

# **LIBERTY**

## **LIBERTY'S BRIEFING ON THE OFFENSIVE WEAPONS BILL FOR REPORT 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](https://libertyhumanrights.org.uk/policy)

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## INTRODUCTION

1. This briefing is concerned with Amendments 35 – 52 to the Offensive Weapons Bill, which would introduce Knife Crime Prevention Orders (KCPOs). First introduced and withdrawn by the Government at Committee Stage in the House of Lords, and now re-introduced at Report Stage, these amendments would add to the Government's already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.
2. 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. Those who do not meet these conditions, or fail to notify the police of specified personal information, could face a prison sentence of two years. As with many civil orders, this dangerously blurs the line between the civil and criminal. Alarming, KCPOs would apply to children as young as 12, and run the risk of fast-tracking more children and young people into the criminal justice system.
3. 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 and raise profound human rights concerns. The proposals are inconsistent with a genuinely preventative approach to violence, and are ultimately likely to exacerbate rather than ameliorate the harm that they purport to address. Many of

Liberty's concerns are shared by the Association of Youth Offending Team Managers,<sup>1</sup> the Magistrates Association,<sup>2</sup> the Local Government Association,<sup>3</sup> and a range of human rights organisations and groups working directly with children<sup>4</sup> – none of whom were consulted before these proposals were introduced. Liberty's primary concerns relate to the:

- Low standard of proof required for the imposition of an order;
- Punitive and open-ended conditions that may be imposed on people;
- Monitoring of people's compliance with KCPOs, which may involve heavy handed surveillance and lead to the erosion of trust between young people and practitioners;
- Criminalisation of people who have not committed a criminal offence; and
- Proposed pilot scheme, which does not address the fundamental harms to which KCPOs give rise.

**Accordingly, Liberty urges Parliamentarians to vote against Amendments 35 – 52 in the name of Baroness Williams of Trafford.**

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<sup>1</sup> <http://aym.org.uk/2019/01/31/aym-responds-to-govt-proposal-for-a-knife-crime-prevention-order/>

<sup>2</sup> [https://www.magistrates-association.org.uk/system/files/05%20MA%20statement%20on%20Knife%20Crime%20Prevention%20Orders\\_HL%20Committee%20Stage%20of%20Offe..\\_.pdf](https://www.magistrates-association.org.uk/system/files/05%20MA%20statement%20on%20Knife%20Crime%20Prevention%20Orders_HL%20Committee%20Stage%20of%20Offe.._.pdf)

<sup>3</sup>

<https://www.local.gov.uk/sites/default/files/documents/260219%20Offensive%20Weapons%20Bill%20HL%20V2%20WEB.pdf>

<sup>4</sup> <https://www.theguardian.com/uk-news/2019/feb/24/sajid-javid-youth-knife-crime-orders-human-rights-fears>

## STANDARD OF PROOF

4. 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.<sup>5</sup> Liberty is concerned that this is an extremely low standard of proof, particularly given the breadth of punitive conditions that may be imposed<sup>6</sup> and the criminal sanctions that are triggered if the order is breached.<sup>7</sup> 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.<sup>8</sup>
5. 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 on the notion of "gangs". According to a report published last year by Amnesty International, 72 per cent of individuals on the Metropolitan Police's Gangs Matrix – a database containing the names and personal information of people classified as a "gang nominal" – are black.<sup>9</sup> Yet the Metropolitan Police Services own figures show that just 27 per cent of those responsible for serious youth

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<sup>5</sup> Amendment 35.

<sup>6</sup> Amendment 42.

<sup>7</sup> Amendments 46 and 50.

<sup>8</sup> Amendment 40 (9).

<sup>9</sup> Amnesty International, *Trapped in the Matrix*, 2018, available at <https://www.amnesty.org.uk/files/reports/Trapped%20in%20the%20Matrix%20Amnesty%20report.pdf>

violence are black.<sup>10</sup> Liberty is concerned that similar assumptions will underpin police assessments of which people have carried a knife in the last two years, with profiling, supposition and quasi-criminal sanctions replacing the more appropriate standard of reasonable suspicion and processes that are compliant with the rule of law.

6. 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.<sup>11</sup> 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.<sup>12</sup> Liberty is concerned that children who are victims of exploitation, abuse or violence will be criminalised, rather than safeguarded.

## **PUNITIVE AND OPEN-ENDED RESTRICTIONS**

7. Amendment 42 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" participate "in particular activities between particular times on particular days" and prohibiting people from "being in a particular place", "with particular persons", "participating in particular activities" or "using the internet to facilitate or encourage crime involving bladed articles".<sup>13</sup> KPCOs must last for six months and can last for up to two years.<sup>14</sup> KCPOs would permit incredibly onerous restrictions on where people go, which friends or family they see, what they watch and how they

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<sup>10</sup> Ibid.

<sup>11</sup> Section 1, Children's Act 1989; Article 3, UN Convention on the Rights of the Child.

<sup>12</sup> Section 17, Children's Act 1989.

<sup>13</sup> Amendment 42 (4).

<sup>14</sup> Amendment 42 (3).

express themselves, as well as impeding their ability to take part in meaningful activity such as work and education where such interference cannot be practicably avoided.<sup>15</sup> Moreover, the list of example conditions outlined in the proposed amendment is illustrative, rather than exhaustive, and the examples 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, education or extracurricular activities. Amendment 42 (8) sets out that conflict or interference with a person's religious beliefs and usual work or educational activities need only be avoided only "so far as practicable", which provides a weak level of protection.
9. 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 that 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.<sup>16</sup> Moreover, the proposed amendments provide no guidance as to how people's use of social media would be policed, paving the way for intrusive surveillance of innocuous interactions.
10. As has been the case with other civil order schemes, people may be subject to punitive measures that 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

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<sup>15</sup> Amendment 42 (8).

<sup>16</sup> <https://www.theguardian.com/law/2019/feb/03/stop-criminalising-our-musicians>



banned him from every street in the area in which he lived, except his own.<sup>17</sup> 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,<sup>18</sup> eroding the very basic freedoms that every one of us should enjoy.

## MONITORING COMPLIANCE

11. Amendment 43 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.<sup>19</sup> 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 compelled 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.
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

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<sup>17</sup> See <http://www.statewatch.org/asbo/ASBOWatch.html>

<sup>18</sup> *Dougherty v. Chief Constable of Essex Police* [2019] EWCA Civ 55

<sup>19</sup> Amendment 43 (5).

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 high levels of police scrutiny, with some interviewees describing being stopped several times a day.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

## 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.<sup>23</sup> The failure to notify police of their name and address within three days of the order being imposed, and any subsequent change of address, is also a criminal offence punishable by up to two years in prison.<sup>24</sup> It is draconian and wholly disproportionate to place an order on children or young people who have

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<sup>20</sup>Patrick Williams and StopWatch, *Being Matrixed*, 2018, available at [http://www.stop-watch.org/uploads/documents/Being\\_Matrixed.pdf](http://www.stop-watch.org/uploads/documents/Being_Matrixed.pdf)

<sup>21</sup> Criminal Justice Alliance, *No respect: Young BAME men, the police and stop and search*, 2017 Available at <http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617-1.pdf>. You are now eight times more likely to be stopped and searched by police if you are black than if you are white. See Home Office Statistical Bulletin 24/19, *Police powers and procedures, England and Wales, year ending 31 March 2018*, October 2018, Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/751215/police-powers-procedures-mar18-hosb2418.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/751215/police-powers-procedures-mar18-hosb2418.pdf)

<sup>22</sup> David Lammy, *The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*, 2017, at p. 17.

<sup>23</sup> Amendment 50.

<sup>24</sup> Amendment 46.

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. It also flies in the face of due process – eroding the presumption of innocence and criminalising, by stealth, innocuous conduct such as which family or friends 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.<sup>25</sup> 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. Where a person is subject to a KCPO post-conviction, the risk that they will be criminalised again significantly increases, which narrows their chances of successfully re-integrating into society and increases pressure on the criminal justice system. 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.<sup>26</sup>

15. The Government's own Serious Violence Strategy recognises the importance of prevention to steer "young people away from crime and putting in place measures to tackle the root causes".<sup>27</sup> It is our assessment that KCPOs are irreconcilable with a genuinely preventative approach, which places children's rights and safety at its heart. Not only will they fail to address the root causes of violence, by marginalizing and criminalizing more young people they are also likely to exacerbate the root causes.

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<sup>25</sup> Article 37, Convention on the Rights of the Child/

<sup>26</sup> <https://www.theguardian.com/society/2019/jan/29/more-than-half-young-people-jail-are-of-bme-background>

<sup>27</sup> HM Government, Serious Violence Strategy 2018 available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/698009/serious-violence-strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf)

## PILOT SCHEME: PUTTING THE CART BEFORE THE HORSE

16. Amendment 52 provides that prior to rolling-out the proposals nationally, the Government must pilot the proposed scheme in “one or more specified areas in England and Wales” for “one or more specified purposes”, offering no information as regards what those specified purposes may be.<sup>28</sup> The Government must also lay a report before Parliament on the operation of “some or all” of the provisions giving rise to KCPOs, for “one or more” of the specified purposes, in relation to “one or more of the areas”.<sup>29</sup>

17. In so far as the Government asserts that this provision will act as a safeguard, it is not fit for purpose. First and foremost, it does not address nor allay any of the fundamental human rights concerns identified above. Second, the Amendment does not empower Parliament to prevent further rollout of the scheme even if the pilot evidences cause for serious concern. Third, the Amendment offers the Government wide discretion to selectively report the details of any pilot it chooses to run. Moreover, it does not require they collect any data on disproportionality; provide information on the nature of the conditions that are imposed, the manner in which compliance is monitored, and the number of people who face criminal sanctions; or offer any analysis of the long-term consequences of such sanctions. Crucially, a rigorous and consultative assessment of these issues and the problem the proposals purport to address, which examined a full range of policy options, should have been conducted *prior* to the development and introduction of KCPOs – not after their roll-out is essentially a foregone conclusion. Any assessment which is merely a pre-requisite for the inevitable implementation of KCPOs puts the cart before the horse.

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<sup>28</sup> Amendment 52 (1) – (2).

<sup>29</sup> Amendment 52 (3).

## **CONCLUSION**

18. 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.

**Liberty therefore urges Peers to vote against Amendments 35 – 52 to the Offensive Weapons Bill.**