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**BRIEFING PAPER**

Number 9159, 12 March 2021

# Police, Crime, Sentencing and Courts Bill: Parts 10 and 11 - Management and rehabilitation of offenders

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# Summary

This briefing paper is one of a collection of Commons Library briefing papers on the *Police, Crime Sentencing and Courts Bill* (the Bill). It deals only with the provisions in Parts 10 and 11 of the Bill which concern the management and rehabilitation of offenders. Briefing papers dealing with other parts of the Bill and general background, are available on the Commons Library website.

**Chapter 1 of Part 10** would introduce Serious Violence Reduction Orders (SVROs). The courts would be able to apply an SVRO to offenders whose offence involved an offensive weapon. Once applied, officers would be able to search those with SVROs without reasonable grounds. Under the Bill the Government is required to pilot SVROs before bringing the relevant provisions into force.

**Chapter 2 of Part 10** is about the management of sex offenders. It would:

- Make changes to the law on the notification requirements under which registered sex offenders must notify the police of personal information by:
  - Removing a requirement for the Secretary of State to prescribe a list of police stations where registered sex offenders must notify, allowing Chief Constables to publish a list instead
  - Enabling the police to make sex offenders who are convicted of, or cautioned for, specified sexual offences abroad subject to notification requirements without the need for a court order
- Make changes to the law on the civil orders used to manage sex offenders, Sexual Harm Prevention Orders (SHPOs) and Sexual Risk Orders (SROs) by:
  - Enabling the British Transport Police and Ministry of Defence Police to apply for an SHPO or SRO
  - Making provision for a list of countries considered to be at high risk of child sexual exploitation or abuse by UK nationals and residents to be established and requiring the police and courts to have regard to the list
  - Providing that a court should apply the civil standard of proof (the 'balance of probabilities') when determining whether the individual has done the act of a sexual nature specified in an application for an SHPO or SRO
  - Enabling a court to impose positive obligations as conditions of SHPOs and SROs and providing that breach of such obligations is a criminal offence
  - Providing for the court to impose electronic monitoring conditions as part of a SHPO or SRO, in order to monitor the individual's compliance with the order
  - Providing for mutual recognition of all sex offenders management orders throughout the UK.

**Chapter 3 of Part 10** is about the management of terrorist offenders. It would implement the recommendations of the Independent Reviewer of Terrorism Legislation (IRTL), Jonathan Hall QC, following a review into the application of Multi-Agency Public Protection Arrangements (MAPPA) to terrorist offenders. These include:

- providing for a power to arrest terrorist offenders released on licence without a warrant;
- providing for a power to search terrorist offenders released on licence;

- providing for a power to search premises used by terrorist offenders released on licence;
- providing for changes to how the MAPPA regime contained in the *Criminal Justice Act 2003 apply* to terrorist offenders.

**Part 11** is about the rehabilitation of offenders. It would provide for some custodial sentences of over 4 years to become spent after a certain period of time. Convictions for serious sexual, violence and terrorist offences would be excluded from this change. The existing rehabilitation periods for certain other disposals on conviction would also be reduced.

# 1. Background

## 1.1 Serious violence

Part 10, Chapter 1 would introduce Serious Violence Reduction Orders (SVROs). SVROs are part of the Governments response to "serious violence". The Government (and its predecessor, the 2017-19 Conservative Government) has taken a dual approach to tackling serious violence. It has supported a "public health approach" to the problem alongside stronger enforcement measures. Provisions Chapters 1 and 2 of Part 2 of the Bill relate the Government's "public health approach" policy. The Library paper on Part 2 of the Bill provides relevant background including what is meant by the term "serious violence" and a discussion of how big the problem is.

### Government enforcement policies to tackle serious violence

The Government's enforcement policy has included supporting police action, reforming police guidance on existing stop and search powers and passing the *Offensive Weapons Act 2019.*

#### Police action

The police have been running *Operation Sceptre* missions for years. *Operation Sceptre* comprises "weeks of action" on knife crime. In November 2020 the police arrested more than 2,000 people in the latest *Operation Sceptre* mission. November's Sceptre mission also included a knife surrender scheme. The police collected around 10,000 knives.[1]

On 8 March 2021 the Government announced a further £130 million to police forces to tackle serious violent crime, including £30 million for "targeted action in parts of England and Wales most affected by serious violence".[2]

#### Recent stop and search reform

The 2017-19 Conservative Government relaxed voluntary guidance which encouraged forces to comply with stricter criteria when authorising pre-condition searches (a type of stop and search power officers can use without suspicion). In March 2019 the Government announced that it was no longer asking the eight forces which police areas affected by serious violence to follow best use of stop and search guidance (BUSS) on the authorisation of pre-condition searches.[3] In April 2019, following Boris Johnson's appointment as Prime Minister, this was extended to all English and Welsh forces.[4] Whilst no force is

1 NPCC, More than 2000 arrests in national knife crime operation, November 2020
2 Home Office, £130.5 million to tackle serious violence, murder and knife crime, March 2020
3 Home Office, Greater powers for police to use stop and search to tackle violent crime, March 2019
4 Home Office, Government lifts emergency stop and search restrictions, 11 August 2019

now being encouraged to follow BUSS guidance on pre-condition search authorisation by the Government some are still choosing to.

Forces that do not follow BUSS guidance can authorise pre-condition searches at a lower rank and with a lower degree of certainty that they are needed to prevent violence.[5]

**Best use of stop and search pre-condition search authorisation**

| | BUSS | Legislation |
|---|---|---|
| **Authorising officer** | Assistant Chief Constable/ Commander | Inspector |
| **Likelihood of serious violence** | Reasonably believed that serious violence will take place | Reasonably believed that serious violence may take place |
| **Initial maximum duration** | 15 hours | 24 hours |
| **Maximum extension** | First extension: 9 hours<br>Second extension: 15 hours | 24 hours |

Alongside the relaxation of BUSS guidance the Home Office announced they were asking the College of Policing to create new guidelines on stop and search community engagement.[6] In August 2019 the College of Policing published draft revisions to its APP guidance on stop and search.[7] New guidance was published in July 2020.[8]

One of the revisions incorporates BUSS guidance which encourages forces to inform local people of a pre-condition search authorisation into the APP. This requires forces to "have regard" to informing local people of a pre-condition search authorisation though it would not make it a legal requirement.

### *Offensive Weapons Act 2019*

The OWA introduced new restrictions on the online sale of bladed articles, introduced Knife Crime Prevention Orders (KCPOs) and created a new offence associated with the possession of flick/ gravity knives. The Library's briefing on the Act provides more details. A surrender scheme for the knives it is now illegal to possess closed on 1 March 2021.[9] However, the OWA's provisions relating to KCPOs and

5 See: House of Commons Library, Police powers: stop and search, March 2021, section 1.2

6 HCWS1497: The Prime Minister's Serious Youth Violence Summit, 1-4 April 2019, 8 April 2019

7 College of Policing, Have your say on proposed changes to stop and search guidance for police, August 2019

8 College of Policing, National police guidance on stop and search updated, 30 July 2020

9 Home Office, Offensive Weapons Act surrender and compensation scheme, 10 December 2020

restrictions on the online sale of knives have not come into force. The commencement of these provisions has been delayed by the coronavirus pandemic.[10]

## 1.2 Management of sex offenders

Part 2 of the *Sexual Offences Act 2003*[11] provides various measures that enable the police in England and Wales to monitor and manage sex offenders living in the local area. A brief outline is provided below. For further information see the Library briefing Registration and management of sex offenders.

### Notification requirements: The "sex offenders register"

Certain sex offenders are required to notify the police of personal information such as their name, address and bank and credit card details, and to update the police annually and whenever this information changes. The police record of this information is commonly referred to as the "sex offenders register". There is no general public access to the "sex offenders register".

The notification requirements are imposed automatically on offenders convicted of or cautioned for certain offences in the UK but can also be imposed by way of court order (a notification order) on offenders convicted overseas.

The notification requirements are imposed for a fixed or indefinite period, depending on the sentence received. The penalties for breaching notification requirements range from a fine to imprisonment for up to five years. The Sentencing Council has issued a guideline for breach of notification requirements.

Relevant offenders (in England and Wales) who intend to travel outside the UK are required to give the police advance notification.[12]

### Sexual Harm Prevention Orders and Sexual Risk Orders

There are other civil orders available to manage sex offenders and those who pose a risk of sexual harm: Sexual Harm Prevention Orders (SHPOs) and Sexual Risk Orders (SROs).

An SHPO may be imposed on someone who has been convicted of or cautioned for a specified sexual or violent offence – an order may be made either by a court on conviction, or by the magistrates' court on application by the police or National Crime Agency. An SHPO may only be made where it is necessary for the purposes of protecting the public from **sexual** harm (not harm from an offence of violence). An SRO may

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10 PQ100312: Knives: Retail Trade, 7 October 2020; HC Deb, Knife crime, 14 December 2020, cc7

11 The relevant provisions for a Sexual Harm Prevention Order on conviction are now found principally in Part 11 Chapter 2 of the Sentencing Code contained in the *Sentencing Act 2020*

12 Section 86 of the Sexual Offences Act 2003 and the *Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004, SI 2004/1220*

be imposed on a person without a conviction but who poses a risk of sexual harm.

These orders can place a range of restrictions on individuals depending on the nature of the case. An order may, for example, prohibit someone from undertaking certain forms of employment, such as acting as a home tutor to children. It may also prohibit the offender from engaging in particular activities on the internet.

An SHPO either lasts for a fixed period of not less than five years (as specified in the SHPO) or until further order. Prohibitions in an SRO either last for a fixed period of not less than two years (as specified in the order) or until further order. Lyndon Harris and Sebastian Walker have commented in a practitioner text that the Court of Appeal Criminal and Civil Divisions have "shown themselves willing to engage in some linguistic gymnastics which have seen requirements re-worded to look like prohibitions".[13]

Both an SHPO and an SRO may contain foreign travel restrictions where this is necessary for the purpose of protecting children or vulnerable adults aboard.

Before making any SHPO or SRO, or including any restriction, the court must be satisfied that it is necessary to protect the public from sexual harm. This includes protecting children or vulnerable adults outside the UK.

The penalties for breach range from a fine to imprisonment for up to five years. The Sentencing Council has issued a guideline: Breach of a sexual harm prevention order, effective from October 2018.

There is no routinely published data on the use of SHPOs. The Government has previously said that such figures are not collated centrally, although it is unclear whether this is still the case. The ad hoc information available indicates that, in England and Wales:

- Between March 2015 and September 2015 2,425 full and 40 interim SHPOs were issued.[14]
- Between 8 March 2015 and 31 October 2016 8,970 SHPOs were issued.[15]

## The Independent Inquiry into Child Sexual Abuse – foreign travel restrictions

The Independent Inquiry into Child Sexual Abuse (IICSA) carried out an investigation into the adequacy of the civil framework for the prevention of, and notification to foreign authorities of, foreign travel by individuals known to the UK authorities as posing a risk to children.

In its report, Children Outside the United Kingdom, published in January 2020, IICSA noted that, in practice, travel restrictions are rarely imposed as part of a SHPO or SRO. IICSA concluded that:

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13 Harris and Walker, *Sentencing Principles, Procedure and Practice* 2021, A5-218
14 HC 70883, on 'Sexual harm prevention orders', tabled on 13 April 2017.
15 HM Government, Tackling Child Sexual Exploitation Progress Report, February 2017, p.14

> As a result, many known sex offenders may be able to travel to parts of the world where they can sexually abuse children. Where travel restrictions are imposed which only apply to limited countries, they can often be circumvented by travelling through third countries.[16]

IICSA found that "obtaining a consistent data set for the number of offenders whose travel has been restricted by a civil order is not straightforward".[17] However, the report states that the number of SHPOs with foreign travel restrictions in the year 2017/18 was only 11 (of 5,551 SHPOs), and in 2016/17 only 4 (of 5,931 SHPOs). It states that as at March 2019, from data provided by 40 police forces, only six SROs with foreign travel restrictions were in existence.

IICSA concluded that greater use should be made of the civil orders regime in order to reduce further the risks posed by sex offenders travelling overseas from England and Wales.

IICSA's recommendation on civil orders was that a list of countries where children are at high risk of sexual abuse and exploitation from overseas offenders should be provided for in legislation:

> The Home Office should bring forward legislation providing for the establishment and maintenance by the National Crime Agency of a list of countries where children are considered to be at high risk of sexual abuse and exploitation from overseas offenders. This list should be kept under regular review.
>
> The list of countries should be made available to the police, and used routinely to help identify whether a person who has been charged with sexual offences against a child poses a risk to children overseas based on their travel history and/or plans. If the person is considered to pose a risk of sexual harm to children overseas, the police should submit an application for a foreign travel restriction order under the Sexual Offences Act 2003.
>
> The list of countries should be admissible in court, and used when considering whether a foreign travel restriction order should be made under the Sexual Offences Act 2003 and if so, to which countries it should apply.[18]

The Bill takes forward this recommendation.

## Government strategy

In January 2021, the Government published its Tackling Child Sexual Abuse Strategy which committed to measures to strengthen SHPOs and SROs. The Government said it would:

- enable courts to impose positive obligations upon registered sex offenders and those who pose a risk of sexual harm requiring them to engage in certain action
- broaden the power of application for SHPOs and SROs beyond the police and NCA

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16 IICSA, *Children Outside the United Kingdom, Phase 2, Investigation Report*, January 2020, p1
17 IICSA, *Children Outside the United Kingdom, Phase 2, Investigation Report*, January 2020, p19
18 IICSA, *Children Outside the United Kingdom, Phase 2, Investigation Report*, January 2020, p56

- provide in legislation for the civil standard of proof required for civil order applications
- introduce express provision within legislation for electronic monitoring of individuals subject to SROs and SHPOs.[19]

## 1.3 Management of terrorist offenders

### Government response to recent terrorist attacks

In December 2019 a terrorist attack was committed at Fishmongers' Hall in London by a terrorist offender released on licence. This was followed by another attack in Streatham in February 2020, also by a terrorist offender released on licence.

In response, the Government introduced emergency legislation, the *Terrorist Offenders (Restriction of Early Release) Bill*. The Bill, which came into force later that month, ended the early automatic release of terrorist offenders. For further information on the Bill see Commons Library Briefing Paper *Terrorist Offenders (Restriction of Early Release) Bill 2019-2021*.

The Government also asked the Independent Reviewer of Terrorism Legislation, Jonathan Hall QC, to review multi-agency public protection arrangements (MAPPA) regarding the management of terrorist offenders and other offenders of terrorism concern.

The Criminal Justice Act 2003 (CJA 2003) established MAPPA, which requires the Police, Probation and Prison Service to work together with other agencies to assess and manage the risks posed by violent and sexual offenders.

The report of the independent review was published in September 2020 and made a number of legislative and non-legislative proposals. The legislative proposals were:

- Statutory provision to permit the use of polygraph testing of Terrorist Offenders.
- Amendments to the Counter-Terrorism Act 2008 to enable sentencing judges to find that a wider range of offences are connected to terrorism.
- Statutory provision to enable judges to grant search warrants to check an offender's compliance with their licence conditions, where this is necessary for the purpose of assessing their terrorist risk.
- Statutory provision to include a licence condition in appropriate cases, requiring an offender to submit to a person search to look for weapons or harmful objects.
- Statutory provision enabling the arrest, in urgent cases, of released offenders who are about to be recalled to prison.
- Removing the power to sentence young offenders convicted of terrorism offences to Detention and Training Orders.

[19] HM Government, Tackling Child Sexual Abuse Strategy, 2021, para 158

- Statutory provision to enable probation officers to supervise post-licence offenders subject to civil orders.
- Amendment to section 325(2)(a) Criminal Justice Act 2003 so that all persons subject to the notification requirements of the Counter-Terrorism Act 2008 are automatically eligible for MAPPA under a new Category 4.
- Amendment to section 325(2)(b) Criminal Justice Act 2003 so that Other Dangerous Offenders are eligible for MAPPA whether or not their risk arises from offences committed by them, again under a new Category 4.
- Statutory provision in the Criminal Justice Act 2003 equivalent to section 115 Crime and Disorder Act 1998, providing a lawful basis for disclosure by any person or body for the purpose of MAPPA.
- Addition of Duty to Cooperate agencies to paragraph 7 of Schedule 2 to the Data Protection Act 2018, providing a clear basis on which offender requests for subject access can be granted or refused.[20]

The Government responded in December 2020, accepting the recommendations and explaining that some would be implemented via the *Counter-Terrorism and Sentencing Bill 2019-2021*, currently before Parliament.[21] Other measures requiring changes to primary legislation would be implemented via new legislation to be introduced in the new year:

> You made three recommendations to give the Police new powers:
>
> - a licence condition in appropriate cases, requiring an offender to submit to a personal search to look for weapons or harmful objects, and a power to enable police to conduct the search on those with this condition in place;
> - a power to enable judges to grant search warrants to check an offender's compliance with his/her licence conditions, where this is necessary for the purpose of assessing their terrorist risk; and
> - a power to enable the arrest, in urgent cases, of released offenders who are about to be recalled to prison.
>
> Officials consulted all operational agencies, including Counter-Terrorism Police and the National Probation Service (NPS), which confirmed how useful the new powers would be and in what circumstances they might be used. Therefore, we have accepted these recommendations and we will bring forward legislation in the New Year to implement the changes.
>
> …
>
> When it comes to eligibility for MAPPA, you made two important recommendations: one to create a discrete new MAPPA category, Category 4, to ensure that all offenders convicted of terrorism offences are automatically referred to and managed under MAPPA; the other to enable offenders who are assessed as

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20 Jonathan Hall QC, Terrorist Risk Offenders: Independent Review of Statutory Multi-Agency Public Protection Arrangements, May 2020, Annex A

21 For further information on this Bill please see Library Briefing Papers *Counter-Terrorism and Sentencing Bill 2019-2021 and Counter-Terrorism and Sentencing Bill: Progress of the Bill*

presenting a terrorism risk to be managed under MAPPA, even where they have not been convicted of terrorism offences. We have accepted these recommendations and will bring forward legislation in the New Year to implement the changes.

You recommended that there should be legislation to put beyond doubt Duty to Co-operate (DTC) agencies' powers to share information under MAPPA. Even though we are clear that the powers already exist, we acknowledge that some agencies and individuals have expressed uncertainty as these powers emanate from a range of legislation. We will legislate to clarify the position by expressly granting DTC agencies the power to share information under MAPPA.[22]

## Scale of the problem

The only relevant statistics available show the number of sentenced terrorist offenders[23] released from prison custody in quarterly and annual periods. The statistics do not show which of these were releases on licence.

In the year ending June 2020, 34 sentenced terrorist offenders were released from prison custody.[24] Between July 2013 and June 2020, 265 terrorist prisoners were released from a custodial prison sentence. The annual figures are shown in the table below.

**Number of sentenced terrorist prisoners released from prison custody, by length of sentence**

Great Britain

| | Year ending 30 June: | | | | | | |
|---|---|---|---|---|---|---|---|
| Length of sentence | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
| Less than or equal to 6 months | - | 10 | 3 | 1 | 1 | - | - |
| >6 months to <12 months | 1 | 12 | - | - | - | - | - |
| 12 months to <4 years | 11 | 14 | 15 | 25 | 22 | 15 | 16 |
| 4 years or more | 11 | 11 | 10 | 9 | 29 | 25 | 17 |
| IPP | - | - | 1 | 2 | - | 1 | - |
| Life | - | - | - | 1 | - | 1 | 1 |
| **Total** | **23** | **47** | **29** | **38** | **52** | **42** | **34** |

**Source:** Home Office, Operation of police powers under the Terrorism Act 2000: quarterly update to September 2020: annual data tables, Table P.05

**Notes:** ' - ' = Nil

1. Includes historical terrorism cases which pre-date the introduction of the Terrorist Acts (2000 & 2006) and where an individual was imprisoned pre-2001 following a terrorist investigation, acts of terrorism, or for membership of a proscribed organisation. This includes convicted terrorists from the 1970s to 1990s for a range of offences. Also, members of groups such as the Palestinian Liberation Organisation (PLO) and domestic bombers.

22 Letter from the Home Secretary and the Justice Secretary to Jonathan Hall QC, 9 December 2020

23 As defined in the Terrorism Acts (2000 and 2006) and including historical terrorism cases which pre-date the introduction of the Terrorist Acts (2000 & 2006) and where an individual was imprisoned pre-2001 following a terrorist investigation, acts of terrorism, or for membership of a proscribed organisation.

24 Home Office, Operation of police powers under the Terrorism Act 2000: quarterly update to September 2020: annual data tables, Table P.05

## 1.4 Rehabilitation of offenders

The *Rehabilitation of Offenders Act 1974* aims to give those with convictions or cautions the chance – in certain circumstances – to wipe the slate clean and start afresh.

Under the Act, eligible convictions or cautions become "spent" after a specified period of time known as the "rehabilitation period", the length of which varies depending on how the individual concerned was dealt with.

Prison sentences of over 4 years are currently excluded from the scope of the Act and can therefore never become spent. The rehabilitation periods for other types of sentence vary according to whether the person was cautioned or convicted and, if the latter, the type of sentence imposed. Rehabilitation periods will generally be shorter for offenders aged under 18 when they were convicted.

**Rehabilitation periods for certain types of sentence/disposal under the 1974 Act (as amended by the 2012 Act)**

| Sentence/disposal | Rehabilitation period if aged 18 or over when convicted/disposal administered | Rehabilitation period if aged under 18 when convicted/disposal administered |
|---|---|---|
| A custodial sentence of over 48 months | Never spent | |
| A custodial sentence of over 30 months but not exceeding 48 months | 7 years from the date on which the sentence (including any licence period) is completed | 42 months from the date on which the sentence (including any licence period) is completed |
| A custodial sentence of over 6 months but not exceeding 30 months | 48 months from the date on which the sentence (including any licence period) is completed | 24 months from the date on which the sentence (including any licence period) is completed |
| A custodial sentence of up to 6 months | 24 months from the date on which the sentence (including any licence period) is completed | 18 months from the date on which the sentence (including any licence period) is completed |
| Fine | 12 months from the date of the conviction in respect of which the fine was imposed | 6 months from the date of the conviction in respect of which the fine was imposed |
| Community order | 12 months from the last day on which the order has effect | 6 months from the last day on which the order has effect |

| | |
|---|---|
| Simple caution, youth caution | Spent immediately |
| Compensation order | On the discharge of the order (i.e. when it is paid in full) |

Once the conviction or caution becomes spent, the offender is regarded as rehabilitated and (for most purposes) is treated as if they had never committed the offence. However, there are a number of exceptions to this general approach. For example, for some types of employment a person can be required to disclose details of both unspent and spent convictions or cautions. For details see the Library briefing The Rehabilitation of Offenders Act 1974.

Those campaigning for change say that the current regime does little to promote rehabilitation or serve public protection, but does result in people being locked out of jobs and opportunities.[25]

In the White Paper, A Smarter Approach to Sentencing, published in September 2020, the Government set out plans to legislate to change the rehabilitation periods that apply before a conviction becomes spent.

The White Paper explained the Government's motivation for this change:

> A key element in reducing reoffending is access to employment and having unspent convictions on a criminal record can act as a barrier to employment. In order to support these aims, we are proposing a change in the law to reduce the number of people who have previously offended and are required to disclose their convictions as part of basic checks for employment.[26]

The Bill would make the changes proposed in the White Paper.

The charity Unlock "provides a voice and support for people who are facing stigma and obstacles because of their criminal record". It welcomed the Government's proposals for generally reduced disclosure periods but concluded that the proposed changes are "fundamentally limited" and called for the Government to "deliver a more ambitious package of reforms".

In December 2020 the charity published a response to the White Paper: The cycle repeats itself: Better, but still not smarter, disclosure of criminal records. It concluded that the proposals are too limited to achieve the Ministry of Justice's goal of reducing the barrier to finding work created by the need to disclose a criminal record. It stated:

> The MoJ have repeated the mistakes of previous governments by assuming that long periods of disclosure need to exist, instead of drawing on evidence to find a smarter approach.[27]

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25 Unlock, Press release, Unlock's response to Ministry of Justice plans to make reforms to the Rehabilitation of Offenders Act 1974, 16 September 2020

26 Ministry of Justice, A Smarter Approach to Sentencing, September 2020, para 257

27 Unlock, The cycle repeats itself: Better, but still not smarter, disclosure of criminal records, December 2020, p1

Unlock's response to the White Paper made a number of recommendations for additional changes which it says, together with the proposals in the White Paper, would be a "much more significant step forward for criminal record disclosure":

- Abolish lifelong disclosure
- Universal reductions in disclosure periods, informed by evidence
- Young people to disclose based on their age at the time of the offence
- Disclosure periods to begin at release, not after licence.[28]

[28] Unlock, The cycle repeats itself: Better, but still not smarter, disclosure of criminal records, December 2020, p1

# 2. The Bill

## 2.1 Serious Violence Reduction Orders

Part 10, Chapter 1 would introduce Serious Violence Reduction Orders (SVROs). Under the Bill the Government would be required to pilot SVROs before bringing the relevant provisions into force.

SVROs would meet a 2019 Conservative Party Manifesto 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.[29]

The policy was included in the 2019 Queen's Speech.

The Government consulted on the design of SVROs in 2020. It published its response on 9 March 2021 (the same day it published the Bill).

### How do SVROs compare to existing stop and search powers?

SVROs would be an unusual stop and search power for two reasons:

- **Officers would be allowed to search people with an SVRO without reasonable grounds and without authorisation.** The only safeguard present in the Bill is the court's decision to apply/ not apply an SVRO on conviction. Once an individual has an SVRO officers would not have to meet any legal test to search them for an offensive weapon.
- **It specifically encourages officers to search people with previous convictions**.

#### Lack of reasonable grounds/ authorisation

There is no modern-day search power that allows officers to search people without reasonable grounds or senior authorisation. In the past "sus laws" allowed officers to search anyone they suspected was "disorderly" or a "rouge and vagabond". It is now widely accepted that these powers were open to abuse and their use contributed to poor police community relations.[30]

The current pre-condition search power can be used to search people without suspicion, but it must be authorised by senior police officers. Senior officers can only authorise its use when there has been, or they have intelligence there will be, a serious violence incident and authorisation is time limited. Once authorised officers can only search people using the pre-condition search power for reasons connected to its authorisation.[31]

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29 Conservative Party, The Conservative and Unionist Party Manifesto 2019, p20

30 Jones, C. (2007). 'Sus Law'. In *The Oxford Companion to Black British History*: Oxford University Press (Intranet link only. Available through the Library's subscription to Oxford Reference)*;* Police Foundation, Stop and search, March 2012

31 See: House of Commons Library, Police powers: stop and search, March 2021, section 1.2

It widely acknowledged that searching without reasonable grounds risk interfering with people's human rights and is less effective at preventing and detecting crime. For these reasons, much of the reform to stop and search powers over the last thirty years has been focused on improving the proportion of searches that are carried out with strong reasonable grounds.[32]

### Previous convictions

At present it is unlawful to search someone *just* because they have a relevant offending history.[33] This is supposed to prevent officers from prejudicing people with previous convictions. However, officers can use knowledge of someone's previous offending *in combination with other factors* to form objective reasonable grounds for a search. For example, officers would have grounds to search a known car thief if they had reports of recent car theft in the area *and* they saw them looking through the window of a parked car.[34]

## Pre-legislative consultation

The Government opened a consultation on how SVROs would work between mid-September and early-November 2020. The Government published its response on 9 March 2021.

The Government received 549 consultation responses. Amongst these responses were contributions elicited by its own stakeholder engagement on the policy.[35] Overall approximately 77% of the consultation responses were in favour of introducing SVROs.[36]

The Government identified several "key themes" in the consultation responses:[37]

- **Enhanced Police Powers**: The majority of respondents, mostly members of the public, noted the importance of giving the police the appropriate powers to tackle violent crime. Many suggested that SVROs could act as an effective deterrent and that more targeted stop and search could result in the most serious offenders being caught and the increased risk of detection would help deter others from carrying weapons.
- **Community Safety**: Some respondents stressed the importance of SVROs in making communities safer. It was suggested that communities would feel reassured and safer in the knowledge that the police were continuing to prioritise tackling violent crime.
- **Effective scrutiny and oversight**: Respondents, in particular practitioners, stressed the importance of being completely transparent about how SVROs were being used, to reassure communities that the orders are being used proportionately, and noted that their implementation

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32 See: House of Commons Library, Police powers: stop and search, March 2021, section 4
33 Home Office, PACE Code A, para 2.6B
34 APP
35 Ibid, p5-p6
36 Ibid, p5
37 Home Office, Consultation on Serious Violence Reduction Orders: Summary of Consultation Responses and Conclusion, 9 March 2021, p6-7

should be subject to robust monitoring. Some noted the importance of community engagement by the police when implementing SVROs.

- **Impact on rehabilitation**. Some respondents supported the new orders in the context of a wider package of rehabilitation, while others offered views on the orders potentially prolonging the criminalisation of individuals and not addressing the systematic issues around knife carrying.
- **Risk of displacement**: Some responses noted the possible 'displacement effect' of adults passing their weapons to others (particularly children) if subject to an SVRO.
- **Disproportionality and the impact on Black, Asian and Minority Ethnic (BAME) people**: Many respondents raised concerns about the possible disproportionality of the orders, in particular concerning the potential impact on BAME groups and individuals.

### Scrutiny and oversight

It is widely acknowledged that stop and search engages Article 8 of the European Convention on Human Rights, which guarantees the right to a private and family life. Article 8 is a qualified right. This means infringement may be justified, provided it is necessary and proportionate in pursuit of a legitimate aim, such as protecting public safety, or prevent disorder and crime.[38]

The pre-condition search power was challenged on human rights grounds on the basis that searching people without reasonable grounds represents a disproportionate interference with Article 8. In *R (on the application of Roberts) (Appellant) v Commissioner of the Police of the Metropolis*[39] the Supreme Court found that safeguards contained in both legislation and guidance were sufficient to ensure that pre-condition search can be compatible Article 8.[40]

The case highlights the importance of safeguards in ensuring that stop and search is compliant with Convention rights. There is a danger that without appropriate safeguards those with SVROs will be subjected to undue police harassment. There is also the possibility that someone mistaken for a person with an SVRO will be unlawfully searched using the power.[41] The Government says

> allowing the granting of an SVRO to be a matter for the court will allow individual circumstances to be considered in determining whether an SVRO should be granted.[42]

It says it will work with the police and other partners when developing guidance on SVROs...

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38 EHRC, Article 8: Respect for your private and family life
39 [2015] UKSC 79
40 R( on the application of Roberts) (Appellant) *v* Commissioner of the Police of the Metropolis and another (Respondents) [2015] UKSC 79.
41 Home Office, Consultation on Serious Violence Reduction Orders: Summary of Consultation Responses and Conclusion, 9 March 2021, p18
42 Home Office, Consultation on Serious Violence Reduction Orders: Summary of Consultation Responses and Conclusion, 9 March 2021, para 47

> …to ensure there is effective scrutiny and safeguards in place to ensure the orders are effective and are used appropriately.[43]

### Effectiveness

We know searches conducted without reasonable grounds are less successful. Just 1% of pre-condition searches result in an arrest for an offensive weapons offence, whereas 20% of reasonable grounds searches result in a linked criminal justice outcome (an arrest or out of court disposal).[44] In February 2021 Her Majesty's Inspectorate Constabulary and Fire & Rescue Services (HMICFRS) published analysis of the 9,378 police search records. Officers found what they were looking for in 40% of the searches they had "strong recorded grounds" for and in just 14% of searches where their recorded grounds "were not reasonable"[45]

The Government says SVROS will "enable police to take a more proactive approach and better target those already convicted of certain knife or offensive weapons offences".[46] It says they are likely to be:

> used most effectively, as part of an area's wider efforts around violence reduction and crime reduction. This would enable a decision to be made about the effectiveness and value of a future roll-out. The Government intends that SVROs should be used as part of an area's wider strategy around violence and crime, aimed at reducing serious violence, saving lives, and making communities safer.[47]

### Impact on Black people

The Government acknowledges that "a disproportionate number of Black people… Black males in particular…" may be subject to SVROs.[48] This could result in Black people being disproportionately exposed to searches conducted without reasonable grounds.

The Government say SVROs are needed to "break the cycle of offending," and protect people from harm. It cites the disproportionate number of Black victims of violence as a reason to press ahead with the policy. [49] It says there will be "clear and careful safeguards in relation to the appropriate use of SVROs".[50] It says its pilot of the policy will help "evaluate the impact of SVROs before a decision is made on a national roll out".[51]

## Clauses 139 and 140

**Clause 139** would add a new Chapter 1A into the Part 11 of the Sentencing Code. Chapter 1A would give courts the power to apply an

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43 Ibid, para 78
44 See: House of Commons Library, Police powers: stop and search, March 2021, section 3.3
45 HMICRS, Disproportionate use of police powers A spotlight on stop and search and the use of force, February 2021, p36
46 Home Office, Consultation on Serious Violence Reduction Orders: Summary of Consultation Responses and Conclusion, 9 March 2021, p3
47 Ibid, para 27
48 Home Office, Serious violence reduction orders: A new court order to target known knife carriers, September 2020, p15
49 Home Office, Consultation on Serious Violence Reduction Orders: Summary of Consultation Responses and Conclusion, 9 March 2021, para 30
50 Ibid, para 89
51 Ibid, p21

SVRO when sentencing adults (those over the age of eighteen) who used an offensive weapon/ bladed article to commit their offence or had an offensive weapon/ bladed article on them when they committed the offence. Two conditions would have to be are met to issue an SVRO:

1 The prosecution would have to apply for the SVRO to be applied to the offender.

2 The court would have to "think it is necessary" to protect the public, protect a specific individual or prevent the offender from committing another offence involving am offensive weapon/ bladed article.

The court would be able to hear evidence from both the defence and prosecution about whether it should issue an SVRO. That evidence could include things that were not admissible in the criminal proceedings associated with the case.

The court would have to explain in plain English the effect of the SVRO to the individual.

The courts would be able to apply an SVRO for a minimum of six months a maximum of two years.

Those issued with an SVRO would have to notify their local police, giving them their name and address within three days. They would also be required to notify the police within three days if they change their name, move to a new house or leave their normal residence for more than a month.

The Secretary of State would have powers to make regulations specifying additional requirements or prohibitions imposed by a SVRO. The Secretary of State would only be able to use this power once the Government had completed the pilot of SVROs required by **clause 140.**

The police would have the power to stop and search anyone with an SVRO "for the purpose of ascertaining whether the person has a bladed article or offensive weapon with them". The new Chapter 1A of Part 11 of the Sentencing Code would also give the police the power to seize offensive weapons/ bladed articles they find during a SVRO search. The Secretary of State powers to make regulations relating to the police's SVRO seizure powers. These regulations would be subject to the affirmative procedure.

It would be an offence to obstruct the use of SVRO search powers by not cooperating during a search or not notifying the police as required. Those who commit this offence would be liable to a prison sentence of up one/two years (if tried at a Magistrates/Crown Court respectively), a fine or both.

Individuals issued with an SVRO, the Crown Prosecution Service and the chief officer of a relevant police force would have the right to apply to the courts for an SVRO to be varied, renewed or discharged. The courts must apply the same test when deciding whether to vary, renew or discharge an SVRO as they do when issuing them.

There would also be a process to appeal an SVROs that would operate in a similar way to appealing a sentence. Offenders could also appeal a decision not to vary or discharge and SVRO.

The Secretary of State would be required to issue guidance on SVROs. Those involved in issuing them or searching people who have them must have "due regard" to this guidance. Unlike statutory guidance on other stop and search powers, the Bill makes no provision for how this guidance should be drawn up and published.

**Clause 140** would require the Secretary of State pilot SVROs in a specific geography before using their commencement powers to bring SVROs into force. **Clause 140** includes regulatory powers which allow the Secretary of State to bring SVROs in force in part for the purpose of a pilot

## 2.2 Management of Sex Offenders

### Locations for sexual offender notification

**Clause 141** of the Bill would remove a requirement for the Secretary of State to prescribe a list of police stations where registered sex offenders must notify. The law would be amended so that relevant offenders would be required to notify at police station(s) which the local Chief Constable would specify and publish.

### Offences committed in a country outside the United Kingdom: notification requirements

**Clause 142** would enable the police to require sex offenders who are convicted of or cautioned for specified sexual offences abroad subject to comply with notification requirements without the need for a court order.

The police would be given the power to service a notice requiring relevant offenders to notify. The notice would be authorised by an officer of the rank of inspector or above.

Offenders would have a right of appeal to a magistrates' court.

The Explanatory Notes state this change would:

> …streamline the process, supporting better management of those who pose a risk and removing an opportunity for the offender to abscond before their court date.[52]

### Notification orders: Scotland

**Clause 143** would extend and apply to Scotland only. For an explanation of this clause see paras 1086-7 of the Explanatory Notes.

### Applications for SHPOs and SROs by BTP and MOD police

**Clause 144** would allow the British Transport Police and Ministry of Defence Police to apply for a SHPO or SRO and for interim SHPOs and SROs.

### High risk countries list

**Clause 145** would make provision for the establishment and maintenance of a list of countries and territories considered to be at

[52] Explanatory Notes, para 1084

high risk of child sexual exploitation or abuse by UK nationals and residents.

**Clause146** would require applicants (e.g. the police) for a SHPO or SRO to have regard to the list. Courts would also be required to have regard to the list including when considering whether a foreign travel order is necessary as part of a SHPO or SRO.

These clauses would implement a recommendation made by the Independent Inquiry into Child Sexual Abuse (IICSA), see above.

## Standard of proof for SHPOs and SROs

Home Office guidance published in 2018 states:

> **What the courts have to be satisfied of to make a Sexual Harm Prevention Order**
>
> Although the SHPO is a civil order, the judgment of the House of Lords in the case of McCann - R (McCann & others) v Manchester Crown Court [2002] (on anti-social behaviour orders) means that a court must apply the criminal standard and therefore be sure that the defendant has carried out the relevant acts before making an order. This is due to the seriousness of the matter, in particular of the consequences of breaching the order.[53]

**Clause 147** would provide that a court should apply the civil standard of proof (the 'balance of probabilities') when determining whether the individual has done the act of a sexual nature specified in the application for a SHPO or SRO. The Government says:

> This will allow for a greater range of evidence to be provided to the court on application, strengthening the basis for provisions contained within the order.[54]

## Positive requirements

**Clauses 148 and 149** would enable a court to impose positive obligations as conditions of SHPOs and SROs. This would allow the court to require individuals to engage in specified activity. The Explanatory Notes gives the following examples of such activities: attend a behaviour change programme, alcohol or drug treatment, or to take a polygraph test. The Explanatory Notes state that enabling the courts to impose positive obligations would enable stronger management of those who pose a risk of sexual harm and increase prevention through rehabilitation.[55]

Clauses 148 and 149 would allow for courts to impose positive obligation in interim SHPOs and SROs. Interim SHPOs and SROs may be imposed where an application for a full order has been made or is being made at the same time, but has not yet been determined.

Clause 148 would enable a defendant or the police to apply for an SHPO to be varied, renewed or discharged to include a positive obligation.

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53 Home Office, Guidance on Part 2 of the Sexual Offences Act 2003, September 2018, p43
54 Explanatory Notes, para 1100
55 Explanatory Notes, Para 1101

Clauses 148 and 149 would provide that breach of any positive obligation imposed in a SHPO or SRO would be a criminal offence, as is currently the position for breach of negative obligations.

**Clause 150** makes further amendments concerning positive requirements. See the Explanatory Notes, paras 1110-1113. Clause 150 would extend to England and Wales in part and to Scotland in part. A legislative consent motion has been sought from the Scottish Parliament.

## Electronic monitoring requirements in SHPOs and SROs

**Clause 151** would provide an express provision for the court to impose electronic monitoring conditions as part of a SHPO or SRO, in order to enable the monitoring of the individual's compliance with the order. The clause provides that electronic monitoring may be imposed in interim SHPOs and SROs.

The clause would provide for obligations on the offender to cooperate with the imposition of the electronic monitoring. Failure to do so would constitute a breach of the order.

Amendments made by clause 151 would direct the Secretary of State to issue a code of practice for the processing of data gathered in the course of electronic monitoring.

## Orders made in different parts of the UK

The Government has said:

> Civil orders, including SHPOs and SROs, made in England & Wales, Scotland or Northern Ireland will be fully reciprocal within other UK jurisdictions. A breach of a civil order which takes place in England, Wales, Scotland or Northern Ireland will constitute a criminal offence in those jurisdictions whichever jurisdiction in the UK the order was made.[56]

This would be achieved by clauses 153, 154 and 155. For details of these clauses see the Explanatory Notes at paras 1119 to 1122. Clauses 153 and 155 would extend and apply to England and Wales and to Scotland in part. Legislative consent motions have been sought with regard to these clauses from the Scottish parliament and the Northern Ireland Assembly.

**Clause 156** would introduce **Schedule 17** which would provide for mutual recognition of all sex offenders management orders throughout the UK by enabling courts to vary an order in respect of an offender in their jurisdiction regardless of where the order was imposed.

Clause 156 and Schedule 17 would apply and extend in part to each of England and Wales, Scotland and Northern Ireland. A legislative consent motion has been sought in respect of both Scotland and Northern Ireland.[57]

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56 Police, Crime, Sentencing and Courts Bill 2021: sex offender management factsheet, 10 March 2021

57 See Annex C of the Explanatory Notes.

## 2.3 Management of Terrorist Offenders

Clauses 157-160 would insert four new sections into the *Terrorism Act 2000* (TA 2000) providing for new powers to manage terrorist offenders.

**Clause 157** would insert a new section 43B into the TA 2000 which would provide the police with a power to arrest without a warrant a terrorist offender who had been released on licence.

The power could be exercised if a police constable had reasonable grounds to suspect that the offender had breached their licence conditions, and reasonably considered that it was necessary to detain them for purposes connected to protecting the public from a risk of terrorism until a recall decision is made.

The terrorist offender would have to be released if a recall decision was not made within a fixed period,[58] or if a decision was made not to revoke the licence.

The detention conditions and safeguards contained in Schedule 8 to the TA 2000 would apply to anyone detained under this new power.

**Clause 158** would insert a new section 43C into the TA 2000 which would provide for a power to conduct personal searches of terrorist offenders released on licence.

The power could be exercised against an offender whose licence includes a search condition, provided a police officer was satisfied that it was necessary for purposes connected to protecting members of the public from a risk of terrorism.

According to the EN, it is expected that in practice a search condition would only be set for a limited cohort of terrorist offenders who pose a high risk of serious harm. The EN explains the rationale for the power:

> It provides a deterrent for offenders on licence to take weapons with them when travelling and exposes offender managers to less danger during meetings with high risk offenders. This is not possible under the normal stop and search powers in section 43 of the Terrorism Act 2000 or, in exceptional circumstances, section 47A, which are not designed for compliance or assurance purposes.[59]

It would also provide a power to search a vehicle if the offender was stopped in one, and anything the offender was carrying, such as a phone.

**Clause 159** would insert a new section 43D into the TA 2000 which would provide for a power to search the premises of an offender released on licence.

This would require a warrant from a court, which could be issued if the court was satisfied that:

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[58] The "relevant period" is defined by new subsection (6) as six hours in England and Wales and 12 hours in Scotland and Northern Ireland

[59] Para 1130

- The person specified in the application was a terrorist offender;
- There are reasonable grounds for believing that they live or can regularly be found at the premises in question;
- That it is necessary for a purpose connected with protecting members of the public from a risk of terrorism; and
- The occupier of the premises is unlikely to consent to a constable entering or searching it

**Clause 160** would insert a new section 43E into the TA 2000 which would provide for a power to seize and retain items found in searches conducted under new sections 43C and 43D.

A police constable would be able to seize any item they found if they reasonably suspected that it was or contained evidence in relation to an offence and that it was necessary to seize it to prevent it being concealed, lost, damaged, altered or destroyed. Or, if they reasonably believed that it was necessary to do so to ascertain whether the offender had breached their licence and if so whether that breach affects the risk of terrorism to the public.

**Clause 161** gives effect to **Schedule 18**, which would make amendments consequential to sections 157 to 160.

**Clause 162** would amend section 325 to 327 of the Criminal Justice Act 2003 (CJA 2003) to provide that terrorist offenders can be managed under the multi-agency public protection arrangements (MAPPA) regime. The new provisions in the CJA 2003 would enable information sharing between agencies in accordance with the *Data Protection Act 2018* and the *Investigatory Powers Act 2016*, and define "terrorist offender" by refence to counter-terrorism legislation.

## 2.4 Rehabilitation of Offenders

**Clause 163** would implement the reforms proposed in the White Paper.

**Clause 163** would amend The Rehabilitation of Offenders Act 1974 to provide for some custodial sentences of over 4 years to become spent after a certain period of time. Convictions for serious sexual, violence and terrorist offences would be excluded from this change.

The existing rehabilitation periods for certain other disposals given or imposed on conviction would also be reduced.

As with the current periods, the Government has proposed that children's rehabilitation periods should continue to be half those of adults.

**Proposal: New Rehabilitation Periods**

| Sentence | Adults | Under 18s |
|---|---|---|
| A custodial sentence of over 4 years (excluding serious | 7 years | 3.5 years |

| | | |
|---|---|---|
| sexual, violent or terrorist offences) | | |
| A custodial sentence of more than 1 year and up to 4 years | 4 years | 2 years |
| A custodial sentence of 1 year or less | 1 year | 6 months |
| Youth Rehabilitation Order | N/A | The last day on which the order has effect |
| Community Order | The last day on which the order has effect | N/A |

The changes to the Rehabilitation of Offenders Act 1974 made by this clause would apply retrospectively so that existing convictions will become spent according to the new rehabilitation periods.

This clause applies and extends to England and Wales only.

**BRIEFING PAPER**
Number 9159
12 March 2021

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