

JOINT BRIEFING FOR HOUSE OF LORDS AHEAD OF COMMITTEE STAGE OF THE POLICE, CRIME, SENTENCING AND COURTS BILL

PART 10, CHAPTER 1 (SERIOUS VIOLENCE REDUCTION ORDERS)

October 2021

Ahead of the Police, Crime, Sentencing and Courts ('PCSC') Bill's Committee Stage in the House of Lords, our organisations from across the human rights, privacy and technology, criminal justice, public health, and racial justice sectors highlight the following concerns with Part 10, Chapter 1 (Serious Violence Reduction Orders) as it stands.

Part 10, Chapter 1 of the Bill provides for the creation of a new civil order, the Serious Violence Reduction Order ('SVRO'), which would be imposed on an individual on the basis of a previous conviction. Such an order could potentially include a range of requirements and prohibitions, that the Secretary of State can specify by way of regulation. Part 10, Chapter 1 would further amend the Sentencing Code in order to confer a new power on the police to stop and search anyone subject to an SVRO whenever they are in a public place, without needing to form reasonable suspicion.

We recognise that the intention of the serious violence measures in the PCSC Bill is to protect communities from harm, save lives and prevent injury. These are aims which we wholeheartedly support – serious violence is a human rights issue which devastates communities across the country, hindering many people's ability to live safe and dignified lives. It demands an evidence-based and just response that works with, not against, communities that bear its brunt.

Instead, the proposals in the PCSC Bill are entirely unsubstantiated by evidence, will sanction injustice and discrimination, and risk fracturing public trust in public services and the authorities. **For the below reasons, we urge Peers to join Lord Ponsonby and Lord Paddick in giving notice of their intention to oppose that clause 140 stands part of the Bill.**

If the above amendment is not selected or passed, we would urge parliamentarians to consider and support the following amendments to mitigate the worst effects of the Bill:

- **Amendments 224 to 231: The amendments to limit the conditions under which an SVRO can be imposed, including:**
 - **Amendment 224: Raising the standard of proof to the criminal standard, in the names of Baroness Meacher, Lord Paddick, and Lord Moylan**
 - **Amendment 225: Narrowing the offence under which an SVRO can be imposed, in the names of Lord Paddick and Baroness Meacher**
 - **Amendment 226: Removing the joint enterprise element, in the names of Lord Ponsonby and Lord Paddick**
 - **Amendment 227: Raising the standard of proof to the criminal standard, in the names of Baroness Meacher, Lord Paddick, and Lord Moylan**

- **Amendment 228 to 231: Requiring an assessment of proportionality and strengthening the evidential requirements for imposing an SVRO**, in the names of Lord Paddick, Baroness Meacher, and Lord Moylan
- **Amendments 233 to 237: The amendments to limit the potential harms faced by those with an SVRO**, in the name of Lord Paddick, Baroness Meacher, and Lord Moylan, including:
 - **Amendment 233 and 234: Narrowing the criminal sanctions for breach of an SVRO**
 - **Amendment 235 and 236: Limiting who can apply for renewal, variation, or discharge of an SVRO**
 - **Amendment 237: Raising the standard of proof**
- **Amendment 238: Limiting the number of times an SVRO can be renewed**, in the names of Baroness Meacher, Lord Paddick and Lord Moylan
- **Amendment 238A: Requiring an assessment of proportionality before renewing or varying an SVRO**, in the names of Baroness Meacher, Lord Paddick, and Lord Moylan
- **Amendment 240: The amendment to establish a robust pilot for SVROs** in the names of Baroness Meacher and Lord Paddick

KEY CONCERNS

1. **The Bill hands the police a highly oppressive tool, unlike anything on the statute books.** Existing stop and search powers are already problematic and yet, in recognition of their ability for harm, have certain safeguards applied to them. As it stands, previous convictions cannot be used alone, or in conjunction with other factors, as grounds to conduct a stop and search. The Code of Practice for statutory powers of stop and search, PACE Code A, states that police cannot use “the fact that the person is known to have a previous conviction” as a basis for a stop and search. Such a constraint seeks to tie reasonable suspicion to factors which are relevant to the likelihood that a person has committed a specific offence, rather than attempts to reduce people to their past behaviour. SVROs on the other hand, which the court can impose via a low standard of evidence, are tied precisely to a person’s previous conviction. The Bill makes clear that “it does not matter” whether the evidence considered in deciding to make an SVRO “would have been admissible in the proceedings in which the offender was convicted.”
2. **The Bill seriously compounds the discrimination faced by marginalised communities – particularly Black men – and exacerbates the disparities that already exist throughout the criminal justice system.** Both in terms of who they are applied to and who bears the brunt of their enforcement, SVROs will reflect, deepen and compound the discrimination marginalised communities face at every juncture of the criminal justice system. **By the Government’s own admission, SVROs are likely to be disproportionately meted out to Black men:** “there may be a disproportionate impact of the orders on the black adult population because they are sentenced and become victims of serious violence at a higher rate... *we can therefore expect that black males will receive an SVRO at a higher rate.*”¹

¹ Home Office, *Home Office measures in the Police, Crime, Sentencing and Courts Bill: Equalities Impact Assessment*, 13 September 2021, available at: <https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-equality-statements/home-office-measures-in-the-police-crime-sentencing-and-courts-bill-equalities-impact-assessment>

3. **Part of the reason for this racial disproportionality may be that SVROs will be able to be imposed on people on the basis of a *de facto* joint enterprise or guilt by association measure.** As drafted, an SVRO could be imposed on someone convicted of an offence who *ought to have known* that someone else involved in the offence used a knife when in the commission of the offence, or had a knife in their possession. Crucially, the person does not actually need to have knowledge that the other person would use a knife, or that they had a knife in their possession. It is unclear how the court will establish if someone ought to have known that someone else had a knife or would use a knife in the commission of the offence. This will only be required to be proven to the civil standard (i.e. on the balance of probabilities, more likely than not), rather than the criminal standard (beyond reasonable doubt), and can be based on evidence that would not have been admissible in the criminal proceedings for the original offence. We are concerned that the current tendency for evidence about people’s associations – based on racist stereotypes and prejudices – to be used to support joint enterprise prosecutions, will be replicated in the context of SVROs, particularly given the expansive new data-sharing powers (without crucial safeguards) that are set to be established under the serious violence duty in Part 2, Chapter 1 of the same Bill. Indeed, the Lammy Review into the over-representation of Black, Asian, and Minority Ethnic individuals in the criminal justice system has highlighted the ways that the existing joint enterprise doctrine creates miscarriages of justice and erodes trust in the criminal justice system.²

4. **Of those on whom an SVRO is imposed, the Government has acknowledged that “people from black, Asian and ethnic minority groups, in particular black people, who are subject to an SVRO are more likely to be searched in practice.”** Home Office data shows clear racial disparities in terms of who is affected by stop and search: as of 2021, Black people are nine times more likely to be stopped and searched than white people; ‘Asian’ people and people of ‘mixed ethnicity’ are three times more likely; and ‘other White’ people are twice as likely.³ The racial disparity is even more acute when the ‘reasonable suspicion’ pre-requisite is removed. Recent Home Office data on s.60 stop and search shows that Black people are now 18 times more likely to be stopped and searched than white people; people of ‘mixed ethnicity’ are four times more likely; and ‘Asian’ people and ‘other White’ people are three times more likely.⁴

5. The experience of being stopped and searched can be a mentally and physically traumatising one – for some people, it takes place frequently, even daily.⁵ Hackney Account – a youth-led social action project – conducted participatory research with young people in Hackney, and found that the practice of stop and search can have “a damaging impact on mental wellbeing, causing feelings of embarrassment, humiliation or anger”. In particular, stop and search can constitute an attack on young people’s dignity: “Whether being stereotyped as a gang

² Gov.uk, *The Lammy Review*, 8 September 2017, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

³ *No respect: Young BAME men, the police and stop and search*, Peter Keeling, 2017 <http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617.pdf> as at 17 September 2021

⁴ *Ibid.* at fn16

⁵ Ali A. and Champion, N. for the Criminal Justice Alliance, *More harm than good - A super-complaint on the harms caused by ‘suspicion-less’ stop and searches and inadequate scrutiny of stop and search powers*, May 2021, available at: https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf

member or treated in a dehumanising manner Stop and Search could be seen as a way that *young people are made to feel they do not 'matter.'*⁶ The SVRO measures in the PCSC Bill will only entrench these inequalities further by expanding stop and search powers that can have long-lasting, traumatising effects.⁷

6. It is worth noting that the Home Office has recently announced its 'Beating Crime Plan', which will, among other things, permanently relax the 'Best Use of Stop and Search Scheme' ('BUSSS') voluntary safeguards relating to Section 60 Criminal Justice and Public Order Act 1994 (CJPOA) stop and search powers (which currently gives the police a right to stop and search people without reasonable suspicion subject to strict requirements).⁸ BUSSS was introduced by ex-Home Secretary Theresa May due to the recognition that police use of stop and search was liable to be "misused" with the resulting impact of this power being "counter-productive," "a waste of police time," and "hugely damaging to the relationship between police and the public."⁹ Following research commissioned to Her Majesty's Inspectorate of Constabulary which found that black people and other ethnic minorities were up to seven times more likely to be stopped and searched than white people, the former Home Secretary acknowledged that it was possible to "reduce the number of stops, improve the stop-to-arrest ratio and still cut crime."¹⁰ By way of example, in 2012, the Metropolitan Police reduced no-suspicion stop and search by 90% and stabbings and shootings fell by a third and 40% respectively.¹¹ We are extremely concerned that the Government is trying to reduce transparency and accountability in an area where more scrutiny, rather than less, is needed – including about whether such police powers are proportionate and fundamentally necessary in the first place.
7. **People subject to, or who police believe are subject to, an SVRO are likely to face intrusive monitoring of their daily lives.** With the establishment of a statutory duty on public bodies to prevent and reduce serious violence in Part 2, Chapter 1 of the PCSC Bill, it is likely that similar tactics to those used to police people on the Metropolitan Police Service's Gangs Matrix may be used to target individuals and communities for chronic over-policing, such as through the continual patrolling and surveillance of the same postcodes. This kind of monitoring not only interferes with people's right to private and family life, but may alter where they associate (for example, not leaving home or attending events because they know they will attract police attention) or who they associate with (for example, not meeting with particular friends or family) and impact their ability to work or access education.

⁶ Hackney Account, *Policing in Hackney: Challenges from youth in 2020*, 2020, available at: <https://static1.squarespace.com/static/5d234a046f941b0001dd1741/t/5f77795b9e2fdb6bf67d3c7d/1601665467995/Final+Draft+-+Report+-+Account+%28Online%29.pdf>

⁷ Ali A. and Champion, N. for the Criminal Justice Alliance, *More harm than good - A super-complaint on the harms caused by 'suspicion-less' stop and searches and inadequate scrutiny of stop and search powers*, May 2021, available at: https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf

⁸ Home Office, *Beating Crime Plan*, 27 July 2021, available at: <https://www.gov.uk/government/publications/beating-crime-plan#:~:text=The%20Beating%20Crime%20Plan%20sets,with%20fraud%20and%20online%20crime>

⁹ Home Office and The Rt Hon Theresa May MP, *Oral Statement to Parliament: Stop and Search: comprehensive package of reform for police stop and search powers*, 30 April 2014, available at: <https://www.gov.uk/government/speeches/stop-and-search-comprehensive-package-of-reform-for-police-stop-and-search-powers>

¹⁰ Ibid.

¹¹ Ibid.

8. **SVROs may also plunge people into cycles of criminalisation.** A person subject to an SVRO may face criminal penalties should they breach its requirements, for example, if they fail to comply with reporting requirements. This has the potential to impact people experiencing insecure housing or homelessness. A person subject to an SVRO may also commit an offence if they “intentionally obstruct” a police officer in the exercise of their powers. The criminal penalties for failing to comply with the requirements of an SVRO have a maximum sentence of two years. Given that there is no limitation on the number of times that an SVRO can be renewed, those who have an SVRO could potentially be perpetually at risk of breaching the order. This is in spite of the fact that the more time has passed since the making of an SVRO, the more remote the original offence becomes, arguably rendering this order less and less necessary and proportionate to its purported aim of preventing serious violence.
9. Given the proposed new measures pose significant human rights impacts, it is crucial that they are supported by unequivocal evidence that they will meet their stated aim of breaking the “cycle of offending and [protecting] our communities from harm”.¹² We support this aim, so we are concerned that no evidence has been provided to justify claims of effectiveness. The Home Office’s own research found that in a previous surge in stop and search during Operation Blunt 2 there were “no discernible crime reducing effects”.¹³ Similarly, an independent, peer-reviewed study drawing on ten years of London-wide data found stop and search has “only a very weak and inconsistent association with crime” and drew no statistically significant links between stop and search and levels of violence.¹⁴
10. **In our view, the proposals are not only likely to be ineffective, but may also be directly counter-productive.** The custodial experience often exacerbates and compounds the early life disadvantage many of the people who come into contact with the criminal justice face. Against this backdrop, these measures may reinforce negative stereotypes and trap people in a cycle of criminalisation and harm, rather than diverting them from the criminal justice system. SVROs also severely risk undermining the potential for rehabilitation and people’s chances of being re-integrated into society. By fomenting injustice, alienation and social exclusion – conditions which have been found to correlate to levels of serious violence – the serious violence proposals in the PCSC Bill may deepen the very problems they seek to address.

¹² Pg. 15, Home Office, *Serious Violence Reduction Orders: A new court order to target known knife carriers*, 14 September 2020,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/917277/SVRO_consultation.pdf

¹³ Pg. 3, McCandless, R., Feist, A., Allan, J., Morgan, N. *Do initiatives involving substantial increases in stop and search reduce crime? Assessing the impact of Operation BLUNT 2*, 2016, available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/508661/stopsearch-operation-blunt-2.pdf

¹⁴ Matteo Tiratelli, Paul Quinton, Ben Bradford, Does Stop and Search Deter Crime? Evidence From Ten Years of Londonwide Data, *The British Journal of Criminology*, 58 (5) pp. 1212–1231.

AMENDMENTS

11. We believe that the provisions relating to Serious Violence Reduction Orders as drafted are oppressive and risk entrenching the root causes of serious violence. **For the below reasons, we urge parliamentarians to join Lord Ponsonby and Lord Paddick in giving notice of their intention to oppose that clause 140 stand part of the Bill.**

12. If the above amendment is not selected or passed, we would urge parliamentarians to consider and support the following amendments to mitigate the worst effects of the Bill:
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 - **Amendment 227: Raising the standard of proof to the criminal standard, in the names of Baroness Meacher, Lord Paddick, and Lord Moylan**
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 - **Amendments 233 to 237: The amendments to limit the potential harms faced by those with an SVRO, in the name of Lord Paddick, Baroness Meacher, and Lord Moylan, including:**
 - **Amendment 233 and 234: Narrowing the criminal sanctions for breach of an SVRO**
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AMENDMENTS TO LIMIT THE CONDITIONS UNDER WHICH AN SVRO CAN BE IMPOSED

Raising the standard of proof for imposing an SVRO

In the names of Baroness Meacher, Lord Paddick, Lord Moylan

Amendment 224

Page 129, line 27, leave out “on the balance of probabilities” and insert “beyond reasonable doubt”

Effect

This amendment would raise the threshold for the standard of proof required to impose an SVRO, from a civil standard (the balance of probabilities) to the criminal standard (beyond reasonable doubt).

Briefing

This amendment should be tabled alongside a series of other amendments that will clarify and narrow the scope of the harmful SVRO clauses. There is precedent for the use of a criminal standard in other similar injunctions. Under s.22 ASBCP Act 2014 (now repealed by the SA 2020), criminal behaviour orders could only be imposed if the court was satisfied beyond reasonable doubt that the offender had engaged in behaviour that caused, or was likely to cause, harassment, alarm or distress to any person; and that the court considered making the order would help in preventing the offender from engaging in such behaviour.

Narrowing the offences for which an SVRO can be imposed

In the names of Lord Paddick and Baroness Meacher

Amendment 225

Page 129, line 30, leave out from “offence” to end of line 32

Effect

This amendment would limit those on whom an SVRO can be imposed to those who have been convicted of criminal offences involving knives and bladed articles, and prevent an SVRO from being applied on a person who simply had a knife on them when they committed the offence.

Briefing

1. Carrying a knife or offensive weapon, is not per se, a criminal offence; the criminal offence is only committed when the knife is carried without reasonable excuse or lawful authority. For example, an individual may lawfully carry a knife in self-defence provided an imminent attack is anticipated (*Evans v Hughes* (1972) 56 Cr. App. R. 813). The clause as currently drafted would enable a court to impose a SVRO on someone who was convicted of driving over the speed limit when on her way to a picnic, at which point she was lawfully carrying a knife for the purpose of cutting cheese at the picnic.
2. The 2019 Conservative Party Manifesto stated a commitment “to create a new court order to target known knife carriers, making it easier for officers to stop and search those convicted of knife crime”. Limiting the SVRO to those who have been convicted of criminal offences involving knives and bladed articles would be consistent with the manifesto promise.
We urge parliamentarians to support the amendments to narrow the offences for which an SVRO can be imposed.

Removing the joint enterprise trigger for an SVRO

In the names of Lord Ponsonby and Lord Paddick

Amendment 226

Page 129, leave out lines 33 to 41

Effect

This amendment would ensure that only a person who used a knife in the commission of an offence could be given an SVRO.

Briefing

1. Under Part 10, Chapter 1, an SVRO can be imposed on a person ('A') if another person ('B') involved in the commission of the offence used or was carrying a knife, and A knew that was the case; or even if A simply *ought to have known* that B would use or was carrying a knife. In other words, an SVRO could be imposed on someone convicted of an offence who **ought to have known** that someone else involved in the offence used a knife when in the commission of the offence, or had a knife in their possession. **It does not require actual knowledge that a knife would be used, or that anyone had a knife in their possession.** This is a *de facto* joint enterprise measure as it criminalises people for the actions of others. Moreover, it potentially criminalises people for the actions of others that they simply *ought to have known* about, rather than what they actually knew.
2. Thousands of people are estimated to have been prosecuted using the joint enterprise doctrine.¹⁵ A survey of prisoners suggests that up to half of those convicted on a joint enterprise basis identify as people of colour.¹⁶ Research suggests that the proportion of Black/Black British people serving custodial sentences for joint enterprise offences is 11 times greater than the proportion of the general population who are Black/Black British (37.2% compared to 3.3%).¹⁷ Campaigners and experts have highlighted how evidence about people's associations – based on racist stereotypes and prejudices – has been used to support joint enterprise prosecutions, in ways that have resulted in significant racial disproportionality in the criminal justice system. In particular, there is a prevalent public discourse that stereotypes young people of colour, associating them with violence and other criminal activities, including 'gang' involvement. These stereotypes are racist and inaccurate. A 2016 study showed that in Manchester 81% of people identified by the police as involved in gangs were Black; whereas only 6% of people involved in serious youth violence were Black. In London 72% of people on the Metropolitan Police Service's Gangs Violence Matrix were Black; whereas only 27% of people involved in serious youth violence were Black.¹⁸
3. Nonetheless, weak 'evidence' that people are part of a gangs is frequently used in joint enterprise prosecutions, particularly in those brought against people of colour. According to one survey of prisoners, where gang narratives have been used in court, 69% of those which resulted in convictions and custodial sentences involved BAME prisoners, whereas only

¹⁵ McCleneghan, M., McFadyean, M., and Stevenson, R., *Revealed: Thousands prosecuted under controversial law*, Bureau of Investigative Journalism, 31 March 2014, available at: <https://www.thebureauinvestigates.com/stories/2014-03-31/revealed-thousands-prosecuted-under-controversial-law-of-joint-enterprise>

¹⁶ Pg. 19, The Lammy Review: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

¹⁷ Williams, P. and Clarke, B., *Dangerous associations: Joint enterprise, gangs and racism*, Centre for Crime and Justice Studies, January 2016, available at: <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Dangerous%20associations%20Joint%20Enterprise%20gangs%20and%20racism.pdf>

¹⁸ Williams, P. and Clarke, B., *Dangerous associations: Joint enterprise, gangs and racism*, Centre for Crime and Justice Studies, January 2016, available at: <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Dangerous%20associations%20Joint%20Enterprise%20gangs%20and%20racism.pdf>

30% involved white British prisoners.¹⁹ In essence, in Andrew Mitchell MP's words, "young people from ethnic communities have been, essentially, hoovered up for peripheral and in some cases even non-existent involvement in serious criminal acts."²⁰

4. The ongoing misuse of evidence relating to people's associations in the context of the joint enterprise doctrine therefore risks translating into the new SVROs endangering the right to a fair trial and eroding trust in the justice system. Highlighting the ways that joint enterprise creates miscarriages of justice and erodes trust in the justice system, the Lammy Review into the over-representation of Black, Asian, and Minority Ethnic individuals in the criminal justice system has recommended a review of how the Crown Prosecution Service and the police approach gang prosecutions.²¹

5. In the context of SVROs, it is unclear how the court will establish if someone ought to have known that someone else had a knife or would use a knife in the commission of the offence. This will only be required to be proven to the civil standard (i.e. on the balance of probabilities, more likely than not), rather than the criminal standard (beyond reasonable doubt), and can be based on evidence that would not have been admissible in the criminal proceedings for the original offence. We are concerned that the same racist and inaccurate stereotypes of young Black people, and other people of colour, in particular their involvement in alleged 'gangs', will be used as evidence for establishing the basis of an SVRO on a de facto joint enterprise basis. **We urge parliamentarians to support the amendments to remove the joint enterprise element from the SVRO measures of the Bill.**

Raising the standard of proof for imposing an SVRO

In the names of Baroness Meacher, Lord Paddick, Lord Moylan

Amendment 227

Page 130, line 1, leave out "considers" and insert "is satisfied beyond reasonable doubt that it is

Effect and Briefing

See Amendment 224 above.

Requiring an assessment of proportionality and strengthening the evidential requirements for imposing an SVRO (Amendments 228 to 231)

In the names of Lord Paddick, Baroness Meacher, and Lord Moylan

Requiring an assessment of proportionality

Amendment 228

Page 130, line 15, at end insert— "(c) concludes that it the order is proportionate to one or more of the aims in subsection (5) above."

¹⁹ To the best of our knowledge, no state agency keeps a centralised record of the use of joint enterprise prosecutions and race.

²⁰ HC Deb, 25 January 2018, Vol.635, Col. 450

²¹ Gov.uk, *The Lammy Review*, 8 September 2017, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

Effect

Amendment 228 would provide that an SVRO can only be imposed if the order is proportionate.

Briefing

The addition of the proportionality test would require the Courts to consider whether there would be less restrictive measures that could put in place, before having to resort to making an SVRO. This would make sure an SVRO is ultimately a proportionate case of action.

Strengthening the evidential requirements for imposing an SVRO

Amendment 229

Page 130, line 17, after “may” insert “only”

Amendment 230

Page 130, line 17, leave out from “evidence” to end of line 18 and insert “which would have been admissible in the proceedings for the offence in subsection (1)(a).”

Amendment 231

Page 130, leave out lines 19 and 20

Effect

Amendments 229 to 231 would strengthen the evidentiary requirements prior to an SVRO being made.

Briefing

Under the current provisions, evidence that would not have been admissible in the proceedings for the offence would be admissible in the proceedings to impose an SVRO. What this means is that a lower standard of evidence than would be allowed in the proceedings in the original offence, would be allowed to be considered in the court’s decision as to whether to make an SVRO. This amendment would ensure that only evidence that was admissible in the original proceedings could be used in the court’s decision on an SVRO.

AMENDMENTS TO LIMIT THE HARMS EXPERIENCED BY THOSE WHO ARE GIVEN AN SVRO

Narrowing the criminal sanctions for breach of an SVRO; limiting who can apply for renewal, variation, or discharge of an SVRO; raising the standard of proof (Amendments 233 to 237)

In the names of Lord Paddick, Baroness Meacher, and Lord Moylan

Narrowing the criminal sanctions for breach of an SVRO

Amendment 233

Page 133, line 17, after “order” insert “unless the offender has a reasonable excuse for so doing,

Amendment 234

Page 133, leave out lines 18 and 19

Effect

The terms of 342G(1)(d) have been modified to restrict the offence to circumstances where an offender is directly asked by a constable whether they are under an SVRO; and to create a defence of reasonable excuse. The offence at 342(1)(e) has been removed.

Briefing

1. The purpose of this amendment is to avoid situations where an offender is prosecuted for this offence in circumstances where they have not been directly asked the question of whether they are subject to an SVRO. It also creates a reasonable excuse defence for example, for an offender who had an honest belief, and reasonable grounds for such belief, that they were not or no longer subject to an order, or those who may not have English as a first language and misunderstand the question in the absence of adequate interpretation.
2. The offence of intentionally obstructing a constable has been removed. The existing offence under s.89(2) Police Act 1996 adequately provides for this offence. This provision would otherwise elevate an existing summary only criminal offence to being either way and carrying a higher ultimate sentence.

Limiting who can apply for renewal, variation, or discharge of an SVRO

Amendment 235

Page 133, leave out lines 39 and 40

Amendment 236

Page 133, leave out lines 44 and 45

Effect

This amendment will limit who can apply for variation, renewal, or discharge of an SVRO.

Briefing

Under the current provisions, a range of people can apply for variation, renewal, or discharge of an SVRO, including the chief police officer for where a person lives; and a chief officer who believes that the person subject to an SVRO is in, or intending to come to, that officer's area. As drafted, these provisions are potentially highly restrictive of a person's freedom of movement. The requirement that someone simply need to 'intend to' come to an area is furthermore highly unclear and subjective.

Amendment to raise the standard of proof before an SVRO is renewed or varied

Amendment 237

Page 134, line 21, leave out "considers" and insert "is satisfied beyond reasonable doubt"

Effect and Briefing

See Amendment 224 above.

Limiting how many times an SVRO can be renewed

In the names of Baroness Meacher, Lord Paddick, and Lord Moylan

Amendment 238

Page 134, line 36, at end insert— "(8A) The court may renew a serious violence reduction order on no more than one occasion."

Effect

This amendment will limit the number of times an SVRO can be renewed to no more than once.

Briefing

Under the current provisions, an SVRO can last for a maximum of two years (clause 342D(2)), however it can potentially be renewed indefinitely as there is no limitation on the number of times an SVRO can be renewed. The more time has passed since the making of an SVRO, the more remote the original offence becomes. SVROs risk trapping people in perpetual cycles of potential criminalisation, given the fact that breach of an SVRO is a criminal offence.

Requiring an assessment of proportionality before renewal or variation of an SVRO

In the names of Baroness Meacher, Lord Paddick, Lord Moylan

Amendment 238A

Page 134, line 36, at end insert— “(8A) The court may only make an order under this section varying or renewing a serious violence reduction order if it concludes that the order is proportionate to one or more of the aims in (7) above.”

Effect

This amendment ensures that an SVRO can only be varied or renewed if the order is proportionate to one or more of the aims identified in the new inserted subsection (7).

Briefing

See Amendment 228 above.

AMENDMENT TO ESTABLISH A ROBUST PILOT FOR SVROS

In the names of Baroness Meacher and Lord Paddick

Amendment 240

Page 137, line 5, at end insert—

(3A) Before making the report under subsection (3), the Secretary of State must obtain, record and publish all reasonably available data, which is relevant to the effect of the operation of Chapter 1A, Part 11 of the Sentencing Code under section 141(2) over a period of no less than 12 months, including:

- (a) its impact on the extent to which knives or weapons are carried;*
- (b) its impact on the rate of serious violence;*
- (c) the age, race, and sex (within the meaning of section 5, 9 and 11 of the Equality Act 2010) of each person:*
 - i. in respect of whom an application is made under section 342A(1)(b);*
 - ii. in respect of whom a serious violence reduction order is made by a court;*
 - iii. in respect of whom action is taken pursuant to sections 342C, 342E, 342F, and/or 342H; and*
 - iv. who is convicted of an offence within section 342G;*

- (d) any action which was taken pursuant to sections 342C, 342E, 342F, and/or 342H, by reference to the age, race and sex of the offender;
- (e) the nature of, and reasons recorded, for any such action;
- (f) any complaint arising the exercise of powers under Clause 342E, the nature and outcome of that complaint, and the age, race and sex of the person who made it;
- (g) the offence within section 342G for which any person by convicted and the sentence imposed, by reference to the age, race and sex of that person;
- (h) for each serious violence reduction order made:
 - i. the offence identified in section 342A(1)(a); and
 - ii. whether the order was imposed under subclause 342A(3)(a), (3)(b), (4)(a) or 4(c)
- (i) whether that operation of Chapter 1A had a discriminatory, disproportionate and/or other adverse impact on people sharing the protected characteristic of age, race or sex.

(3B) The report under subsection (3) must include:

- (a) an analysis of the effect described in (3A), by reference the data identified in (3A);
- (b) an equality impact assessment of the operation of Chapter 1A as described in (3A); and
- (c) a description of any guidance or codes of practice, to which the operation of Chapter 1A described in (3A) was subject.

(3C) The any action which was taken pursuant to sections 342C, 342E, 342F, and/or 342H

Effect

This provision establishes a framework for a robust pilot to the SVRO programme.

Briefing

1. At Committee Stage, the Government sought to reassure the Opposition that the establishment of SVROs by way of a pilot across 4 police forces, would enable them to collect robust data on their use.²² We are concerned that pilots and other exercises such as these, do not achieve their purported aims of safeguarding and establishing agreed standards to base further roll out of policy from, but are instead a mere buffer zone between introduction of a policy and its wider roll out.²³ The only safeguard available to counter the harms that SVROs are likely to cause, is for them not to be created at all.
2. In the event that the SVRO provisions are passed, we believe that there must be a robust pilot that evaluates, among other factors, the equalities impacts of the SVRO regime.

²² HC Public Bill Committee 17 June 2021

²³ For example, the Home Office collects annual data on stop and search. This data has repeatedly shown the disproportionality inherent in these police powers, but the Government is yet to make substantial efforts to rectify these problems. Similarly, the Home Office has delayed their pilot of Knife Crime Prevention Orders – the findings from which may have substantially aided the decision to implement SVROs in the first place.

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