when an application for an SPO, Restraining Order or a Harassment Injunction should be made. In addition, there needs to be increased engagement between the police and victims to ensure that the most appropriate tool is being used and that the conditions are tailored to best suit the victim's needs. Finally, it is crucial that examples of best practice arising from Police forces that use SPOs successfully within Multi-Agency Stalking Intervention Programme, becomes the norm across the country.

Part 9 – Public Order

40. 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).

41. 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 "**ECHR**"). 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**") are having a *"chilling effect" on peaceful protest.* In such circumstances, we consider Part 9 of the Bill to be unnecessary and overly restrictive, risking further erosion of freedoms without clear justification.

42. We have further concerns about the scope of clause 86 in particular. First, it criminalises even those who do not intend to conceal their identity. Second, the only defences available are that a person wore or used the item which conceals their identity for: (a) health purposes; (b) religious purposes; or (c) work-related purposes. The excessive nature of this new offence is, in our view, brought into sharp relief when read against the narrow range of defences. There are a number of 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

[36] https://hmicfrs.justiceinspectorates.gov.uk/publication-html/police-response-to-stalking/

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 ECHR.

43. 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 to grant 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.

44. 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 'reasonable excuse' defence is to be welcomed, given that the courts will be required to interpret its scope in a way which is compliant with the ECHR.[38]

45. In light of the above, JUSTICE recommends that:

    a. **Clauses 86-88 and clause 90 are removed from the Bill.**

    b. **Existing frameworks are reviewed.** Parliament should engage in post-legislative scrutiny of the Public Order Act 2023 and assess the efficacy of current police powers, including a thorough analysis of their effects on protected groups' abilities to exercise their ECHR rights.

Part 10 – Powers of the Police Etc.

46. 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

[37] Crime and Policing Bill: Public Order factsheet

[38] Following the Supreme Court's decision in *DPP v Ziegler* [2021] UKSC 23

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.

47. 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.**

48. 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 the Art.8 ECHR 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.

49. 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.

50. 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.

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[39] p.55

[40] UKRI, " Intelligent Positioning in Cities using GNSS and Enhanced 3D Mapping"

[41]Holly Yan, Melissa Alonso, Andy Rose, "Denver police raided the wrong house after officers relied on a phone tracking app. Now a grandmother will get $3.76 million," CNN, March 8, 2024; Maureen Groppe " FBI SWAT team raided the wrong house. Can family sue? Supreme Court will decide," USA Today,

[42] See e.g. Damache v DPP [2012] IESC 11, [2012] 2 IR 266, where the Irish Supreme Court's ruled that self-authorised warrants lack independent scrutiny.

[43] See Police and Criminal Evidence Act 1984 ("PACE"), sections 17, 18 and 32.

51. 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]

52. 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]

Part 13 – The Police

53. Clause 107 of the Bill would raise the threshold for referring police officers to the Crown Prosecution Service ("**CPS**"). Currently, the Independent Office for Police Conduct ("**IOPC**") must notify the CPS if an investigation into an officer indicates that a criminal offence may have been committed, and it considers it appropriate for the matter to be referred. The Bill would amend this so that a matter must only be referred if the investigation indicates that there is sufficient evidence to provide a realistic prospect of conviction.

54. JUSTICE is concerned that this provision will significantly limit the ability of the IOPC to refer cases for criminal prosecution, further undermining police accountability and exacerbating mistrust amongst communities most affected by police violence. Prosecutions against the police are already incredibly rare. For example, in the last 10 years there have been three prosecutions for murder or manslaughter following a death in custody or following police context, involving 5 police officers.[46] This is compared with 128 police deaths involving use of force between 2012-2022. In this time frame, 20 percent of those killed were from Black backgrounds.[47]

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[44]See HM Inspectorate of Constabulary and Fire & Rescue Services, 'PEEL Assessments 2021/22' (27 October 2021), https://hmicfrs.justiceinspectorates.gov.uk/peel-assessments/peel-assessments-2021-22/.

[45]Law Commission, *Search Warrants (HC 852/Law Com No.396)* (2020), available at https://s3-eu-west-2.amazonaws.com/cloud-platform-e218f50a4812967ba1215eaecede923f/uploads/sites/30/2020/10/Search-warrants-report-grayscale-web-1.pdf, pp.510

[46] Srgt Martyn Blake acquitted of murder of Chris Kaba (2024); Benjamin Monk sentenced to eight years for manslaughter of Dalian Atkinson (2021); Srgt Jan Kingshot, Simon Tansley and Michael Marsden acquitted of manslaughter of Thomas Orchard.

[47] JUSTICE, 'Achieving racial justice at inquests: a practitioner's guide' (February 2024), p75.

55. Lack of police accountability has significant impact on public confidence, especially amongst racialised communities. Research by the Economic and Social Research Counsil in 2023 found that just 41% of people in English reported trusting the police, for non-White British respondents this was even lower at 32.1%.[48] Individuals who have had force used against them tend to have more negative views of the police and have been shown to lack confidence in the complaints system.[49] The Government's Equality Impact Assessment for this Bill recognises the potentially damaging impact this provision will have on the Black community's confidence in policing and ability to hold the police to account and accepts that this constitutes indirect discrimination.

56. JUSTICE considers that the ability to effectively hold police officers to account is fundamental to ensuring public trust in policing, particularly amongst communities disproportionately subject to police use of force. Lack of accountability promotes a sense of impunity for police officers and shows indifference to the concerns of the public. Moreover, under the current system, once a case is referred to the CPS, they retain discretion to decide whether to charge based on whether there is a realistic prospect of conviction – this discretion would also remain under the new provision. The CPS, unlike the IOPC, are best placed to make this determination given that they are concerned with the prosecution of crime, rather than investigating misconduct. Clause 107 creates an unnecessary additional barrier to criminal prosecutions, in a context where the prosecution of police officers is already uncommon and faith in accountability is mechanisms low.

Part 14 – Terrorism and national security

57. Clauses 110 to 121 would create new **Youth Diversion Orders.** These can be imposed on children and young people between the ages of 10 and 21 (12 and 21 in Scotland) if a court is satisfied, on the balance of probabilities, that 1) the individual has committed a terrorism offence, an offence with a terrorism connection, or engaged in conduct likely to facilitate terrorism and 2) the order is necessary to protect the public from terrorism or other "serious harm" which is defined broadly**.** Breaching a YDO is a criminal offence, punishable by up to six months' imprisonment (for individuals under 18) or two years (for those 18 and over), along with potential fines.

58. Recent tragedies including the case of 16 year old Rhianan Rudd who took her own life after being charged for terrorist offences, emphasise the need to take a safeguarding approach to tackling terrorism

[48] The Guardian, 'Only 40% of people in England trust their police force, research reveals' (April 2024).

[49] 'Use of force factsheet', *StopWatch.*

and the grooming of children.[50] However, we do not consider that YDOs reflect this. For example, YDOs impose significant conditions and requirements, including electronic monitoring requirements making them more punitive than preventive. Coercion tactics do not work on children and young people. We are concerned that the difficulties that they face in understanding and complying with orders, means that they will be "set up to fail".

59. We remain concerned that these orders could risk driving young people towards the criminal justice system, rather than steer them away. Further, the stigma of being subject to a YDO can have life-long consequences, impacting their physical and emotional wellbeing and cutting them off from positive support networks, whilst undermining trust in the police, which is count-productive. Finally, we are concerned that YDOs will worsen the existing over-policing of young people from Black and minoritised communities.

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JUSTICE | 7 March 2025

[50] The Telegraph, 'CPS 'charged schoolgirl with terrorism despite grooming fears'', (February 2025).