HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number 9163, 12 March 2021

Police, Crime, Sentencing and Courts Bill: Part 2, Prevention, investigation and prosecution of crime

By Jennifer Brown
Grahame Allen
Joanna Dawson
Sally Lipscombe

Contents:

Contents

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 Part 2 of the Bill which concern the prevention of serious violence. Briefing papers dealing with other parts of the Bill and general background, are available on the Commons Library website.

Part 2 of the *Police, Crime, Sentencing and Courts Bill* (the Bill) is divided into four Chapters:

Part 2, Chapter 1 would introduce a new legal duty requiring local public services to work together in "Serious Violence Partnerships" to tackle serious violence. It would also amend provisions in the *Crime and Disorder Act 1998* so that existing Community Safety Partnerships (CSPs) are required to consider "serious violence" when making their strategies to combat local crime and disorder.

The last Conservative Government committed to introducing this legislation in its response to the 2019 consultation Serious violence: new legal duty to support multi-agency action. The current Conservative Government promised to introduce this legislation in the 2019 Queen's Speech.

Part 2, Chapter 2 would require police, local authorities and Clinical Commissioning Groups (public health boards in Wales) to conduct Offensive Weapon Homicide Reviews when an adult's death involves the use of an offensive weapon.

Offensive Weapon Homicide Reviews would be similar to Domestic Homicide Reviews. DHRs are carried out when an adult dies as a result of domestic violence, abuse or neglect.

The Government has been committed to "take action" to address homicide, but has not previously committed to introduce Offensive Weapon Homicide Reviews specifically.

Part 2, Chapter 3 would introduce a new statutory framework for the extraction of information from electronic devices for the purposes of certain investigations.

Part 2, Chapter 4 contains various other provisions including amendments to pre-charge bail, sex offences (including positions of trust), criminal damage to memorials, Overseas Production Orders, police powers to take photographs, search warrants relating to human remains, and the role of prisoner custody officers in live link hearings at police stations.

1. Background: Serious violence

1.1 What is serious violence?

There is no agreed definition of "serious violence". The Government's 2018 *Serious Violence Strategy* focused on knife crime, gun crime and homicide. The strategy is particularly concerned with how county lines drug dealing is connected to these types of crime.[1]

The Government says "public space violent crime" is at the "core" of the strategy.[2] This means the Government does not tend to use the term "serious violence" in the context of other types of violent crime (for example, domestic abuse). However, other actors have used the term "serious violence" to encompass a wider range of violent crimes.[3]

1.2 Prevalence of serious violence

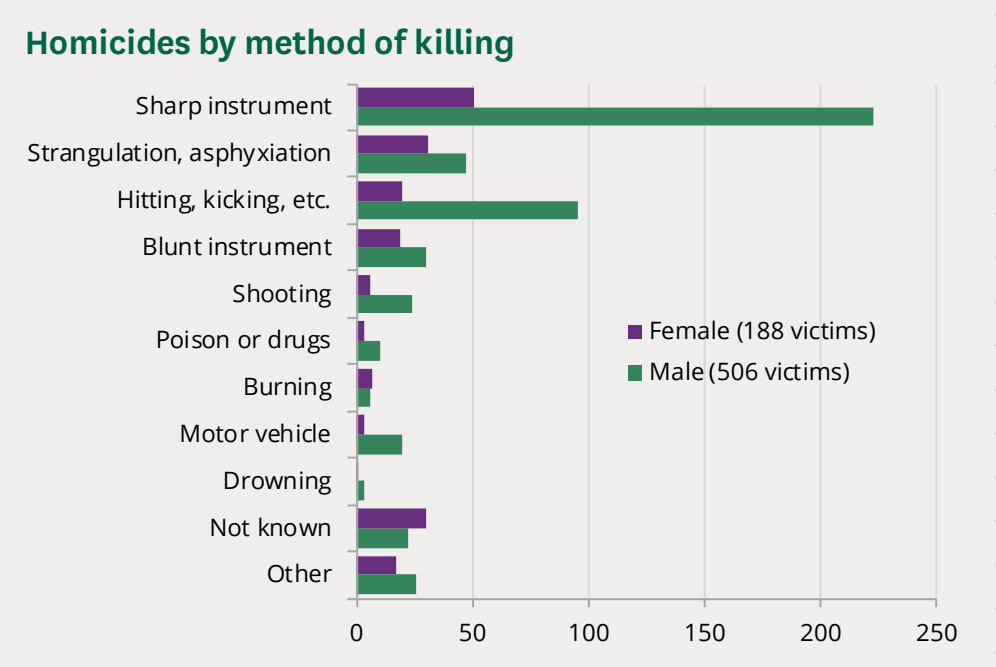
Homicide

For the year ending 31 March 2020 there were 695 currently recorded homicides in England and Wales – a rate of 1.17 per 100,000 of population. Figures for Essex include 39 homicide victims of human trafficking found in a lorry in Grays. Excluding Essex, Cleveland and Dyfed-Powys Police Forces had the highest recorded homicide rates (1.93 and 1.92 per 100,000 of population respectively). The Police Force with the lowest recorded homicide rate was Surrey which had 0.25 homicides recorded per 100,000 of population.

Method of Homicide

Information about the method of killing is available in Homicide in England and Wales: year ending March 2020. The latest edition was published in February 2021 and provides data for 2019/20 (as at 15 December 2020). The chart below shows a breakdown of homicides by method of killing and gender of the victim in 2019/20.

1 Home Office, Serious violence strategy, April 2018
2 Home Office, Consultation on a new legal duty to support a multi-agency approach to preventing and tackling serious violence, July 2019, para 20
3 Local Government Association, Taking a public health approach to tackling serious violent crime: Case studies, July 2020, p2



Source: ONS, *Homicide in England and Wales: year ending March 2020*, 25 February 2021, Table 7a

The most common method of killing in 2019/20 (40%) was use of a sharp instrument (275 out of 695 victims). This was the most common method of killing both male and female victims at 44% and 27% respectively.

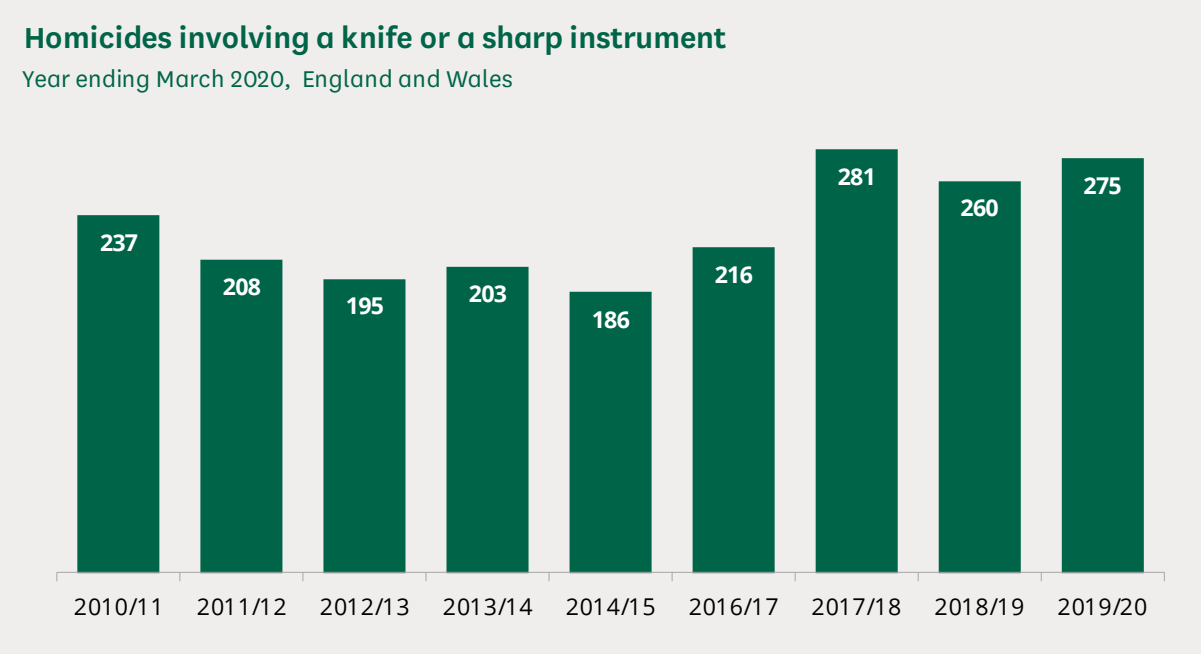
Strangulation and asphyxiation was the next most prevalent method of death for females (31 out of 188 victims) while for males it involved hitting, kicking, etc. (95 out of 506 victims). As a proportion of all homicides, hitting, kicking, etc was also the second most common for all victims, combined, accounting for 17% of deaths (115).

Sharp objects

Since 2006/07 sharp instruments have been the method of killing in between 30% and 40% of cases each year. The number of homicides carried out with sharp instruments increased to 275 in the year ending 31 March 2020 from 260 in the previous year. This was an increase of 6%. As a proportion of homicides committed, it remained 40%.

The chart below shows that the number of homicides in this category decreased from 237 in 2010/11 to 186 in 2014/15 before rising to a high of 281 in 2017/18. The 275 recorded in 2019/20 was the second highest number recorded since 2010/11. In 2019/20, homicides accounted for around 0.6% of all offences involving a sharp instrument.[4]

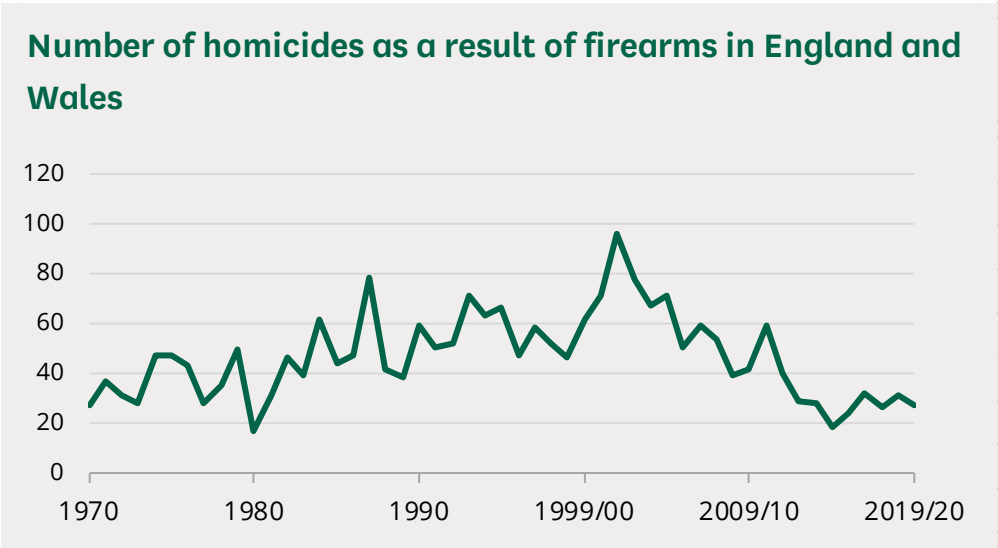
[4] ONS, *Crime in England and Wales: Other related tables, year ending March 2020*, Table F3. The figures in this release, concerning the use of a knife or a sharp instrument, differ from those given in the ONS *Homicide in England and Wales: year ending March 2020* as figures from the Greater Manchester Police (GMP) have now been excluded and they were published at a later date.



Source: ONS, *Homicide in England and Wales: year ending March 2020*, 25 February 2021, Table 7a

Firearms

In total, there were 9,406 "Offences involving a firearm" in 2019/20 - a 6% decrease on 2018/19. There were 27 homicides in 2019/20, which involved a firearm, 7 less than in 2018/19 (34).[5]



Sources:
Home Office, Criminal Statistics England & Wales, Annual Command Papers, Various Years
Home Office, Crime in England and Wales, Various years
ONS, *Homicide in England and Wales: year ending March 2020, Appendix table 10,* 25th February 2021, Table 9

Approximately 4% of victims of recorded homicide (30 people) in 2019/20 were shot. This was 2 less people than in 2019/20 but was

[5] ONS, *Offences involving the use of weapons: data tables: year ending March 2020*, Table 8, February 2021

proportionally of a similar level. The chart above shows the number of homicides since 1970 as a result of firearms.

Following the banning of large calibre handguns from July 1997, and all handguns from 1998, the use of firearms in homicide increased, peaking at 96 in 2001/02. Since then they have decreased and current statistics show some of the lowest numbers since the 1980s. The graph above shows a spike in the year ending March 2011 as it includes the 12 victims of the Derrick Bird shooting.

Of the firearms used to commit homicide in 2019/20, 7 were recorded as licensed and 15 were recorded as unlicensed.[6]

Offences involving weapons

Figures for offences involving weapons continue to exclude Greater Manchester Police (GMP) because of issues with the data supply from the implementation of new force IT system. Total figures refer to England and Wales excluding GMP.

The latest figures for offences involving weapons can be found in the ONS publication: Crime in England and Wales: year ending September 2020 (published 3 February 2021). However, the last half of this 12-month period was affected by the coronavirus (COVID-19) pandemic and related lockdown restrictions.

Unaffected data, to March 2020 (2019/20 financial year) can be found in Crime in England and Wales: year ending March 2020 (published 17 July 2020). The publication suggests that figures in the year to March 2020 showed:

- Offences involving weapons recorded by the police continued to rise;
- a 6% rise in offences involving knives or sharp instruments recorded by the police compared with the previous year; and
- Firearms offences saw a 4% decrease compared with the previous year.

Knife Crime

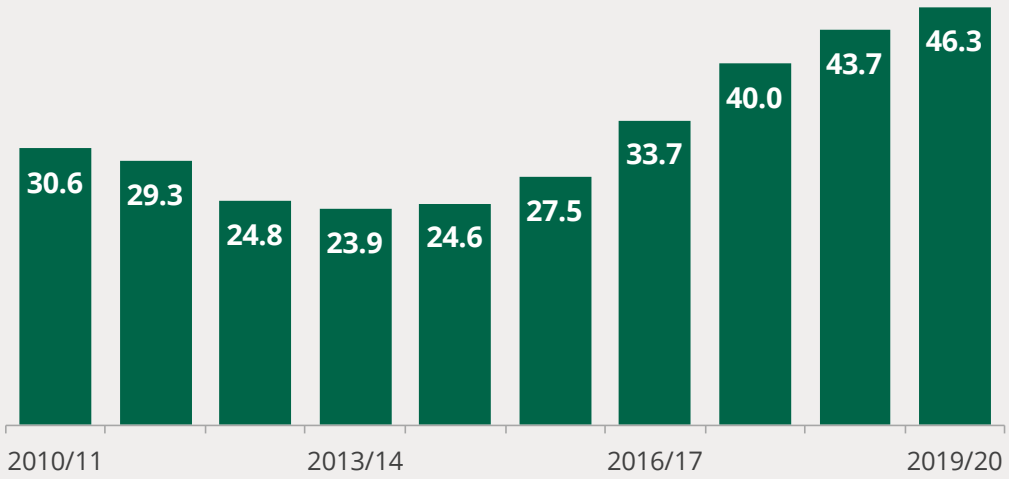
Excluding data from GMP, the chart below shows that the number of selected offences involving a knife or sharp instrument fell between 2010/11 and 2013/14 before rising over the next six years to 2019/20. In this year ending March 2020, there were around 46,300 offences involving a sharp instrument. This was 6% higher than in 2018/19 and 51% higher than in 2010/11.

[6] ONS, *Homicide in England and Wales: year ending March 2020*, appendix table 10, 25 February 2021

Source: ONS, *Crime in England and Wales: Other related tables*, 18 July 2019, F3, 17 July 2020 and earlier editions.

Selected offences involving a knife or sharp instrument

Year ending March, England and Wales, excluding Greater Manchester (000's)

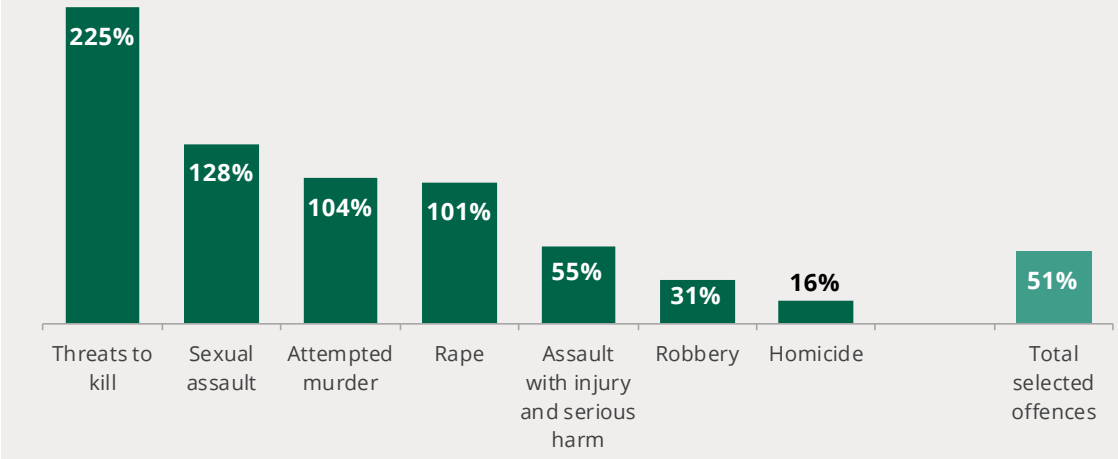


The main offences involving a knife or sharp instrument recorded in the year ending March 2020 were "Assault with injury and intent to cause serious harm" (43.9%) and "Robbery" (43.6%).

Source: ONS, *Crime in England and Wales: Other related tables*, 18 July 2019, Table F3, 17 July 2020 and earlier editions.

Selected offences involving a knife or sharp instrument

Percentage change by category, England and Wales 2010/11 – 2019/20



There were more offences committed in all categories in 2019/20 compared to 2010/11 (excluding GMP). Since 2010/11, the total number of selected offences involving a knife or sharp instrument has increased by 51%; the number of threats to kill using knifes or sharp objects has more than tripled (increasing by 225%); sexual assaults and rape offences increased by 128% and 101% respectively. Care should be taken when comparing figures for rape and sexual assaults offences over time due to the relatively low number of these offences recorded.

Further statistics on knife crime by police force area to March 2020, prosecutions and hospital episodes for stab wounds in England can be found in the HC Library Briefing Paper: Knife Crime in England and Wales.

Firearm Crime

Statistics on the number of police recorded firearm offences are published by the ONS as part of the Crime in England & Wales series. Firearm related crime statistics are also published by the ONS in the Offences involving the use of weapons: data tables where totals include GMP.

Non-air firearm offences

In the year ending 31 March 2020, there were a total of **6,622 non-air firearm offences** recorded by police in England & Wales.[7] This was a decrease of 4% compared with the 6,884 offences recorded during the year ending 31 March 2019.

Between 2010/11 and 2013/14 there was a general decline in the recorded use of non-air firearms. In 2010/11 there were 7,040 recorded offences; by 2013/14 there were 4,856 recorded offences – a decrease of just over 2,000 (31%) over the period. Between 2013/14 and 2019/20, the number of non-air firearm offences recorded has increased by 36% from the 4,856 offences recorded in 2013/14.

Source: ONS, *Offences involving the use of weapons: data tables*, Appendix Table 3, 25 February 2021.

Air firearm offences

Data for air firearm offences show that there were 2,784 offences recorded in 2019/20 a decrease of 6% on the total for 2018/19 (3,122). The proportion of offences involving **air firearms** as a proportion of all firearms offences has decreased from 57% in 2002/03 to 30% in

[7] Firearms include: shotguns; handguns; rifles; imitation weapons such as BB guns or soft air weapons; other weapons e.g. CS gas or pepper spray and stun guns; and unidentified weapons. The figures exclude conventional air weapons, e.g. air rifles.

2019/20 (30%). In 2019/20, air firearms accounted for just under one-third of all firearm offences (30%). This was a decrease compared to the average proportion over the period 2010/11 to 2018/19 when air firearms represented 35% of all offences.

County lines

County Lines drug dealing involves drugs gangs in cities expanding their operations to smaller towns. These drug gangs often use children and vulnerable adults to transport and deal drugs using local public transport networks (often using trains). Senior gang members coordinate its activities using mobile phones.[8]

By its very nature there are few statistics available on the prevalence of County Lines. Some estimates are available from the National Crime Agency's National Strategic Assessment of Serious and Organised Crime 2020 which suggests that there are "4,772 known OCGs operating within the UK" covering a range of criminal activities and of these an estimated "1,716 OCGs involved in supplying illicit drugs supply". The report also suggests that "More than 3,000 unique deal [county] line numbers were identified in 2019, of which 800 to 1,100 lines are estimated to be active during a given month".[9]

1.3 Public health approach to serious violence

Since the *Serious Violence Strategy* the Government has slowly adopted the term 'public health approach' to describe its violence prevention policy.

What is a public health approach?

A public health approach focuses on the health, safety and wellbeing of entire populations. It is multi-disciplinary and should involve different services working together. A public health approach looks for short and long-term solutions to health problems using data and evidence.[10]

A public health approach to violence recognises violence is a public health problem. Typically, it seeks to identify what is causing individuals to become violent. This information is used to design, implement and evaluate interventions intended to stop violence occurring.[11]

Support for a public health approach to violence

There is broad support for adopting a public health approach to serious violence. The cross-party Youth Violence Commission has supported the adoption of a public health approach since 2018.[12] The Home Affairs Select Committee have "welcomed" the Government's adoption of a

8 NCA, County Lines, [last accessed 10 March 2021]
9 NCA, National Strategic Assessment of Serious and Organised Crime 2020,2020
10 Public Health England, A whole-system multi-agency approach to serious violence prevention, October 2019, p14
11 Public Health England, A whole-system multi-agency approach to serious violence prevention, October 2019, p16
12 Youth Violence Commission, Youth Violence Commission: Final Report, July 2020, p12

public health approach.[13] Labour Party spokespeople have said a "genuine public health approach" to violence "does work".[14] The Local Government Association says early council work to implement a public health approach to violence has shown "signs of promise".[15] College of Policing research has found that "public health approaches" have a "positive impact" on knife crime.[16]

1.4 Government policies

The Government is implementing a public health approach to serious violence by:

- establishing **Violence Reduction Units** in the police force areas "worst effected by violent crime";
- creating the **Youth Endowment Fund**; and
- proposing the legal duties included in this Bill.

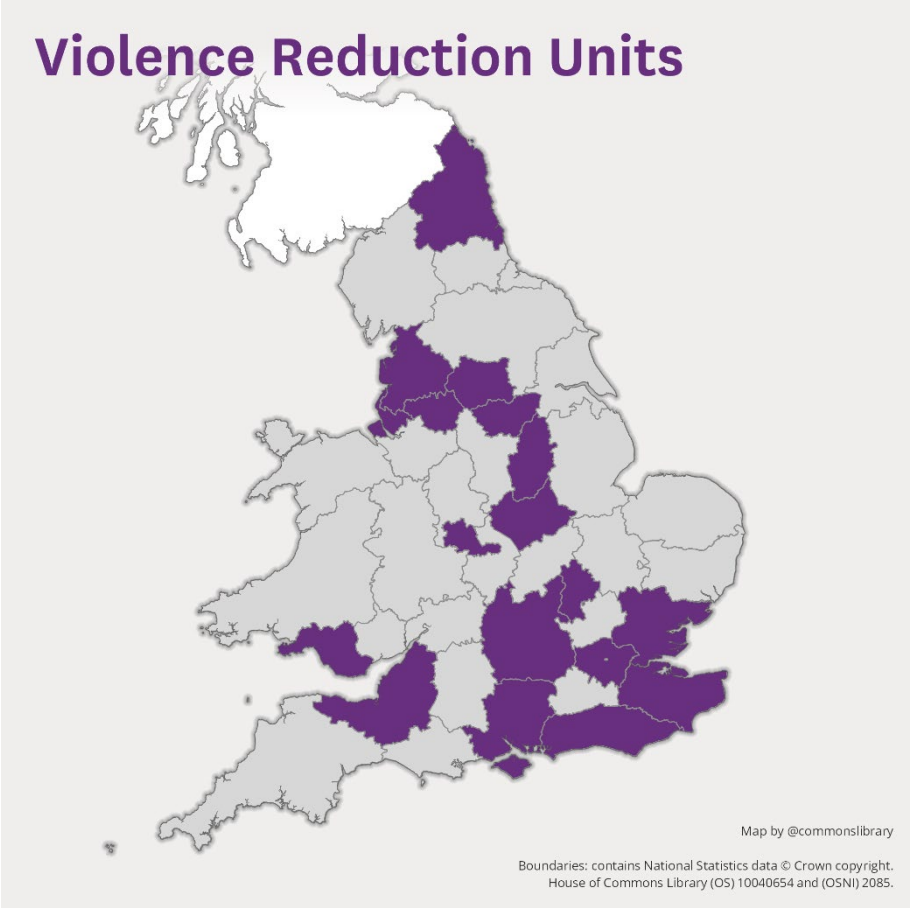
The previous Conservative Government set up the "Serious Violence Taskforce" to coordinate this work and implement the *Serious Violence Strategy*. The taskforce was chaired by the Home Secretary. Its membership included Government ministers, police leaders, third sector bodies and MPs from the main political parties.[17]

The Serious Violence Taskforce last met in June 2019.[18] The current Minister for Crime and Policing, Kit Malthouse, says the Government is "considering the future role" of the taskforce following the establishment of the new "cross-Whitehall Crime and Justice Taskforce" (chaired by the Prime Minister).[19]

Violence Reduction Units (VRUs)

Violence Reduction Units (VRUs) ensure a multi-agency approach to understanding and combating violence by coordinating the work of local public services.[20] There are currently eighteen VRUs in England and Wales, serving the areas "worst affected by violent crime".[21]

13 Home Affairs Committee, Serious youth violence: Sixteenth Report of Session 2017–19, April 2019, para 28
14 Labour, Passing responsibility on violent youth crime won't work – Diane Abbott, April 2019
15 Local Government Association, Taking a public health approach to tackling serious violent crime: Case studies, July 2020, p3
16 College of Policing, Knife crime evidence briefing, January 2020, p6
17 Home Office, New taskforce to take action against violent crime, April 2018
18 PQ43989: Serious Violence Taskforce, answered 14 May 2020
19 PQ43989: Serious Violence Taskforce, answered 14 May 2020
20 Home Office, Violence Reduction Unit Interim Guidance, March 2020,
21 Home Office, Additional £35 million for Violence Reduction Units, 29 December 2019



VRUs are currently funded by annual Home Office grants to the relevant Police and Crime Commissioners/ Mayors.[22] The Government has made a total of £69.52 million of grant money available for VRUs up to March 2021.[23] On 8 February 2021 the Government announced a further £35.5m to fund VRUs up to March 2022.[24]

The Youth Violence Commission has been critical of VRU funding. It July 2020 it called for VRUs to receive "enhanced funding immediately, accompanied by funding projections for a minimum of ten years". It says this will help VRUs plan the strategic use of their funds.[25] Similarly, the Home Affairs Select Committee criticised the Government for taking a "piecemeal" and "short-term" approach to funding services designed to tackle serious youth violence.[26]

Most VRUs are run by staff in the Police and Crime Commissioner's/ Mayor's office.[27] However, representatives from police forces, local authorities, Clinical Commissioning Groups, Public Health England and

22 Ibid
23 Home Office, Additional £35 million for Violence Reduction Units, 29 December 2019
24 Home Office, £35.5m to support young people at risk of involvement in serious violence, 8 February 2021
25 Youth Violence Commission, Youth Violence Commission: Final Report, July 2020, p13
26 Home Affairs Committee, Serious youth violence: Sixteenth Report of Session 2017–19, April 2019, para 199
27 Home Office, Process evaluation of the Violence Reduction Units, August 2020, p23

Youth Offending Teams must be included in the membership of VRUs. Some VRUs are therefore led by professionals from these services.[28]

It is up to each VRU how it operates. The Home Office has issued interim guidance which provides some questions to think about when designing VRU services. However, since VRUs are encouraged to adopt a public health approach, most do the following things:

- Agree a local definition of "serious violence" and "public health approach" with the relevant partners.[29]
- Coordinate the sharing of relevant information between local partners.[30]
- Conduct research about the nature and scale of serious violence in the local area and what factors are driving it.[31]
- Commission partner and third sector organisations to carry out local early intervention projects. Evaluate the progress of these projects.[32]

The Youth Violence Commission is concerned that VRUs are too focused on their commissioning work and are adopting a "relatively narrow vision of their potential role". The Commission has called on VRUs to come together as a network to promote national level policy changes.[33]

The Home Office commissioned an independent process evaluation of the English and Welsh VRUs, which was published in August 2020. It concluded that VRUs had generally made "good progress" over the first year of the programme. The evaluation said it was too early to comment on the effectiveness of VRU commissioned projects.[34]

English and Welsh VRUs have been (partly) modelled on the Scottish Violence Reduction Unit (SVRU). Violent crime trends in Scotland give "some evidence of a potential crime reduction effect" of the SVRU's activities. Since the SVRU was established in 2006 several violent crime rates have fallen in Scotland (and further than they did in England and Wales over the same time period). However, as the Government acknowledges, this "cannot automatically be taken as a sign of effectiveness for the programme".[35]

Youth Endowment Fund

The Home Office made £200 million available over ten years to fund the Youth Endowment Fund (YEF).[36] The YEF is an independent charitable trust. It's managed by Impetus (a private equity firm that specialises in

---

28 Ibid
29 Ibid, p34-37
30 Ibid, p38-43
31 Home Office, Process evaluation of the Violence Reduction Units, August 2020, p38-43
32 Home Office, Process evaluation of the Violence Reduction Units, August 2020, p43-46
33 Youth Violence Commission, Youth Violence Commission: Final Report, July 2020, p12
34 Home Office, Process evaluation of the Violence Reduction Units, August 2020, p6
35 Home Office, Violence Reduction Unit Interim Guidance, March 2020, p7-8
36 Home Office, Charity chosen to deliver £200m Youth Endowment Fund to tackle violence, March 2019

funding charities) in partnership with the Early Intervention Foundation and Social Investment Business.

The YEF published its 10-year strategy in October 2020. The strategy sets out its ambition to:

- **"Fund good work"**: The YEF provided £18.1 million to 24 projects targeting high-risk young people as part of its launch; £2 million to 45 organisations to help them "articulate their impact" and £6.5 million to 129 organisations to support programmes during the coronavirus pandemic.[37] It aims to prioritise its future grant funding by theme and is currently consulting on what to prioritise.[38]
- **"Find what works"**: The YEF evaluates the projects it funds and examines the impact of socio-economic factors on the lives of children and their families. The YEF published its first "what works" evidence report in October 2020: What works: Preventing children and young people from becoming involved in violence.
- **"Work for change"**: The YEF intends to "scale up" interventions that are shown to work and thereby improve systematic approaches to youth violence.

37 YEF, Launch round grantees [last accessed 10 March 2021];YEF, Capacity building grantees [last accessed 10 March 2021]YEF, COVID-19 grantees [last accessed 10 March 2021]

38 YEF, Get involved [last accessed10 March 2021

2. Chapter 1: Serious Violence Duty

Part 2, Chapter 1 of the Bill would introduce a new legal duty requiring local public services to work together in "Serious Violence Partnerships" to tackle serious violence. It would also amend provisions in the *Crime and Disorder Act 1998* so that existing Community Safety Partnerships (CSPs) are required to consider "serious violence" when making their strategies to combat local crime and disorder.[39]

The last Conservative Government committed to introducing this legislation in its response to the 2019 consultation Serious violence: new legal duty to support multi-agency action. The current Conservative Government promised to introduce this legislation in the 2019 Queen's Speech.[40]

2.1 Pre-legislative consultation

In April 2019, then Prime Minister Theresa May held a summit on "serious youth violence". The summit involved Ministers from across Government, youth workers, educators, law enforcement professionals and victims. Its central aim was to "ensure a shared understanding and commitment to a multi-agency or 'public health' approach to tackling knife crime and serious violence". [41] To coincide with the summit then Home Secretary Sajid Javid launched a public consultation on a new legal duty to ensure that public bodies work together to protect young people at risk of becoming involved in knife crime. [42] The consultation opened on 1 April 2019 and closed on 28 May 2019.

The consultation asked for views on three options to institute multi-agency approach to serious violence:

1 A new duty on specific organisations to prevent and tackle serious violence.[43]

2 Amending Community Safety Partnerships (CSPs) to ensure they can suitably tackle serious violence. The Government assumed this would require amending both the remit and membership of CSPs.[44]

3 A voluntary non-legislative approach. The Government would bring relevant partners together and help facilitate best practice.[45]

The Government responded to the consultation in July 2019. It received 225 responses from those working in the criminal justice, education,

39 s5-7, *Crime and Disorder Act 1998*
40 HM Govt, The Queen's Speech 2019: background briefing notes, December 2019, p69-70
41 HM Govt, Prime Minister's Summit on Serious Youth Violence: 1-4 April 2019, May 2019, p5
42 HCWS1497: The Prime Minister's Serious Youth Violence Summit, 1-4 April 2019, 8 April 2019
43 Home Office, Consultation on a new legal duty to support a multi-agency approach to preventing and tackling serious violence, April 2019, p11-12
44 Ibid, p12-13
45 Ibid, p13-14

housing and voluntary sector. Consultees were split between option one and two. 37% said they preferred option one and 40% preferred option two with the remaining 23% favouring option three.[46]

The Government chose to pursue a legislative approach which combined options one and two because they felt that "more needs to be done" to tackle serious violence than option two alone.[47] However, it also recognised the "important role" CSPs play in the serious violence context. It therefore committed to amending their remit to "ensure that serious violence is an explicit priority" for them.[48]

The Library published an Insight in July 2019 discussing the Government's consultation response in more detail.

2.2 How much will the policy cost?

The Government estimates that the policy will **save the public purse £222 million over ten years**.[49] It estimates that cost savings realised by public services dealing with less violent crime will far outweigh the operational cost of serious violence partnerships.

The Home Office estimates that public services could save £389.9 million over ten years (2022/23-2031/32).[50] The Home Office used a cost-benefit analysis of a multi-agency approach to serious violence in Cardiff as the basis assumptions. The Home Office did account for variations in the success of partnerships across England and Wales.

The Home Office estimates Serious Violence Partnerships will cost frontline services £16.4 million a year[51] to operate once they are fully operational. It estimates this cost will be split unevenly between services, with the police taking most of the financial burden. Over ten years the Government estimated the policy would cost £168million.[52]

The main costs are expected to fall to the police (£51m), local authorities (£35m), health services (£28m) and education (£27m).[53]

2.3 Community Safety Partnerships

Sections 5 through 7 of the *Crime and Disorder Act 1998* (as amended) require local authorities, police forces, probation services, fire and rescue authorities and local health services in England and Wales to work together in Community Safety Partnerships (CSPs). There are around 300 CSPs in England and Wales. Some local partners have merged with their neighbours to create CSPs that cross local authority boundaries.[54]

---

46 Home Office, Consultation on a new legal duty to support a multi-agency approach to preventing and tackling serious violence: Government response, July 2019, p12
47 Ibid, para 17
48 Ibid, para 28
49 Home Office, Impact assessment: serious violence duty, 9 March 2021, p.2. The figure used for the Net Present Social Value varies at points within the document.
50 Ibid., p.20
51 **Note**: Or £19.1m average total cost per year. First year expected to cost 43.8m.
52 Ibid
53 Ibid, p2
54 Home Office, Community Safety Partnerships contact details, 10 April 2012

CSPs must conduct an annual 'strategic assessment' of crime and disorder in their area. They must use their assessment to formulate and implement a strategy to address local crime and disorder.[55] CSPs in England must work with their local PCC by sharing their strategies with them and meeting them when requested.[56]

CSPs work differently across England and Wales, but most tend to have priorities which span the totality of crime and focus both on anti-social behaviour and serious and organised offending. For example, Doncaster's CSP lists both improving the town's CCTV coverage and providing taxi drivers with training to spot and report child sexual exploitation, as some of its successes. [57] Similarly Dartford's CSP lists providing support to domestic abuse victims and running operations to target fly tippers amongst its successes.[58]

Some CSPs, including Dartford's and others like Liverpool's already work on early interventions to combat serious violence. [59] The Local Government Association estimated in 2016 that between 21% and 29% of CSPs were already prioritising violent crime.[60] CSPs have already worked with their new Violence Reduction Units (VRUs) to commission and oversee local interventions to serious violence. [61]

Are CSPs working?

The Government's consultation response recognised that "Community Safety Partnerships are stronger in some areas than others".[62] This reflects longstanding concerns that some CSPs are ineffective at preventing crime and anti-social behaviour.

In 2006, the then Labour Government conducted a review of the 1998 Act. They identified that some CSPs "were performing evidently better than others".[63] In response, the Labour Government amended the statutory functions of CSPs and introduced regulations which prescribe how they should function. [64]

In March 2010, the Home Affairs Select Committee found that strong leadership was a key feature of high performing CSPs. The Committee

---

55 r5-7 and r10-11, *The Crime and Disorder (Formulation and Implementation of Strategy) Regulations 2007*

56 Home Office, Police and Crime Commissioners and Community Safety Partnerships, undated

57 Doncaster Community Safety Strategy 2018 – 2021

58 Dartford Borough Council, Dartford and Gravesham Community Safety Strategy 2019-2022, p4

59 Liverpool's Community Safety Partnership, 3 year strategic plan 2017-2020, p15

60 LGA, Community safety survey 2016, table 1

61 Home Office, Process evaluation of the Violence Reduction Units, August 2020, p56

62 Home Office, Consultation on a new legal duty to support a multi-agency approach to preventing and tackling serious violence: Government response, July 2019, para 26

63 HM Govt, Explanatory Memorandum to the *Crime and Disorder (formulation and implementation of strategy) Regulations 2007* and the *Crime and Disorder (prescribed information) Regulations 2007*, para 7.1

64 Ibid, para 3.2 see also: Schedule 9, *Police and Justice Act 2006* and *The Crime and Disorder (Formulation and Implementation of Strategy) Regulations 2007*

questioned what the Government was doing to improve the leadership of CSPs in "under-achieving areas".[65]

In May 2018, the Local Government Association (LGA) published findings of their review of the role of councils in providing community safety services. The LGA raised several specific concerns with the operation of CSPs. The LGA found that[66]:

- **the relationship between some CSPs and their PCCs was stifling progress.** Particularly, in areas where the CSP strategy did not align with the PCC's police and crime plan.
- **CSPs had struggled to work within a complex framework for multi-agency partnership.** CSPs are not the only multi-agency partnership related to tackling crime and disorder. Local safeguarding boards, Health and Wellbeing Boards and Criminal Justice Boards all work in this area. Some CSPs were struggling to define their role within the system.
- **That CSPs had not been able to overcome existing barriers to joined up working.** The public services that sit on CSPs rarely share the same service areas. This can make coordination difficult.

2.4 Clauses 7 to 23

Serious Violence Partnerships

Clause 7 would place a duty on "specified authorities" to plan together and exercise their functions to prevent and reduce "serious violence" in their area. **Clause 10** introduces Schedule 1 which defines "specified authorities". Specified authorities would be local authorities, probation service providers, youth offending teams, clinical commissioning groups (in England), local health boards (in Wales), chief officers of police, and fire and rescue authorities.[67] These are the same bodies which are already required to form Community Safety Partnerships.[68]

Clause 7 would require the new "serious violence partnerships" (SVPs) to identify the kinds of serious violence that occur in their area, what is causing the violence and prepare and implement a strategy to prevent it.[69] SVPs would be required to keep these strategies "under review" and revise them if necessary.[70] This is similar to how CSPs are legally required to develop and implement "crime and disorder strategies".[71]

Clause 7 would also require SVPs consult local education, prison and youth custody services (as defined by Schedule 2 introduced by **clause 12**) when preparing their strategies. SVPs would have powers to require these services carry out "actions" in support of their strategies.[72] This

65 Home Affairs Select Committee, The Government's Approach to Crime Prevention, Para 150
66 Local Government Association, LGA review of the future of community safety services, May 2018, p9-11
67 ENs, para 263
68 s5, *Crime and Disorder Act 1998*
69 c7(3)
70 c7(7)
71 s5, *Crime and Disorder Act 1998*
72 c7(5)

would make education, prison and youth custody services secondary partners in the SVP thus ensuring that SVPs include a broader range of public services than CSPs.

Clause 8 would allow SVPs to collaborate with each other when exercising their functions.

Clause 9 would give the Secretary of State powers to make regulations connected to the formulation and implementation of SVP strategies. These regulations could specify:

- a timetable for the publication of such strategies;
- objectives that must be addressed in the strategy and performance targets in relation to those objectives;
- the functions of the members of the SVP in relation to the strategy;
- matters to which the strategy must have regard;
- the procedure SVPs must follow when formulating their strategy.
- the publication of the strategy; and
- requirements to report on the implementation of the strategy.

In accordance with **clause 34** these regulations would be made as a statutory instrument using the negative procedure.

Clauses 10 and **11**, as discussed above, introduce Schedules 1 and 2 which define the "specified authorities" which much join SVPs and also define education, prison and youth custody services, for the purposes of the Bill's consultation and collaboration requirements.

Clause 12 goes some way to defining what activities are in scope for SVPs. It would define "preventing and reducing" serious violence as "preventing people becoming involved" in serious violence and "reducing the instance of serious violence". It would specify that "violence" includes violence against property and threats of violence but **does not** include terrorism. It would require SVPs consider certain factors when determining what violence is "serious". These factors would be:

- the maximum penalties imposed for offences;
- the impact of violence on any victims;
- the prevalence of the violence in the area; and
- the impact of the violence on the community.

Clause 13 would allow PCCs/ Mayors to assist local SVPs. It would also give PCCs/ Mayors the ability to monitor their SVPs and report on its findings. Clause 14 would also give the Secretary of State powers to make regulations regarding how PCCs/ Mayors can assist SVPs. **Clause 16** would give PCCs/ Mayors the power to request information from SVP partners, education, prison and youth custody services to support the exercise of their clause 14 power.

Clause 14 would allow education, prison and youth custody services to collaborate to prevent and reduce serious violence. It would also allow them to collaborate with SVPs. Clause 15 would impose a duty on education, prison and youth custody services to collaborate together and with SVPs when one partner organisation requests it (so long as complying with a request does not infringe on any of their pre-existing legal duties).

Clause 15 would allow SVP partners, education, prison and youth custody services and PCCs/ Mayors to disclose information to one another (provided it did not interfere with their other legal duties and obligations).

Clause 16, as discussed above, would give PPCs/ Mayors the power to request information from SVP partners, education, prison and youth custody services for the purpose of monitoring their SVPs.

Clause 17 would give the Secretary of State powers to issue directions to any SVP member, education, prison or youth custody service it thinks is failing to discharge its duties to prevent serious violence. The Secretary of State would be required to consult the Welsh Government before issuing a direction to a body in Wales.

Clause 18 would give the Secretary of State power to issue guidance on SVPs. Those involved in SVPs would be required to "have regard" to this guidance.

Community Safety Partnerships

Clause 19 would amend sections 5 through 7 of the *Crime and Disorder Act 1998.* These amendments would require CSPs to have regard to "preventing people from becoming involved in serious violence" and "reducing instances of serious violence" when assessing crime and disorder in their area and formulating their strategies. The amendments would provide the same "definition" of serious violence as is provided for in **clause 12**.

Clause 20 would make the necessary amendments to the *Police and Justice Act 2006.*

General

Clause 21 would provide information about the regulatory powers in the Chapter. Regulations made under this Chapter would be made via statutory instrument made under the affirmative procedure apart from regulations made under **clause 9** (concerning the formation and implementation of SVP strategies) and consequential regulations amending the definition of the partner organisations involved in SVPs. These instruments would be made using the negative procedure.

Clause 22 defines key expressions in the chapter.

3. Chapter 2: Offensive Weapon Homicide Reviews

Part 2, Chapter 2 of the Bill would require police, local authorities and Clinical Commissioning Groups (public health boards in Wales) conduct Offensive Weapon Homicide Reviews when an adult's death involves the use of an offensive weapon.

Offensive Weapon Homicide Reviews would be similar to Domestic Homicide Reviews (DHRs). DHRs are carried out when someone over the age of 16 dies as a result of domestic violence, abuse or neglect.

The Government has been committed to "take action" to address homicide, but has not previously committed to introduce Offensive Weapon Homicide Reviews specifically.[73]

3.1 Domestic Homicide Reviews

Domestic Homicide Reviews are carried out when an adult's death has, or appears to have, resulted from violence, abuse or neglect by someone they lived with, were related to or were in an intimate relationship with.[74] DHRs were a policy of the Labour Government 2001-2005. The Labour Government supported them as an important part of preventing domestic violence.[75]

DHRs are not inquiries into how a person died or who is culpable. They are designed to help local actors learn from their death. DHRs provide local agencies with an opportunity to reflect on their efforts to safeguard the victim and design strategies to improve these efforts going forward. They are also supposed to support a multi-agency approach to domestic violence prevention by contributing to a better understanding of the nature of domestic violence and highlighting best practice.[76]

DHRs are initiated and coordinated by the relevant Community Safety Partnership (CSP), who should be alerted to the occurrence of a domestic homicide by the police.[77] The CSP establishes a "review panel" to conduct the review. It is up to CSPs how they do this, but the panels must include representatives from the police, local authority, probation service and health services.[78]

The Home Office has collated information about DHRs on its website. This includes a statutory guidance on the conduct of DHRs and a paper discussing the results of a Home Office review conducted into a number

---

73 HM Govt, Serious Violence Strategy, April 2018, p7
74 s9, *Domestic Violence, Crime and Victims Act 2004*
75 Home Department, Safety and justice: The Government's proposals on domestic violence, Cm 5847, June 2003, para 71
76 Home Office, Multi-agency Statutory Guidance for the Conduct of Domestic Homicide Reviews, December 2016, para 7
77 Ibid, para 19
78 s9, *Domestic Violence, Crime and Victims Act 2004*

of DHRs in 2016. That review described DHRs as a "rich source of information about the nature of domestic homicide".[79]

Standing Together (a domestic abuse charity) recently reviewed DHR processes in London Boroughs. Their report (published October 2019) identified several areas for improvement. These include improving how DHRs are stored and retrieved, how DHR chairs are appointed and securing appropriate funding.[80]

In January 2019 the Government committed to create a "public, searchable repository of DHRs" and work with partners to ensure DHR recommendations are implemented locally and nationally.[81] It is hoped that these actions will "strengthen" DHRs by ensuring the learning they identify is acted upon.[82]

3.2 Child Death Reviews

Child Death Reviews (CDRs) are carried out whenever a child (a person under the age of eighteen) dies. CDRs are carried out no matter the cause of death. Therefore they are already carried out for child homicides.

Like DHRs, CDRs are designed to support multi-agency working and learning. CDRs are focused on child welfare, public health and public safety. CDR partners should look for actions that could improve child welfare, public health or public safety arrangements whilst conducting their review.[83]

CDRs are carried out by local authorities and local health services. CDR partners must pursue a "Joint Agency Response" when a child's death is sudden or could be due to external causes.[84] Joint Agency Responses are therefore used for CDRs involving child homicide. A Joint Agency Response ensures that a policing and social work partners are involved in the CDR.[85]

3.3 Clauses 23 to 35

Clause 23 would require an "Offensive Weapon Homicide Review" (OWHR) to be carried out when a "qualifying homicide" has taken place. "Qualifying homicides" occur when an adult's death, or the circumstances or history of the person who died (or someone connected with the death) meet conditions set by the Secretary of State in regulations (assuming a DHR is not already taking place).

---

79 Home Office, Domestic Homicide Reviews: Key findings from analysis of domestic homicide reviews, December 2016
80 Standing Together, London Domestic Homicide Review (DHR) Case Analysis and Review of Local Authorities DHR Process, October 2019, p28-30
81 HM Govt, Transforming the Response to Domestic Abuse Consultation Response and Draft Bill, January 2019, p82
82 HM Govt, Transforming the Response to Domestic Abuse Consultation Response and Draft Bill, January 2019, p82; PQ995: Homicide, answered October 2019
83 s16M-s16Q, *Children Act 2004*
84 HM Government, Child Death Review Statutory and Operational Guidance (England), October 2018, p7
85 Ibid

In accordance with **clause 27** the purpose of an OWHR would be to identify lessons to learn from the death and decide on actions to take in response to those lessons.

Clause 24 would give the Secretary of State powers to make regulations listing the public bodies that a required to carry out an OWHR. The regulations may require the relevant review partners are:

- chief officer of the police force
- local authorities (as described by regulations)
- Clinical Commissioning Group/ local health board.

The regulations would provide information on how to identify which local services (in terms of geography) are relevant to the OWHR. They would provide information about how local services could negotiate as to who carries out a review when the circumstances are not clear.

Clause 25 would clarify that a OWHR does not need to be carried out when a CDR or DHR or a safeguarding review is already taking place. Clause 25 would also have powers to make regulations setting out when OWHRs are not necessary owing to local arrangements for NHS bodies to review deaths involving those receiving mental health treatment. These regulations would be made by Statutory Instrument using the affirmative procedure.

Clause 26 would require OWHR partners to decide whether a death meets the requirement for an OWHR within one month of one of them being made aware of the death. OWHR partners would have to report the outcome of their assessment to the Secretary of State.

Clause 27, as explained above, would set out the conduct of OWHRs. It would also require OWHR partners to report their reviews findings to the Secretary of State which they would be required to publish. Clause 27 would allow OWHR partners to omit information they believe might jeopardise anyone's safety or prejudice any investigation or prosecution of an offence.

Clause 28 would empower OWHR partners to request information in connection to their review from each other. Those who OWHR partners request information from would be required to provide it (notwithstanding clause 29). Review partners would be able to make an application to the High Court if a request was not complied with.

Clause 29 would set out that those requested information under clause 28 would **not** have to provide it if it interferes with their existing legal duties.

Clause 30 would allow the Secretary of State to make regulations allowing the relevant review partners to delegate their functions in connection with OWHRs.

Clause 31 would allow the Secretary of State to issue guidance on OWHRs. Those carrying out OWHRs would be required to have "regard" to this guidance. The Secretary of State would be obliged to consult bodies representing OWHR partners, the Welsh Government

and any other person they "consider appropriate" before issuing the guidance.

Clause 32 would allow the Secretary of State to pay a grant to local health boards in Wales so they can carry out OWHRs.

Clause 33 would require OWHRs are piloted before they are bought into force. The Secretary of State would be required to report to Parliament on the pilot.

Clause 34 sets out the parliamentary procedure applicable for regulations under this Chapter. Regulations must be made using the affirmative procedure.

Clause 35 would provide necessary definitions for the purposes of interpreting the Chapter.

4. Chapter 3: Extraction of information from electronic devices

4.1 Background

The extraction of information from electronic devices has become a routine part of criminal investigations. However, the arrangements for making this information available to law enforcement, prosecutors and the defence has been the subject of controversy. The need to balance defendants' right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR) against the potential intrusion into the Article 8 privacy rights of complainants and witnesses has been particularly acute in the context of sexual offences.

The Information Commissioner conducted a review in 2020 prompted by concerns about "the potential for excessive processing of personal data extracted from mobile phone" which concluded that a new approach was needed to "improve privacy protection whilst achieving legitimate criminal justice objectives".[86]

The report found that there was a complex interplay between human rights, criminal justice and data protection legislation. It therefore recommended that the legislative framework should be strengthened to ensure the law is sufficiently clear and foreseeable:

> The following information, which is not exhaustive, should be set out with sufficient detail to ensure that interference with the rights of individuals is not arbitrary and is in accordance with the law:
>
> - under what circumstances mobile phone extraction is permitted and why (including for which categories of offence under investigation);
> - the options available for lawfully obtaining devices and examining their contents, including the circumstances in which consent or coercive powers should be used;
> - how lines of enquiry relate to requirements for mobile phone data;
> - which categories of individual are liable to have their mobile devices examined (eg suspects, witnesses, third parties);
> - the nature of the material to be examined;
> - the time limits on the period of examination; and
> - the procedure to be followed for authorising, examining, using and storing the data obtained.[87]

The report also found inconsistencies in different police forces understanding of the legal basis for mobile phone extraction, which

86 Mobile phone data extraction by police forces in England and Wales, Investigation Report, June 2020, ico.org.uk
87 Ibid, Recommendation 1

resulted in inconsistent practices between forces. It therefore recommended introducing a code of practice in order to standardise the approach taken.

4.2 Clauses 36-42

Clauses 36-42 would introduce a new statutory framework to govern the extraction of information from electronic devices as evidence in criminal investigations and investigations of death.

Clause 36 would provide that an 'authorised person' can extract information from an electronic device if the user of the device provides it voluntarily and consents. Data may be extracted for the purposes of:

- Preventing, detecting, investigating or prosecuting crime;
- Helping to locate a missing person;
- Protecting a child or at-risk adult[88] from neglect or physical, mental or emotional harm

Data may only extracted if the authorised person reasonably believes that information stored on the device is relevant to one of these purposes, and is satisfied that exercise of the power is necessary and proportionate to achieve that purpose.

If the authorised person thinks that there is a risk of obtaining information other than that necessary for these purposes, or the purposes provided for by clause 39, exercise of the power would only be proportionate if there are no other means of obtaining the information, or if there are other means but it is not reasonably practicable to use them.

Clause 37 would provide for the extraction of information from a device used by a child or adult without capacity.

A child is defined as a person under 16 and an adult without capacity is defined by reference to the mental capacity legislation in England and Wales, Scotland and Northern Ireland.

Both are treated as being incapable of voluntarily providing a device and consenting to the extraction of data for the purposes of clause 36.

A parent, guardian, or representative of a care provider may provide a device and give consent on behalf of a child. Where such a person is unavailable, any responsible person over the age of 18 may give consent.

The child's views should be sought and taken into account if reasonably practicable.

In the case of an adult without capacity, in addition to a parent, guardian or representative of a care provider, a device may be provided and consent given by a social worker, a person authorised under a power of attorney or intervention order, or a deputy. If no such person

[88] An adult is defined as 'at risk' if they are experiencing or at risk of neglect or physical, mental or emotional harm and are unable to protect themselves.

is available, any responsible person over the age of 18 may give consent.

Clause 38 would set out circumstances in which data could be extracted without the user's consent or voluntary provision of the device, namely:

- Where a person has died, and was the user of the device immediately before their death;
- Where the user is a child or adult without capacity, and the authorised person reasonably believes that they are at risk of serious harm or death;
- Where a person is missing, and was the user of the device immediately before they went missing, and the authorised person reasonably believes that they are at risk of serious harm or death

Clause 39 would set out the circumstances in which information could be extracted from an electronic device in relation to the investigation of a death. These are:

- That the dead person was the user of the device immediately before they died;
- That the data is extracted for the purposes of an investigation or inquest into the person's death, or for the purposes of determining whether an investigation or inquest should be held;
- The authorised person reasonably believes that information stored on the device is relevant to that purpose and satisfied that the exercise of the power is necessary and proportionate for that purpose;

If the authorised person thinks that there is a risk of obtaining information other than that necessary for these purposes, or the purposes provided for by clause 36, exercise of the power would only be proportionate if there are no other means of obtaining the information, or if there are other means but it is not reasonably practicable to use them.

Clause 40 provides that the Secretary of State must publish a code of practice on the use of these powers, prepared in consultation with:

- The Information Commissioner;
- The Scottish Ministers;
- The Department of Justice in Northern Ireland; and
- Other persons the Secretary of State considers appropriate

The code would be brought into force by regulations, subject to negative resolution.

Clause 41 would provide that the Secretary of State must make regulations providing for the exercise of the clause 36 and clause 39 powers in relation to 'confidential information'.

Confidential information includes:

- Confidential journalistic material as defined in the Investigatory Powers Act 2016;

- Material subject to legal privilege and other confidential records

Subclause (4) sets out examples of what regulations may cover, including conditions that must be met before the powers in clauses 36 and 39 can be exercised in relation to confidential material. No specific safeguards are included on the face of the Bill, however.

Regulations would be subject to affirmative resolution.

Clause 42 and **Schedule 3** define "authorised person" for the purpose of exercising the powers in clauses 36 and 39. These include police officers and officials from law enforcement agencies and regulatory bodies:

- Those listed in Part 1 of Schedule 3 may exercise the powers in clauses 36 and 39 for any of the listed purposes in those clauses;
- Those listed in Part 2 may exercise the clause 36 powers for all purposes listed in that clause;
- Those listed in Part 3 may only exercise the clause 36 power for the purposes of preventing, detecting, investigating or prosecuting crime.

5. Chapter 4: Other provisions

5.1 Clause 43: Pre-charge bail

Clause 43 introduces **Schedule 4** which would amend provisions in the *Police and Criminal Evidence Act 1984* (PACE) relating to pre-charge bail (also known as police bail). The Government committed to legislating for these changes in their response to a 2020 consultation on pre-charge bail.

Background

> The Library's briefing police powers: pre-charge bail provides a detailed discussion of the background to **clause 32**. Its summary has been pasted here for background.

Suspects who cannot be charged or issued with an out of court disposal whilst they are held in police custody are either released on pre-charge bail, "under investigation" (RUI) or with "no further action". At present there is a presumption against the use of pre-charge bail in such cases.

Pre-charge bail v RUI

Pre-charge bail	RUI
Requires authorisation. Inspectors can authorise pre-charge bail when it is "necessary and proportionate".	No authorisation required.
Strict time limits. Initially suspect's pre-charge bail is set for 28 days.	No limit for how long suspects can be RUI
Court oversight. Investigators who need to keep suspects on pre-charge bail for more than three months must seek court approval. They must return to the courts at regular intervals thereafter if they need more time.	No court oversight.
Suspects required to report to the police.	Suspects may be asked to voluntarily attend further police interviews.
Possibility of attaching pre-charge bail conditions. Conditions may be attached to protect victims and witnesses and preserve evidence. Conditions can restrict a suspect's movement and who they can associate with.	No ability to attach conditions.

2017 reforms

Reforms pursued by the Conservative Government 2015-2017 introduced the presumption against the use of pre-charge. These reforms also introduced strict time limits on the use of pre-charge bail.

The reforms were designed to "reduce both the numbers of individuals subject to, and the average duration of, pre-charge bail". This was supposed to address concerns that un-convicted individuals were being subjected to pre-charge bail conditions for long periods of time without due process.

There is no official data about who is released from police custody and how they are released. However, data obtained from various freedom of information requests suggest that the number of suspects released on pre-charge bail fell substantially following the 2017 reforms. As a result, police use of RUI increased rapidly as a result. Data shows that RUI has been used in cases involving violent and sexual offences.

Stakeholders from across the criminal justice system have been critical of the 2017 reforms. They say the use of RUI (particularly in cases involving violent and sexual offences) puts vulnerable victims at risk because pre-charge bail conditions are not imposed on suspects. There are also concerns that the rights of RUI suspects are being undermined. Investigations against RUI suspects on average take longer and the police are not required to inform suspects about their progress whilst they are ongoing.

Proposal for Kay's Law (2021)

The current Conservative Government acknowledges the 2017 reforms caused a "number of knock-on effects" which have negatively impacted both victims and suspects. The Government consulted in 2020 on proposals to further reform pre-charge bail. It has now pledged to introduce legislation to address the problems. It refers to this as Kay's Law, after Kay Richardson, who was murdered by her estranged husband following his release under investigation.

In January 2021 the Home Office said a forthcoming "major criminal justice bill" will seek to:

- **Remove the presumption against the use of pre-charge bail**. The Government expects the use of RUI to decline as a result. It says "no further action" is likely to be "the most appropriate course to take" in cases where pre-charge bail is not necessary or proportionate.
- **Introduce a new statutory framework for pre-charge bail time limits**. Under the new framework court approval will only be required to keep suspects on pre-charge bail for more than nine months. Government analysis estimates that pre-charge bail in 30% of sexual offences cases will require magistrate oversight under the proposed regime.
- **Introduce separate statutory rules for the use of pre-charge bail in non-police force investigations.** This will allow enforcement agencies like the National Crime Agency and Financial Conduct Authority to keep suspects on pre-charge bail

> for longer without court oversight. The Government says these agencies need lengthier bail time limits because their investigations are more complicated and take longer to complete.

Stakeholders have welcomed the proposals. Many (like Women's Aid and the Police Federation) argue the 2017 reforms were a mistake. The Law Society have been more cautious. They say it will be important to ensure the police "do not fall back into the bad habits of the past and routinely put suspects on bail for extended periods."

Clause 43

Clause 43 introduces **Schedule 4** which would amend provisions in the *Police and Criminal Evidence Act 1984* (PACE) and its related legislation concerning pre-charge bail (also known as police bail).

Schedule 4 is divided into six parts.

Part 1 would make amendments to PACE to change when pre-charge bail can be used. It would make various amendments to PACE to provide a presumption *in favour* of pre-charge bail when releasing suspects from custody.[89]

Schedule 4, Part 1 (paragraph 2) would deal with street bail. Changes to street bail were not part of the pre-legislative consultation associated with clause 43. Paragraph 2 would provide a presumption that those arrested and released without being taken to custody (known as street bail) are released *without* pre-charge bail. Officers would still be able to apply pre-charge bail in these cases when they think it is "necessary and proportionate" and have authorisation from an Inspector (the same legal tests used at present to determine whether pre-charge bail should be used when releasing suspects from custody). This would replace a neutral position in PACE as to whether those released via street bail should be given pre-charge bail or not.[90]

Part 2 would insert new provisions into PACE to help custody officers determine when it is "necessary and proportionate" to grant pre-charge bail. It would be "necessary and proportionate" to apply pre-charge bail in order to "safeguards victims of crime and witnesses" and "prevent offending".[91]

Part 3 would impose a duty on officers to seek the victims views as to whether pre-charge bail or street bail should be applied and what conditions should be attached when it is "reasonably practicable" to do so.[92] This was not something the Government consulted on.

Part 4 would make varying amendments to PACE to make the changes to pre-charge bail "applicable bail periods" described in the table overleaf.[93]

Part 5 would make amendments to function of the PACE clock (aka detention clock). It would suspend a detention clock for three hours

89 ENs, para 309
90 Ibid
91 ENs, para 404
92 ENs, para 405
93 ENS, Annex B

when they are arrested for failure to comply with bail. These amendments are supposed to prevent suspects from running down their PACE clock by repeating breaching bail.

Part 6 would give the College of Policing new powers to issue new statutory guidance relating to pre-charge bail. These powers appear commensurate to the College's existing powers to issue statutory guidance to police chiefs on other matters. The College would be required to consult with PCCs, police chiefs and others before issuing the guidance.

<table>
<tr><th>Months</th><th>Current</th><th>New arrangements for police</th><th>New arrangements for agency cases</th></tr>
<tr><td>1</td><td rowspan="2">Initial bail period
Inspector</td><td rowspan="3">Initial bail period
Custody Officer</td><td rowspan="6">Initial bail period
Relevant authorised agency member</td></tr>
<tr><td>2</td></tr>
<tr><td>3</td><td rowspan="3">First extension
Superintendent</td></tr>
<tr><td>4</td><td rowspan="3">Second extension
Magistrate</td><td rowspan="3">First extension
Inspector</td></tr>
<tr><td>5</td></tr>
<tr><td>6</td></tr>
<tr><td>7</td><td rowspan="3">Third extension
Magistrate</td><td rowspan="3">Second extension
Superintendent</td><td rowspan="6">First extension
Relevant authorised agency member</td></tr>
<tr><td>8</td></tr>
<tr><td>9</td></tr>
<tr><td>10</td><td rowspan="3">Fourth extension
Magistrate</td><td rowspan="3">Third extension
Magistrate</td></tr>
<tr><td>11</td></tr>
<tr><td>12</td></tr>
<tr><td>13</td><td rowspan="3">Continuation of fourth extension
Magistrate</td><td rowspan="3">Fifth extension
Magistrate</td><td rowspan="3">Second extension
Magistrate</td></tr>
<tr><td>14</td></tr>
<tr><td>15</td></tr>
</table>

5.2 Clauses 44 to 45: Sexual offences

Clause 44 would extend the existing offence of arranging or facilitating the commission of a child sex offence.

Clause 45 would extend the existing "position of trust" offences in the *Sexual Offences Act 2003* to cover sports and religious settings.

Arranging or facilitating a child sex offence

The current law

Section 14 of the *Sexual Offences Act 2003* makes it an offence for a person to arrange or facilitate any action which he intends to do, intends another person to do or believes that another person will do, in any part of the world, which will involve an offence being committed under any of the substantive child sex offences listed in sections 9 to 13 of the 2003 Act. The Explanatory Notes to the 2003 Act provide examples of how the offence might be committed:

> An example of the first two limbs of the offence is where A approaches an agency requesting the agency to procure a child for the purpose of sexual activity either with himself or with a friend. The offence is committed whether or not the sex takes place. An example of the third limb of the offence is where A intentionally drives another person (X) to meet a child with whom he knows X is going to have sexual activity. A may not intend X to have child sexual activity, but he believes that X will do so if he meets that child.

The Bill

Clause 44 would amend the section 14 offence so that it also covers arranging or facilitating the offences in sections 5 to 8 of the 2003 Act, namely rape of a child under 13, assault of a child under 13 by penetration, sexual assault of a child under 13, and causing or inciting a child under 13 to engage in sexual activity.

Clause 44 would also amend the maximum penalty for the section 14 offence, which is currently 14 years' imprisonment on conviction on indictment. As the Explanatory Notes state, the maximum penalties would instead flow from the substantive offence that the arranging or facilitating related to:

> The effect of the amendment is that the maximum penalty will be aligned with that for the substantive offence in respect of which the section 14 offence of arranging or facilitating has been committed. For example, if an individual arranges or facilitates the rape of a child under 13 (section 5 of the 2003 Act), the maximum penalty for the section 14 offence would be life imprisonment to match that for the section 5 offence.[94]

The Explanatory Notes says clause 44 would address a "gap in the criminal law".[95]

Position of trust offences

The current law

Sections 16 to 19 of the *Sexual Offences Act 2003* set out a range of offences that criminalise sexual activity with children under 18 by people who hold a "position of trust" in relation to them, even where such activity is apparently consensual and the child is aged 16 or 17.

The definition of "position of trust" is set out in sections 21 and 22 of the 2003 Act. The current definition covers a range of roles that involve

94 Explanatory Notes, para 431
95 Ibid, para 54

regular and direct contact with children, including youth justice workers, care workers, healthcare workers, teachers and social workers.[96]

Calls for change

For several years there have been sustained calls from parliamentarians and campaign groups for the definition of "position of trust" to be expanded to cover other roles such as sports coaches, religious leaders, driving instructors and private tutors. Examples include:

- Baroness Tanni Grey-Thompson's Duty of Care in Sport: Independent Report to Government (April 2017), in which she recommended that sports coaches be included within the "positions of trust" definition to provide additional safeguards for 16 and 17 year olds
- The NSPCC's 'Close the Loophole' campaign, which was launched in November 2018 and called on the Government to extend the "positions of trust" definition to adults in non-statutory roles such as sports coaches, driving instructors and youth workers
- The APPG on Safeguarding in Faith Settings, which in 2019 conducted an inquiry into The Effectiveness of 'Positions of Trust' in Safeguarding Young People within Faith Settings and recommended that the "positions of trust" definition should cover any adult who is regularly involved in caring for, training, supervising or being in sole charge of a child.
- Former sports Minister Tracey Crouch's Sexual Offences (Sports Coaches) Bill 2019-21 (introduced under the Ten Minute Rule in June 2020), which sought to add sports coaches to the "positions of trust" definition

Speaking in a Westminster Hall debate in March 2020, Tracey Crouch argued that

> Anyone in a position to influence the direction of another person's journey through life—meaning that a power balance rests with them—should not be able to abuse that position via a sexual relationship. Someone's place in the team or time on the pitch, or the competitions in which they are entered, should not be vulnerable to another person's physical or emotional demands.[97]

In response, Justice Minister Alex Chalk said that the issue was "not without complexity". He went on:

> As my hon. Friend made crystal clear, those offences do not cover all positions in which a person might have contact with, or a supervisory role of, a young person aged under 18. That was a deliberate decision by the Government of the day. In preparation for this debate, I looked up some of the relevant debates. The issue of scope was raised in the other place by Baroness Blatch, a Conservative, on 13 February 2003. She noted that she was "disappointed" that provision had not been made in the Bill to encompass those being supervised as scouts or in youth centres.

---

96 Paragraphs 35 to 48 of the Explanatory Notes to the 2003 Act provide full details of the current definition

97 HC Deb 4 March 2020 c302WH

> Interestingly, when responding to her that same day, Lord Falconer said:
>
> "I understand the noble Baroness's argument, but a line has to be drawn somewhere and we think that is the right place".—[Official Report, House of Lords, 13 February 2003; Vol. 644, c. 878.]
>
> My sense is that that judgment may well be wrong but, in fairness to the noble lord, it is not a straightforward one to make. What is at stake here is a need to balance the legal right, as prescribed by Parliament, for young persons aged 16 and over to consent to sexual activity, with the proper desire to protect vulnerable young people from manipulation.[98]

He said that the Government had been reviewing the law and hoped to announce next steps by May 2020 – although events were of course subsequently overtaken by the pandemic.

In March 2021, Sarah Champion raised the issue again in an Adjournment Debate. She asked why the Government had still not acted:

> Given the Government's claim to be sending out what the Home Secretary's foreword to her recent "Tackling Child Sexual Abuse strategy" describes as
>
> > "a clear message to those who abuse our children",
>
> I fail to understand why, after years of persistent campaigning by Members across the House, action to protect children from being sexually exploited by adults in positions of trust has not been taken. In the same strategy, the Home Secretary goes on to state that
>
> > "if you think you can…abuse positions of trust—think again, you will pay for your crimes",
>
> but that is not true. Government inaction means that there remain a whole host of adults in positions of trust, from sports coaches to those in faith organisations, who are not covered by the law and who will simply say that the 16 or 17-year-old consented to a sexual relationship with them as their defence.[99]

In response, Alex Chalk said the Government had had "candid and wide-ranging discussions" with stakeholders as part of its internal review into the offences. He went on:

> A key topic raised with us was, of course, whether a change in the existing positions of trust legislation was required in order to best protect young adults from those who sought to use their position of power for sexual purposes. Many of those we heard from agreed that any change or reform of the existing laws raised difficult and complicated issues. There was a clear concern from some stakeholders that any broad or sweeping new definition could raise the age of consent by stealth. The risk is that if we go too far in one direction, the pendulum may swing all the way back in the other direction. Who will be the collateral damage in all this? Young people. That is why we proceed with care.
>
> Conversely (…) there were those who said that drafting the law too narrowly, or perhaps by simply listing roles or jobs to be considered as positions of trust, in effect adding to the list, could

98 Ibid, c304WH
99 HC Deb 3 March 2021 c357

> create loopholes or definitions that could be easily exploited or circumvented by abusers. That is why we have to take care.[100]

He said that the Government agreed that the issues raised required "a clear, considered and decisive response", and that it was looking at "how the law might be strengthened in this area".

The Bill

Clause 45 of the Bill would add a new section 22A to the 2003 Act. New section 22A would provide that a person (A) is in a position of trust in relation to another person (B) if:

> (a) A coaches, teaches, trains, supervises or instructs B, on a regular basis, in a sport or a religion, and
>
> (b) A knows that they coach, teach, train, supervise or instruct B, on a regular basis, in that sport or religion.

"Sport" would be defined as including "any game in which physical skill is the predominant factor, and any form of physical recreation which is also engaged in for purposes of competition or display".

"Religion" would be defined as including any religion "which involves belief in more than one god" or any religion "which does not involve belief in a god."

New section 22A would also give the Secretary of State a regulation-making power to add or remove an activity in which a person may be coached, taught, trained, supervised or instructed (subject to the affirmative resolution procedure). The Delegated Powers Memorandum notes that there are other situations such as "transport, youth work, the scout movement, cadets, the charity sector and within the performing arts, which potentially also fall to be addressed in due course".[101]

The Government has highlighted the difference in approach between new section 22A and the existing positions of trust in section 21:

> We are creating a new s22A of the Sexual Offences Act 2003, rather than simply adding roles to the existing positions of trust contained in s21. This is because the current positions are defined either by reference to statutory settings or services so far as the adult's (A's) relationship to the young person (B) is concerned. Non-statutory settings represent a departure from the current legislation and require a different approach.
>
> The new further positions of trust are defined by reference to the activity which A is carrying out in relation to B, namely, coaching, teaching, training, supervising or instructing in a sport or a religion, as defined. Both elements would need to be met.[102]

The Government has also expanded on the "regular basis" and knowledge requirements:

> Furthermore, it is a requirement that A carries out the activity "on a regular basis", to avoid an approach that is too broad and

---

100 Ibid, c362

101 Police, Crime, Sentencing and Courts Bill: Delegated Powers Memorandum, para 122

102 Home Office, Police, Crime, Sentencing and Courts Bill 2021: positions of trust factsheet, 10 March 2021

> capture someone who only helps with a coaching session, say, on one occasion or infrequently.
>
> Also, a knowledge requirement must also be met, so that A is aware that they carry out a certain activity on a regular basis in relation to B. This is to prevent the positions of trust being drawn too broadly and strengthen the requirement for a prior connection/contact between A and B. This is intended to ensure that if, for example, A preaches regularly to a congregation of 2000 people and has had never met B, so does not even know that B is a member of that congregation, A will not be considered to be in a position of trust over B.[103]

The NSPCC said it was "delighted" at the Government's plans.[104] The *Daily Telegraph* reported that Tracey Crouch, Sarah Champion, and Baroness Grey-Thompson – who had all campaigned for change – also welcomed the news.[105] However, it said that Ms Champion would "like the occupations included in the 'positions of trust' definition scrapped, so that more children in an adult's care - including driving instructors or tutors – will be protected".

5.3 Clause 46: Criminal damage to memorials

Clause 46 would amend section 22 of the *Magistrates' Courts Act 1980* to enable the Crown Court to try offences of criminal damage to memorials where the financial value of the damage caused is below £5,000. Such cases can currently only be tried in the magistrates' courts, which have more limited sentencing powers.

Criminal damage: the current law

Criminal damage is one of the offences that can be used to prosecute damage to cultural and heritage assets such as statutes, war memorials and monuments.[106] The relevant legislation is the Criminal Damage Act 1971, subsection 1(1) of which provides as follows:

> A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.

Criminal damage is an "either way" offence, which means it can be prosecuted in either the magistrates' court or (for more serious cases) the Crown Court. The Crown Court can impose a custodial sentence of up to ten years; the magistrates' court can only impose a custodial sentence of up to six months (or three months, in cases involving damage valued at £5,000 or less).

---

103 Ibid

104 NSPCC, Government to close loophole in Positions of Trust law to better protect young people, 9 March 2021

105 "Meet the three women who fought to make it illegal for sports coaches to sleep with young athletes", *Daily Telegraph*, 9 March 2021

106 Other relevant offences include the common law offence of outraging public decency, which has been used to prosecuted people who urinate on monuments and memorials, and various 'heritage crimes' involving damage to sites such as Schedule Monuments, Listed Buildings and World Heritage Sites

For criminal damage, one of the key factors in deciding which level of court to prosecute in is an assessment of the financial value of the damage caused. Section 22 and Schedule 2 of the Magistrates' Courts Act 1980 provide that where a case involves damage valued at £5,000 or less, then the offence **must** be tried "summarily" in the magistrates' court – it cannot be tried in the Crown court. Under section 33 of the 1980 Act, If the offence is tried summarily because the value is determined as less than £5,000, the maximum penalty is three months imprisonment or a fine up to level 4 on the standard scale (£2,500). Criminal damage cases are therefore only eligible to be heard in the Crown court – and to attract a higher sentence of up to ten years – if the damage caused exceeded £5,000.

Detailed guidance on how the courts should approach sentencing in individual cases is set out on the Sentencing Council's website: see Criminal damage (other than by fire) value not exceeding £5,000/ Racially or religiously aggravated criminal damage and Criminal damage (other than by fire) value exceeding £5,000/ Racially or religiously aggravated criminal damage. Both sets of guidance note that if the damage was to "heritage and/or cultural assets" then the sentencing court should treat this as an aggravating factor when passing sentence.

The Crown Prosecution Service (CPS) website sets out further details on the elements of section 1, and on how prosecution decisions will be taken: see Legal guidance: criminal damage.

Calls for change

The Government notes that concerns have been raised – in Parliament and more widely – that the law "focuses too heavily on the monetary value of the damage with insufficient consideration given to the emotional or wider distress caused by this type of offending".[107]

There have been previous attempts to change the law by way of Private Members' Bills. In the 2009-10 session David Burrowes introduced a Ten Minute Rule Bill on the issue: see the *Desecration of War Memorials Bill 2009-10*. That Bill would have amended the 1971 Act by adding a new offence of destroying, damaging or desecrating a war memorial. The Bill did not progress beyond first reading.

Jonathan Gullis introduced a similar Ten Minute Rule Bill in June 2020: see the *Desecration of War Memorials Bill 2019-21*, which again proposed a new offence of unlawfully destroying, damaging or otherwise desecrating a war memorial. The new offence would have been triable either way and subject to the same maximum penalties as the existing section 1(1) criminal damage offence. However, the £5,000 damage threshold would not have applied to the new offence, which would have enabled offences resulting in low financial damage to nevertheless be tried in the Crown Court.

The Bill was introduced shortly after reports of monuments and memorials having been damaged or desecrated during the Black Lives

[107] Home Office, Police, Crime, Sentencing and Courts Bill 2021: criminal damage to memorials factsheet, 10 March 2021

Matter protests and subsequent counter-protests,[108] although Mr Gullis said the Bill should "not be perceived as a knee-jerk reaction to recent events".

The Home Secretary has expressed support for the sentiment of the proposed changes. For example, on 15 June she said:

> The Government are considering all options to stop those who seek to attack emblems of our national sacrifice and pride, including the proposed desecration of war memorials Bill. I can confirm that my right hon. and learned Friend the Justice Secretary will meet my hon. Friends the Members for Stoke-on-Trent North (Jonathan Gullis) and for Bracknell (James Sunderland) this afternoon to take that forward. My message today is simple: actions have consequences. I want vicious individuals held to account for the violence and criminality that they perpetrate. I want to see them arrested and brought to justice.[109]

In response, the Shadow Home Secretary said:

> On the issue of the law around war memorials, I recognise the importance of local memorials including cenotaphs, and I will scrutinise carefully the proposal on the issue that the law as it stands puts the financial value of repair above the hurt caused to the community. On sentencing, bearing in mind some of the media coverage at the weekend, I should point out that the maximum sentence for criminal damage is already 10 years, and sentencing guidelines for damaging memorials would need to be developed considering sentences already handed out for other serious offences.[110]

Writing in the *Guardian*, the "Secret Barrister" – a barrister and legal blogger – queried whether it would be proportionate to introduce a ten year sentence irrespective of the value of the damage caused, given the sentences that apply to other arguably more serious offences:

> While in practice the maximum of 10 years would rarely, if ever, be imposed, the new cross-party consensus appears to be that displaying disrespect – not even quantifiable damage – to an inanimate object is worthy of a higher maximum sentence than inflicting grievous bodily harm, violent disorder, affray, theft, carrying knives, acid or offensive weapons, voyeurism, upskirting and causing death by careless driving, to name but a few offences that cause tangible harm to real people. It would inject criminal sentencing, which already suffers from wild incoherence and inconsistency between offence types, with another dose of gratuitous disproportionality.[111]

The Bill

Clause 46 would remove criminal damage offences committed by destroying or damaging a memorial from the scope of section 22 and Schedule to the *Magistrates' Courts Act 1980*. This would mean such offences would be capable of being tried in the Crown Court (and

---

108 See for example "London protests: Demonstrators clash with police", BBC News, 13 June 2020

109 HC Deb 15 June 2020 c542

110 HC Deb 15 June 2020 c543

111 "The UK government responded to Black Lives Matter – by protecting statues: The Secret Barrister", *The Guardian*, 15 June 2020

sentenced accordingly) regardless of the financial value of the damage caused.

"Memorial" would be defined as:

> (a) a building or other structure, or any other thing, erected or installed on land (or in or on any building or other structure on land), or
>
> (b) a garden or any other thing planted or grown on land, which has a commemorative purpose.

The Government's fact sheet on the proposals states:

> Destruction or damage to memorials continues to include acts of desecration as was the position in law prior to the amendments made to section 22 and paragraph 1 of Schedule 2 to the 1980 Act. Whether or not a memorial has in fact been destroyed or damaged will, if necessary, remain a matter for determination by the court.[112]

The fact sheet sets out the following justification for the changes:

> There has been widespread upset about the damage and desecration of memorials with a recent spate over the summer of 2020. It has long been considered that the law is not sufficiently robust in this area. Incidences of damage and desecration of memorials are typically of low monetary value, but very often carry a high sentimental and emotional impact. As the law previously stood, courts were obliged to try such cases summarily where the value of damage was assessed as being less than £5,000, which, in turn, meant the full range of sentencing powers was not available.[113]

5.4 Clause 47: Overseas Production Orders

Clause 47 introduces Schedule 5, which would make a number of amendments to the *Crime (Overseas Production Orders) Act 2019* (the 'C(OPO) Act').

The C(OPO) Act grants law enforcement agencies and prosecuting authorities the power to obtain Overseas Production Orders (OPOs) in UK courts against persons (in practice generally Communication Service Providers, 'CSPs') based in other jurisdictions, provided there is a relevant international cooperation agreement in place.

At present, the only such agreement in place is the UK-US Agreement on Access to Electronic Data for the Purpose of Countering Serious Crime, which came into force in 2020.

The Act was introduced due to the increasing use of software applications over public networks to facilitate criminal activities. Evidence generated by such activity is crucial for investigations into serious crimes, including terrorism. However, the companies holding the data are largely situated outside the UK and therefore beyond the reach of domestic production orders.

---

112 Home Office, Police, Crime, Sentencing and Courts Bill 2021: criminal damage to memorials factsheet, March 2021

113 Ibid

For further background information on the C(OPO) Act, see Commons Library Briefing Paper *Crime (Overseas Production Orders) Bill*.

According to the EN, work on implementing the C(OPO) Act has identified the need to make a number of amendments to allow it to work more effectively.

Clause 47 would give effect to **Schedule 5**, which sets out the amendments to the C(OPO) Act:

- Section 3 of the Act would be amended to provide that communications data[114] that is "comprised in, included as part of, attached to or logically associated with" stored electronic data could be included in an application for an OPO. At present, section 3 provides that communications data is excepted from applications. According to the EN, such communications data is necessary to provide the electronic content data (pictures, content of communication) with the necessary context to enable it to be treated as evidence.
- Section 5 would be amended to change the legal test as to what a judge would need to be satisfied of in order to specify data in an OPO. At present, a judge can only make an OPO with respect to data if satisfied that all or part of it is likely to be of substantial value, and that it is in the public interest that all or part of it be produced or accessed. The amendment would require that the also be satisfied that there are reasonable grounds for believing that all or part of the data is likely to be relevant evidence.
- Section 9 would be amended to provide that the Secretary of State or Lord Advocate (in Scotland) could delegate the power to serve OPOs to a person prescribed by regulations. The EN explain that this will ensure that the function can be discharged by a body with the appropriate infrastructure to securely transmit requests and receive data from service providers based overseas.
- Further amendments are consequential.

5.5 Clauses 48 to 49: Amendments to PACE

Under section 64A of PACE the police have a power to take photographs of a person who has been detained in a police station, or who is elsewhere than at a police station and has been arrested or subjected to various other criminal justice interventions.[115]

The Explanatory Notes state that there is currently no 'recall' power if photographs are not taken under section 64A:

> If a person is arrested, charged or convicted without a photograph being taken, there is no power to require them to attend a police station later for this to be done, although there is such a "recall" power in Schedule 2A to PACE relating to taking of fingerprints and DNA samples. More suspects are now interviewed voluntarily in the first instance and then arrested, or charged later, so the absence of a recall power increasingly means that photographs of suspects and offenders are not taken. This may make it more

[114] Information on who sent a communication, when and to whom)
[115] See CODE D: Revised Code of Practice for the identification of persons by Police Officers, paras 5.12 to 5.15 for further details of the existing powers to take photos

> difficult to detect crimes the person may have committed in the past or may commit in the future.[116]

Clause 48 would amend section 64A and Schedule 2A to PACE by adding a variety of new provisions enabling the police to require a person to attend a police station to be photographed following their arrest, charge or conviction. Full technical details are set out in paragraphs 454 to 469 of the Explanatory Notes. The new provisions are based on the recall power that already exists in relation to fingerprints in section 61 of PACE.

Clause 49 would amend paragraph 16 of Schedule 2A to PACE to enable police to specify a particular date and time (or range of times) on which a person must attend a police station under the existing recall powers or the new clause 48 powers. At present, paragraph 16 only enables police to require attendance at a time (or range of times) on any day within a seven-day period. The Explanatory Notes state that this makes the recall powers difficult to use:

> Currently, the person can be required to attend a police station at a particular time but not a particular day, only any day within a seven-day period. Police forces find this makes the power difficult to use, as they cannot deploy an officer or staff member to take the biometrics at a specific time. In practice, this results in opportunities to take fingerprints, DNA or photographs being missed. This means that opportunities may be missed to detect crimes the person may have committed in the past or may commit in the future.[117]

5.6 Clauses 50 to 52: Search for material relating to human remains

Section 8 of PACE enables the police to apply to a justice of the peace for a warrant to enter and search premises and seize evidence. The justice of the peace may only issue a warrant if satisfied that there are reasonable grounds for believing:

- that an indictable offence has been committed; and
- that there is material on the premises that is likely to be of substantial value to the investigation of the offence; and
- that the material is likely to be relevant evidence; and
- that it does not consist of/include items subject to legal privilege, excluded material or special procedure material; and
- that it is not practicable to communicate with any person entitled to grant entry to the premises or access to the evidence, that entry will not be granted unless a warrant is produced, or that the purpose of the search may be frustrated or seriously prejudiced without immediate police entry to the premises.

The Government's fact sheet on these provisions explains that the case of Keith Bennett – one of the victims of Ian Brady and Myra Hindley – had identified a gap in the operation of section 8:

---

[116] Explanatory Notes, para 454
[117] Ibid, para 470

> 12 year old Keith Bennett was abducted and killed by 'Moors Murderers' Ian Brady and Myra Hindley in the 1960s. His family have been looking for his body for over fifty years.
>
> Ian Brady died in prison in 2017 and left two locked briefcases in the possession of his solicitor. He had previously suggested to the Bennett family that he held information relating to the location of Keith's body, but the existence of the briefcases was not known until after his death.
>
> A magistrate subsequently denied an application by Greater Manchester Police for search warrants to access the briefcases to see if they contained information, on the grounds that as both Brady and Hindley were deceased it was no longer possible to bring about any prosecution for criminal offences relating to Keith's death.
>
> The issue was raised with the Home Office in 2019. On investigation, it was concluded that there were no further avenues available to Greater Manchester Police and the Home Office made the decision to resolve the issue through a change in the law.[118]

Clauses 50 to 52 and **Schedule 6** would enable the police to apply to a justice of the peace for a search warrant or production order relating to material that consists of, or may relate to the location of, "relevant human remains". This would be defined as the body or any other human remains of:

- a person who the constable making the application reasonably believes to have died in England and Wales but whose death has not been registered under section 15 of the *Births and Deaths Registration Act 1953*
- a person whose death has been registered under that Act following an investigation under section 1(5) of the *Coroners and Justice Act 2009*
- or a person in respect of whom a declaration has been made under section 2 of the *Presumption of Death Act 2013*

The Explanatory Notes state that the clauses "mirror, as far as is possible, provisions for obtaining search warrants and production orders within PACE". Paragraphs 472 to 501 of the Explanatory Notes set out full technical details.

5.7 Clause 53: Prisoner custody officers

Part IV of the *Criminal Justice Act 1991* makes provision for prisoner escorts. Section 80 provides that the Secretary of State may make arrangements for custody officers to perform the following functions:

- the delivery of prisoners from one set of court, prison, police station or hospital premises to another;
- the custody of prisoners held on court premises and their production before the court;

[118] Home Office, Police, Crime, Sentencing and Courts Bill 2021: police powers factsheet, 10 March 2021

- the custody of prisoners temporarily held in a prison in the course of delivery from one prison to another; and
- the custody of prisoners while they are outside a prison for temporary purposes.

Section 82 of the 1991 Act lists the powers and duties of prisoner custody officers acting in pursuit of arrangements made under section 80, including powers of search and a duty to prevent escape (using reasonable force where necessary).

Clause 53 would amend sections 80 and 82 to enable prisoner custody officers to have custody over prisoners in police stations for any purpose connected with their participation in a hearing through a live audio link or live video link within the meaning of Part 3A of the Crime and Disorder Act 1998.

The Government's fact sheet on clause 53 explains that this is intended to facilitate video remand hearings and to relieve pressure on the police:

> Before the pandemic, remand hearings were normally conducted at court. Detainees remanded in police custody overnight were collected by PECS [prisoner escort and custody service] officers from police stations and brought before magistrates' courts where they remained in the custody of PECS officers before being transported to prison on remand or released on bail. Once the police handed over the detainee to the custody of the PECS officer at the police station, the police had no further involvement. In video remand hearings (VRH), the detainee remains in the police station. This means the cell is occupied for longer and the police have additional work to facilitate the remote remand hearing (both in terms of booking/arranging the hearing and in facilitating the detainee's participation). The new provision will enable criminal justice partners to revise business processes, which will allow for more effective and efficient ways of working in the future.[119]

The fact sheet notes that the measures will assist in the criminal justice system response to COVID-19 but is also ultimately intended to have longer-term efficiency benefits.

The fact sheet describes clause 53 as "enabling legislation to ensure that any future VRH rollout is not reliant on police resource, which would be an ineffective and inefficient use of their training and skills". It notes that the implementation plan for rolling out video remand hearings across police stations "is being developed and not yet finalised", and that a solution to "long-term structural and resourcing issues" is required to facilitate the rollout.

Clause 47 introduces Schedule 5, which would make a number of amendments to the *Crime (Overseas Production Orders) Act 2019* (the 'C(OPO) Act').

The C(OPO) Act grants law enforcement agencies and prosecuting authorities the power to obtain Overseas Production Orders in UK courts against Communication Service Providers (CSPs) based in other

---

[119] Home Office, Police, Crime, Sentencing and Courts Bill 2021: audio and video live links factsheet, 10 March 2021

jurisdictions, provided there is a relevant international cooperation agreement in place.

At present, the only such agreement in place is the UK-US Agreement on Access to Electronic Data for the Purpose of Countering Serious Crime, which came into force in 2020.

The Act was introduced due to the increasing use of software applications over public networks to facilitate criminal activities. Evidence generated by such activity is crucial for investigations into serious crimes, including terrorism. However, the companies holding the data are largely situated outside the UK and therefore beyond the reach of domestic production orders.

For further background information on the C(OPO) Act, see Commons Library Briefing Paper *Crime (Overseas Production Orders) Bill*.

According to the EN, work on implementing the C(OPO) Act has identified the need to make a number of amendments to allow it to work more effectively.

Clause 47 would give effect to **Schedule 5**, which sets out the amendments to the C(OPO) Act:

- Section 3 of the Act would be amended to provide that communications data[120] that is "comprised in, included as part of, attached to or logically associated with" stored electronic data could be included in an application for an overseas production order. At present, section 3 provides that communications data is excepted from applications. According to the EN, such communications data is necessary to provide the electronic content data (pictures, content of communication) with the necessary context to enable it to be treated as evidence.

[120] Information on who sent a communication, when and to whom)

6. Annex: Homicide by police force area

Offences currently recorded as homicide by police force area.
England and Wales

	2015/16	2016/17	2017/18	2018/19	2019/20	Offences per 100,000 population 2019/2020
Avon and Somerset	7	14	14	10	7	0.41
Bedfordshire	6	5	4	6	4	0.59
British Transport Police	2	7	5	6	4	..
Cambridgeshire	7	6	7	10	8	0.93
Cheshire	4	6	6	19	9	0.84
City of London	2	1	2	1	2	+
Cleveland	5	6	3	15	11	1.93
Cumbria	5	4	3	3	4	0.80
Derbyshire	14	8	9	6	11	1.04
Devon and Cornwall	16	13	14	19	16	0.90
Dorset	7	9	3	4	3	0.39
Durham	0	4	3	8	5	0.79
Dyfed-Powys	6	3	7	5	10	1.92
Essex	28	13	24	16	62	3.36
Gloucestershire	6	6	3	7	5	0.78
Greater Manchester	36	51	84	53	34	1.20
Gwent	4	2	7	2	6	1.01
Hampshire	7	12	17	10	21	1.05
Hertfordshire	4	12	7	13	8	0.67
Humberside	8	5	15	10	10	1.07
Kent	16	8	12	18	10	0.54
Lancashire	12	12	13	18	21	1.39
Leicestershire	9	12	15	6	10	0.91
Lincolnshire	6	9	5	5	12	1.58
Merseyside	10	20	26	21	22	1.54
Metropolitan Police	107	108	155	123	146	1.63
Norfolk	6	7	5	7	8	0.88
North Wales	2	8	10	4	4	0.57
North Yorkshire	6	6	6	2	4	0.48
Northamptonshire	9	3	3	17	6	0.80
Northumbria	14	17	13	14	12	0.82
Nottinghamshire	7	9	14	9	12	1.03
South Wales	17	15	10	10	19	1.42
South Yorkshire	13	114	8	22	15	1.06
Staffordshire	12	3	10	6	11	0.97
Suffolk	2	10	2	7	6	0.79
Surrey	8	5	6	5	3	0.25
Sussex	12	12	30	16	23	1.34
Thames Valley	17	18	21	14	19	0.79
Warwickshire	10	8	13	2	7	1.21
West Mercia	12	12	17	14	9	0.70
West Midlands	31	38	43	48	50	1.71
West Yorkshire	26	31	23	36	23	0.99
Wiltshire	3	4	1	1	3	0.42
England and Wales (inc BTP)	541	676	698	648	695	1.17

As at 15 December 2020; figures are subject to revision as cases are dealt with by the police and by the courts, or as further information becomes available.

Home Office statisticians and Police Forces have undertaken a review of all historical homicide data to update court outcomes and suspect data, this means totals shown in this table will not match previously published figures.

'+' Indicates that rate per 1,000,000 population data for City of London have been suppressed due to the small population size of the police force area.

.. Denotes 'not available'.

Source: Home Office - Homicide Index

BRIEFING PAPER
Number 9163
12 March 2021

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcenquiries@parliament.uk.

Disclaimer