LIBERTY’S BRIEFING ON THE OFFENSIVE WEAPONS BILL FOR COMMITTEE STAGE IN THE HOUSE OF LORDS

FEBRUARY 2019
ABOUT LIBERTY

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at libertyhumanrights.org.uk/policy

CONTACT

GRACIE MAE BRADLEY
Policy and Campaigns Manager
020 7378 3654 | gracieb@libertyhumanrights.org.uk

ROSALIND COMYN
Policy and Campaigns Officer
020 7378 3015 | rosalindc@libertyhumanrights.org.uk
INTRODUCTION

1. This briefing is concerned with Government amendments 73A – 73U to the Offensive Weapons Bill, which would introduce Knife Crime Prevention Orders (KCPOs). KCPOs would add to the Government’s already expansive array of civil orders, which include Gang Injunctions, Serious Crime Prevention Orders, Criminal Behaviour Orders, Parenting Orders and Community Protection Notices. KCPOs would allow the imposition of onerous conditions – which may seriously limit the exercise of fundamental rights by proscribing where someone may go, who they may see, when they can be out in public, what they may say or view online, and whether or not they can attend work or education – based on an extremely low standard of proof. As with so many civil order regimes, the proposals dangerously blur the line between the civil and criminal. Alarmingly, KCPOs would apply to children as young as 12, who could face a prison sentence of up to two years if they breach the terms of the order – including notification requirements to the police – funnelling more children and young people into the criminal justice system.

2. Liberty wholeheartedly agrees that youth violence and knife crime are human rights issues, and that the Government has an obligation to take meaningful and effective steps to address that violence. However, we are deeply troubled by these proposals, which have been introduced at a very late stage in Parliamentary scrutiny of the Bill. In particular, the low standard of proof required for the imposition of an order, punitive and open-ended restrictions that may be imposed, heavy-handed surveillance that is likely to be used to monitor people’s compliance, and criminalisation of people who have not committed a criminal offence raise profound human rights concerns. Our assessment is that KCPOs are ultimately more likely to exacerbate rather than ameliorate the harm that they purport to address.
STANDARD OF PROOF

3. Under the Government’s proposed amendments, a KCPO could be imposed on a child as young as 12 where, on the balance of probabilities, it is believed to be more likely than not that they have carried a bladed object in the last two years. Liberty is concerned that this is an extremely low standard of proof, particularly given the breadth of punitive conditions that may be imposed and the criminal sanctions that are triggered if the order is breached. It leaves ample scope for orders to be imposed based on considerations such as where a person lives, where they go to school, or who they are friends with; all of which may be crude proxies for race or socio-economic status. Given that KCPOs are characterised as civil orders, the strength of evidence that can be adduced is also thinned. It may include the mere reported testimony of third parties, including police officers, known as hearsay evidence. In the case of KCPOs made pursuant to a criminal conviction, evidence may also include that which may not have been admissible in criminal proceedings.

4. The test does not invite the police or the court to consider why someone might be carrying a knife, for example where young people do so out of fear or for their own protection. As one person subject to a Gang Injunction recently explained, he carried a flick knife in his waistband because “in June of this year my little brother died and he was stabbed and he was only 15, so after he died my best friend ... gave me a little flick knife to just hold – hold with me so that I’d be safe at all times, but I didn’t know that I could be arrested for a flick knife that length.”

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1 Clause 73A
2 Clause 73H
3 Clause 73H
4 Clause 73F(9)
5. Given that KCPOs can be imposed on children as young as 12, it is extremely concerning that the proposals make no reference to public authorities’ obligation to assess and prioritise the best interests of any child the police wish to subject to an order, in line with their domestic and international obligations. Moreover, the amendment does not require an assessment under family social care legislation, where these children may be children in need within in the meaning of the Children’s Act.

6. KCPOs will likely have a disproportionate impact on black, Asian and minority ethnic (BAME) communities. The way in which youth violence is policed is heavily fuelled by racial stereotypes, many of which centre around the notion of “gangs”. According to a report published last year by Amnesty International, a staggering 72 per cent of individuals on the Metropolitan Police’s Gangs Matrix – a database containing the names and personal information of people classified as ‘gang nominals’ – are black. Yet the Metropolitan Police Services own figures show that just 27 per cent of those responsible for serious youth violence are black. Liberty is concerned that similar assumptions will underpin police assessments of which people have carried a knife in the last two years, with crude profiling, supposition and quasi-criminal sanctions replacing the more appropriate standard of reasonable suspicion and processes that are more compliant with the rule of law.

**PUNITIVE AND OPEN-ENDED RESTRICTIONS**

7. Clause 74H sets out a non-exhaustive list of the kinds of requirements or prohibitions that can be imposed on a person under a KCPO. These include, but are not limited to, requiring people to be “at a particular place between particular times on any day” or to participate “in particular activities between particular times on particular days” and prohibiting people from “being in a particular place”, “with

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7. Section 1, Children’s Act 1989; Article 3, UN Convention on the Rights of the Child.
8. Section 17, Children’s Act 1989.
10. Ibid.
particular persons”, “participating in particular activities” or “using the internet to facilitate or encourage crime involving bladed articles”.\textsuperscript{11} KCPOs must last for six months and can last for up to two years.\textsuperscript{12} KCPOs would permit incredibly onerous restrictions on where people go, which friends or family they see, what they watch and how they express themselves, as well as impeding their ability to take part in meaningful activity such as work and education where such interference cannot be practically avoided.\textsuperscript{13} Moreover, the list of examples outlined in the proposed amendment are only illustrative, rather than exhaustive, and are extremely vaguely worded, allowing wide discretion to police officers as regards the nature and severity of the constraints imposed.

8. Under the Government’s proposals, KCPOs could be used to impose curfews or other restrictions that would be used to curtail people’s freedom to engage in otherwise lawful, everyday activities, including work and education, as protected by Article 8 ECHR. Clause 73H(8) sets out that conflict or interference with a person’s religious beliefs and usual work or educational activities need only be avoided “so far as practicable” – a very low level of protection.

9. As has been the case with other civil order schemes, people may be subject to punitive measures which marginalise and isolate them from their own communities. For example, under the (now repealed) Anti-Social Behaviour Order (ASBO) Scheme, an ASBO was imposed on a 16-year-old which banned him from every street in the area in which he lived, except his own.\textsuperscript{14} Gang Injunctions have also banned people from being in a public place with one other person behaving “in a manner causing or likely to cause any person to feel intimidated or fear for their safety” or wearing clothing with hoods,\textsuperscript{15} eroding the very basic freedoms that every one of us should enjoy.

\textsuperscript{11} Clause 73H (4)
\textsuperscript{12} Clause 73K (3)
\textsuperscript{13} Clause 73 H (8)
\textsuperscript{14} See http://www.statewatch.org/asbo/ASBOwatch.html
\textsuperscript{15} Dougherty v. Chief Constable of Essex Police [2019] EWCA Civ 55
10. The potential for KCPOs to disproportionately curtail people’s use of the internet and social media raises serious free expression and privacy concerns. In light of recent artist convictions for breach of gang injunctions, Liberty is gravely concerned that artistic expression, including expression which reflects on or describes violence without inciting it, will be unjustifiably viewed in the context of KCPOs as facilitating or encouraging crime, and censored accordingly.\(^{16}\) Moreover, the proposed amendments provide no guidance as to how people’s use of social media would be policed, paving the way for unjustified, intrusive surveillance of innocuous interactions.

**MONITORING COMPLIANCE**

11. Clause 73J sets out the process by which compliance with KCPOs is monitored. Where an order requires the person subject to it to do certain things (termed “requirements” under the proposed scheme) it must appoint an individual or an organisation to be responsible for supervising compliance with that requirement. The individual or organisation is placed under a duty to make “any necessary arrangements in connection with the requirements”, to promote their compliance, and to notify the chief officer of police whether or not they consider the defendant has complied.\(^ {17}\) The amendment provides no guidance on who that person or organisation is, whether they would have appropriate training, and what the consequences are if they fail to report an individual who has not complied. This raises the very disquieting prospect that youth or community workers may be made complicit in measures to surveil and report on the young people with whom they are supposed to be building trusting, supportive relationships. It is entirely unclear how any obligation to report that a person has breached a KCPO interacts with other duties on such workers, which include safeguarding children and promoting their best interests, as well as duties of care and confidentiality.

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\(^{16}\) [https://www.theguardian.com/law/2019/feb/03/stop-criminalising-our-musicians](https://www.theguardian.com/law/2019/feb/03/stop-criminalising-our-musicians)

\(^{17}\) Clause 75 J (5) (a)
12. The amendment sets out no process for monitoring compliance with the provisions of KCPOs which prohibit particular forms of conduct. Liberty is concerned this will lead to the increased surveillance of children and young people, and the heightened targeting of those who are subject (or believed to be subject) to KCPOs with intrusive police powers such as stop and search or strip searches. A recent report by Dr Patrick Williams and StopWatch on the Metropolitan Police Service’s Gangs Matrix revealed that people included on the Matrix are subject to staggeringly high levels of police scrutiny, with some interviewees describing being stopped several times a day.\(^8\) The effect of intrusive and routine over-policing is deep and enduring. In 2017, the Criminal Justice Alliance spoke to young BAME people – who face rising disproportionality in stop and search – about their first-hand experience. They described feeling harassed, targeted, provoked, and even violated by these coercive encounters.\(^9\) What also emerges from these interviews is a long-term sense of anger and hostility towards the police. As David Lammy MP pointed out in his 2017 report on the treatment and outcomes for BAME people in the criminal justice system, this drains trust in the whole system.\(^{20}\)

**CRIMINALISATION**

13. Under the Government’s proposed scheme, if a person subject to a KCPO breaches its terms without reasonable excuse they have committed a criminal offence and could face up to two years in prison.\(^{21}\) The failure to notify police of their name and address within three days of the order being imposed, and any subsequent change

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\(^{21}\) Clause 73R.
of address, is also a criminal offence punishable by up to two years in prison.\textsuperscript{22} Placing an order on children or young people who have not committed any criminal offence which prohibits them from engaging in conduct which is not a criminal offence, but then sanctions them with criminal punishment if they do not comply, is draconian and wholly disproportionate. It also flies in the face of due process – eroding the presumption of innocence and criminalising, by stealth, innocuous conduct such as who people see, where they go, or what they view.

14. Lowering the bar for criminalisation runs counter to the UK’s international obligations, which state that carceral punishments for children should always be a last resort.\textsuperscript{23} The effect can only be to funnel more children and young people into the criminal justice system and increase the number of young people in custody, with potentially devastating effects on their future. Again, BME people – who, according to the most recent Government statistics now make up over half of young people in UK prisons – are likely to be disproportionately affected. Moreover, criminalisation as a means for dealing with youth violence is highly contested.\textsuperscript{24} Measures such as these arguably create what Professor Kehinde Andrews recently termed a “feedback loop” where the criminal justice system is “continually offered as a solution to a problem that it is one of the principal forces in creating.”\textsuperscript{25}

**CONCLUSION**

15. The Government’s proposed KCPOs would clamp down on the exercise of fundamental rights, erode basic procedural safeguards and fast-track children and young people into the criminal justice system. The Government’s own Serious Violence Strategy recognised the importance of prevention to steer “young people

\textsuperscript{22} Clause 73M.
\textsuperscript{23} Article 37, Convention on the Rights of the Child.
\textsuperscript{24} https://www.theguardian.com/society/2019/jan/29/more-than-half-young-people-jail-are-of-bme-background
\textsuperscript{25} https://www.theguardian.com/commentisfree/2019/jan/30/britain-criminalising-bme-young-people-racism
away from crime and putting in place measures to tackle the root causes’. Yet KCPOs will do nothing to address the root causes of knife crime. In fact, not only are they likely to fail to reduce violence, they are also likely to exacerbate the conditions conductive to it. Not even a sticking plaster, KCPOs will rub salt in a wound.

Liberty therefore urges Peers to reject amendments 73A-73U to the Offensive Weapons Bill.

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