

JOINT BRIEFING FOR PARLIAMENTARIANS ON SERIOUS VIOLENCE REDUCTION ORDERS: ESTABLISHING A ROBUST PILOT AND ENHANCING DEMOCRATIC SCRUTINY (PART 10, PCSC BILL)

FEBRUARY 2022

In advance of the Bill's return to the House of Commons during ping pong stage on 28th February, the Government have issued its motions relating to Lords Amendments.¹ We reject the Government's amendment to introduce a weakened pilot. And, as per the below, reaffirm the importance of Lords amendments 114-116 in mitigating some of the worst harms of the proposed SVRO regime, including through a more robust pilot, and for the strengthened democratic process as issued by the amendment to introduce a Parliamentary vote before the pilot period commences.

1. Part 10, Chapter 1 of the PCSC Bill creates a new civil order, the Serious Violence Reduction Order ('SVRO'), which can be imposed on an individual with a previous conviction. Those given an SVRO will be subject to a range of conditions and prohibitions (such as reporting requirements), breach of which is a criminal offence with a maximum two year prison sentence. The police will be given the power to stop and search anyone subject to an SVRO whenever they are in a public place, without needing to have 'reasonable suspicion' that they have done anything wrong.
2. We recognise that the aim of SVROs is to protect communities from harm. These are aims which we wholeheartedly support – serious violence is a human rights issue which devastates communities across the country. It demands an evidence-based and just response that works with, not against, communities that bear its brunt. However, we oppose SVROs given they are entirely unsubstantiated by evidence, will sanction injustice and discrimination, and risk fracturing public trust in public services and the authorities.
3. We echo the concerns voiced by former senior police officers² and parliamentarians that SVROs will:
 - **Entrench the harms of ineffective and racially disproportionate suspicion-less stop and search**, which the police,³ the Home Office,⁴ and HMICFRS⁵ acknowledge is not conducive to reducing crime and exacerbates mistrust in public institutions. Just 1% of suspicion-less stop and searches resulted in an arrest for possession of weapons (i.e. their intended aim) in the year ending March 2020.⁶
 - **Expand the injustice of the doctrine of joint enterprise**, given that SVROs can be imposed on people who knew or merely *ought to have known* that someone else involved in an offence had or used a knife in the commission of the offence.⁷ 'Ought to have known' is not an actual state of knowledge and evidence shows that racial stereotypes and prejudices about purported criminality – including taste in music and fashion – is likely to inform what someone is deemed to have 'ought to have known'.⁸
 - **Disproportionately affect over-policed and marginalised groups**, including young women experiencing domestic abuse and criminal exploitation,⁹ who are deemed to have 'ought to have known' that a family member or intimate partner had a knife. They could be subjected to an SVRO.
 - **Drag more people into the criminal justice system**, as while SVROs are a civil order, breach of a condition under SVROs will be a criminal offence attracting a maximum two year prison sentence. SVROs can also be renewed indefinitely, meaning that those given an SVRO could be subject to continual surveillance and monitoring and be trapped in a 'revolving door' of offending.

¹ See Police, Crime, Sentencing and Court Bill, *Motions relating to Lords Amendments*, available at: https://publications.parliament.uk/pa/bills/cbill/58-02/0239/amend/police_rm_ccla_0222v2.pdf

² ITV News, *Policing bill 'disproportionately impacts black men' and 'exacerbates violence', ex-chiefs warn*, 25 October 2021, available at: <https://www.itv.com/news/2021-10-25/policing-bill-could-undermine-trust-and-exacerbate-violence-ex-chiefs-warn>

³ College of Policing, *Stop and search: Transparent*, available at: <https://www.app.college.police.uk/app-content/stop-and-search/transparent/>

⁴ 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

⁵ HMICFRS, *Disproportionate use of police powers - A spotlight on stop and search and the use of force*, 26 February 2021, available at:

<https://www.justiceinspectorates.gov.uk/hmicfrs/publications/disproportionate-use-of-police-powers-a-spotlight-on-stop-and-search-and-the-use-of-force/>

⁶ Pg. 10, 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

⁷ Liberty, *Policing Bill will increase discredited 'joint enterprise' warn campaigners*, 8 January 2022, available at: <https://www.libertyhumanrights.org.uk/issue/policing-bill-will-increase-discredited-joint-enterprise-warn-campaigners/>

⁸ 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>

⁹ Agenda briefing for the Police, Crime, Sentencing and Courts Bill – Report Stage in the House of Lords, January 2022, available at: <https://weareagenda.org/wp-content/uploads/2022/01/Agenda-PCSC-Bill-HoL-Report-Stage-Briefing.pdf>

- Have far-reaching, unintended effects, given that SVROs as drafted are much wider than the Conservative Party manifesto promise to create a civil order targeting those “convicted of knife crime”.
4. We welcome the cross-party support of a majority of peers in the House of Lords (215-177) for Baroness Meacher’s amendments to subject any national roll-out of SVROs to a parliamentary vote and to establish a more robust pilot. **We urge parliamentarians to support Lords Amendments 114 to 116 (see Appendix) which will reinstate democratic oversight over laws engaging rights and equalities issues and affirm the importance of an evidence-based approach to tackling the serious violence.**

Enhancing democratic scrutiny over SVROs: Lords Amendment 115

5. Pilots are useful insofar as their findings are properly considered and used to inform decisions about whether certain proposals should be implemented more widely. As drafted, the provisions enacting SVROs would commence after a report of the pilot is laid before Parliament by the Secretary of State, regardless of whether SVROs have been proven to be effective at their intended purpose. The original provisions also did not require the Government to report on whether the SVRO regime is proportionate, fair, and compliant with human rights. **Relegating pilots to a tick-box exercise erodes principles of democratic scrutiny and undermines the credibility and effectiveness of legislation and policy.**
6. This is particularly important given that the Government has a track record of rolling out policies while evading transparency and accountability over the impacts of pilots. In 2019, the Government launched a pilot which removed the Best Use of Stop and Search safeguards for s.60 suspicion-less stop and search, originally introduced by former Home Secretary Theresa May to address stop and search powers’ liability for misuse and contributions to racial disproportionality in the criminal justice system. In July 2021, despite failing to publish any assessment of the impact of the pilot, the Government announced its ‘Beating crime plan’, which would permanently relax the BUSSS safeguards. Legal action on the basis of equalities concerns eventually forced the Government to u-turn on its decision.¹⁰ The Government has continued to refuse to publish its evaluation of the pilot. In a long over-due response to an FOI request – on which the Information Commissioner’s Office also intervened¹¹ – the Government insisted it needs a “safe space” to discuss changes.¹² **This has been criticised for demonstrating a “disturbing but unfortunately unsurprising lack of transparency and accountability” by the Criminal Justice Alliance.¹³**
7. It is plainly logical that if a pilot demonstrates that a particular intervention is ineffective or disproportionate, further roll-out should not proceed, and Parliament should have the final say as to **whether the scheme should stand.** This is particularly important given the lack of evidence to show that SVROs will be effective at reducing knife crime and the abundance of evidence that shows that existing suspicion-less stop and search powers are ineffective and racially disproportionate. Indeed, the Home Office has acknowledged that both in terms of who is given an SVRO and who is stopped and searched under SVRO provisions, Black males are likely to be disproportionately affected.¹⁴
8. Further, Parliament should be given the ability to scrutinise substantive elements of SVROs that will be introduced via secondary legislation, such as the powers that will be given to constables in relation to SVROs and the conditions and requirements that SVROs will impose, particularly given that breach of these conditions is a criminal offence attracting a maximum two-year prison sentence. This accords with the strong recommendation of the Secondary Legislation Scrutiny Committee and Delegated Powers and

¹⁰ White, N., *Home Office sued over ‘racially disproportionate’ new stop and search rules*, The Independent, 3 November 2021, available at:

<https://www.independent.co.uk/news/uk/home-news/home-office-sued-stop-search-b1950653.html>

Liberty, *Home Secretary u-turns on stop and search decision after legal action by Liberty and Stopwatch*, 29 November 2021, available at:

<https://www.libertyhumanrights.org.uk/issue/home-secretary-u-turns-on-stop-and-search-decision-after-legal-action-from-liberty-and-stopwatch/>

¹¹ Criminal Justice Alliance, *Government fails to produce evidence behind expansion of stop and search*, 1 November 2021, available at:

<https://www.criminaljusticealliance.org/blog/government-fails-to-produce-evidence-behind-expansion-of-stop-and-search/>

¹² Dearden, L., *Home Office refuses to reveal impact of expanded powers to stop and search people without suspicion*, The Independent, 5 January 2021, available at:

<https://www.independent.co.uk/news/uk/home-news/police-stop-and-search-section-60-suspicion-b1978317.html>

¹³ Criminal Justice Alliance, *Government refuses to release findings of section 60 stop and search pilot*, 5 January 2022, available at:

<https://www.criminaljusticealliance.org/blog/government-refuses-to-release-findings-of-section-60-stop-and-search-pilot/>

¹⁴ 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>

Regulatory Reform Committee that the balance between Parliament and Government should be “re-set afresh” by re-instating Parliamentary scrutiny over significant policy developments and changes.¹⁵

Establishing a more robust pilot for SVROs: Lords Amendments 114 and 116

9. Apart from requiring a vote across both the Houses prior to national roll-out of SVROs, Lords Amendments 114 and 116 provide a more robust framework for evaluating their impact. These amendments precisely identify contentious issues within the SVRO measures that require further scrutiny, for example, the provisions that enable an SVRO to be given to someone with a conviction on the basis that they *ought to have known* that someone else involved in the offence had a knife, which Agenda¹⁶ and 21 other VAWG organisations¹⁷ have warned will disproportionately affect young women experiencing domestic abuse and criminal exploitation.
10. During the debate, the Minister noted “the general point is that it is not necessary to include... a list [of matters to be considered in the pilot] in the Bill.”¹⁸ Apart from a passing remark that this is not how things have been done in the past,¹⁹ **at no point has the Minister provided sufficient reasons or justifications for why in principle it is inappropriate for Parliament to set out an inclusive list of factors for the pilot to consider.** This is particularly concerning given the significant issues that have been raised in respect of the ways that SVROs may have disproportionate and unintended consequences for already over-policed and marginalised communities.

We urge parliamentarians to support Lords Amendments 114 to 116, which will reinstate democratic scrutiny over SVROs by requiring a vote across both Houses before their national roll-out; and establish a more robust pilot for SVROs given their wide-ranging human rights and equalities impacts and existing lack of evidence base.

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¹⁵ Secondary Legislation Scrutiny Committee, *Government by diktat: A call to return power to Parliament*, 24 November 2021, available at: <https://publications.parliament.uk/pa/ld5802/ldselect/ldsecleg/105/105.pdf>

¹⁶ Agenda briefing for the Police, Crime, Sentencing and Courts Bill – Report Stage in the House of Lords, January 2022, available at: <https://weareagenda.org/wp-content/uploads/2022/01/Agenda-PCSC-Bill-Hol-Report-Stage-Briefing.pdf>

¹⁷ Joint briefing for House of Lords ahead of Report Stage of the Police, Crime, Sentencing and Courts Bill, Serious Violence Duty and Serious Violence Reduction Orders, December 2021, available at: <https://rightsofwomen.org.uk/wp-content/uploads/2021/12/Joint-VAWG-sector-briefing-on-SVD-and-SVROs-for-Hol-ahead-of-report-stage-Dec-2021-1.pdf>

¹⁸ HL Deb 17 Nov 2021, vol. 816, Col. 312

¹⁹ HL Deb 17 Nov 2021, vol. 816, Col. 312

Appendix

Lords Amendment 115

Page 137, line 5, at end insert—

“(3A) The condition in this subsection is that the Secretary of State has laid before Parliament a response addressing any issues identified in the report produced under subsection (3).

(3B) A statutory instrument containing regulations under section 178(1) for the purposes mentioned in subsection (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Lords Amendments 114 and 116

Page 136, line 40, leave out “and (3)” and insert “to (3A)”

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 of Part 11 of the Sentencing Code (inserted by section 163) under subsection (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) of the Sentencing Code;
 - (ii) in respect of whom a serious violence reduction order is made by a court;
 - (iii) in respect of whom an application is made under section 342A(1) of the Sentencing Code and the court has adjourned proceedings pursuant to section 342A(8A) or (8B);
 - (iv) in respect of whom action is taken pursuant to section 342C, 342E, 342F, or 342H of the Sentencing Code; and
 - (v) who is convicted of an offence within section 342G of the Sentencing Code;
- (d) any action which was taken pursuant to sections 342C, 342E, 342F, or 342H of the Sentencing Code, 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 from the exercise of powers under section 342E of the Sentencing Code, 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 of the Sentencing Code for which any person was 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 under section 342A(1)(a) of the Sentencing Code;
 - (ii) whether the order was imposed under subsection 342A(3)(a), (3)(b), (4)(a) or (4)(b) of the Sentencing Code; and
 - (iii) if the order was imposed under subsection 342A(4)(a) or (4)(b), whether the order was made on the basis that the offender knew that a bladed article or offensive weapon was used by another person; or whether the offender ought to have known that this would be the case;
- (i) whether that operation of Chapter 1A of the Sentencing Code had a discriminatory, disproportionate or other adverse impact on people sharing the protected characteristic of age, race or sex;
- (j) the number of survivors and victims of domestic abuse, including women who have experienced or are experiencing criminal exploitation, coercive control, or other forms of abuse, who are given such orders, broken down by ethnicity, age, and policing borough.

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

- (a) an analysis of the effect described in subsection (6), by reference to the data identified in subsection (6);
- (b) an equality impact assessment of the operation of Chapter 1A of the Sentencing Code as described in subsection (6);

- (c) a description of any guidance or codes of practice, to which the operation of Chapter 1A described in subsection (6) was subject;
- (d) analysis of data assessing the extent to which the pilot has reduced serious violent crime and reoffending by comparison with other areas;
- (e) analysis of what evidence is relied on to justify the imposition of serious violence reduction orders, and whether there is any bias in the decisionmaking process;
- (f) analysis of information on the reason for each breach of a serious violence reduction order, any defence pleaded, and the result of the breach proceedings;
- (g) analysis of any impacts, including equalities impacts, of other positive requirements or conditions imposed on individuals pursuant to section 342C(1) of the Sentencing Code;
- (h) analysis of any impacts, including equalities impacts, of adjournment of proceedings on individuals where the court adjourns proceedings under section 342A(8A) or (8B); and
- (i) analysis of any impacts of serious violence reduction orders on survivors and victims of domestic abuse, including women who have experienced or are experiencing criminal exploitation, coercive control, or other forms of abuse, who are given such orders.

(3C) Statistical information collected for the purposes of subsection (7) from different pilot areas must be collected and presented in a form which enables direct comparison between those areas.