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Research Briefing

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Criminal Justice Bill 2023-24

Summary

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Summary

The Criminal Justice Bill was introduced to the House of Commons on 14 November 2023. The Bill's second reading is scheduled for 28 November 2023.

The Bill contains various measures which the Government says will protect the public, give the police the powers they need to cut crime and anti-social behaviour, improve public confidence in the police, introduce tougher sentencing for sexual and violent criminals and strengthen the supervision of offenders on release from prison.

These measures include:

- New criminal offences relating to items used in serious crime, theft or fraud, including 3D printer firearms templates and tablet presses, electronic devices for use in theft, SIM farms, knives and offensive weapons
- The introduction of a broader offence of encouraging or assisting serious self-harm and new offences relating to the taking of intimate images without consent
- Changes to the law on corporate criminal liability to extend criminal liability from individual senior managers, to include their organisation
- The expansion of existing police powers to test suspects in police detention for drugs, to seize bladed articles, to search for and seize stolen goods
- Provisions for IP address and domain name suspension orders allowing law enforcement agencies to apply for a court order to prevent access to IP addresses and domain names that are being used for criminal purposes
- Extending and clarifying the existing law allowing police and law enforcement officers to access driver licence records
- Powers for courts to order the attendance of offenders at sentencing hearings and punish them if they do not attend
- New aggravating factors increasing the seriousness of child sex offences where there is grooming, and of murder where it took place in connection with the end of a relationship with the victim
- Provisions to allow for the transfer of prisoners from England and Wales to cells rented in prisons in foreign countries

- Provisions to make certain offenders convicted of coercive or controlling behaviour automatically subject to multi-agency public protection arrangements
- Changes to the confiscation regime in England and Wales giving effect to the Government's acceptance of a number of Law Commission recommendations and provisions to allow the creation of a Suspended Accounts Scheme
- Changes to the law on serious crime prevention orders to expand the circumstances in which orders can be applied for and made, and by enabling the use of electronic monitoring and standardised notification requirements to improve compliance and enforcement
- A new framework of nuisance begging directions, prevention notices and prevention orders, together with broadly identical nuisance rough sleeping directions, notices and orders and an offence of trespassing with intent to commit a criminal offence
- Amended powers to tackle anti-social behaviour (ASB), including expanding the timeframe for which a dispersal order can be put in place, lowering the minimum age at which a Community Protection Notice (CPN) can be imposed to 10 years old, extending powers to apply for a Public Space Protection Order (PSPO), extending Community Safety Accreditation Scheme powers to breaches of PSPOs and CPNs, increasing the upper limit of fixed penalty notices for breaches of CPNs and PSPOs to £500 and creating a duty for local policing bodies to raise awareness of ASB case reviews in their police areas
- A duty on the College of Policing to issue a Code of Practice about ethical policing and a power for the Secretary of State to make certain regulations about appeals by chief officers of police and local policing bodies to the Police Appeals Tribunals.

1 The Bill: An overview

The following supporting Government documents have been published regarding the Bill:

- Explanatory Notes (PDF)
- Human Rights Memorandum (PDF)
- Delegated Powers Memorandum (PDF)
- Equality Statements
- Impact assessments
- Factsheets

This briefing provides background to the Bill, an overview of its main provisions and analysis of its proposals.

1.1 What would the Criminal Justice Bill do?

Criminal offences

Clauses 1-3 would introduce new offences criminalising the possession, importation, manufacture, adaptation and supply of certain articles used in serious crime (such as 3D printer firearms templates and tablet presses). **Clause 4** would introduce a similar offence in relation to electronic devices for use in vehicle theft.

Clauses 5-7 and Schedule 1 concern SIM farms, devices that can house multiple SIM cards simultaneously and can be used to send thousands of text messages in a short space of time. The Bill would make it an offence to possess a SIM farm without good reason or lawful authority or to supply a SIM farm to another person unless certain conditions were met. It would create powers of entry in relation to the new offences of possessing or supplying a SIM farm. **Clause 8** would give the Government power to make regulations to prohibit specified articles if the Secretary of State considers that there is a significant risk of them being used to commit fraud by means of electronic communications networks.

Clause 9 would create a new offence of possessing a relevant weapon with intent to use it to perpetrate unlawful violence, or cause another person to believe that unlawful violence would be used, or to cause serious unlawful

damage to property, or to enable another person to do any of these things. **Clause 10** would provide for higher maximum sentences for existing offences relating to the manufacture, sale and supply of weapons and knives.

Clauses 11 and 12 would repeal the offence of encouraging or assisting the serious self-harm of another person by means of verbal, written or electronic communications in section 184 of the Online Safety Act 2023 (in so far as it extends to England and Wales) and replace it with a broader offence covering "any act capable of encouraging or assisting the serious self-harm of another person", where that act is intended to encourage or assist such serious self-harm. The new offence would not be limited to communications-based forms of encouragement or assistance.

Clause 13 and **Schedule 2** of the Bill would repeal the existing offences of recording a person doing a private act and recording an image beneath the clothing of another person and set out three new offences of taking or recording an intimate photograph or film. The three offences would be of intentionally taking a photograph or recording a film that shows another person in an intimate state, without that person's consent (or a reasonable belief in their consent); of doing so with the intent to cause the person alarm, distress or humiliation; and of doing so for the purpose of obtaining sexual gratification for themselves or another person. The Bill would also create new offences of installing, adapting, preparing or maintaining equipment with the intention of committing (or enabling another person to commit) any of the three new offences of taking or recording an intimate photograph or film.

Clause 14 concerns corporate criminal liability and would extend criminal liability from individual senior managers, to include their organisation. It would remove the requirement that an offence must be committed by the "directing mind and will" of a corporation to trigger attribution to the corporate itself and put the identification doctrine on a statutory footing for all criminal offences.

Police powers

Clauses 15-17 would expand existing police powers to test suspects in police detention for drugs, by permitting tests in relation to a wider range of 'trigger' offences and for a wider range of drugs.

Clause 18 would give the police additional powers to seize bladed articles. A police officer, lawfully on any premises who found a bladed or sharply pointed article on the premises would be able to seize it if they had reasonable grounds to suspect it would be likely to be used in connection with unlawful violence if it were not seized.

Clause 19 would give police a new power to enter premises without a warrant to search for (and seize) suspected stolen goods.

Clause 20 and **Schedule 3** would make provision for IP address and domain name suspension orders, allowing law enforcement agencies to apply for a court order to require the organisation responsible for registering an IP

address or domain name to prevent access to IP addresses and domain names that are being used for criminal purposes.

Clause 21 would allow the Secretary of State to make driver licensing records available to an authorised person and would require the Secretary of State to make regulations prescribing the purposes for which, and the circumstances in which, that information may be made available. These purposes and circumstances would only be permitted to relate to policing or law enforcement.

Sentencing and management of offenders

Clause 22 would provide powers in legislation for a court to order a person being sentenced for an offence punishable by a life sentence to attend their sentencing hearing and punish them as if it were a criminal contempt of court if they do not. Powers would be set out in legislation to allow a court to require prisons to produce adults in court for sentencing hearings and for reasonable force to be used where necessary and proportionate.

Clauses 23 and 24 would create new aggravating factors where the court is considering the seriousness of an offence when sentencing. Where an adult is being sentenced for a specified child sex offence it would be an aggravating factor that the offence was facilitated by or involved the grooming of a child. Where a person is being sentenced for murder, it would be an aggravating factor that the offence was connected with the end of an intimate personal relationship with the victim.

Clauses 25-29 would enable the transfer of prisoners from England and Wales to prison places rented in another country in circumstances where the UK and a foreign country have made an arrangement for the transfer of prisoners for this purpose. The Secretary of State would be given power to make further provision in secondary legislation, including to amend existing primary legislation, to facilitate the implementation of such an arrangement.

Clause 30 would provide that offenders convicted of controlling or coercive behaviour in an intimate or family relationship, who are sentenced to imprisonment for 12 months or more, are automatically managed under Multi-Agency Public Protection Arrangements (MAPPA).

Clause 31 would extend the circumstances in which a polygraph condition may be included in a person's licence conditions to include:

- where an offender has been convicted of murder and is deemed to pose a risk of sexual offending
- the whole of the sentence where an offender is serving concurrent sentences for a relevant sexual offence and a non-sexual offence
- where an offender was sentenced for offending that is considered to be linked to terrorism before the commencement of relevant provisions in

the Counter Terrorism Act 2008 and Counter-Terrorism and Sentencing Act 2023.

Proceeds of crime

Clause 32 and Schedule 4 would amend Part 2 of the Proceeds of Crime Act 2002 ('POCA') and give effect to the Government's acceptance of the following Law Commission recommendations:

- To introduce a statutory objective for the confiscation regime
- To better prioritise compensation for victims and legitimate third-party interests
- To create a procedure for the early resolution of confiscation
- To make it easier to restrain assets to preserve their value during an investigation
- To extend the enforcement powers of the magistrates' courts to the Crown Courts.

Clause 33 and Schedule 5 would provide for the Secretary of State to introduce a Suspended Accounts Scheme by regulations. It would enable financial institutions to transfer funds held in suspended accounts due to suspicions of criminality to the scheme administrator in order to fund projects relating to economic crime.

Serious Crime Prevention Orders

Clauses 34-37 of the Bill would amend the existing law on serious crime prevention orders by expanding the circumstances in which orders can be applied for and made, and by enabling the use of electronic monitoring and standardised notification requirements to improve compliance and enforcement.

Nuisance begging and rough sleeping

Clauses 38 to 64 would introduce a framework of nuisance begging directions, prevention notices and prevention orders, together with broadly identical nuisance rough sleeping directions, notices and orders. They would also create an offence of trespassing with intent to commit a criminal offence.

The provisions would replace sections 3 and 4 of the Vagrancy Act 1824, which have been used to police begging and rough sleeping for almost two centuries. The Vagrancy Act is awaiting repeal by section 81 of the Police, Crime, Sentencing and Courts Act 2022. Section 81 is not yet in force, but the Government has said it will commence the provision, and thus effect the repeal, once new legislation replaces the 1824 Act.

Anti-social behaviour

Clause 65 would remove the restrictions on a court attaching a power of arrest to a prohibition or requirement contained in an injunction issued under section 1 of the Anti-Social Behaviour, Crime and Policing Act 2014.

Clause 66 would expand the timeframe that a dispersal order can be in place from 48 hours to 72 hours and extend the maximum duration of a closure notice from 48 hours to 72 hours.

Clause 67 would lower the age limit for a Community Protection Notice (CPN) to 10 years old.

Clause 68 and Schedule 6 would enable a senior police officer to make a Public Space Protection Order (PSPO) or an expedited PSPO where the relevant legal tests have been met.

Clause 69 and Schedule 7 would enable registered social housing providers to issue a closure notice and apply for a closure order in respect of premises that are being used (or are likely to be used) to commit nuisance or disorder.

Clause 70 would increase the upper limit for Fixed Penalty Notices for breaches of PSPOs and CPNs to £500.

Clause 71 and Schedule 8 would create a duty for local policing bodies to promote awareness of anti-social behaviour (ASB) case reviews in their police area and provide a route for victims to query decisions.

Clause 72 would provide for additional powers for, and duties on local policing bodies and Community Safety Partnerships (CSPs).

The police

Clause 73 would require the College of Policing to issue a code of practice about ethical policing. The code would be required to set out actions that a chief officer of police should take "for the purpose of securing that persons under the chief officer's direction and control act ethically".

Clause 74 would enable the Secretary of State to make rules enabling a chief officer of police to appeal to the Police Appeals Tribunal against decisions relating to members (or former members) of their force, or special constables (or former special constables) appointed for their police area.

1.2 Where and when will the Bill take effect?

The provisions in the Bill would apply to England and Wales only, except for:

- Clauses 5-8, 10(1) and (4), 14, 20 (and Schedule 3), 21, 33 (and Schedule 5), 34-37, 74(10)-(14), 75(1) and (2), 76-79, which extend to England and Wales, Scotland and Northern Ireland, and
- Clause 10(3) which extends to England and Wales and Scotland.

Annex B of the Explanatory Notes (PDF) provides a table setting out the territorial extent and application of the Bill.

Most of the provisions in the Bill would come into force on a date appointed by the Secretary of State to be set out in regulations.

Clauses 15, 21 and 34 (for the purposes of making regulations) and sections 74-79 would come into force once the Bill receives Royal Assent.

Clauses 14, 23 and 24, 30 and 31, 33 (and Schedule 5), 35-37 and 73 would come into force two months after the Bill receives Royal Assent.

2 Criminal offences

2.1 Articles for use in serious crime and vehicle theft

Clauses 1-3 would introduce new offences criminalising the possession, importation, manufacture, adaptation and supply of certain articles used in serious crime (such as 3D printer firearms templates and tablet presses). **Clause 4** would introduce a similar offence in relation to electronic devices for use in vehicle theft.

Background

In January 2023, the Home Office launched a consultation on strengthening the law enforcement response to serious and organised crime.[1] Announcing the consultation, the then Home Secretary Suella Braverman said it formed part of a wider package of measures to strengthen the police response to serious and organised crime, including Government plans to:

- invest around £2 million to support the roll-out of 'Clear, Hold, Build',[2] including new serious and organised crime community coordinators in Regional Organised Crime Units and a performance management and information system; and
- update the Serious and Organised Crime Strategy, which was published in 2018, with a new strategy due to be published "later this year".[3]

The consultation sought views on two proposals:

- introducing new offences to criminalise the making, modification, supply, offer to supply and possession of articles for use in serious crime; and

1 Home Office, Strengthening the law enforcement response to serious and organised crime, 24 January 2023

2 'Clear, Hold, Build' is a multiagency approach to tackling serious and organised crime, which involves the police pursuing gang members to 'clear' an area, maintaining a 'hold' over the area to prevent another gang taking control, and working with communities to 'build' resilience and prosperity so the area is less susceptible to organised crime. The approach has been piloted by West Yorkshire Police and Merseyside Police: see College of Policing, Practice Bank: Clear, hold, build, 27 March 2023 and Smarter practice: Clear, hold, build – West Yorkshire Police and Merseyside Police, 25 April 2023

3 HCWS513, 24 January 2023. See also Home Office press release, Government announces crackdown against organised criminal gangs, 24 January 2023.

- strengthening and improving the functioning of Serious Crime Prevention Orders.[4]

In relation to the first proposal, the Government said that law enforcement agencies had "raised concerns that there are limited legal options to address the rapidly evolving tools and technology exploited by serious criminals".[5] There was particular concern about individuals possessing the following articles in circumstances where there was a strong suspicion they were being used for the purpose of serious crime:

- **Vehicle concealments or 'hides'**: these are static or moveable hidden compartments in vehicles that "may allow individuals to conceal and transport illicit goods with a reduced risk of the commodity being discovered"[6]

- **Sophisticated encrypted communication devices**: these devices provide access to encrypted communication platforms used by serious and organised criminals, which "create considerable barriers to law enforcement agencies collecting intelligence and evidence in respect of serious crimes"[7]

- **Digital files or templates for 3D-printed firearms components**: the consultation cited the National Crime Agency's operational assessment that viable 'hybrid' firearms – "where 3D-printed components are combined with easily accessible metal non-firearms parts" – would increasingly feature in UK criminality[8]

- **Pill presses:** these are used to make tablets and have legitimate industrial uses, but the National Crime Agency "has identified that organised crime groups are using pill presses to manufacture illicit benzodiazepines"[9]

The consultation noted that existing legislation already covers the possession and use of such articles to a certain extent. For example, sections 44-49 of the Serious Crime Act 2007 set out a range of offences targeting acts that encourage or assist crime, which can be used (in some circumstances) to prosecute those who possess or supply articles for use in serious crime.[10] Section 45 of the Serious Crime Act 2015 makes it an offence to participate in the criminal activities of an organised crime group. In relation to pill presses, the Misuse of Drugs Act 1971 makes it an offence to supply (or offer to supply)

4 Section 6 of this briefing covers the proposals relating to Serious Crime Prevention Orders

5 Home Office, Strengthening the law enforcement response to serious and organised crime: consultation document, 24 January 2023

6 As above

7 As above

8 As above

9 As above

10 The consultation cited the case of R v Sadique, [2013] EWCA Crim 1150, in which the offence in s46 of the 2007 Act (encouraging or assisting the commission of offences, believing one or more will be committed) was successfully used to prosecute a man who ran a business supplying cutting agents (lawful chemicals in themselves) for use in the criminal drugs trade

any article which may be used to prepare a controlled drug for administration, believing it is to be used in circumstances where the administration is unlawful.[11] In relation to vehicle concealments, the Customs and Excise Management Act 1974 provides for the forfeiture of vehicles that have been "constructed, adapted, altered or fitted in any manner for the purpose of concealing goods", although this only applies to vehicles within the confines of a port, railway customs area or aerodrome and it is not a criminal offence to possess such a vehicle.[12]

However, the consultation argued that there were barriers to using the above offences, in particular the need to prove that the accused had a particular state of mind (such as encouraging or assisting the commission of offences in the belief that one or more will be committed) or had links to an organised crime group.

The Government had therefore concluded that there was "a gap in the legal framework":

> Manufacturers, modifiers and suppliers profit from the supply of such articles to serious criminals, but keep just enough distance from the offences being carried out to avoid facing any consequences. Similarly, where people are found in possession of articles in circumstances which point to involvement in serious crime, it can be difficult to show the level or knowledge or intention that would be required to prosecute them for a criminal offence.[13]

The consultation sought views on whether existing legislation was sufficient to tackle the issue of supply of articles for use in serious crime, or whether a new criminal offence should be introduced. The consultation also sought views on what articles should be covered by any new offence (and how these should be defined), how 'serious crime' should be defined, and whether any defences should be available.

The Government published its response to the consultation on 14 November 2023.[14] A total of 57 responses had been received. The Government said a majority of respondents had supported its proposals for a new offence, "in particular law enforcement agencies who would be directly involved in enforcing these measures".[15]

Key themes raised in responses to the consultation included:

- The changing nature of serious and organised crime, particularly the "significant increase in the exploitation of technological capabilities by

11 Misuse of Drugs Act 1971, section 9A(3)

12 Customs and Excise Management Act 1974, section 88

13 As above

14 Home Office, Strengthening the law enforcement response to serious and organised crime: Summary of consultation responses and conclusion, 14 November 2023

15 As above, para 8

organised crime groups", and the need to ensure the law can "stay ahead of the evolving threat landscape".[16]

- Controversy about including sophisticated encrypted communication devices in the scope of the proposed new offence. The Government noted that a "significant number" of respondents were concerned about becoming criminally liable for using encrypted software and hardware, "and that ceasing to use such devices and platforms would be at the expense of personal privacy, the legitimate protection of data, and technological innovation".[17]

- The need to balance the potentially significant benefits of the proposals to law enforcement with human rights considerations.[18]

The consultation response did not refer to arguments made by respondents who disagreed with the proposals for a new offence. However, one example is the joint response from the Bar Council and the Criminal Bar Association, in which they argued the existing law was sufficient. They went on:

> ...it is not clear to us that the consultation paper has established either (a) that existing provisions do not already fulfil the task, or (b) that the scale of those who presently "slip through the net" is sufficiently large to justify the introduction of what is potentially a very broad offence, with a relatively low mens rea requirement.[19]

They suggested that "any perceived problem with existing offences may be capable of being resolved through increased investigative resource or more focused application".[20] They were concerned that the new offence might be "too broad" and could "inappropriate render criminally liable those who engage in lawful activity".[21]

In the consultation response, the Government said it had decided to proceed with new offences to criminalise the possession, importation, making, modifying, supplying and offering to supply of a specified list of articles for use in serious crime. The list of articles would include vehicle concealments, templates for 3D-printed firearm components, and pill presses and encapsulators. This list would be amendable via secondary legislation.

The Government said it did not propose to include sophisticated encrypted communication devices on the list at this time, given the number of concerns raised by respondents and the need to ensure that the new offences would

16 As above, para 9

17 As above, para 9

18 This was a greater concern in relation to the other proposed measure in the consultation (changes to Serious Crime Prevention Orders, as discussed in section 6 of this briefing), but was also raised here in relation to potential interference with private communication methods

19 Bar Council/Criminal Bar Association of England and Wales, Bar Council and CBA response to the Home Office's Consultation on Strengthening the law enforcement response to serious and organised crime (PDF), 21 March 2023. 'Mens rea' is the mental element of a criminal offence, for example 'intention' to do a certain act or a 'belief' that certain consequences will occur.

20 As above

21 As above

not "inappropriately criminalise technologies used in everyday lawful activity".[22]

The Government did, however, say it would legislate in relation to other articles that had been put forward by respondents:

> In addition, electronic devices used to steal vehicles was also put forward by a number of respondents. We have included new criminal offences in the Criminal Justice Bill to prohibit the use of these devices to combat vehicle theft. Other articles were put forward by respondents, some of which we will consider further for inclusion using the secondary power once the legislation has been commenced.[23]

The Bill

Clause 1 would introduce two offences:

- an offence of possessing a "relevant article" in circumstances which give rise to a reasonable suspicion that the article will be used in connection with any "serious offence"; and
- an offence of importing, making, adapting, supplying, or offering to supply a "relevant article" in circumstances which give rise to a reasonable suspicion that the article will be used in connection with any "serious offence".

"Serious offence" would be defined as an offence specified or described in Part 1 of Schedule 1 to the Serious Crime Act 2007. This includes offences relating to drug trafficking, slavery, people trafficking, terrorism, firearms, prostitution and child sex offences, armed robbery, money laundering, fraud, tax evasion, bribery, counterfeiting, computer misuse, intellectual property, environmental protection, organised crime and sanctions. Some consultation respondents had called for a wider definition to be used, for example one that also covered serious offences against the person (such as homicide). There was particular concern about "the printing of 3D firearms which could be utilised by an individual for serious violent offences including homicide unconnected to serious and organised crime".[24] However, the Government considered that the list in the 2007 Act was "sufficient" for the purpose of the new offences.[25]

It would be a defence for a person charged with either offence to show that they did not intend or suspect that the article would be used in connection with a serious offence.

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22 Home Office, Strengthening the law enforcement response to serious and organised crime: Summary of consultation responses and conclusion, 14 November 2023, para 12

23 As above, para 12

24 As above, para 21

25 As above, para 23

The court would be able to assume that the accused possessed the article if it was proved that the article was:

- on any premises at the same time as the accused; or
- on premises of which the accused was the occupier, or a habitual user (other than as a member of the public).

The court would not be able to make such an assumption if the accused could show that they did not know of the article's presence on the premises or that they had no control over it.

The offences would carry a maximum sentence of five years and/or an unlimited fine on conviction on indictment.

Clause 2 would define "relevant article" as any of the following:

- a 3D printer firearms template that can be used in conjunction with a 3D printer to produce any part of a firearm as defined by section 57 of the Firearms Act 1968;
- an encapsulator (including any device that may be used to produce capsules);
- a tablet press (including any device that may be used to produce tablets); and
- a vehicle concealment (a compartment forming part of a vehicle or attached to a vehicle that is intended to conceal, or facilitate the concealment of, things or people).

The Secretary of State would be able amend the definition of "relevant article" in clause 2 by regulations.

Clause 3 would introduce similar offences in relation to possessing, importing, making, adapting, supplying or offering to supply an electronic device in circumstances which give rise to a reasonable suspicion the device will be used in connection with a "relevant offence". For the purposes of clause 3, "relevant offence" would mean:

- theft of a vehicle or anything in a vehicle, under section 7 of the Theft Act 1968; or
- taking a vehicle or other conveyance without authority, under section 12 of the 1968 Act.

Clause 3 includes similar provision to clause 1 in relation to a defence of not intending or suspecting that the device would be used in connection with a relevant offence; assumptions about possession; and the maximum sentence.

The Explanatory Notes state that the offences in clause 3 are designed to deal with devices "such as signal jammers, signal amplifiers and devices used to

access a vehicle's wiring system", where those devices are used to commit offences involving stealing a vehicle or anything in a vehicle.[26]

Clause 4 relates to the defences in clauses 1 and 3, which would be available where the accused could "show" they did not intend the article concerned to be used in connection with a serious crime or relevant offence. Clause 4 states that a person should be regarded as having "shown" the matter if:

- they adduce sufficient evidence of the matter to raise it as an issue; and
- the prosecution fails to prove the contrary beyond reasonable doubt.

The Explanatory Notes state that this is a similar approach to the one taken in section 118 of the Terrorism Act 2000, which sets out defences to several terrorism offences.

2.2 SIM farms and telecommunications-facilitated fraud

Background

SIM farms

A Subscriber Identity Module (SIM) card is a memory card used in mobile telephony to identify and authenticate users and communicate with mobile networks.

A SIM farm is a device that can house multiple SIM cards simultaneously. They can be used to send thousands of text messages in a short space of time. While there are legitimate uses for multi-SIM devices, such as for business-to-consumer communications, SIM farms can be used by fraudsters to send scam text messages in bulk in a way that is cheap and difficult to detect.[27]

According to an August 2022 survey for the telecommunications regulator Ofcom, 75% of UK mobile users had received a suspicious text or call in the preceding three months.[28] An earlier Ofcom survey found that 44% of people received suspicious text messages at least once a week.[29]

There are no statistics to show what proportion of scam messages are sent using SIM farms. The government's Economic Note on SIM farm regulation cites an anonymous industry source who estimated that 10-15% of mobile network traffic comes from SIM farms.[30] According to industry group Mobile

26 Explanatory Notes (PDF), para 176
27 Inside the 'Royal Mail' text scam factories, Times, 11 April 2021
28 Ofcom, Research supporting scam statements, 15 November 2022, p9
29 Ofcom, Scams research 2021, October 2021, p12
30 Home Office, Economic Note on SIM farm regulation, 3 May 2023

UK, however, evidence from its members suggests that most scam texts come from single-SIM devices.[31]

The Government's proposals

It is already illegal under section 6 of the Fraud Act 2006 to possess an 'article' used for fraud, which could include SIM farms. However, the Government argues that the current legislation is insufficient:

> ...it is extremely difficult to establish that a person who possesses, makes or supplies SIM farms is intending to use them for fraud. Likewise, the [Fraud] Act does not require importers, manufacturers or sellers to undertake checks on the intended use of the device.[32]

The Government committed to banning SIM farms in its May 2023 Fraud Strategy. Alongside the strategy it published a consultation on preventing the use of SIM farms for fraud, which sought views from stakeholders on proposals for implementing the ban.[33] It asked for comments on the scope of the ban, including potential exemptions for legitimate uses, and whether other telecommunications technologies used to facilitate fraud should be included in the ban.

The Government proposed to ban devices that can hold more than five SIM cards. That is because there are four mobile network operators (MNOs) in the UK. One legitimate use of SIM farms is for business-to-customer communications (such as appointment reminders). To give them the best chance of having a mobile signal, businesses may use a multi-SIM device with a SIM card from each MNO. For this they would need four SIM slots, but no more. [34]

Mobile UK commented that banning SIM farms would be "a positive step" as it "should mean they are more difficult to acquire and use and make it easier for law enforcement agencies to prosecute bad actors".[35] However, the industry group cautioned that this measure alone would not eradicate scam text messages, which can also be sent in large quantities from single SIM devices.

The Government has not published a full response to the consultation. The Explanatory Notes to the Bill confirm that Clauses 5-8 and Schedule 1 are intended to give effect the consultation's proposals.[36]

Clauses 5-8 and Schedule 1 would apply and extend to all of the UK.

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31 Mobile UK, Home Office consultation on preventing the use of SIM farms for fraud: response from Mobile UK, June 2023, p1

32 Home Office, Preventing the use of SIM farms for fraud, 3 May 2023

33 Home Office, Preventing the use of SIM farms for fraud, 3 May 2023

34 The four MNOs are EE, O2, Three, and Vodafone. There are many more companies providing mobile services (such as Sky, Tesco Mobile, GiffGaff) but they utilise the networks built by the MNOs.

35 Mobile UK, Home Office consultation on preventing the use of SIM farms for fraud: response from Mobile UK, June 2023, p1

36 Home Office, Criminal Justice Bill: explanatory notes, 14 November 2023, para 35

The Bill

Clause 5: possession of a SIM farm

Clause 5(1) of the Bill would make it an offence to possess a SIM farm (as defined in clause 7) without "good reason or lawful authority" (5(2)).

Clause 5(3) provides a non-exhaustive list of 'good reasons' for possessing a SIM farm, namely:

- providing broadcasting services
- operating a public transport service
- operating an electronic communications service
- tracking or monitoring freight

These exemptions are based on stakeholder feedback about legitimate uses for SIM farms.[37]

A person who commits an offence under clause 5(1) would be liable on summary conviction to an unlimited fine in England and Wales or up to a level 5 fine (£5,000) in Scotland and Northern Ireland.

Clause 6: supply of a SIM farm

Clause 6(1) would make it an offence to supply a SIM farm to another person. Under **clause 6(2)** a person supplying a SIM farm would not commit an offence if they could prove all of the following:

- The supplier supplied the SIM farm in the course of its business, or otherwise had good reason or lawful authority to possess the SIM farm. **Clause 6(3)** clarifies that 'good reason' under this sub-section does not include possessing a SIM farm for the purpose of supplying it to another.
- The supplier had taken reasonable steps to confirm that the person to whom the SIM farm was supplied had good reason or lawful authority for possessing it.
- The supplier had recorded specified information about the supply. The required information is listed in **clause 6(4)** and includes the date of supply and the address of the recipient.

Possessing a SIM farm for the purpose of supplying it to another would only be lawful if the person possessing it could demonstrate that any potential supply would comply with these conditions (**clause 5(4)**).

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[37] See for example Mobile UK, Home Office consultation on preventing the use of SIM farms for fraud: response from Mobile UK, June 2023, p4

A person who commits an offence under clause 6(1) would be liable on summary conviction to an unlimited fine in England and Wales or up to a level 5 fine (£5,000) in Scotland and Northern Ireland.

Clause 7: definitions

'SIM farm' is defined in **clause 7** as "a device which is capable of using five or more SIM cards simultaneously or interchangeably" for the purpose of sending calls or text messages.

'SIM card' is defined as a "removable physical" module, implying that e-SIMs (which are not physical items) are not covered. E-Sims are digital SIM 'cards' built in to devices.[38] They can allow users to have multiple e-SIM profiles on a single device, which act like separate physical SIM cards. Mobile UK had argued in its response to the government's consultation that e-SIMs should be included in the ban:

> ...e-SIMs have an emerging presence on mobile networks worldwide. While they are not widely used in the UK at present, devices with many multiples of e-SIMs present a threat to the Government's objective of reducing scam messaging.
>
> There may be little point in banning devices that can hold multiple physical SIMs without also restricting devices that contain many multiples of e-SIMs.[39]

Clause 7(4) would grant the Secretary of State powers to amend the definitions in Clause 7 by regulations. The Government argues that this power is necessary because new technologies such as e-SIMs "may lead to new versions of SIM farms that cannot currently be foreseen and necessitate an updating of the definitions provided for in the Bill".[40] The regulations would be made under the draft affirmative procedure (**clause 76(3)(a)**).

Clause 8: other electronic communications devices

The Government's consultation noted that fraudsters can be "quick to adapt" to new technologies and regulations. It proposed that the Secretary of State should be able to prohibit new technologies by regulations rather than primary legislation.

Clause 8 would create a power to make regulations prohibiting specified 'articles' if the Secretary of State considers that there is a "significant risk" of them being used to commit fraud by means of electronic communications networks. New offences would be summary and subject to an unlimited fine in England and Wales or £5,000 in Scotland and Northern Ireland.

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38 PC Magazine, What is an eSIM card?, 7 November 2023

39 Mobile UK, Home Office consultation on preventing the use of SIM farms for fraud: response from Mobile UK, June 2023, p1

40 Home Office, Criminal Justice Bill: delegated powers memorandum, 14 November 2023, para 14

The regulations may (but are not required to) contain defences, exceptions, and other provisions similar to those for SIM farms in clauses 5 and 6 and Schedule 1 to the Bill.

The regulations would be made under the draft affirmative procedure (clause 76(3)(a)). Before making regulations, the Secretary of State would be required to consult people who may be affected.

Schedule 1

Schedule 1 to the Bill would create powers of entry in relation to the new offence of possessing or supplying a SIM farm. The Government states that these powers are needed because existing search powers (for example in the Police and Criminal Evidence Act 1984 in England and Wales) are only available for indictable offence.[41]

Part 2 would allow the police to stop, enter, and search a vehicle, vessel, or aircraft if there are reasonable grounds to suspect that it contains evidence of an offence. These powers do not apply if the vehicle, vessel, or aircraft is being used as a dwelling.

Part 2 also makes provision for powers of entry to premises. Paragraph 5 provides that the police must obtain a warrant from a justice (as defined in Schedule 1 Part 1) to enter and search premises. Warrants can only be issued if there are reasonable grounds to suspect that it would not be possible to obtain the consent of the owner/occupier of the premises.

Under paragraph 8, warrants confer powers to search anything in or on the premises, including breaking open locked containers where reasonably necessary. They could not confer powers to search a person.

Under paragraph 11 it would be an offence to obstruct or refuse to comply with anyone exercising powers conferred by this Schedule.

Parts 3 and 4 set out the procedure for applying for a warrant and further requirements relating to the execution of warrants in England, Wales, and Northern Ireland.

2.3 Knives and offensive weapons

Background

In April 2023, policing minister Chris Philp announced a Home Office consultation on a range of legislative proposals to tackle the use of machetes

[41] Home Office, Criminal Justice Bill: ECHR memorandum, 14 November 2023, p5. An indictable offence

and other bladed articles in crime.[42] The consultation ran from April to June 2023.[43] It sought views on the following five proposals:

1. a targeted ban on certain types of large knives that seem to be designed to look menacing with no practical purpose;

2. additional police powers to seize, retain and destroy lawfully held bladed articles of a certain length if these are found by the police when in private property lawfully and they have reasonable grounds to believe that the article(s) are likely to be used in a criminal act;

3. increasing the maximum penalty for the offences of manufacturing, importing, selling and supplying prohibited offensive weapons and certain types of knife[44] and selling bladed articles to persons under 18[45] from six months to two years;

4. treating possession in public of prohibited knives and offensive weapons more seriously than possession of non-prohibited knives and weapons; and

5. introducing a new offence of possession of a bladed article with the intention to endanger life or cause fear of violence.

The Government said its aim was to "provide the police with more tools to disrupt knife possession and tackle knife crime".[46]

The Government's response to the consultation was published on 30 August 2023.[47] It noted that while "most responses were supportive of the proposals", concerns were raised about several aspects of the proposals.[48] These included:

- Concerns that the proposals to ban certain types of knives and machetes could have a negative impact on legitimate needs for, and use of, such articles (for example for agricultural purposes), and on items of historical interest or that have been traditionally crafted by hand.

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42 HCWS722, 18 April 2023. For an overview of existing law, policy and statistics on knife crime, see Commons Library debate pack, General debate on knife crime, 13 October 2023 and Commons Library research briefing CBP-04304, Knife crime statistics

43 Home Office, Consultation on new knife legislation proposals to tackle the use of machetes and other bladed articles in crime, April 2023

44 Criminal Justice Act 1988, s141 and Restriction of Offensive Weapons Act 1959, s1

45 Criminal Justice Act 1988, s141A

46 Home Office, Consultation on new knife legislation proposals to tackle the use of machetes and other bladed articles in crime, April 2023, Executive summary

47 Home Office, Consultation on new knife legislation proposals to tackle the use of machetes and other bladed articles in crime: Government response, 30 August 2023

48 As above, para 11

- Concerns that a new police power to seize bladed articles held legally in private premises could "lead to the police arbitrarily taking private property from law-abiding citizens".[49]

- Concerns that new offences and higher sentences could impact negatively "on young people who may carry knives in public for self-defence purposes or because they are coerced into carrying the article".[50]

The Government said it intended to implement all the proposals and that it would seek to introduce legislation (where required) when parliamentary time allowed. The Bill includes measures to implement a new offence of possession of a bladed article with the intention to endanger life or cause fear of violence (clause 9), higher maximum sentences for existing offences relating to the manufacture, sale and supply of weapons and knives (clause 10), and the additional police powers to seize bladed articles (clause 18).[51]

The proposed ban on certain types of machetes and knives can be implemented by way of secondary legislation and is not included in the Bill.[52]

In relation to the proposal to treat possession in public of prohibited knives and offensive weapons more seriously than possession of non-prohibited knives and weapons, the Government said it would implement this by asking the Sentencing Council to consider amending the Sentencing Guidelines relating to possession of bladed articles and offensive weapons to reflect this principle.[53]

The Bill

Possessing a weapon with intent to use unlawful violence

Clause 9 of the Bill would add a new section 139AB to the Criminal Justice Act 1988, which would introduce a new offence of possessing a "relevant weapon" with intent to use it:

- to perpetrate unlawful violence against another person;

49 As above, para 12

50 As above, para 12

51 Clause 18 is dealt with in section 3.2 of this briefing

52 By amending the list of prohibited offensive weapons set out in the schedule to the Criminal Justice Act 1988 (Offensive Weapons) Order 1988. This list, coupled with the offences set out in section 141 of the Criminal Justice Act 1988, is what effectively amounts to the ban. The list can be amended by statutory instrument under a power granted by subsection 141(2) of the 1988 Act.

53 The Sentencing Council is an independent non-departmental public body whose primary role is to issue guidelines on sentencing, which the courts must follow unless it is in the interests of justice not to do so. The Lord Chancellor can ask the Sentencing Council to review sentencing guidelines for a particular category of offence and the Council must consider whether to do so: Coroners and Justice Act 2009, s124.

- to cause another person to believe that unlawful violence will be used against them or anyone else;
- to cause serious unlawful damage to property; or
- to enable another person to do any of the above.

"Relevant weapon" would be defined as a bladed or pointed article covered by section 139 of the 1988 Act, or an offensive weapon within the meaning of section 1 of the Prevention of Crime Act 1953.

The Government says this new offence "bridges the gap"[54] between the following existing offences:

- possessing a bladed article or offensive weapon, which carries a maximum sentence of four years' imprisonment and/or a fine;[55] and
- using a bladed article or offensive weapon to threaten someone, which attracts a mandatory minimum sentence of four or six months (depending on the age of the offender) and carries a maximum sentence of four years' imprisonment and/or a fine.[56]

In its consultation, the Government had indicated the new offence would carry a higher maximum sentence than the 'simple' possession offences.[57] However, clause 9 provides that the new offence would carry a maximum sentence of four years' imprisonment and/or a fine, which is the same as the existing possession offences.

Clause 9 would also amend section 315 of the Sentencing Code, which provides for mandatory minimum custodial sentences for certain repeat knife crime offenders, to bring the new offence within the scope of the mandatory minimum sentence regime. This is in line with the existing offences on possession and making threats.

Maximum penalty for offences of sale and supply

Clause 10 would introduce a higher maximum penalty for the following offences:

- the offence of manufacturing, selling, or supplying a prohibited offensive weapon under s141 of the Criminal Justice Act 1988;
- the offence of selling knives and certain bladed articles to children under s141A(1) of the Criminal Justice Act 1988; and

54 Explanatory Notes (PDF), para 234

55 Criminal Justice Act 1988, sections 139 and 139A and Prevention of Crime Act 1953, section 1

56 Criminal Justice Act 1988, section 139AA and Prevention of Crime Act 1953, section 1A. The mandatory minimum sentence is governed by the Sentencing Act 2020, section 312.

57 Home Office, Consultation on new knife legislation proposals to tackle the use of machetes and other bladed articles in crime: Government response, 30 August 2023, para 94

- the offence of manufacturing, selling, or supplying flick knives or gravity knives under s1 of the Restriction of Offensive Weapons Act 1959.

These offences are currently 'summary only' offences, which means they can only be tried in the magistrates' court, and they all currently carry a maximum sentence of six months' imprisonment and/or a fine.

Clause 10 would make all of these offences 'triable either way' meaning they could be tried in either the magistrates' court or the Crown Court. The maximum available sentence in the magistrates' court would remain at six months' imprisonment and/or a fine. However, the maximum available sentence in the Crown court would be two years' imprisonment and/or a fine.

The Government says this change would "reflect the severity" of these offences.[58] It also notes that making the offences 'either way' rather than 'summary only' would give the police longer to investigate allegations of these offences. This is because prosecutions for most 'summary only' offences must be commenced within six months of the offence having been committed.[59] 'Either way' offences are not subject to such a time limit. The Government says removing this time limit would be of particular use in cases involving social media and other online means:

> Currently, where the police wish to bring a charge in relation to the unlawful sales of knives to a person under 18 or illegal sales of prohibited offensive weapons, they must do so within 6 months of the alleged offence having been committed, as the offences are currently 'summary only'. Any investigation of suspicious sales using social media and other online means takes time and cannot usually be done in the 6 months required for an offence triable as 'summary only'. For instance, the police have made us aware of investigations relating to the unlawful sales of knives to persons under 18 conducted via web app groups and instant messaging, where additional time has been needed to request access and retrieve data held on private devices. Increasing the maximum penalty to 2 years, would make the offence triable 'either way' and would provide the police with more time to investigate the alleged offence and to do so when sufficient evidence has been gathered, without the pressure of the current summary offence time limit.[60]

The change would also bring the offences within the scope of section 17 of the Police and Criminal Evidence Act 1984, which empowers the police to enter any premises for the purposes of arresting a person for an indictable offence (this includes 'either way' offences).

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58 Explanatory Notes (PDF), para 240

59 Magistrates' Courts Act 1980, s127

60 Home Office, Consultation on new knife legislation proposals to tackle the use of machetes and other bladed articles in crime, April 2023, proposal 3

2.4 Encouraging or assisting serious self-harm

Background

Section 184 of the Online Safety Act 2023 (not yet in force) introduced a new offence of encouraging or assisting the serious self-harm of another person by means of verbal, written or electronic communications.[61] The new offence was based on a recommendation by the Law Commission that the deliberate encouragement or assistance of serious self-harm should be criminalised, following the model of the offence of encouraging or assisting another to commit (or attempt to commit) suicide under the Suicide Act 1961.[62]

The Law Commission stressed the importance of defining any new offence in a narrow way that would avoid criminalising vulnerable people who post self-harm content online. The Samaritans welcomed the section 184 offence, but commented "it's crucial that the offence is only focused on malicious and harmful communications, as online conversations about self-harm can be a vital source of support".[63]

Given the scope of the Online Safety Act 2023, the section 184 offence was drafted in such a way that it only covered encouragement or assistance that took the form of a communication (whether verbal, written or electronic). The Government is now proposing to give full effect to the Law Commission's recommendation by repealing section 184 of the 2003 Act and replacing it with a broader version of the offence that captures other forms of encouragement or assistance, for example "direct assistance such as providing a bladed article with which to self-harm".[64]

The Bill

Clauses 11 and 12 would repeal the section 184 offence (in so far as it extends to England and Wales) and replace it with a broader offence covering "any act capable of encouraging or assisting the serious self-harm of another person", where that act is intended to encourage or assist such serious self-harm.

Unlike section 184, the new offence would not be limited to communications-based forms of encouragement or assistance. In all other substantive respects, including the definition of "serious self-harm" and the requirement

61 See section 11 of the Library briefing Analysis of the Online Safety Bill, 11 October 2022 and sections 4.5 and 9.19 of the Library briefing Online Safety Bill: progress of the Bill, 31 October 2023 for background

62 Law Commission, Modernising Communications Offences: A final report (PDF), 2021, Chapter 7

63 Samaritans, Samaritans responds to new self-harm offence, 18 May 2023

64 Explanatory Notes (PDF), para 47

for intent, the scope of the new offence would be the same as the section 184 offence.[65]

Under the Bill as introduced, the wider offence would only extend to England and Wales (the existing section 184 offence also extends to Scotland and Northern Ireland). However, the Government has said it is consulting the devolved administrations about the proposed new offence and will "bring forward amendments at a later stage if they decide that it should extend to their jurisdictions", subject to legislative consent.[66]

2.5 Intimate photographs or films and voyeurism

Background

Intimate image abuse involves the non-consensual taking, making and/or sharing of intimate images. There is currently no single criminal offence that covers intimate image abuse. Instead, a range of offences exist covering different types of image and different types of conduct.[67]

In July 2022, the Law Commission concluded a review of the law on Taking, making and sharing intimate images without consent, in which it described the existing criminal law as a "patchwork" and noted the offences had failed to keep up with developments in technology and sexual offending.[68] It therefore recommended that the Government replace the existing offences with a new tiered framework, including a 'base' offence of taking or sharing an intimate image without consent without the need to prove any additional motivation or intent on the part of the offender.

The then Justice Secretary Dominic Raab said in a statement in November 2022 that the Government planned to legislate to introduce a package of new offences based on the Law Commission's recommendations.[69] He said this was a "medium-term plan" that would involve "the repeal or amendment of several current offences, and the creation of a new, more coherent package of measures". However, he added that limited but more immediate changes would be implemented by way of Government amendments to the Online Safety Bill.[70]

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65 As is the case under section 184, "serious self-harm" would be defined as self-harm amount to grievous bodily harm within the meaning of the Offences Against the Person Act 1861

66 Home Office/Ministry of Justice, Policy paper - Criminal Justice Bill: Encouraging or assisting serious self-harm, 22 November 2023

67 Examples include disclosing (or threatening to disclose) private sexual photographs and films with intent to cause distress (Criminal Justice and Courts Act 2015, s33), voyeurism (Sexual Offences Act 2003, s67), and 'upskirting' and breastfeeding voyeurism (Sexual Offences Act 2003, s67A)

68 Law Commission, Intimate image abuse: a final report (PDF), July 2022

69 HCWS388 [on Intimate Images Abuse Offences], 25 November 2022

70 See sections 4.6 and 9.19 of the Library briefing Online Safety Bill: progress of the Bill for background

These changes were enacted as section 188 of the Online Safety Act 2023 (not yet in force), which added new sections 66B-66D to the Sexual Offences Act 2003, and section 190 of the 2023 Act (not yet in force), which will repeal the existing offence of disclosing (or threatening to disclose) private sexual photographs and films, as set out in section 33 of the Criminal Justice and Courts Act 2015. Once in force, new sections 66B-66D will replace the existing section 33 offence with four new sexual offences:

- A 'base' offence of intentionally sharing an intimate photograph or film, or what appears to be an intimate photograph or film, without consent or reasonable belief in consent.
- Two more serious offences of sharing an intimate photograph or film, or what appears to be an intimate photograph or film, without consent and either with intent to cause alarm, distress or humiliation, or for the purpose of obtaining sexual gratification.
- Another more serious offence of threatening to share an intimate image or film, or what appears to be an intimate image or film, with the intention of causing fear that the threat will be carried out or being reckless as to whether such fear will be caused.

The new offences have been drafted to cover manufactured or so-called 'deepfake' images.

The offences are subject to a range of exemptions, including:

- where the image was taken in public where the person in the image had no reasonable expectation of privacy and was in an intimate state voluntarily;
- where the image had previously been publicly shared with the consent of the person in the image;
- where the image is of a person under 16 and has been shared with a healthcare professional acting in that capacity; and
- where the image is of a child in an intimate state and is "of a kind ordinarily shared between family and friends".

The Government is now proposing to legislate to introduce "a range of complementary offences to tackle the "taking or recording" of such images and installing equipment to enable a person to commit a "taking or recording" offence".[71]

The Bill

Clause 13 and **Schedule 2** of the Bill would add new sections 66AA-66AC to the Sexual Offences Act 2003, repeal the existing offences of recording a

[71] Explanatory Notes (PDF), para 49

person doing a private act (s67(3) of the 2003 Act) and recording an image beneath the clothing of another person (s67A(2) of the 2003 Act), and make a range of related and consequential amendments.

New section 66AA would set out three offences of taking or recording an intimate photograph or film:

- an offence of intentionally taking a photograph or recording a film that shows another person in an intimate state, without that person's consent (or a reasonable belief in their consent);
- an offence of intentionally taking a photograph or recording a film that shows another person in an intimate state, without that person's consent and with the intent to cause them alarm, distress or humiliation;
- an offence of intentionally taking a photograph or recording a film that shows another person in an intimate state, without that person's consent (or a reasonable belief in their consent) and for the purpose of obtaining sexual gratification for themselves or another person.

The first of these offences would carry a maximum sentence of six months' imprisonment and/or a fine, while the others would carry a maximum sentence of two year's imprisonment and/or a fine.

Under new section 66AB similar exemptions would apply to these offences as apply to the offences of sharing (or threatening to share) intimate photographs and films referred to above:

- where the image was taken in public where the person in the image had no reasonable expectation of privacy and was in an intimate state voluntarily;
- where the image is of a person under 16 who lacks capacity to consent to the taking or recording of the image, and the image was taken or recorded by a healthcare professional acting in that capacity or otherwise in connection with care or treatment by a healthcare professional; and
- where the image is of a child in an intimate state and is "of a kind ordinarily taken or recorded" by family or friends, such as a family member taking a photograph of "a group of toddlers in a paddling pool at a family barbeque".[72]

New section 66AC would introduce new offences of installing, adapting, preparing or maintaining equipment with the intention of committing (or enabling another person to commit) any of the "taking" offences in section 66AA. The maximum penalties for the section 66AC offences mirror those for the section 66AA "taking" offences to which they relate.

[72] Explanatory Notes (PDF), para 271

The new offences only cover the taking of photographs or the recording of films; they do not, therefore, cover the creation of 'deepfake' images. The Government agrees with the Law Commission's view that creating such an image (without subsequently sharing it) is not "harmful" enough to justify a criminal offence:

> Following an extensive public consultation with victims, the police, prosecutors and academics and further engagement with the Police and Crown Prosecution Service, the Law Commission found insufficient evidence of harm to justify the criminalisation of making an intimate image which is not subsequently shared or threatened to be shared.
>
> We agree that this behaviour is not sufficiently harmful or culpable that it should constitute a criminal offence.[73]

2.6 Corporate criminal liability

Clause 14 would extend criminal liability from individual senior managers, to include their organisation. This principle is known as the identification doctrine, which was established under common law in 1971.[74] The current law requires that an offence must be committed by the "directing mind and will" of a corporation to trigger attribution to the corporate itself. As company management structures have grown in complexity, individual managers are less likely to hold the "directing mind and will" of a corporation. Clause 14 would remove this requirement and put the identification doctrine on a statutory footing for all criminal offences.

The Government's summary impact assessment explains that they regard the reform as necessary because the Economic Crime and Corporate Transparency Act 2023 (ECCTA 2023) introduced for economic crimes, a similar organisational criminal liability and statutory footing for the identification Doctrine. [75] Clause 14 of the Criminal Justice Bill would extend this organisational criminal liability as a result of senior manager actions to all criminal offences, not just the economic offences covered by the ECCTA 2023.

Clause 14(1) would mean that where a senior manager of a body corporate or partnership commits a criminal offence under existing laws whilst acting within their role, the relevant body corporate or partnership would also commit the offence. "Senior Manager" means an individual who plays a significant role in (a) decisions about how the whole or a substantial part of the activities of the organisation are to be managed or organised, or (b) the

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73 Home Office/Ministry of Justice, Policy paper - Criminal Justice Bill: Intimate images, 22 November 2023

74 Home Office, Factsheet: identification principle for economic crime offences, updated 26 October 2023, 'background'

75 The Home Office, Criminal Justice Bill Summary Impact Assessment (PDF), para 29

managing or organising of the whole or a substantial part of those activities (**Clause 14(3)**).

Clause 14(2) would provide an exception to this. The organisation would not commit an offence if none of the offence was committed in the UK, or if no offence would have been committed if the organisation had performed the conduct, rather than the senior manager.

Clause 14(3) provides relevant definitions for "body corporate" and "partnership" which would include organisations incorporated or registered outside of the UK.

Clause 14(7) would delete the provisions of the ECCTA 2023 which legislate for the identification doctrine for economic crimes, as they would be superseded by this Bill for relevant crimes of all types.

3 Police powers

3.1 Drug testing

Clauses 15-17 would expand existing police powers to test suspects in police detention for drugs, by permitting tests in relation to a wider range of 'trigger' offences and for a wider range of drugs.

Background

In March 2023, the Government published an Anti-Social Behaviour Action Plan. The Plan covered a range of issues connected to anti-social behaviour, including action to tackle illegal drugs.[76]

One action included in the Plan was a proposal to expand police powers to carry out drug testing on arrest.[77] Under sections 63B and 63C of the Police and Criminal Evidence Act 1984 (PACE), the police currently have the power to test suspects in police detention for the presence of "specified Class A drugs" in the following circumstances:

- the suspect is aged 18 or over and has been arrested for a 'trigger' offence, or is aged 14 or over and has been charged with a 'trigger' offence; and
- a police officer of at least the rank of inspector authorises the test on the basis there are reasonable grounds to suspect that specified Class A drug use has caused or contributed to the offence.

Specified Class A drugs are those listed in paragraphs 1 to 5 of Part 1 (Class A drugs) of Schedule 2 to the Misuse of Drugs Act 1971.[78]

'Trigger' offences are listed in Schedule 6 to the Criminal Justice and Court Services Act 2000 and include theft, robbery, burglary, handling stolen goods, possession or supply of a specified Class A drug, and begging or persistent begging.

[76] The Bill includes clauses relating to other aspects of the plan, including begging and rough sleeping (see section 7 of this briefing) and anti-social behaviour (see section 8 of this briefing)

[77] Department for Levelling Up, Housing and Communities and Home Office, Anti-Social Behaviour Action Plan, March 2023, paras 24-26

[78] Section 70 of the Criminal Justice and Court Services Act 2000 defines specified Class A drugs by reference to the Criminal Justice (Specified Class A Drugs) Order 2023, which in turn refers to paragraphs 1 to 5 of Part 1 (Class A drugs) of Schedule 2 to the Misuse of Drugs Act 1971

In the Action Plan the Government said it would expand both the list of 'trigger' offences, to include "night-time economy-related offending, offences linked to violence against women and girls, domestic abuse, serious violence, and anti-social behaviour", and the types of drug that could be tested for, to include all Class A drugs as well as some Class B and Class C drugs.[79]

The Bill

Clause 15 would amend sections 63B and 63C of PACE to replace references to "specified Class A drugs" with "specified controlled drugs". This would be defined as any controlled drug (within the meaning of the Misuse of Drugs Act 1971, which includes Class A, B and C drugs) that has been specified in regulations to be issued by the Secretary of State. Clause 15 would also provide for "trigger offences" to be listed in regulations to be issued by the Secretary of State, rather than by reference to the current list in Schedule 6 to the Criminal Justice and Court Services Act 2000 (this list would be repealed).

Clause 15 would add a new section 63CA to PACE, which would give the Secretary of State the necessary regulation-making powers to specify controlled drugs and trigger offences. The regulations would be able to make different provision for different purposes: for example by specifying different trigger offences for Class A, B or C drug tests.

Regulations specifying controlled drugs would be subject to the negative procedure, while regulations specifying trigger offences would be subject to the affirmative procedure (regulations specifying both would also be subject to the affirmative procedure). The Government has provided the following justification for this approach:

> The negative procedure for the power to specify controlled drugs is considered to afford an appropriate level of parliamentary scrutiny as there are existing processes for controlling substances under the Misuse of Drugs Act 1971, including the requirement to consult with the Advisory Council on the Misuse of Drugs and established Parliamentary processes prior to controlling a drug under the 1971 Act. The draft affirmative procedure is considered appropriate for the power to specify trigger offences as any regulations adding to the list of trigger offences would have the effect of bringing more persons within the drug testing regime without requiring a police officer at least the rank of inspector to authorise the drug test, where there are reasonable grounds to suspect the drug use caused or contributed to the offence.[80]

Clause 16 would make related amendments to the Drugs Act 2005, which sets out the framework for initial and follow-up assessments following a positive drug test in police detention. The amendments would reflect the new definitions of "specified controlled drugs".

Clause 17 would remove the existing requirements in sections 63B and 63C of PACE and the 2005 Act for chief officers of police to have been 'notified' by the Secretary of State that appropriate drug testing arrangements have been

79 As above, paras 25-26

80 Delegated Powers Memorandum (PDF), para 27

made in their area before conducting drug testing or assessments. This follows Home Office guidance issued in 2011 that advised forces that they did not need to seek Home Office authorisation to conduct drug testing in police detention.[81]

3.2 Seizure of bladed articles

Background

In April 2023, the Government launched a consultation on a range of legislative proposals to tackle the use of machetes and other bladed articles in crime.[82]

One of the proposals consulted on was for additional police powers to seize, retain and destroy lawfully held bladed articles of a certain length if these are found by the police when in private property lawfully **and** the police have reasonable grounds to believe that the articles are likely to be used in a criminal act.

The consultation noted that the police already have powers to seize knives or weapons from people in connection with the following offences:

- where a person is carrying a knife in public or on education premises without good reason (contrary to sections 139 and 139A of the Criminal Justice Act 1988); and
- where a person possesses in private a knife or offensive weapon of a type listed in the Criminal Justice Act 1988 (Offensive Weapons) Order 1988 (contrary to section 141(1A) of the Criminal Justice Act 1988).

However, the consultation said that the police currently have no power to seize lawfully held knives or bladed articles that they find while they are already lawfully on private premises (for example if they are executing a search warrant), unless the articles are required as evidence:

> By way of example, the police, in the course of a drug dealing investigation, may come across several machetes hidden under a bed, but they may not necessarily be linked to the specific offence being investigated. There may be circumstances surrounding the particular individual which lead the police to conclude that there are reasonable grounds to believe that the machetes are likely to be used in crime; for example, the individual may have a history of violence and previous convictions for knife crime related offences. At the moment, however, unless the bladed articles are prohibited, or are needed as evidence, the police cannot forfeit those items. They have to wait until the person is found with a machete in a public place before they can take any

[81] Home Office, Introducing Locally Funded Drugs Testing On Arrest, 23 May 2011

[82] HCWS722, 18 April 2023 and Home Office, Consultation on new knife legislation proposals to tackle the use of machetes and other bladed articles in crime, April 2023. See section 2.3 of this briefing for full details of the consultation.

> action. We believe that if the police cannot act and seize bladed articles in this and similar scenarios, we are missing a valuable opportunity to disrupt serious crime.[83]

The consultation suggested that disputes about the exercise of such a power could be dealt with using the existing police complaints procedure, which involves complaints being made either to the relevant police force or via the Independent Office for Police Conduct. The consultation said the Government was also considering whether there should be "a judicial avenue of redress in order to recover an item that has been seized by the police".[84]

The Government's response to the consultation was published on 30 August 2023.[85] There were a total of 2,379 responses to the consultation's question on whether the proposed new power was "necessary and proportionate", of which 42% agreed that it was and 58% disagreed with the proposal.[86]

The consultation response summarised the key themes of the responses:

> The main concerns raised were around the power being open to interpretation and applied arbitrarily or incorrectly by the police and the possibility of it affecting people who have a legitimate use for knives.
>
> Other responses were supportive of a power that would help prevent future offending and protect future victims of violence or crime. It was also noted that the power could be very useful in situations of domestic abuse where there are significant risks but currently no powers to seize weapons. [87]

Respondents also supported the suggestion that there should be a right of appeal to the courts or some other avenue of redress in order to recover items seized by the police. However, there was some concern from respondents about the capacity of the courts to deal with appeals.

The Government said it intended to proceed with legislating for the proposed new power, but would "continue to develop this proposal, taking into account the concerns expressed" by consultation respondents.[88]

The Bill

Clause 18 of the Bill would introduce a new police power to seize bladed articles that could be exercised by a police constable in the following circumstances:

- the constable is lawfully on any premises;

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83 Home Office, Consultation on new knife legislation proposals to tackle the use of machetes and other bladed articles in crime, April 2023, proposal 2

84 As above

85 Home Office, Consultation on new knife legislation proposals to tackle the use of machetes and other bladed articles in crime: Government response, 30 August 2023

86 As above, paras 53-54

87 As above, paras 55-56

88 As above, para 69

- the constable finds (on those premises) a bladed or sharply pointed article (a "relevant article); and
- the constable has reasonable grounds to suspect that the relevant article would be likely to be used in connection with unlawful violence (including unlawful damage to property and threats of unlawful violence or damage to property) if it were not seized.

A constable who seized a relevant article would be required to provide a record of what had been seized, including a description of the article and the reason why it had been seized.

A person claiming to be the owner of a seized article would be able to apply to the magistrates' court to recover the article. The court would be able to order the return of the article if it appeared to the court that the applicant was the owner of the relevant article and it would be "just" to make the order.

The police would be entitled to retain seized articles, or to destroy or otherwise dispose of them. However, articles would have to be retained for a minimum of six months from the date of seizure, or until the final determination of an application to the magistrates' court for the return of an article, before seized articles could be destroyed or disposed of.

3.3 Stolen goods

Background

In August 2023, the College of Policing (the body responsible for setting professional standards in policing) issued new guidelines on conducting investigations and updated Authorised Professional Practice (APP) on managing effective investigations and the investigation process.[89]

A College of Policing press release said the new guidance would mean the following in practice:

- Where there is clear recorded CCTV (or other) footage, police will recover that and seek to present it as evidence
- When there is clear eyewitness evidence, that person will be interviewed
- Where there is strong evidence and forensic opportunities, police will seek to present these
- Where property is stolen with unique features ie serial number etc, police will seek to recover it and obtain evidence.[90]

[89] College of Policing, Investigations guidance updates, 28 August 2023
[90] College of Policing, Police pledge better investigations to drive down crime rates, 28 August 2023

The press release noted that the guidance "is likely to lead to, on occasions, a more thorough investigation" but added "officers will still have to consider the proportionality as forces seek to meet the needs of their communities".[91] This was echoed by Chief Constable Andy Marsh, CEO at the College of Policing, who said "Police officers want to give the best possible service to everyone but they are trying to do this in a time pressured and increasingly complex environment".[92]

In a letter to chief constables and other senior policing figures, the then Home Secretary Suella Braverman and policing minister Chris Philp said they were "pleased" that the police had acted on concerns that "all too often, the public feel that information they provide to the Police about a crime is not acted on". They welcomed the commitment in the guidelines and APP that the police would follow all reasonable lines of enquiry for all crime types:

> We understand that no crime investigations will now be screened out solely on the basis that they are perceived as "minor".
>
> This is vital because there is no such thing as a "minor" crime. If any crime type is unchecked, public confidence is undermined, an atmosphere of disorder and menace can rapidly develop and there is the likelihood of escalation to more serious or widespread offending. Offences such as shoplifting, mobile phone theft, car theft, criminal ASB and public drug possession all merit investigation where there is a reasonable line of enquiry to pursue, and prosecution where the evidence supports it.[93]

The letter also set out examples of what the public can "expect to see differently", which included the police following up on stolen property being advertised on online sales sites by requesting information from the site to help identify the suspect, retrieving stolen vehicles that contain GPS trackers enabling their location to be observed, and recovering stolen mobile phones where victims of theft have provided the police with the location of the phone (for example by use of a tracking app).

The Bill

Clause 19 would add new sections 26A-26C to the Theft Act 1968 to give police a new power to enter premises without a warrant to search for (and seize) suspected stolen goods.

Under new section 26A, a police officer of at least the rank of inspector would be able to authorise a constable to enter specified premises and to search those premises for specified items (both the premises and the items would be specified in the terms of the authorisation). An officer could only give an authorisation if satisfied that there were reasonable grounds to believe that:

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91 As above

92 As above

93 Home Office, Correspondence: Pursuing all reasonable lines of enquiry: letter to police leaders, 28 August 2023

- the specified items were stolen goods;
- the specified items were on the specified premises; and
- it would not be reasonably practicable to obtain a warrant for entry and search (under section 26 of the 1968 Act, which deals with search warrants for stolen goods, or any other enactment) without frustrating or seriously prejudicing its purpose.

The search powers conferred by an authorisation would have to be executed by a uniformed officer within 24 hours of the authorisation having been given and at a reasonable hour (unless exercising them at a reasonable hour might frustrate or seriously prejudice the purpose of the search).

New section 26B would allow a constable lawfully exercising search powers under a section 26A authorisation to seize anything on the specified premises (whether or not it is a specified item under the terms of the authorisation), provided they have reasonable grounds to believe:

- that it is stolen goods or evidence in relation to an offence of theft; and
- that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

The Explanatory Notes state that this would mean, for example, if the police "enter a property to search for one particular stolen phone, but find during their search several other phones they reasonably believe to be stolen, these phones can also be seized".[94]

New section 26C would provide that the search and seizure powers would not extend to items subject to legal privilege, excluded material or special procedure material.[95]

The Government says this new power "is intended to support the police in their commitment" in their commitment to follow up all reasonable lines of enquiry "by giving them an additional tool to do so, and facilitate the swift investigation of acquisitive crime".[96] It considers that the existing requirement for police to obtain a search warrant to enter premises and search for stolen goods (either under section 26 of the 1968 Act or a more general provision, such as section 8 of PACE) is a barrier to the efficient investigation of acquisitive crime:

> The police currently have no general power to enter and search premises solely for the purpose of searching for and seizing stolen property without a warrant. The time taken to seek a warrant can be considerable. Whilst there is variation across the country, it can sometimes take days or even weeks for a non-urgent search warrant to be granted. The police have highlighted the

94 Explanatory Notes (PDF), para 341

95 As defined in sections 10, 11 and 14 of PACE

96 Home Office/Ministry of Justice, Policy paper – Criminal Justice Bill: Police powers, 22 November 2023

> burdensome nature of the warrant system as a factor negatively impacting their response to acquisitive crime. The Law Commission's 2020 review of search warrants found that the warrants process was inefficient, and delays caused by this increased opportunities for evidence to be lost, reducing the likelihood of successful prosecution, and for further offending to take place.[97]

Unlike clause 18 on bladed articles, clause 19 does not include any specific provision for a person to apply to a magistrates' court to recover goods seized by the police. However, the ECHR Memorandum for the Bill states "existing provision for the rightful owner of property to apply to have property in police possession restored to them applies".[98] It also notes that "An individual may, after the event, challenge the exercise of the power by the police via the police complaints process and/or by way of judicial review".[99]

3.4 Suspension of IP addresses and domain names

Background

The internet can be misused to facilitate a wide range of criminal activities, including scams, fraud, and the sale of illicit goods. One way of disrupting online criminal activity is to suspend Internet Protocol (IP) addresses and domain names that are being used for criminal purposes.

An IP address is a unique numerical identifier. Each device and network connected to the internet has its own IP address, which allows different devices and networks to communicate with each other across the web.

A domain name is the textual name assigned to each website on the internet (for example, www.parliament.uk). They are shorter and easier to remember than the website's IP address or the URL assigned to each individual webpage.

Domain names are managed by registries who are responsible for keeping a record of who owns which domain. Individual domain names are leased to end users by registrars accredited by the relevant registry. End users – those who operate the domain – are known as registrants.

The Government's proposals

In May 2021 the Government published a call for evidence on the Computer Misuse Act 1990, the main piece of legislation on computer-enabled crime.[100]

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97 As above. See Law Commission, Search Warrants [accessed 23 November 2023] for details of the 2020 review referred to in this extract.

98 Criminal Justice Bill: European Convention on Human Rights Memorandum (PDF), para 85. The existing power to apply to have property in police possession returned is set out in section 1 of the Police (Property) Act 1897.

99 As above, para 86

100 Home Office, Computer Misuse Act 1990: call for information, 11 May 2021

Based on the call for evidence, the Government published a further consultation in February 2023 on three proposals for legislative change.[101]

The proposal being taken forward in the Bill is to create a new power for law enforcement agencies to take down IP addresses and domain names that are being used for criminal purposes. This would be done by means of a court order requiring the organisation responsible for registering the IP address or domain name to prevent access.

The consultation acknowledged that existing voluntary arrangements between law enforcement and domestic IP address and domain name providers are "often effective".[102] For example, Nominet (the company responsible for domain names ending .uk, .cymru, and .wales) says that it has a policy to suspend domain names within 48 hours if law enforcement agencies provide evidence of criminal misuse.[103] However, the Government argued that a formal power is needed to:

- Provide an alternative route where voluntary arrangements are not available or not complied with.
- Help law enforcement agencies deal with overseas IP address and domain name providers, who may not respond to informal requests.
- Allow the UK cooperate more effectively with overseas law enforcement agencies.

Consumer group Which? said in response to the consultation that the proposed power to order IP address and domain name takedowns was "an appropriate and decisive tool" given that voluntary arrangements are not always sufficient.[104]

The Government's analysis of responses noted concerns that a statutory power could crowd out existing voluntary arrangements.[105] Nominet suggested that domain providers might insist that law enforcement use the statutory route, as it would have a clear basis in law. Nominet itself said that having considered the proposals it expects to continue using its voluntary procedures in the first instance and treat the statutory route as "effectively an appeal mechanism where a domain registrant disagrees with the suspension of their domain."[106]

101 Home Office, Review of the Computer Misuse Act 1990: consultation and response to call for information, 7 February 2023
102 Home Office, Review of the Computer Misuse Act 1990: consultation and response to call for information, 7 February 2023
103 Nominet, Home Office review of the Computer Misuse Act 1990, 3 March 2023
104 Which?, The Home Office's Review of the Computer Misuse Act 1990 and proposals for change - Which? response, 6 April 2023
105 Home Office, Review of the Computer Misuse Act 1990: analysis of responses, 14 November 2023
106 Nominet, Home Office review of the Computer Misuse Act 1990, 3 March 2023

Stakeholders also cautioned that domain takedowns were a blunt instrument that could have knock-on effects where domain names are shared by multiple parties.[107]

In its response to the consultation, the government said that there was "broad support" for *introducing a statutory power, although it expects that "voluntary arrangements will continue to be the primary route for action".[108]

There were two other legislative proposals in the February 2023 consultation: a power to require organisations to preserve data needed for investigations and an offence of possessing or using data obtained illegally. These are not being taken forward at this time. The Government said that further work was required to mitigate adverse impacts.[109]

Clause 20 and Schedule 3 to the bill would introduce the new power to take down IP addresses and domain names. They extend and apply to the whole of the UK.

The Bill

Clause 20 supports the provisions in **Schedule 3** to the Bill. Schedule 3 would make provision for IP address and domain name suspension orders.

Paragraphs 1-5: applications for suspension orders

Paragraph 1 would provide that an 'appropriate officer' may apply to the courts for an IP address suspension order. An IP suspension order would require a specified IP address provider to prevent access to a specified IP address for a specified period of time (up to a maximum of 12 months).

Paragraph 3 does the same for domain name suspension orders, which could be served on domain registries or registrars.

The organisations who could apply for suspension orders in England, Wales, and Northern Ireland are:

- the police
- the National Crime Agency
- HM Revenue and Customs
- the Financial Conduct Authority

[107] M3AAWG, Comments on Review of the Computer Misuse Act 1990: consultation and response to call for information, 4 April 2023; Nominet, Home Office review of the Computer Misuse Act 1990, 3 March 2023

[108] Response to consultations on tackling crime and anti-social behaviour, HCWS33, 14 November 2023

[109] Home Office, Review of the Computer Misuse Act 1990: analysis of responses, 14 November 2023

In England and Wales, the Gambling Commission could also apply. In Scotland, the appropriate officer must be a procurator fiscal.

Paragraph 2 requires all of the following conditions to be met before an IP address suspension order can be granted:

- Condition 1 is that the IP address is being used for serious crime. This is defined in paragraph 17 as a crime that could reasonably carry a prison sentence over three years; involves violence; results in substantial financial gain; or is carried out by a large number of persons with a common purpose.
- Condition 2 is that the serious crime involves a UK victim, UK perpetrator, or a UK-based device, or that the IP address is being used in connection with unlicenced gambling;
- Condition 3 is that it is necessary and proportionate to prevent access to the IP address;
- Condition 4 is that voluntary arrangements to prevent access to the IP address are either not available, or not suitable to law enforcement efforts to disrupt the serious crime in question.

Paragraph 4 includes similar conditions for domain name suspension orders. The main point of difference is in condition 2. For domain name suspension orders the appropriate officer could show that a UK person "will be" a victim of serious crime enabled by the specified domain name, as an alternative to showing that a UK person actually is a victim.

This would allow law enforcement to apply for a court order to pre-emptively prevent the creation of domain names where it can be predicted that they will be used for criminal purposes. The February 2023 consultation argued that this may be the case where the domain name mimics a legitimate organisation, or where it has been created using a known domain generation algorithm.

Nominet said in response to the consultation that it had "considerable reservations" about the power to prevent the creation of domain names:

> There are well-known problems with this idea which would be extremely difficult to legislate for. There are also the speech and human rights considerations, and strong legitimate use cases (for example security training companies frequently register what on the face of it could be malicious domains, but use them for the laudable objective of raising awareness of phishing and other fraudulent attacks).[110]

The global industry association Messaging Malware Mobile Anti-Abuse Working Group (M3AAWG) similarly noted that there would be technical challenges involved, and pointed out that domain registers already have anti-abuse policies. However, it said that despite the limitations "pre-emptive

[110] Nominet, Home Office review of the Computer Misuse Act 1990, 3 March 2023

measures are extremely useful and should be pursued."[111] Which? welcomed the proposal but asked the Home Office to consider other options, such as placing due diligence obligations on domain registries and registrars.[112]

Paragraph 5 provides that suspension orders may include non-disclosure requirements on the IP address or domain name provider against whom it is made.

Paragraphs 6-10: procedures for suspension orders

Paragraph 6 would allow a judge to discharge or vary a suspension order. Non-disclosure requirements could remain in effect after the order has been discharged.

Paragraph 7 would allow officers to apply to the court for a suspension order to be extended. There would be no limit on the number of times the specified period may be extended, but each extension could be for no more than 12 months.

Under paragraph 9 suspension orders could be served on persons in or outside the UK.

Paragraph 10 would allow rules of court to make further provision for procedures and practice in connection with procedures relating to suspension orders. The Bill itself does not include provisions relating to appeals, for example.

As explained in the Bill's Delegated Powers Memorandum, independent Rule Committees make and maintain the rules that govern the procedure and practice of the criminal courts:

> Rules of court may make provision at a level of detail that is not appropriate to be made in primary legislation. The point of allowing the Rules to provide the supplementary procedures is to keep criminal procedure consistent and easy to find, and to make it possible for procedures to be up to date and efficient in the light of experience.[113]

Paragraphs 12-19: definitions and interpretation

Paragraphs 12-19 define terms used in the Schedule. For example, clauses 14-16 provide definitions for the categories of person who could be served with a suspension order: IP address providers, internet domain registries, and internet domain registrars. Clause 18 sets out who is considered a 'UK person' for the purpose of the Schedule.

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111 M3AAWG, Comments on Review of the Computer Misuse Act 1990: consultation and response to call for information, 4 April 2023

112 Which?, The Home Office's Review of the Computer Misuse Act 1990 and proposals for change - Which? response, 6 April 2023

113 Home Office, Criminal Justice Bill: delegated powers memorandum, 15 November 2023, para 30

3.5 Access to driver licensing records

Background

Under section 71 of the Criminal Justice and Court Services Act 2000, the Secretary of State may make driver licensing records held under Part III of the Road Traffic Act 1988 available for use by police constables (defined to include officers and civilian staff within UK territorial police forces and the British Transport Police) and National Crime Agency officers.

The Secretary of State may make regulations determining the purposes for which such information may be made available to police and National Crime Agency officers, and the circumstances in which they may further disclose any of the information made available to them. Regulations are currently in place in relation to driver licensing records accessed through the Police National Computer or the Law Enforcement Data Service.[114] The effect of these regulations is that when police or other law enforcement officers access driver licensing records using either of these means, they are restricted "primarily to purposes related to the enforcement of road traffic offences under the Road Traffic Act 1988, for example if a person has been stopped on suspicion of careless driving or for having an unroadworthy vehicle".[115]

The Explanatory Notes state that access is available for a wider range of purposes if police make direct contact with the Driver and Vehicle Licensing Authority (DVLA), but this takes more time and may involve disclosing operational policing information:

> Data can be obtained directly, and used for any purpose, by phoning the DVLA directly. However, this takes additional time and in certain circumstances, the police consider that it is not appropriate to disclose the sensitive operational information needed to satisfy the DVLA of the law enforcement need to obtain the driver information.[116]

The Government says the police and the National Crime Agency "have provided compelling and significant examples of where DVLA driver information could have better safeguarded the public should it have been available more promptly".[117] The Government is therefore proposing to use the Bill to widen law enforcement access to driver records.

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114 Regulation 2 of the Motor Vehicles (Access to Driver Licensing Records) Regulations 2001, as amended by the Vehicle Drivers (Certificates of Professional Competence) (Amendment) (No.2) Regulations 2008

115 Explanatory Notes (PDF), para 71

116 As above, para 72

117 Home Office/Ministry of Justice, Policy paper – Criminal Justice Bill: Police powers, 22 November 2023

The Bill

Clause 21 would replace existing section 71 of the 2000 Act with a new section 71. New section 71 would take a similar approach to existing 71, by allowing the Secretary of State to make driver licensing records available to "an authorised person" and requiring the Secretary of State to make regulations prescribing the purposes for which, and the circumstances in which, that information may be made available. These purposes and circumstances would only be permitted to relate to policing or law enforcement.

New section 71 would define "an authorised person" as a person under the direction and control of the chief officer of a body listed in subsection 71(4) who has been authorised by that chief officer to receive driver licensing information. The list of bodies would include UK territorial police forces, the British Transport Police and the National Crime Agency, as is currently the case, but would also include other police forces (including the Ministry of Defence Police, the Civil Nuclear Constabulary, Crown Dependency police forces and military police forces) and the Independent Office for Police Conduct.

Clause 21 would also add a new section 71A to the 2000 Act, which would enable the Secretary of State to issue a code of practice about the receipt and use of information under section 71.

The Government says the regulation-making power will be exercised after further engagement:

> The legislation will allow access to driver records for policing and law enforcement purposes and provide a regulation-making power for further provision to be made about the purposes and circumstances in which information may be made available. This will be done following engagement between the Information Commissioner's Office, DVLA and Department for Transport to ensure the new powers have the appropriate operational oversight. This will ensure officers and other authorised persons with operational need can access information quickly at the point of need.[118]

[118] As above

4 Sentencing and offender management

Clauses 22 to 31, concerning sentencing and offender management would apply and extend to England and Wales only.

4.1 Attendance at sentencing hearings

Background

The Government announced in an August 2023 press release that it would legislate for powers to compel offenders to attend their sentencing hearings.[119]

The Explanatory Notes include examples of several adults convicted of murder who have refused to attend their sentencing hearing in recent years. The notes state that these cases have led to a recognition of a need to clarify the courts powers to compel attendance at hearings.[120]

Families of victims in recent cases where offenders have refused to attend sentencing have spoken of the impact this has had on them and have called for a change in the law to force offenders to attend.[121] They have drawn attention to the fact that offenders who do not attend sentencing do not hear victim impact statements setting out how victims and families have been affected by the crime.

The courts currently have the power to order a person to be present in court. It is then a case of prison staff enforcing the order by using reasonable steps to bring the individual to the court from the prison or holding cell. This may, as a last resort and on a case-by-case basis, involve the use of reasonable force.

Prison service policy sets out the process and the various responsibilities between the court and prison officers.[122] The policy notes that a court has no legal right to direct a prison officer or governor to use force to compel a prisoner to attend court. It states that force may be used to get the prisoner to court as a last resort, providing the court has confirmed they must attend and all reasonable options to persuade the prisoner to attend have been

119 Gov.uk, press release, Offenders to be ordered to attend sentencing, 30 August 2023

120 Explanatory Notes (PDF), paras 76-77

121 For more detail on the campaign for a change in the law see House of Lords Library, In Focus, Forced to face justice: Will ordering attendance at sentencing hearings work?, 24 October 2023

122 HM Prison and Probation Service Policy Framework, Prevention of Escape: External Escorts, 31 July 2023, paras 4.243-4.249

exhausted. The policy states that "using force will only be justified, and therefore lawful, if is necessary, reasonable, and proportionate to the seriousness of the circumstances".

The Crown Prosecution Service has legal guidance for prosecutors involved in a case where a person refuses to attend, and the court and prosecution are satisfied that there is no good reason for the non-attendance.[123]

Where a prisoner refuses to attend and is not forced to, sentencing may take place in their absence.[124] A judge may also order that copies of their sentencing remarks and the statements from the victims' family are given to the offender.

The Bill

Clause 22 would create a power for the Crown Court to make an attendance order, directly ordering a person to attend their sentencing hearing.

An adult who refused to attend, without reasonable excuse, would commit a contempt of court. This would be punishable as if it were a criminal contempt of court, with up to two years in prison. A child who refused to attend would face a maximum penalty of a £2,500 fine.

The power in clause 22 would apply to adults and children convicted of an offence for which the maximum penalty is life imprisonment. A court will be required to consult with the Youth Offending Team when ordering the attendance of a child.

The court would be able to make such an order on application by the prosecution or of its own volition.

Clause 22 would also create a power for a judge to require prisons to produce adults in court for sentencing hearings. Prison officers and prisoner escort officers would be able to use reasonable force to achieve this where it was necessary and proportionate. The final decision on whether to use reasonable force would be one for prison and escorting staff.

It would be for the judge in each case to decide whether to order a person to attend court and/or to require the prison to produce the person. The Explanatory Notes state that the Government expect that judges will use their discretion when exercising the new powers to ensure that justice is done. The notes give an example of not ordering attendance where the person may cause significant disruption in court or where there are significant other factors (such as mental health or learning disabilities).[125]

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123 Crown Prosecution Service, Legal guidance: Defendant's refusal to attend Court, 23 September 2022

124 Criminal Procedure Rules 2020, rule 25.2

125 Explanatory Notes (PDF), para 81

Clause 22 states that the new powers would not limit any other powers of the court to compel attendance or any part of the law of contempt.

Comment

The Government's announcement that it would legislate on this issue was welcomed by those who have campaigned for a change in the law, including the families of victims in recent cases where offenders have refused to attend sentencing.[126] It was also supported by the opposition, with Kier Starmer calling for a change to the law to be made quickly.[127]

Concerns have been raised about the operation of any new powers to compel attendance. Commentators have said that where the person refusing to attend is to receive a life sentence for murder, particularly with a whole life order, the addition of extra time to the sentence may not be very persuasive.[128] Regarding enforcement, there are concerns that the use of force to secure attendance risks the safety of staff and may result in disruptive and offensive behaviour in the court in front of victims and/or their families causing further distress.[129] The then Lord Chief Justice raised these practicalities in an interview following the Government's August 2023 announcement and expressed his hope that they would be considered before legislating.[130]

The Explanatory Notes acknowledge that these provisions will not guarantee everyone will attend their sentencing when so ordered, but states that the policy intention is to clarify the existing law and reinforce the expectation that people should attend their sentencing hearing.[131]

Some, including the former Lord Chief Justice, Lord Thomas, have suggested that the court's proceedings should be broadcast into an offender's cell.[132] A Government factsheet published in respect of the bill responds to this suggestion stating that it is "considering whether other measures are necessary or appropriate to ensure the impact on victims and judges remarks are felt".[133]

126 Criminals to be forced to attend sentencing hearings, BBC, 31 August 2023

127 'Stop dragging your heels': Sunak told to force killers into sentencing hearings, ITV News, 21 August 2023

128 The Secret Barrister, Why murderers like Lucy Letby cannot be forced to appear in court, regardless of political posturing, inews, 21 August 2023

129 Sentencing Academy blog, Dr Gabrielle Watson, Refusal to Attend Sentencing, 27 August 2023

130 Forcing killers into the dock? The lord chief justice has doubts, The Times, 2 September 2023

131 Explanatory Notes (PDF), para 82

132 Pressure mounts on Rishi Sunak for law change after 'cowardly' Lucy Letby avoids facing victims' families at sentencing, Evening Standard, 21 August 2023
Matthew Scott, If killers won't go to court, take courts to their cells, The Telegraph, 21 August 2023

133 Gov.uk, Criminal Justice Bill (MoJ): Sentencing measures, updated 22 November 2023

4.2 Aggravating factor: grooming

Background

An aggravating factor is a factor that increases the seriousness of an offence and justifies increasing the severity of the sentence to be imposed.

Statutory aggravating factors are set out in legislation. Other aggravating factors are set out in sentencing guidelines produced by the independent Sentencing Council. Courts are required to follow any relevant sentencing guidelines, unless it is contrary to the interests of justice to do so.

The Government announced in a press release in April 2023 that it would "make being the leader of or involved in a grooming gang a statutory aggravating factor".[134] The press release said this reflected the Government's intention to ensure members and leaders of grooming gangs receive the toughest possible sentences.

Current sentencing guidelines state that when determining sentence for offences such as sexual activity with a child (contrary to section 10 Sexual Offences Act 2003) grooming behaviour against a victim increases the culpability of an offender.

The Bill

Clause 23 would create a new aggravating factor to apply when a court is sentencing an adult for a specified child sex offence[135] and that offence was facilitated by or involved the grooming of a child (a person aged under 18). The court would be required to treat the grooming as an aggravating factor. The aggravating factor would not apply where the person who committed the offence was a child (under 18) at the time of the offence. Clause 23 would require the judge to state in open court that the offence had been aggravated by grooming.

The grooming of a child would not need to be sexual.[136] It could be undertaken by the offender or a third party and committed against the victim of the underlying offence or a third party.

Where the grooming is undertaken or facilitated by a third party, the offence will be considered to be aggravated if the offender knew, or could reasonably have been expected to have known, about the grooming when the offence took place.

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134 Gov.uk, press release, PM to clamp down on Grooming Gangs, 3 April 2023

135 Listed in subsections (5) to (7) of the new section 70 that would be inserted into the Sentencing Act 2020 by clause 23.

136 Gov.uk, fact sheet, Criminal Justice Bill (MoJ): Sentencing measures, updated 22 November 2023

The person groomed need not be the victim of the offence. The Explanatory Notes state that this is to allow for a case, for example, where child A is groomed to recruit child B and an offence is committed against child B. [137]

The clause would not require that the grooming be undertaken as part of a "gang".

The Government notes this new aggravating factor will go further than the current sentencing guideline by creating an obligation to consider grooming undertaken or facilitated by a third party and grooming committed against a third-party.[138]

Clause 23 states that courts would continue to be able to treat grooming as an aggravating factor for offences not covered by the new provision.

This new aggravating factor would apply where a person is convicted of an offence on or after the date this provision comes into force. The ECHR Memorandum for the Bill states that the measure will have retrospective effect as the changes would apply to people who may have committed offences before this provision is brought into force but who have not yet been convicted. The Government says that Article 7 of the ECHR (no punishment without law) is not breached because the maximum penalty that could be imposed before and after commencement is unaffected.[139]

4.3 Aggravating factor: Domestic homicide - end of relationship

Background

The Domestic Homicide Sentencing Review

On 5 March 2021 the Victims' Commissioner and Domestic Abuse Commissioner wrote a joint letter to the Home Secretary, Lord Chancellor and Attorney General calling for (among other things) a review of sentencing in domestic homicide cases. The Commissioners argued that "some sentences received by men who kill their female partners or ex-partners do not reflect the seriousness of domestic abuse, nor do they reflect the fact that these homicides often follow a period of prolonged abuse", while on the other hand "the sentences received by women who kill their partners in self-defence, or after a long period of abuse" could appear "disproportionate", particularly in cases where the woman had used a weapon.[140]

137 Explanatory Notes (PDF), para 405
138 Letter from the Justice Secretary to the Chair of the Justice Committee (PDF), 14 November 2023
139 European Convention on Human Rights Memorandum (PDF), para 108
140 Victims Commissioner, Joint letter from Victims' Commissioner and Domestic Abuse Commissioner on domestic homicide, 5 March 2021

The Review was initiated by the then Justice Secretary Robert Buckland in March 2021, as reported on the Victims Commissioner website.[141] In September 2021 the Government appointed Clare Wade KC to conduct the Review.[142] Terms of reference were subsequently published in November 2021.[143]

The Domestic Homicide Sentencing Review, was published on 17 March 2023.[144] The Review noted that women comprise the majority of victims in domestic killings and said that there is insufficient recognition in law of the harms which their killings involve.

The review made 17 recommendations.[145] Recommendation 6 was that if a murder takes place at the end of a relationship, or when the victim has expressed the desire to leave the relationship, then this should be regarded as an aggravating factor. The Government, in its full response to the review published on 20 July 2023, committed to legislate to implement this recommendation.[146]

Sentencing for murder

Murder carries a mandatory life sentence. This can, but rarely does, mean that the offender will spend the rest of their life in prison. For most offenders who receives a mandatory life sentence the court will set a minimum term (which used to commonly be referred to as a "tariff"). In particularly serious cases a whole life order can be made, which means the offender can never be considered for release.

When setting the minimum term or deciding whether to impose a whole life order for murder, the court must have regard to the starting points for different types of murder set out in Schedule 21 of the Sentencing Act 2020.[147]

Having chosen a starting point, the court should then consider any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.[148] Detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.

Paragraphs 9 and 10 of Schedule 21 list a range of statutory aggravating and mitigating factors that may be relevant to murder. The court can also apply any aggravating and mitigating factors set out in general sentencing guidelines issued by the Sentencing Council (examples might include the

141 Victims Commissioner, Ministry of Justice to review laws that see domestic abuse victims get 'disproportionately high' sentences for acting in self-defence, 11 March 2021

142 Gov.uk, press release, Spotlight on domestic homicides as independent reviewer appointed, 9 September 2021

143 Ministry of Justice, Domestic Homicide Sentencing Review: Terms of Reference, 2 November 2021

144 Domestic Homicide Sentencing Review: Independent Review Clare Wade KC, CP 814, March 2023

145 Summarised in a table in section 10, p104

146 Gov.uk, Domestic Homicide Sentencing Review and government response, 17 March 2023

147 Section 322 Sentencing Act 2020

148 An aggravating factor is a factor that justifies increasing the severity of a sentence. A mitigating factor is a factor that justifies decreasing the severity of a sentence.

General guideline: overarching principles and Overarching principles: domestic abuse).

Secondary legislation - further aggravating factors

The Government has introduced secondary legislation to implement three other recommendations from the Domestic Homicide Sentencing Review. These changes will create two further statutory aggravating factors for murder and one statutory mitigating factor for murder.[149] The new statutory aggravating factors are:

- that the offender had repeatedly or continuously engaged in behaviour towards the victim that was controlling or coercive
- the use of sustained and excessive violence towards the victim, sometimes referred to as 'overkill.'

The new statutory mitigating factor is that the victim had repeatedly or continuously engaged in behaviour towards the offender that was controlling or coercive.

A draft statutory instrument, Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023 was laid on 23 October 2023 and will be subject to the affirmative procedure.[150] The Government tabled a motion to approve the instrument on 7 November 2023.Paragraph 19 of Schedule 23 to the Sentencing Act 2020 allows for the Lord Chancellor to amend Schedule 21 by regulations subject to the affirmative resolution procedure, following consultation with the Sentencing Council.

The House of Lords Secondary Legislation Scrutiny Committee questioned the Ministry of Justice on its consultation with the Sentencing Council on the proposals.[151] The Committee said the exchanges between the Council and the Ministry of Justice revealed that the Council had initially had reservations and had said that "the proposals will not have any impact on sentencing and that they risk complicating the sentencing process to the disadvantage of victims". In response, the Ministry of Justice had changed the wording of the overkill provision but retained its position on those relating to coercive behaviour.

The House of Lords Secondary Legislation Scrutiny Committee also asked the Ministry of Justice why the changes that would be made by this Bill and those in the statutory instrument were not made together. The Government explained that the proposals to be made by secondary legislation had been

149 Explanatory Notes, para 85

150 For details see: The Sentencing Act 2020 (Amendment of Schedule 21) Regulations 2023, Explanatory Memorandum and Letter from the Secretary of State for Justice to the Chair of the Justice Committee, (PDF) 23 October 2023

151 House of Lords, Secondary Legislation Scrutiny Committee, 1st Report of Session 2023–24, (PDF) HL Paper 3, 4 November 2023 para 61

announced in the Government's interim response to the review whereas the change now contained in the Bill was announced in a later full response and that this meant its implementation would also be later. The Committee said that whilst it understood the desire to make changes rapidly where possible, generally it is better policy making to make all the changes at the same time.[152]

The Bill

Clause 24 would insert a new aggravating factor into Paragraph 9 of Schedule 21 to be considered when determining the minimum term in relation to a life sentence imposed for murder.

It would apply where the offence was connected with:

- The end of the offender's intimate personal relationship with the victim
- The victim intending to bring about the end of that intimate personal relationship or
- A belief by the offender that the intimate personal relationship had ended or that the victim intended to bring about the end of the personal relationship.

This new statutory aggravating factor would apply to offences committed on or after the date the relevant provision comes into force.

The Government's announcement that it would create a new statutory aggravating factor for murder at the end of a relationship was welcomed by Clare Wade KC,[153] by the Domestic Abuse Commissioner,[154] and by the families of victims.[155]

4.4 Transfer of prisoners to foreign prisons

Background

On 3 October 2023 the Government announced it would legislate to allow the Government to transfer prisoners abroad to cells overseas rented from other

[152] House of Lords, Secondary Legislation Scrutiny Committee, 1st Report of Session 2023–24 (PDF), HL Paper 3, 4 November 2023, para 63

[153] Clare Wade KC, Garden Court Chambers, Coercive and controlling behaviour to become statutory mitigating factor - Clare Wade KC comments on Government's response to Domestic Homicide Sentencing Review, 20 July 2023

[154] Domestic Abuse Commissioner, Domestic Abuse Commissioner welcomes commitment to sentencing reform to provide more robust response to domestic homicides, 20 July 2023

[155] People who murder ex-partners could face longer sentences, Guardian, 20 July 2023

countries.[156] The Government said prisoners would be allowed to be moved to another country's prison estate provided the facilities, regime and rehabilitation were to the same standard as those in England and Wales.

This proposal is one of a number of measures the Government is taking to reduce pressures on prison capacity.[157] The Government's impact assessment states that "prisons in England and Wales are currently operating near total useable operating capacity".[158]

On 13 October 2023, the prison population was 88,225, the highest figure to date. On 13 October 2023, the population was 557 places short of 'useable capacity' (the number of prisoners that can be held given the need to provide different accommodation for different types of prisoner).[159] The latest prison population projections were released in February 2023 and project a rise to 94,400 prisoners by March 2025 and between 93,100 and 106,300 by March 2027.[160]

There is currently no legislation in England and Wales which provides for the transfer of prisoners to serve their sentence in another jurisdiction in a prison place rented by the Government.

Norway and Belgium have both previously rented prison places from the Netherlands.[161] The "Nova Belgica" agreement between Belgium and the Netherlands was in place between 2010 and 2016 and the "Norgerhaven" agreement between Norway and the Netherlands from 2015 until 2018.

The Bill

Clauses 25-29 would enable the transfer of prisoners from England and Wales to prison places rented in another country in circumstances where the UK and a foreign country have made an arrangement for the transfer of prisoners for this purpose.

Clause 26 would provide the Secretary of State with a power to issue a warrant for the transfer of a prisoner to another country to serve their sentence. It would allow for the prisoner to be handed over to a person representing the appropriate authority of the foreign country either at the point of departure from England and Wales or at the point of arrival in a

156 Gov.uk, press release, Foreign prison rental to ensure public protection, 3 October 2023

157 For details of other measures see the Library's insight, What is the Government doing to reduce pressure on prison capacity?, 19 October 2023

158 Criminal Justice Bill: prisons and offender management impact assessment (PDF), page 7, para 2

159 Ministry of Justice, Prison population figures: 2023

160 Ministry of Justice, Prison Population Projections 2022 to 2027, England and Wales (PDF)

161 See: Alison Liebling, Berit Johnsen, Bethany E Schmidt, Tore Rokkan, Kristel Beyens, Miranda Boone, Mieke Kox, An-Sofie Vanhouche, Where Two 'Exceptional' Prison Cultures Meet: Negotiating Order in a Transnational Prison, The British Journal of Criminology, Volume 61, Issue 1, January 2021, Pages 41–60 and Linda Kjaer Minke and An-Sofie Vanhouche, Renting cells abroad: Understanding contemporary policy responses to prison overcrowding, Nordic Journal of Criminology, Volume 24, Issue 1, February 2023 and University of Oxford, Faculty of Law blog, Steven De Ridder, Tilburg: A Belgian Prison Across the Border, 20 September 2013

foreign country. Clause 26 would also provide the Secretary of State with a power to issue a warrant for the return of a prisoner to the UK. The Secretary of State would also be given power to vary or revoke a warrant issued under this provision.

The sentence to be served by the prisoner would not be affected by a transfer abroad under these provisions. Time spent in another country would "count" in the same way as if the prisoner had not been transferred abroad. The jurisdiction for the sentence would be retained in England and Wales.

Clause 27 would enable the Secretary of State to designate individuals to detain and escort prisoners in transit between England and Wales and other countries.

Clause 28 would require the Secretary of State to appoint a "controller" to oversee the functioning and implementation of any arrangement made under these provisions. The controller would be required to keep the running of any prisons where prisoners are detained under these provisions under review and to report on them to the Secretary of State.

Clause 28 would also provide that the Chief Inspector of Prisons may inspect or arrange for the inspection of any prison where prisoners are detained under an arrangement made under these provisions and report to the Secretary of State.

Clause 29 would allow for the Secretary of State to make regulations making further provisions in connection with arrangements between the UK and a foreign country for such transfers. Clause 29 would provide the Government with powers to amend primary and secondary legislation, for the purposes of implementing and ensuring compliance with any international agreement made for the purpose of transferring prisoners to be detained in another state.

The Delegated Powers Memorandum states that this power is required to amend legislation which cannot be amended until negotiations with other countries are completed.[162] It states that if this power were not available, the Government would have to wait for an appropriate vehicle each time an agreement was negotiated to then be able to use the agreement. The Memorandum explains that since the reason for the agreement would be to increase prison capacity, this purpose would be defeated if there were a delay whilst primary legislation was drawn up and a bill passed through Parliament. The Government states that the power is therefore necessary. The Memorandum lists illustrative examples of the types of issues for which such a power could be used. These include to make amendments to the law concerning extra-territorial jurisdiction for offences committed by prisoners in a prison overseas in which places are being rented and to make provision

[162] Delegated Powers Memorandum (PDF), para 52

about a prisoner's right to judicial review for matters relating to their treatment in the prison abroad.[163]

The Government states that the specific terms of any treaty agreed would be subject to parliamentary scrutiny when the treaty text is laid before Parliament as part of the ratification procedure under the Constitutional Reform and Governance Act 2010.[164] Regulations made under clause 29 which amend primary legislation would be subject to the affirmative procedure. The Delegated Powers Memorandum says the affirmative procedure is appropriate for a "Henry VIII power" such as this. Regulations making amendments to statutory instruments would be subject to the negative procedure.

The Government's European Convention on Human Rights (ECHR) Memorandum for the Bill states that any agreement reached with another country would need to ensure the preservation of all rights of prisoners under the ECHR.[165] It states that any international agreements would engage certain articles of the ECHR (specifically Articles 2, 3 ,6, and 8), but that the provisions in the Bill do not themselves engage these articles. The memorandum states that the provisions in the bill concerning transfer do engage Article 5 of the ECHR (liberty and security) but that the measure falls within the authorised circumstances where deprivation of liberty is lawful.

The Government's impact assessment states that as part of the policy, it will need to ensure prisoners' rights to family life are protected in accordance with Article 8, including "access to visitation on a par with what would be provided in HMPPS [HM Prison and Probation Service]". The impact assessment states "it has not been decided who would bear the costs of these visits".[166]

The impact assessment states that there is significant uncertainty regarding the number of prisoners who would be involved and the cost per prison place as this would depend upon the specifics of an agreement with another country and no agreements have yet been reached.[167]

Comment

The announcement that the Government intends to rent prison places overseas met with criticism from charities that support prisoners and their families and campaign for prison reform.

Chief Executive of the charity PACT, Andy Keen-Downs, condemned the policy, stating that "as well as considering the impact on prisoners' rehabilitation and the cost to the taxpayer, we should also pause to think about the families

163 Delegated Powers Memorandum (PDF), para 56
164 See: Commons Library briefing, How Parliament treats treaties
165 ECHR Memorandum, (PDF), para 122-123
166 Impact Assessment, Criminal Justice Bill: Prisons and offender management (PDF), p10, para 28
167 Impact Assessment, Criminal Justice Bill: Prisons and offender management (PDF), paras 55, 56 and 61

and children affected". He questioned how family visits would be maintained when a prisoner was sent abroad, stating that anything that undermines family contact undermines efforts to cut crime.[168] Anne Fox, Chief Executive of the charity Clinks, said she was "particularly disappointed these proposals so fundamentally compromise the Ministry of Justice's commitment to family and relationship support for people in prison".[169]

Christopher Stacey, Chief Executive of Prisoners Abroad, a charity that supports British prisoners held overseas, opposed the policy. He highlighted the "significant levels of isolation and trauma" caused by being imprisoned so far away from home and family, not understanding the language and being excluded from opportunities to work and participate in effective rehabilitation programmes".[170]

The Howard League for Penal Reform and the Prison Reform Trust have asked a series of practical questions about the policy, including which prisoners would be transferred, how visits would be facilitated, what the cost would be and what safeguards would be in place.

Andres Coomber, Chief Executive of The Howard League noted the concept of renting cells abroad is not new, with both Norway and Belgium having rented cells from the Netherlands. She said such arrangements are not simple, that the governments involved have faced many practical problems and that "both the Norwegian and Belgian experiments only lasted a few years before being quietly dismantled".[171]

Mark Day, Deputy Director of the Prison Reform Trust, said the policy of renting prison places abroad had had "decidedly mixed results". He noted the Norwegian scheme ran for three years from 2015–2018 and the arrangements in Belgium for seven years from 2009–2016 with neither Norway nor Belgium extending their contracts with the Netherlands.[172] Mark Day said that Norway and Belgium had both sought to house primarily foreign national prisoners in a neighbouring state. He said it is possible the UK Government will also seek to take this approach but cautioned that this may not be straightforward and could be resisted by the receiving country.

Both the Howard League and the Prison Reform Trust have questioned how the policy would solve the immediate capacity crisis, noting the need for an agreement with another county to be reached and for legislation to be passed before any prisoners could be transferred.

168 Pact, press release, Pact CEO condemns the news that the Government is considering renting prison places abroad, undated

169 Clinks blog, Why we need to pursue alternatives to renting foreign prison places, 13 October 2023

170 Prisoners Abroad, press release, Prisoners Abroad's comment on Alex Chalk's speech, 4 October 2023

171 Howard League for Penal Reform blog, Renting prison cells overseas, 4 October 2023

172 Prison Reform Trust, Blog: Renting foreign prison places—the unanswered question, 10 October 2023

4.5 Management of offenders convicted of coercive or controlling behaviour

Background

Multi-Agency Public Protection Arrangements (also known as MAPPA) are statutory arrangements that require the police, probation and prison service to work together, with other agencies (including, local authorities, local authority or social housing providers, and health agencies) to manage the risks posed by violent, sexual and terrorist offenders living in the community.[173]

The official MAPPA website explains how the MAPPA process is used to manage relevant offenders:

> MAPPA is not a statutory body in itself but is a mechanism through which agencies can better discharge their statutory responsibilities and protect the public in a co-ordinated manner. MAPPA allows agencies to assess and manage offenders on a multi-agency basis by working together, sharing information and meeting to ensure that effective plans are put in place. Agencies retain their full statutory responsibilities and obligations at all times. All MAPPA offenders are assessed to establish the level of risk of harm they pose to the public. Risk management plans are then worked out for each offender to manage those risks. These set out the action that needs to be taken to minimise the risk. Some measures that can be considered are:
>
> - Ensuring offenders have suitable accommodation, which can include requiring the offender to reside at a probation run Approved Premises on release.
> - Placing controls on the offender's behaviour through strict licence conditions which can include not to have contact with a named individual or not to enter a defined exclusion zone
> - Intensive supervision by a probation officer offender manager and/or community public protection police
> - Ensure the offender attends identified accredited programmes and other interventions (such as drug and alcohol programmes) aimed at reducing further offending.
>
> All offenders supervised by probation must comply with the conditions of their order or licence. Any failure to do so will result in action being taken. For those on licence, this could mean a return to prison. A failure to comply does not necessarily mean that an offence has been committed; it could be a missed appointment or any behaviour which gives cause for concern.[174]

[173] Sections 325-327B of the Criminal Justice Act 2003

[174] MAPPA, How Does MAPPA Work?

There are three categories of offender who can be managed through MAPPA, and three levels of MAPPA management. The official MAPPA website provides details:

> **Category 1** - Registered sexual offenders are required to notify the police of their name, address and other personal details, under the terms of the Sexual Offences Act 2003. The length of time an offender is required to register with the Police can be any period between 12 months and life, depending on the age of the offender, the age of the victim, the nature of the offence and the sentence received.
>
> **Category 2** - Violent offenders who have been sentenced to 12 months or more in custody or to detention in hospital and are now living in the community subject to Probation supervision.
>
> **Category 3** - Other dangerous offenders who have committed an offence in the past and are considered to pose a risk of serious harm to the public.
>
> **Levels**
>
> There are three levels of MAPPA management. They are mainly based upon the level of multi-agency co-operation required with higher risk cases tending to be managed at the higher levels. Offenders will be moved up and down levels as appropriate.
>
> **Level 1** - Ordinary agency management is for offenders who can be managed by one or two agencies (eg Police and/or Probation). It will involve sharing information about the offender with other agencies if necessary and appropriate.
>
> **Level 2** - Active multi-agency management is for offenders where the ongoing involvement of several agencies is needed to manage the offender. Once at level 2, there will be regular multi-agency public protection meetings about the offender.
>
> **Level 3** - Same arrangements as level 2 but cases qualifying for level 3 tend to be more demanding on resources and require the involvement of senior people from the agencies, who can authorise the use of extra resources. For example , surveillance on an offender or emergency accommodation.[175]

Only offenders who fall within category 1 or category 2 will be automatically managed through MAPPA. Offenders are classed as category 3 on a discretionary basis taking into account factors such as the nature of the offence they have committed and the degree of multi-agency management they are thought to require.

MAPPA guidance on the Identification and Notification of MAPPA Offenders provides further details of how offenders are assessed. It notes that domestic abuse offending can be perpetrated in a range of ways, not all of which will involve a sexual or violent offence that would result in automatic MAPPA management as a category 1 or 2 offender:

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[175] MAPPA, MAPPA Basics: Categories & Levels

> Domestic abuse can take a variety of forms and can result in a wide range of convictions, some of which are not automatically subject to MAPPA management. For example a conviction for Criminal Damage where the offence took place within a relationship could be indicative of more serious risk. Due to the serious harm caused by domestic abuse, all domestic abuse perpetrators not automatically subject to MAPPA must be considered for referral to Category 3 management. Those convicted under s.76 of the Serious Crime Act 2015 (Controlling or Coercive Behaviour in an Intimate or Family Relationship) do not fall under Sch. 15 and so offenders sentenced under this section are not automatically MAPPA-eligible but must be considered for Category 3.
>
> Those with convictions for stalking or who display stalking behaviours must also be considered for referral to Category 3 if they do not fall into Category 2 management. Those convicted under s.2A of the Protection from Harassment Act 1997 (Stalking) and those sentenced to less than 12 months for offences under s.4A of the Protection from Harassment Act 1997 (Stalking Involving Fear of Violence or Serious Alarm or Distress) do not fall under sch.15 and sentences for these offences may not give an appropriate indication of the true risk of serious harm.
>
> All available information and intelligence should be assessed when considering a case for Category 3 as the conviction may not give an appropriate indication of the true risk of serious harm and a multi agency approach could add value to the overall management of that individual and the reduction of risk to actual and potential victims. For more information see Chapter 27 - Domestic Abuse and Stalking.[176]

The then Home Secretary in a written statement February 2023 said the Government would change the law so that a person convicted of the offence of controlling or coercive behaviour (section 76 of the Serious Crime Act 2015) would be automatically managed through MAPPA, rather than this being left to the discretion of criminal justice agencies.[177] They would be treated as a category 2 offender rather than a category 3 one for MAPPA purposes.

The Bill

Clause 30 would provide automatic (rather than discretionary) MAPPA management of offenders convicted of controlling or coercive behaviour in an intimate or family relationship who are sentenced to 12 months or more.[178]

Comment

The charity Women's Aid has said that including offenders convicted of coercive control within MAPPA signals that the crime is being taken more seriously within the justice system. It states that this is crucial given the links between coercive control and homicide. Women's Aid says it remains unclear how many women the change would protect given the limited number of offenders convicted of this offence. It calls for education and awareness

176 MAPPA, Guidance, Identification and Notification of MAPPA Offenders paras 6.16-6.18

177 UIN HCWS564, Tackling violence against women and girls, 20 February 2023

178 This includes suspended sentences where the custodial term is 12 months or more

raising, and specialist training for all professionals to increase the identification and successful prosecution of this crime.[179]

4.6 Extension of polygraph conditions

Background

Most people released from prison in England and Wales are released on licence into the community, meaning they are supervised by the probation service and are required to comply with certain conditions.

The law currently allows for certain adult offenders to have a condition included in their licence requiring them to undergo polygraph testing.[180] These offenders are sex offenders, specified terrorist offenders and (under a pilot scheme) certain offenders convicted of offences concerning domestic abuse who have received a custodial sentence of 12 months or over.

The use of polygraph testing was introduced in 2014, following a pilot, for people convicted of certain sexual offences. Its use was extended to certain terrorist offenders by the Counter Terrorism Sentencing Act 2021 and to certain domestic abuse offenders under a pilot scheme which began in 2021 using provisions in the Domestic Abuse Act 2021.[181]

There is currently no provision to allow for a polygraph condition for:

- an offender convicted of murder
- an offender serving concurrent sentences for a relevant sexual offence and a non-sexual offence, where the sentence for the sexual offence ends before the sentence for the non-sexual offence.[182]

The Government considers that the ability to impose a polygraph condition should be extended to cover these two situations.

The Government also wants to address a "gap" in the polygraph testing regime with regard to non-terrorist offences with a terrorist connection. The Counter Terrorism Act 2008 lists specific non-terrorist offences that can be found to have a terrorist connection (when committed after the coming into force of the relevant provision of the 2008 Act).[183] The Counter Terrorism Sentencing 2021 Act allows for any non-terrorist offence, punishable with over

179 Women's Aid, Women's Aid responds to changes to the justice system set out in The King's Speech and how they will impact on protecting survivors, 16 November 2023

180 Section 28 Offender Management Act 2007

181 Section 32 Counter Terrorism Sentencing Act 2021 and section 76 Domestic Abuse Act 2021

182 Concurrent sentences are served at the same time as opposed to consecutive sentences that are served one after the other. For details see Sentencing Council, Totality guideline, effective 1 July 2023

183 Schedule 2 Counter Terrorism Act 2008

two years' imprisonment (committed after the coming into force of the relevant provision of the 2021 Act) to be found to have a terrorist connection.[184] The Government wishes to extend polygraph conditions to those who were convicted of any non-terrorist offence, committed before the relevant provisions of the 2008 or 2021 Acts came into force where the offence is considered to have had a terrorist connection.

The Bill

Clause 31 would allow for a polygraph condition to be imposed in the following circumstances, where the person as aged 18 years or over on the day of release:

- where the Secretary of State considers an offender convicted of murder poses a risk of committing a relevant sexual offence[185] on release on licence
- where an offender is serving a relevant custodial sentence in respect of an offence who, at any earlier time during that sentence, was also serving a relevant custodial sentence for a relevant sexual offence.[186]

Clause 31 would also extend the use of polygraph conditions for terrorist offenders. It would enable the Secretary of State to extend polygraph conditions to offenders where they are satisfied that the offence was, or took place in the course of, an act of terrorism or was committed for the purposes of terrorism.

The ECHR Memo states that while certain ECHR rights are engaged by this clause, it does not breach any of these rights. It says Article 5 (liberty and security) is not breached as any detention following a recall to prison in connection with a polygraph test will be in accordance with the sentence of imprisonment as set by the court. Article 6 (fair trial) includes a right not to incriminate oneself. The Government says that safeguards against an unlawful interference with Article 6 are built into the existing legislation and accompanying policies. The Government says that Article 7 (no publishment without law) is not breached because polygraph conditions are licence conditions that are part of the enforcement of the sentence handed down by the court and are not a new or additional penalty.[187]

184 Section 1 Counter Terrorism Sentencing Act 2021
185 Relevant sexual offences are specified in section 28(4) of the Offender Management Act 2007
186 Relevant offences are specified in section 28 of the Offender Management Act 2007
187 ECHR Memorandum, (PDF), para 124-128

5 Proceeds of crime

5.1 Background

The Proceeds of Crime Act 2002

The Proceeds of Crime Act 2002 ('POCA') sets out the legislative scheme for the recovery of criminal assets. It was intended to:

- ensure that criminals do not profit from their criminal activity;
- deter the commission of further offences; and
- reduce the monies available to criminals to fund further criminal enterprises.

Confiscation following conviction is dealt with by Part 2 of POCA.[188] A confiscation order may be made under section 6 if the defendant has been convicted of an offence in the Crown Court or committed to the Crown Court for sentencing following conviction for certain offences.

The Court must also decide whether the defendant has a "criminal lifestyle" and whether they benefitted from their general criminal conduct.

The question of whether the defendant has a criminal lifestyle is determined according the whether the offence they have been convicted of satisfies one of three tests:[189]

- It is an offence listed in Schedule 2 (for example drug and other forms of trafficking, money laundering, counterfeiting and blackmail);
- The offence constitutes conduct forming part of a course of criminal activity and the defendant benefitted from it; or
- It was an offence committed over a period of at least six months, from which the defendant benefitted.

If the defendant has a criminal lifestyle the confiscation hearing will consider all of their criminal conduct, including conduct which occurred before or after POCA was passed. If they are not found to have a criminal lifestyle, the

[188] Parts 3 and 4 govern confiscation in Scotland and Northern Ireland respectively.
[189] Section 75

hearing will only consider the offences for which the defendant was convicted in the proceedings that led to the application for a confiscation order.[190]

A person is deemed to benefit from criminal conduct if they obtain property as a result of or in connection with the conduct.[191] The burden of proving that the defendant has obtained property, and the amount of that property, lies with the prosecution to the civil standard of proof (the balance of probabilities).

If the court decides that the defendant has benefitted from their criminal conduct it must decide on a recoverable amount[192] and make an order requiring them to pay that amount if it would not be disproportionate to do so.[193]

Section 10 requires the court to make certain statutory assumptions for the purposes of making a confiscation order if it decides a defendant has a criminal lifestyle, including:

- that any property transferred after the commencement of proceedings was obtained as a result of general criminal conduct;
- that any property held at the date of conviction was obtained as a result of general criminal conduct; and
- that any expenditure incurred after the commencement of proceedings was met from property obtained from general criminal conduct

POCA further provides for search and seizure powers; powers to apply for production orders and disclosure orders; and allows for the freezing or restraint of assets to prevent dissipation prior to a confiscation order being made.

POCA also enables the recovery of the proceeds of crime in the absence of a conviction via civil recovery, cash seizure, and taxation powers.

Part 5 establishes an extended regime of civil recovery of the proceeds of unlawful conduct. These procedures provide an alternative to confiscation after conviction if it can be shown on the balance of probabilities that there are "reasonable grounds" for suspecting that the assets to be forfeited are the proceeds of unlawful conduct.

Law Commission recommendations

In 2018 the Law Commission agreed with the Home Office to review the law on confiscation after conviction in Part 2 of POCA.

190 Section 6
191 Section 76
192 The recoverable amount is an amount equal to the defendant's benefit from the conduct concerned: s 7
193 S 6(5)

The aims of the project were to improve the process for making confiscation orders, ensuring the fairness of the confiscation regime, and optimising the enforcement of confiscation orders.

In its final report, published in 2022,[194] the Law Commission noted the long-standing perception that the regime is not effective, citing court statistics from 2021 indicting that of £2.35 billion in outstanding confiscation orders, only £143 million (6.1%) was thought to be recoverable.[195]

However, the Law Commission considered this debt to be an artificial number, reflecting "considerable problems with the operation of the regime, both in terms of the calculation of the orders and in terms of their enforcement".[196]

The Law Commission made numerous recommendations for reform of Part 2, including:

- That the objective of Part 2 should be put on a statutory footing. This should be "to deprive a defendant of their benefit from criminal conduct, within the limits of their means".[197]
- That confiscation proceedings should be streamlined, by facilitating the exchange of information between the defendant and the prosecution, as well as encouraging them to reach an agreement.[198]
- Improvements to the way the benefit and recoverable amount are determined by the court to enable a more accurate and realistic calculation of the figures that form the basis of a confiscation order.[199]
- The codification of principles for dealing with assets which have been hidden, in order to make the law clearer and more accessible.[200]
- Measures to strengthen the regime for enforcing confiscation orders, including better protection for third party interests, enabling them to make representations at an earlier stage in proceedings.[201]
- Changes to the regime to protect the value of assets in confiscation proceedings aimed at preventing defendants from frustrating the purpose of confiscation proceedings, by dissipating assets before an order is made and enforced.[202]

194 Confiscation of the proceeds of crime after conviction: a final report (PDF), HC 828, Law Com No 410, 2022
195 Para 1.13
196 Para 1.16
197 Part 1
198 Part 2
199 Part 3
200 Part 4
201 Part 5
202 Part 7

The Government responded in October 2023, accepting many the Law Commission's recommendations and committing to give further consideration to others.[203]

Economic crime plan

In 2023 the Government published its second Economic Crime Plan 2023-2026. It defines economic crime as

> ... a broad category of activity involving money, finance or assets, the purpose of which is to unlawfully obtain a profit or advantage for the perpetrator or cause loss to others.[204]

It set out three outcomes under separate pillars:

- Reducing money laundering and recovering more criminal assets;
- Combatting kleptocracy and reducing sanctions evasion;
- Cutting fraud.

The plan committed to "explore a mechanism to enable suspected illicit funds held in suspense accounts to be used in tackling economic crime, while protecting customers' access to their legitimate funds".[205]

The Bill's European Convention on Human Rights ('ECHR') memorandum also discusses the Article 6 right to a fair trial in the context of the criminal lifestyle assumptions. It suggests that the measures in the Bill will assist the courts and enhance the protection of an offender's Article 6 rights.[206]

It does not accept that the provisions which would prevent a defendant from recovering their costs in restraint proceedings engage Article 6, because it would not lead to the permanent deprivation of any property. However, notwithstanding this position, it states that the Home Office considers the safeguards sufficient to ensure the regime is ECHR compliant.[207]

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203 Government's response to the Law Commission's review of confiscation, Home Office, 23 October 2023

204 Economic Crime Plan 2 2023-2026, Home Office & HM Treasury, 2023

205 Economic Crime Plan 2 2023-2026, Home Office & HM Treasury, 2023, 6.20

206 Crime and Justice Bill: ECHR Memorandum, para 150

207 As above, para 156

5.2 The Bill

Confiscation under POCA

Clause 32 and Schedule 4 would amend Part 2 of POCA and give effect to the Government's acceptance of the following Law Commission recommendations:

- To introduce a statutory objective for the confiscation regime;
- To better prioritise compensation for victims and legitimate third-party interests;
- To create a procedure for the early resolution of confiscation;
- To make it easier to restrain assets to preserve their value during an investigation;
- To extend the enforcement powers of the magistrates' courts to the Crown Courts;
- To introduce confiscation assistance orders to enable appropriately qualified persons assist defendants with satisfying orders;
- To allow for the provisional discharge of confiscation orders where there is no realistic prospect of recovery;
- To clarify the courts' approach to hidden assets.

Part 1 of Schedule 4 would insert a new clause into Part 2 of POCA defining the principal objective as

> To deprive the defendant of the defendant's benefit from criminal conduct, so far as within the defendant's means.[208]

Any court or person exercising powers under Part 2 of POCA would be required to do so in a way best calculated to further that objective.

Part 2 of Schedule 4 would amend the operation of the criminal lifestyle provisions in POCA. It would introduce prosecutorial discretion, by providing that the court should only determine whether the defendant had a criminal lifestyle under section 6 if asked to do so by the prosecutor.[209]

It would also amend section 10 of POCA to widen the application of the "serious risk of injustice" test, which results in the disapplication of the

[208] New section 5A, inserted by Schedule 4, para 1
[209] Paragraph 2

statutory assumptions.[210] Courts would be required to consider all the circumstances of the case when considering whether there would be such a risk.[211]

Further, it would add new offences to Schedule 2 of POCA, meaning that the criminal lifestyle provisions automatically apply in relation to two environmental offences and the offence of keeping a brothel for prostitution.[212]

Part 3 of Schedule 2 would amend section 7 of POCA, which determines how the recoverable amount is calculated.

It would include additional categories of property which could be ignored when calculating the recoverable amount, recognising that property should not be included if it has been seized, or legitimately divested by the defendant.[213]

It would also insert a new section 9A into POCA, providing for how hidden assets should be calculated.[214] It require the courts to treat as hidden assets any difference between the defendant's benefit from the criminal conduct[215] and the available amount, [216] unless there are other circumstances that account for the disparity.

It would also codify certain principles established in case law about the value of property. [217] It would provide that where property was partially obtained through criminal conduct, only that proportion of it would be treated as a benefit. It would further insert a new section 81A into POCA to calculate the proportion of the value of property obtained via a mortgage would be treated as a benefit. The explanatory notes state that specific provision is required for mortgaged because of the way the transaction is processed.[218]

Part 4 would amend section 13 of POCA, which governs the treatment of priority orders. These are compensation orders, surcharge orders, unlawful profit orders, and slavery and trafficking reparation orders. The amendment

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210 As noted above, section 10 requires the court to make certain assumptions for the purposes of making a confiscation order if it decides a defendant has a criminal lifestyle, including: that any property transferred after the commencement of proceedings was obtained as a result of general criminal conduct; that any property held at the date of conviction was obtained as a result of general criminal conduct; and that any expenditure incurred after the commencement of proceedings was met from property obtained from general criminal conduct.

211 The explanatory notes explain that the existing provision has been narrowly construed by the courts as to apply only to prevent double counting: Explanatory Notes to the Criminal Justice Bill 2023-24, para 449

212 Paragraph 4

213 Paragraph 5

214 Paragraph 6

215 Section 8

216 Section 9

217 Paragraph 9

218 Explanatory Notes to the Criminal Justice Bill 2023-24, para 460

would require the court to direct that sums recovered under a confiscation order would be applied to priority orders.[219]

Part 5 would make a number of changes to the procedure for confiscation proceedings and provides for a process called the Early Resolution of Confiscation ("EROC") process. [220] According to the explanatory notes, this formalises an existing practice, the purpose of which is to fast-track agreed orders and narrow the issues in dispute.[221]

Part 6 would insert a new section 22A into POCA, allowing for the subsequent reconsideration of a confiscation order, where the value has decreased.[222]

It would also provide for the provisional discharge of confiscation orders.[223] This would enable orders to be temporarily placed in abeyance where there was no reasonable prospect of recovery. It would retain the possibility of recovery the property as the order could be revoked. According to the explanatory notes, "unlimited enforcement is not viable because it is not without costs ultimately borne by the taxpayer".[224]

Part 7 would amend the regime for the enforcement of confiscation orders.

It introduced new sections 13ZA and 13ZB into POCA, which would require the courts when making a confiscation order to also make an enforcement plan if there are reasonable grounds to believe that the defendant might default.[225] This would include drafts of orders the court could make in the event of a default, and date for an enforcement hearing.

It would also replace section 35 of POCA with new sections 35A to 35D.[226] These would allow for the Crown Court to enforce confiscation orders where appropriate. The Crown Court would be responsible if the court that made the confiscation order also prepared an enforcement plan, or determined that the Crown Court should be responsible.

New section 35E of POCA would provide that at the initial enforcement hearing following a default, the court must make any orders that were set out in draft in the enforcement plan.[227] New section 35F would enable a court to compel a defendant to attend court to attend court at any stage of confiscation enforcement proceedings.[228]

New section 35H would give the court the power to appoint any person the court thinks appropriate to advise and assist the defendant in satisfying the

219 Paragraph 11
220 Paragraph 12, new sections 15A & 15B POCA
221 Explanatory Notes to the Criminal Justice Bill 2023-24, para 465
222 Paragraph 14
223 Paragraph 15, new sections 24A, 24B & 24C POCA
224 Explanatory Notes to the Criminal Justice Bill 2023-24, 467
225 Paragraph 16
226 Paragraph 17
227 Paragraph 18
228 Paragraph 19

confiscation order.[229] The explanatory notes explain that this follows a successful pilot scheme and the related Law Commission recommendation.[230]

Certain seizure and collection powers currently exercised by the magistrates' court would also be extended to the Crown Court.[231]

Part 8 would amend the regime under POCA for making restraint orders.

It would codify the "risk of dissipation" test which is currently applied by the courts when considering restraint applications. It would do so by providing that an additional condition that must be met in order to impose a restraint order under section 41 is that there is a real risk that relevant property will be dissipated otherwise.[232]

New clause 46A would also provide that the defendant will not be entitled to an order for costs in restraint proceedings, unless the prosecutor had acted unreasonably.[233]

Part 9 would extend the ability of the police to apply to the Crown Court for a management receivership order. This is the appointment of a person to manage a defendant's property pending their conviction, including selling seized assets in order to preserve their value.[234]

Part 10 would amend a number of provisions relating to appeals in POCA proceedings. According to the explanatory notes, these are intended to clarify and codify existing appeal rights, and do not introduce any new rights of appeal.[235]

Compatibility with the European Convention on Human Rights

The Government's ECHR memorandum notes that the Bill's provisions, and the existing scheme, engage the following Convention rights:

- Article 8 – right to private and family life
- Article 1 of Protocol 1 – right to peaceful enjoyment of possessions

It acknowledges that the confiscation regime constitutes an interference with the qualified right to the peaceful enjoyment of possessions. However it argues that the Bill's provisions either retain or enhance existing measures which ensure that the legislation can be applied compatibly with Convention rights. For example, the inclusion of a statutory objective will provide the

229 Paragraph 21
230 Explanatory Notes to the Criminal Justice Bill 2023-24, para 476
231 Paragraphs 22-24
232 Paragraph 25
233 Paragraph 30
234 Paragraph 31
235 Explanatory Notes to the Criminal Justice Bill 2023-24, para 487

courts with a criterion against which the proportionality of its application can be measured.[236]

Likewise, it argues that the amendments to the provisions governing the calculation of the recoverable amount would make this more accurate, and thus more likely to be proportionate.

Overall it argues that the combined effect of the various measures would be to make it "clearer, on the face of legislation, when it will be necessary and proportionate to interfere with a defendant's rights.[237]

It makes the same argument with respect to Article 8 rights, noting that there is scope within the scheme to put Article 8 arguments forward, and that the courts will closely scrutinise any attempt to confiscate an offender's home.[238]

Suspended accounts scheme

Clause 33 and Schedule 5 would provide for the Secretary of State to introduce a Suspended Accounts Scheme by regulations. It would enable financial institutions to transfer funds held in suspended accounts due to suspicions of criminality to the scheme administrator in order to fund projects relating to economic crime.

The scheme administrator would be appointed by the Secretary of State.[239]

The Secretary of State would be able to determine the requirements for the appointment of the scheme administrator in regulations and specify "financial institutions" to which it would apply.[240] They would also be able to set the conditions to be met to constitute a "suspended account" and the meaning of suspending or partially suspending an account, and how the balance is determined.[241]

Regulations would also make provision for

- The transfer of funds from a suspended account not to affect any rights of the account holder or third parties against the financial institution in respect of the account;[242]
- The scheme administrator not to be liable to the account holder or third parties with rights in respect of the account;[243]

236 Crime and Justice Bill: ECHR Memorandum, para 137
237 Crime and Justice Bill: ECHR Memorandum, para 145
238 As above, para 159
239 Schedule 5, Paragraph 4
240 Paragraph 2
241 Paragraph 3
242 Schedule 5, Paragraph 5(1)(a)
243 Paragraph (5)(1)(b)

- The scheme administrator to compensate the transferring financial institution for payments made to customers or third parties in respect of a suspended account, to the extent provided for in the regulations;[244]
- The purposes for which transferred funds are to managed and used;[245]
- That the funds are used for expenditure relating to economic crime.[246] The Secretary of State would able to direct the scheme administrator to allocate funds for particular economic crime projects.[247]

The regulations could also cap the amount of compensation payable by the scheme administrator to a financial institution in any period.[248]

The Government has set out in the delegated powers memorandum its justification for establishing the scheme via regulations. Its states that the scheme is set out in principle in the Bill itself and that the detail is properly left to regulations as it would involve detailed technical provision and would be subject to variation in light of experience.[249]

244 Paragraph 5(1)(c)
245 Paragraph 6(1)
246 Paragraph 6(2). Economic crime is defined by reference to the offenses listed in Schedule 11 of the Economic Crime and Corporate Transparency Act 2023 and their inchoate counterparts.
247 Paragraph 6(3); Explanatory Notes to the Criminal Justice Bill 2023-24, para 498
248 Paragraph 5(2)
249 Criminal Justice Bill: Delegated Powers Memorandum, para 98

6 Serious crime prevention orders

Clauses 34-37 of the Bill would amend the existing law on serious crime prevention orders (SCPOs) by expanding the circumstances in which orders can be applied for and made, and by enabling the use of electronic monitoring and standardised notification requirements to improve compliance and enforcement.

6.1 Background

Existing legislation

SCPOs are governed by Part 1 of the Serious Crime Act 2007.[250] They are civil court orders that can be used to impose prohibitions, restrictions or requirements on a person (including bodies corporate such as companies, partnerships or unincorporated associations, as well as individuals) to prevent or disrupt their involvement in serious crime.

SCPOs can currently be imposed by the High Court or the Crown Court following an application by the Director of Public Prosecutions, the Director of the Serious Fraud Office, or (in terrorism-related cases only) a chief officer of police:

- The High Court can make an SCPO if it is satisfied that a person has been "involved in serious crime (whether in England and Wales or elsewhere)",[251] meaning the person has:
  - committed a serious offence;[252]
  - has facilitated that commission by another person of a serious offence; or

[250] SCPOs are also available in Scotland and Northern Ireland, and the 2007 Act makes specific provision for these jurisdictions. However, the proposed changes set out in the Bill would only extend to England and Wales, so this briefing does not cover SCPOs as they apply in Scotland or Northern Ireland.

[251] Serious Crime Act 2007, s1(1)(a)

[252] "Serious offence" is defined as an offence specified in Part 1 of Schedule 1 to the 2007 Act, or an offence which, in the particular circumstances of the case, the court considers to be sufficiently serious to be treated for the purposes of the application or matter as if it were so specified (Serious Crime Act 2007, s2)

  - has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence (whether or not such an offence was committed).

- The Crown Court can make an SCPO when dealing with a person who has been convicted of having committed a serious offence.[253]

In either case, the High Court or Crown Court may only make an SCPO if it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales. An SCPO may include such prohibitions, restrictions or requirements (and such other terms) as the court considers appropriate for achieving this purpose.[254] The Explanatory Notes to the Bill state:

> The terms of an SCPO might relate to, for example: business and financial dealings, use of premises or items, provision of goods or services, employment of staff, association with individuals, means of communication or travel.[255]

Failure to comply with an SCPO is a criminal offence carrying a maximum penalty of a five year prison sentence and/or a fine.

The Crown Prosecution Service legal guidance Serious Crime Prevention Orders provides detailed operational guidance on SCPOs.

The Government consultation

In its January 2023 consultation on strengthening the law enforcement response to serious and organised crime, the Home Office sought views on the following proposals relating to SCPOs:

- expanding the list of bodies that can apply to the High Court for an SCPO to include HM Revenue & Customs, the National Crime Agency, the police (in all cases, not just those that are terrorism-related) and the British Transport Police;

- enabling the Crown Court to make an SCPO on application by the Crown Prosecution Service or Serious Fraud Office following an acquittal;

- giving the courts an express power to include an electronic monitoring requirement when making an SCPO (both to assist with monitoring compliance with other terms of the SCPO, such as a curfew or exclusion zone, and as a standalone 'trail monitoring' requirement to track an individual's whereabouts); and

253 Serious offence has the same definition as for orders made by the High Court: see the previous footnote

254 A non-exhaustive list of example terms is set out in section 5 of the 2007 Act

255 Explanatory Notes (PDF), para 23

- requiring anyone subject to an SCPO to comply with a prescribed set of notification requirements, which would standardise the information provided to and recorded by law enforcement agencies.[256]

The Government said the aim of these proposals was to improve the application process by making SCPOs "more accessible to frontline practitioners in the full range of circumstances in which they may be appropriate", and to ensure closer and more consistent case management by improving monitoring and enforcement of SCPOs.[257]

The Government published its response to the consultation on 14 November 2023.[258] A majority of respondents agreed with each of the Government's key proposals. However, the Government noted that concerns had been raised about the proposed use of electronic 'trail monitoring' requirements, and that it had decided against proceeding with this measure:

> The Government recognises that trail monitoring is a particularly intrusive condition to track a subject's whereabouts with significant resource implications. The consultation did not yield a compelling evidence base that trail monitoring is a necessary or proportionate standalone condition for SCPOs at this time. Law enforcement agencies' ability to manage the threat posed by the very highest risk individuals must be balanced against the need to protect an individual's right to privacy and freedom.[259]

6.2 The Bill

Clauses 34-37 would amend the Serious Crime Act 2007 to give effect to the proposals set out in the Government's consultation. These changes would apply to England and Wales only.

Clause 34 would add new sections 5B-5D to the 2007 Act. New section 5B would give the courts express permission to include an electronic monitoring requirement as part of an SCPO. The requirement would be for the purpose of monitoring compliance with other prohibitions, restrictions or requirements imposed by the SCPO, such as a curfew or restrictions on movement. In accordance with the conclusions of the Government's consultation, clause 34 does not provide for electronic monitoring to be used as a standalone 'trail monitoring' provision.

256 Home Office, Strengthening the law enforcement response to serious and organised crime: consultation document, 24 January 2023. See section 2.1 of this briefing for full background on the consultation.

257 As above

258 Home Office, Strengthening the law enforcement response to serious and organised crime: Summary of consultation responses and conclusion, 14 November 2023

259 As above, para 77

An electronic monitoring requirement would only be permitted to have effect for up to 12 months at a time. The requirement could be extended for further periods of up to 12 months each time on application to the court.

New section 5C would set out various conditions for imposing an electronic monitoring requirement, including a condition that such a requirement cannot be imposed in the absence of the person subject to the SCPO and a condition that the consent of any additional persons must be gained if it would be impracticable to impose electronic monitoring without their cooperation.

New section 5D would require the Secretary of State to issue a code of practice relating to the processing of data gathered in the course of electronic monitoring of individuals subject to SCPOs.

Clause 35 would extend the list of bodies that can apply to the High Court for an SCPO to include the following:[260]

- the Director General of the National Crime Agency;
- the Commissioners of HM Revenue & Customs;
- a chief officer of police (in any case, not just those related to terrorism as is the current position);
- the Chief Constable of the British Transport Police; and
- the Chief Constable of the Ministry of Defence Police.[261]

These bodies would be required to consult the Director of Public Prosecutions before making an application for an SCPO. In its consultation response, the Government indicated that the Home Office would set out a formal framework for consultation in a Memorandum of Understanding "to ensure a shared understanding amongst all parties of their roles and responsibilities in the process of applying to the High Court for an SCPO".[262]

Clause 35 would also extend related powers in Part 1 of the 2007 Act, such as the power to wind up companies under section 27 of the 2007 Act and the functions of applicant authorities in Schedule 2 to the 2007 Act, to the same bodies.

[260] There would be no change to the list of bodies that can apply to the Crown Court for an SCPO, or to the list of bodies that can apply for SCPOs in the relevant courts in Scotland and Northern Ireland

[261] The Chief Constable of the Ministry of Defence Police was included on this list as a result of feedback to the Government consultation: see paras 56-61 of Home Office, Strengthening the law enforcement response to serious and organised crime: Summary of consultation responses and conclusion, 14 November 2023

[262] Home Office, Strengthening the law enforcement response to serious and organised crime: Summary of consultation responses and conclusion, 14 November 2023, para 61

Clause 36 would add new sections 15A-15H to the 2007 Act, which would introduce new notification requirements as an automatic consequence of an SCPO.

New sections 15A-15C would deal with bodies corporate that are subject to an SCPO. Within three days of the day on which the SCPO had been made, such bodies would be required to identify an individual who is authorised to communicate with the police on their behalf and notify the police of that individual's name. The individual must have given their consent to be named. If the individual were to withdraw their consent, or was unable to communicate with the police on behalf of the body, the body would have to identify a replacement individual and notify their identity to police. Failure to comply with these requirements would be an offence punishable with a fine.

New sections 15D-15G would deal with individuals who are subject to an SCPO (including individuals who are partners in a partnership). Within three days of the SCPO being made, such individuals would be required to notify police of the following:

- their name (or names, if they use one or more other names)
- the address of their sole or main UK residence (and other UK premises at which they regularly reside or stay)
- their telephone numbers and email addresses
- their social media usernames
- identifying information of motor vehicles of which they are the registered keeper or which they have a right to use
- specified financial information[263]
- specified information about identification documents[264]
- the names and addresses of their employers (if any)
- any other information of a description specified in regulations made by the Secretary of State.

Failure to comply with these notification requirements (without reasonable excuse), or notifying the police of false information in purported compliance, would be a criminal offence.

There would also be a requirement to notify the police of any changes to the notifiable information within three days of the change occurring. Again,

[263] Meaning the information specified in paragraph 1(1)(a) and (b) of Schedule 3A to the Counter-Terrorism Act 2008

[264] Meaning the information specified in paragraph 2(a) and (b) of Schedule 3A to the Counter-Terrorism Act 2008

failure to comply with this (without reasonable excuse), or notifying the police of false information in purported compliance, would be a criminal offence.

In order to verify the identity of the individual giving a notification, the police would be entitled to take that individual's fingerprints or photograph. Failure to allow the police to take fingerprints or a photograph (without reasonable excuse) would be a criminal offence.

Each of the offences referred to above would be punishable with a prison sentence of up to five years and/or a fine.

Under new section 15H the courts would be able to make provision in an SCPO about how a notification under new sections 15A-15E should be made.

Clause 37 would add a new section 19A to the 2007 Act to enable the Crown Court to make an SCPO following an acquittal or a successful appeal against a conviction. As is currently the case with SCPOs issued by the High Court, the Crown Court would only be able to make an SCPO in such circumstances if:

- it was satisfied that the person had been involved in serious crime (whether in England and Wales or elsewhere); and
- it had reasonable grounds to believe that the SCPO would protect the public by preventing, restricting or disrupting involvement by that person in serious crime in England and Wales.

7 Nuisance begging and rough sleeping

Clauses 38 to **64** of the Bill would introduce a framework of nuisance begging directions, prevention notices and prevention orders, together with broadly identical nuisance rough sleeping directions, notices and orders. They would also create an offence of trespassing with intent to commit a criminal offence.

The provisions would replace sections 3 and 4 of the Vagrancy Act 1824, which have been used to police begging and rough sleeping for almost two centuries. The Vagrancy Act is awaiting repeal by section 81 of the Police, Crime, Sentencing and Courts Act 2022. Section 81 is not yet in force, but the Government has said it will commence the provision, and thus effect the repeal, once new legislation replaces the 1824 Act.

7.1 Background

Current law

The Vagrancy Act 1824 is currently used to police begging and rough sleeping in England and Wales, and Northern Ireland.[265] The Act was introduced at a time of increasing numbers of travelling destitute people, who relied on a system of passes and subsistence payments to move across the country. Parliamentarians had grown concerned about the costs faced by local authorities in removing vagrants from their counties.[266] The 1824 Act sought to address this by, among other things, creating criminal offences relating to begging and rough sleeping.

Whilst much of the 1824 Act has been repealed over the past 200 years, sections 3 and 4, as substantially amended, remain on the statute book. Section 3 criminalises begging in the following terms:

> Every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing or procuring or encouraging any child or children so to do; shall be deemed an idle and disorderly person

The maximum sentence is a fine at level 3 on the standard scale (currently £1,000).

Section 4 makes it an offence to sleep rough (or 'sleep out'), although individuals can only be charged with the offence if they have been directed to

[265] It was repealed in Scotland by the Civic Government (Scotland) Act 1982

[266] Report from the Select Committee on The Existing Laws Relating to Vagrants, 23 May 1821

reasonably accessible and free of charge shelter, and they have either refused or failed to apply for accommodation there.[267] Section 4 also prohibits being on enclosed premises for an unlawful purpose, which is used to deal with those suspected of burglary but has also been used to challenge rough sleepers.[268] Section 4 offences are punishable a level 3 fine (£1,000).

Powers in the Anti-Social Behaviour, Crime and Policing Act 2014, which would be amended by **clauses 65-71** and **Schedules 6** and **7** of the Bill (see section 8 of this briefing), are also sometimes used to target begging and rough sleeping where this is accompanied by anti-social behaviour. Whilst these powers are sometimes used to police certain types of begging, the Government states that the use of anti-social behaviour powers is not always a suitable alternative to the powers in the Vagrancy Act, because they cannot be used to police begging that does not involve anti-social behaviour.[269]

For a more detailed discussion of the relevant enforcement powers, see Commons Library Research briefing CBP 7836, Rough Sleepers: Enforcement Powers (England), 9 April 2021

Prosecutions and convictions

The number of prosecutions and convictions under sections 3 and 4 of the 1824 Act has declined in recent years. In 2022, there were 328 prosecutions and 262 convictions for the section 3 offence of begging. There has been a decline in the number of prosecutions in each year since the peak of 2,219 prosecutions and 1,857 convictions in 2014.

Similarly, in 2022 there were 116 prosecutions and 81 convictions under section 4, with no prosecutions for the specific offence of sleeping out. The number was highest, in recent years, in 2011 when 1,050 prosecutions and 810 convictions were for offences under section 4. However, the vast majority of these prosecutions (1,021) were for the section 4 offence of being on enclosed premises for an unlawful purpose, which is also used in cases of suspected burglary.

Most convictions for these offences result in a fine or a conditional discharge.[270] The prosecution and conviction data are, however, unlikely to paint a full picture of how the Act is used in practice. Homelessness organisations have said the Act is more commonly used informally to move individuals on or challenge behaviour.[271]

267 Vagrancy Act 1935, section 1

268 Crisis, Scrap the Act: The case for repealing the Vagrancy Act (1824), 2018, p3

269 Department for Levelling Up, Housing & Communities, Home Office & Ministry of Justice, Review of the Vagrancy Act: consultation on effective replacement, 7 April 2022

270 Ministry of Justice, Criminal justice statistics quarterly December 2022, Outcomes by offence data tool, 18 May 2023.

271 Crisis, Scrap the Act: The case for repealing the Vagrancy Act (1824), 19 June 2019, p18

Prosecutions and convictions for selected offences under the Vagrancy Act 1824

England and Wales

	Offences under Section 4:			Offences under Section 3:
	Sleeping Out	Being on enclosed premises for an unlawful purpose	Total	Begging
Prosecutions				
2010	50	940	990	1,776
2011	29	1,021	1,050	1,296
2012	21	779	800	1,229
2013	30	581	611	2,097
2014	23	520	543	2,219
2015	23	350	373	1,827
2016	30	255	285	1,461
2017	8	207	215	1,025
2018	11	165	176	1,144
2019	6	177	183	926
2020	-	153	153	420
2021	4	148	152	459
2022	-	116	116	328
Convictions				
2010	28	752	780	1,518
2011	16	794	810	1,080
2012	19	593	612	1,010
2013	22	445	467	1,727
2014	16	401	417	1,857
2015	19	252	271	1,484
2016	15	197	212	1,242
2017	7	151	158	867
2018	8	137	145	966
2019	4	136	140	742
2020	-	89	89	293
2021	3	106	109	341
2022	-	81	81	262

Notes: These relate to defendants for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

Source: Ministry of Justice, Criminal justice statistics quarterly December 2022, Outcomes by offence data tool, 18 May 2023.

The number of rough sleepers

Statistics on rough sleeping are compiled separately by the UK Government in England and the Welsh Government in Wales.

How many people sleep rough in England?

A 'snapshot' of the number of people sleeping rough on a given night in autumn is published annually by the Department for Levelling Up, Housing and Communities (DLUHC). The most recent available data is for autumn 2022.

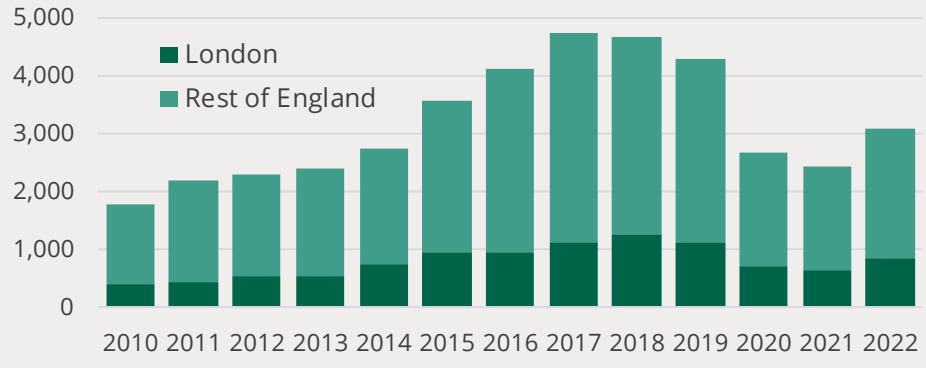
Local authorities are asked to either carry out an in-person count of people sleeping rough, or create an estimate in consultation with local organisations working with rough sleepers.

The resulting statistics are intended to give an idea of the number of people sleeping rough on a given night in October or November, rather than a complete picture of the number of people sleeping rough across the year. An estimated 3,070 people slept rough on a given night in autumn 2022.

The chart below shows the trend in the rough sleeper snapshot between 2010 and 2022. The number of people sleeping rough increased each year between 2010 and 2017, with a downward trend between 2017 and 2021. Rough sleeper numbers rose by an estimated 26% between 2021 and 2022.

The number of rough sleepers was higher in 2022

Estimated number of rough sleepers on a given night in autumn, England



Source: DLUHC, Rough sleeping snapshot in England: Autumn 2022 – Tables, Table 1

It's likely that much of the fall in rough sleeping in 2020 and 2021 was due to the Government's Covid-19 response, as well as subsequent efforts to retain low levels of rough sleeping.

Autumn rough sleeping estimates, 2010 - 2022

Estimated number of people sleeping rough on a given night

	England		London	
	Number	% change on prev. year	Number	% change on prev. year
2010	1,770		420	
2011	2,180	*23%*	450	*7%*
2012	2,310	*6%*	560	*24%*
2013	2,410	*4%*	540	*-4%*
2014	2,740	*14%*	740	*37%*
2015	3,570	*30%*	940	*27%*
2016	4,130	*16%*	960	*2%*
2017	4,750	*15%*	1,140	*19%*
2018	4,680	*-1%*	1,280	*12%*
2019	4,270	*-9%*	1,140	*-11%*
2020	2,690	*-37%*	710	*-38%*
2021	2,440	*-9%*	640	*-10%*
2022	3,070	*26%*	860	*34%*

Source: DLUHC, Rough sleeping snapshot in England: Autumn 2022 – Tables, Table 1

DLUHC acknowledges that the snapshot statistics only provide a limited picture of the number of people who sleep rough, noting that "accurately estimating the number of people sleeping rough within a local authority is inherently difficult given the hidden nature of rough sleeping".[272]

Alternative data published by the Greater London Authority (GLA) illustrates the substantial difference between the single-night snapshot and the number of people who sleep rough at any point over the course of a year.

The GLA publishes data about rough sleepers in London collected from the Combined Homelessness and Information Network (CHAIN) database, which records contact between rough sleepers and outreach teams and services.

A total of 10,053 people were seen sleeping rough in London during the 2022/23 financial year, compared with 860 recorded as part of the snapshot for a given night in autumn.[273]

The Commons Library Insight Rough sleeping statistics: How reliable are they? explains the strengths and limitations of these different sources in more detail.[274]

272 DLUHC, Rough sleeping snapshot in England: autumn 2022, 24 February 2022

273 Greater London Authority, CHAIN annual report: Greater London, April 2022 – March 2023, p.6

274 Commons Library, Rough sleeping statistics: How reliable are they?, 13 March 2020

How many people sleep rough in Wales?

The Welsh Government last carried out a rough sleeper count in 2019. The count was suspended between 2020 and 2022 due to the Covid-19 pandemic, and in 2023 the decision was taken to suspend it again because of the availability of alternative data. [275]

The Welsh Government instead publishes monthly statistical bulletins on homelessness and rough sleeping. The bulletins include an estimate of rough sleeper numbers over the course of the month, based on 'local intelligence' from local authorities.

The statistical bulletin for August 2023 put the number of individuals sleeping rough across Wales at 174.[276]

Repeal of the Vagrancy Act

The Police, Crime, Sentencing and Courts Act 2022

Use of the Vagrancy Act to deal with rough sleeping and begging is highly contentious, with long-standing calls for its repeal. Concerns have been expressed by a variety of stakeholders, including the Government's Rough Sleeping Advisory Panel.[277] As part of a broader review of the Government's approach to rough sleeping, the 2018 Rough Sleeping Strategy committed to reviewing the Act.[278] The Government said it would consider a range of options, including retention, repeal, replacement or amendment.[279]

In 2022 Baroness Williams, then a Home Office Minister, said the review had been delayed by the Covid-19 pandemic.[280] The Government had yet to commit to a specific course of action when, during the passage of the Police, Crime, Sentencing and Courts Bill (now 2022 Act), Lord Best tabled a new clause that would repeal the Vagrancy Act.[281] The Government opposed the amendment, stating it was premature to repeal the Act before the review had been completed and a suitable replacement had been developed:

> an outright repeal of the Vagrancy Act might leave a gap. That is why, as I explained when I met with the noble Lord, once the necessary work has been concluded, the Government are committed to repealing the outdated Act and replacing it with much more modern, fit-for-purpose legislation when parliamentary time allows.[282]

275 Welsh Government, Homelessness accommodation provision and rough sleeping: August 2023, 26 October 2023

276 As above

277 Ministry of Housing, Communities and Local Government, The Rough Sleeping Strategy, 13 August 2018, p.10

278 As above

279 PQ 20469, Sleeping Rough, 2 March 2020

280 HL Deb 17 January 2022 c1481

281 HL Deb 17 January 2022 c1478

282 HL Deb 17 January 2022 c1482

Lord Best pressed the amendment to a vote and the Government was defeated.[283] When the Bill returned to the House of Commons, the Government introduced its own amendment in lieu, which also provided for the repeal of the Vagrancy Act. The Home Office Minister, Kit Malthouse, said the repeal would come into effect after 18 months, giving the Government time to introduce a replacement to the 1824 Act:

> we must balance our role in providing essential support for the vulnerable with ensuring that we do not weaken the ability of the police to intervene where needed. Therefore, while our amendments in lieu will provide for the Vagrancy Act to be repealed in full in England and Wales, we intend to enact replacement legislation in the coming Session before bringing the repeal of the 1824 Act into force. To allow for that, and ultimately to ensure that the police have the tools they need, we will delay commencement of the repeal for up to 18 months.[284]

The amendment became section 81 of the Police, Crime, Sentencing and Courts Act 2022. The Act received Royal Assent on 28 April 2022, but section 81 has not yet been brought into force; it would come into force on a date appointed by commencement regulations, which have not yet been made.[285]

The Levelling-up and Regeneration Act 2023

As introduced, the Levelling-up and Regeneration Bill would have provided a basis for replacing the Vagrancy Act. Clause 187 of the original version of the Bill would have created broad powers for the Secretary of State to make regulations intended to replace sections 3 and 4 of the 1824 Act. The powers would have enabled the creation of new criminal offences and civil penalties. The Explanatory Notes to the Bill stated that the Government was concerned that if the Vagrancy Act were repealed without a replacement, it would leave police without effective powers to respond to begging:

> The Government position is that the Vagrancy Act should be repealed in full but that this should not come into force until the Government legislates on suitable replacement legislation. This is because elements of the Act, including Section 3 that creates the offence of begging, continues to be used by police to respond to harmful instances of begging that are not otherwise covered under other legislation. Delaying commencement until the Government legislates for more suitable, appropriate replacement for some elements of the 1824 Act ensures the Police have the ability to respond to begging where necessary.[286]

The clause attracted criticism from Opposition Members during the Bill's committee stage. Matthew Pennycook (Labour Shadow Minister for Levelling Up, Housing and Communities) called the Vagrancy Act an "embarrassing remnant of Georgian England's approach to the poor and destitute" that

283 HL Deb 17 January 2022 cc1483-1484

284 HC Deb 28 February 2022 c830

285 Police, Crime, Sentencing and Courts Act 2022, section 208(1)

286 DLUHC, Levelling-Up and Regeneration Bill: Explanatory Notes (PDF), para 1038

should be "consigned to the dustbin of history in its entirety" not brought back or reformed in a modern form.[287]

Dehenna Davison, then Parliamentary Under Secretary for the Department for Levelling Up, Housing and Communities, said that, whilst the Government recognised the Vagrancy Act was "not fit for purpose" it also needed to balance its "role in providing essential support for the most vulnerable with ensuring that the police and other agencies can protect communities".[288]

Given the opposition to the clause, the Government tabled an amendment during the Bill's report stage to remove it.[289] The clause was replaced with a new clause that would require the Government to report on the impact of enforcing the Vagrancy Act on the Government's levelling-up missions. That clause became section 242 of the Levelling-up and Regeneration Act 2023.

Section 242 is not yet in force (it would require commencement regulations to bring it into force). It would require the publication of the aforementioned report within 12 months of the section coming into force. However, the section would cease to have effect on the day on which the Vagrancy Act is repealed by section 81 of the Police, Crime, Sentencing and Courts Act 2022.[290]

Replacing the Vagrancy Act

Between 7 April 2022 to 5 May 2022 the Government ran a consultation on replacing the Vagrancy Act.[291] The consultation document stated that the Government had concluded that the Vagrancy Act should be replaced with new powers to enable the police to respond to specific forms of begging:

> It is vital that the police and other agencies are able to help prevent and respond to instances of begging that place individuals involved at risk or makes the public or public realm feel unsafe. They also have a crucial role to play when begging is a barrier to vulnerable individuals entering a pathway to stability off the street, for example by sustaining substance misuse.
>
> The government believes a replacement for the Vagrancy Act is needed, which prioritises specific forms of begging that can be most detrimental and may involve aggressive behaviours. The replacement will provide for, in the first instance, responses that encourage and mandate individuals into support. This consultation is seeking views on the design of this.[292]

The consultation document said this was needed because, whilst anti-social behaviour legislation provides powers to respond to some forms of begging, begging without accompanying anti-social behaviour does not meet the relevant legal threshold, and therefore "police forces have continued to

287 PBC Deb 18 October 2022 c790
288 PBC Deb 18 October 2022, c789
289 HC Deb 23 November 2022 c340
290 See Levelling-up and Regeneration Act 2023, section 242(3)
291 Department for Levelling Up, Housing & Communities, Home Office & Ministry of Justice, Review of the Vagrancy Act: consultation on effective replacement, 7 April 2022
292 Department for Levelling Up, Housing & Communities, Home Office & Ministry of Justice, Review of the Vagrancy Act: consultation on effective replacement, 7 April 2022

derive benefit from use of Section 3 of the Vagrancy Act to intervene constructively to help support vulnerable people".[293]

Following the conclusion of the consultation, the Government published its Anti-Social Behaviour Action Plan in March 2023.[294] The plan stated that police forces and local agencies had called for tools to deal with anti-social behaviour that can accompany street activity.[295] The plan said the Government would, among other things

- prohibit begging where it is causing a public nuisance, such as by a cashpoint, in a shop doorway, on public transport, approaching people on the street or in their cars, and any broader incidence that cause nuisance, distress or blight; and,
- introduce powers for the police and local authorities to address rough sleeping and other street activity where it is causing a public nuisance, such as by obstruction of doorways and pavements, and to clear the debris, tents and paraphernalia that can blight an area, while ensuring those genuinely homeless and with complex needs are directed to appropriate support.[296]

7.2 The Bill

Nuisance begging

Clauses 38 to **48** would provide the basis for nuisance begging directions; nuisance begging prevention notices; nuisance begging prevention orders; and an offence of engaging in nuisance begging. Each of these is discussed below, and all hinge on the definition of nuisance begging.

How would the bill define nuisance begging?

Clause 49 would define nuisance begging using two alternative approaches. The first approach would be based on where the begging takes place. A person would be deemed to be engaging in nuisance begging if they were to beg:

- on public transport or at a station for public transport
- at other places where people get on or off public transport
- at a taxi rank

293 Department for Levelling Up, Housing & Communities, Home Office & Ministry of Justice, Review of the Vagrancy Act: consultation on effective replacement, 7 April 2022
294 HM Government, Antisocial Behaviour Action Plan, 27 March 2023
295 As above, p28
296 As above, p28

- on a carriageway or cycle track
- in any area outside business premises where people are consuming food or drinks supplied by the business
- within 10 metres of an ATM or night safe
- within 10 metres of a ticket machine, vending machine or any other device through which the public obtain goods or services by making payments
- in, or within five metres of, the entrance to, or exit from, retail premises
- in the common parts of any building containing two or more dwellings.[297]

The second approach would be based on the nature of the begging. A person would engage in nuisance begging if they were to beg in a way that caused, or was likely to cause:

- harassment, alarm or distress
- a person reasonably to believe they or another may be harmed, or that property may be damaged
- disorder
- a risk to the health or safety of others.[298]

For the purposes of the definition of nuisance begging, **clause 49(4)** would define "carriageway", "cycle track",[299] and "retail premises"[300] in commonly understood terms. "Distress" would be any distress caused by:

- the use of threatening, intimidating, abusive or insulting words or behaviour, or disorderly behaviour; or
- the display of any writing, sign, or other visible representation that is threatening, intimidating, abusive or insulting.

Under **clause 49(5)**, the Secretary of State could by regulations amend these defined terms or amend the list of locations used for the definition of nuisance begging. The regulations would be subject to the affirmative procedure.[301]

297 Clause 49(2)
298 Clause 49(3)
299 These are defined by reference to section 329 of the Highways Act 1980. Broadly, section 329 of the 1980 Act defines carriageway as a highway where the public have the right to use vehicles, and cycle track as a highway where the public have a right of way on pedal cycles
300 As "premises used wholly or mainly for the purposes of the sale of anything by retail"
301 See clause 76(3)

Nuisance begging directions

Clause 38 would introduce a power for an "authorised person" to give a nuisance begging direction, described in the Bill's explanatory notes as a "move on" direction.[302] An authorised person would be a police constable or the local authority.[303] A nuisance begging direction could be given to someone appearing to be aged 18 or over, if the authorised person is satisfied, on reasonable grounds, that the person has engaged, or is likely to engage, in nuisance begging. The direction would require the person to:

- leave a "specified location" as soon as reasonably practicable; and
- not return for a specified time, not exceeding 72 hours, running from the time the direction is issued.

The clause does not define any geographical limit to the area that could constitute the "specified location". However, authorised persons, as public authorities, would have to exercise these powers in a manner compatible with human rights and public law, so any move on direction would have to be proportionate to addressing the harm caused by the nuisance begging. The approach used is similar to the dispersal powers in section 35 of the Anti-social Behaviour, Crime and Policing Act 2014, discussed below, that enable a police constable to direct a person to leave a specified area where "members of the public in the locality being harassed, alarmed or distressed".

Clause 38(5) states that the nuisance begging direction must, so far as practicable, avoid conflicting with the requirements of a court order to which the person might be subject. Similarly, it must seek to avoid interfering with attendance at a place "where the person normally works" or an educational establishment that they attend.

The direction may require the person, when leaving the location, to take litter, belongings and other things with them if they appear, in the opinion of the authorised person, to be responsible for them.[304]

The direction would have to be in writing and state that it would be an offence to fail to comply with the direction. A person who fails to comply with a nuisance begging direction would be liable on summary conviction to a up to a month in prison or a fine not exceeding level 4 on the standard scale (currently £2,500), or both.[305]

Nuisance begging prevention notices

Clause 39 would provide the basis for nuisance begging prevention notices. An authorised person could give such a notice to a person aged 18 or over, if the authorised person reasonably believes them to be engaging, or to have

302 Explanatory Notes, para 551
303 Clause 38(7) and 64
304 Clause 38(4)
305 Clause 38(9), together with clause 38(8)

previously engaged, in nuisance begging. A nuisance begging prevention notice could specify:

- requirements not to do things during a specified time period; and/or
- requirements to do things by or within specified times.[306]

The time period could not be more than three years from the date of issue.[307] A requirement could only be imposed "if it is reasonable to impose it for the purpose of preventing the person" from engaging in nuisance begging.[308] As with nuisance begging directions, the notice would have to, so far as practicable, avoid interfering with requirements of a court order the person might be subject to, or the times during with the person normally works or attends an educational establishment.[309]

The notice may be given to a person by hand; by leaving it at or posting it to the person's last known address; or by electronic means, subject to the person's agreement.[310] The notice must, among other things, describe the behaviour giving rise to the issuance of the notice, describe the consequences of failing to comply with the notice, and contain information about appeal rights.[311] An appeal may be made to a magistrates' court within 21 days.[312] The magistrates' court may quash or modify the notice, or dismiss the appeal.[313]

A person would commit an office if they failed, without reasonable excuse, to comply with a notice. The sentence on summary conviction would up to a month in prison or a fine not exceeding level 4 on the standard scale (currently £2,500), or both.[314]

Under **clause 42**, an authorised person could issue a subsequent notice that either discharged the notice or varied it by:

- removing a requirement; or
- reducing or extending the time period during which a requirement in a notice must be performed.

Nuisance begging prevention orders

Under **clause 43** a magistrates' court could, on the application of an authorised person, make a nuisance begging prevention order if satisfied that a person appearing age 18 or over:

306 Clause 39(2)
307 Clause 39(3)
308 Clause 40(2)
309 Clause 40(3)
310 Clause 39(5)
311 Clause 39(4)
312 Clause 41(1)
313 Clause 41(3)
314 Clause 39(8)

- engaged in nuisance begging
- failed to comply with a nuisance begging direction; or
- failed to comply with a nuisance begging prevention notice.[315]

As with nuisance begging prevention notices, a nuisance begging prevention order could impose:

- requirements not to do things during a specified time period; and/or
- requirements to do things by or within specified times.[316]

Failure without reasonable excuse to comply with a nuisance begging prevention order would be an offence punishable on summary conviction by up to one month imprisonment or a level 4 fine (£2,500), or both.[317]

Clause 44 would provide that a requirement may only be imposed if it is reasonable to impose to prevent the person engaging in nuisance begging.[318] Again, as with notices and directions, any requirement must, so far as practicable, avoid interfering with the times at which a person normally works or attends an educational establishment.[319]

The clause also sets out a framework for supervising compliance with requirements to do specified things. A court may when imposing requirements specify a responsible person to supervise compliance; for example, a mental health counsellor.[320] The court must first receive evidence from the individual or organisation to be specified as to the suitability and enforceability of the requirements. The responsible person must then promote compliance with the requirements and inform the authorised person as to whether the subject of the order has complied with them.

Nuisance begging prevention orders would last for up to five years, running from the date they are made.[321] Where the subject of the order is already subject to a nuisance begging prevention order, the new order could be set to run from the date the earlier order expires.[322] The orders may be varied or discharged by a magistrates' court on the application of either the subject of the order or an authorised person.[323] Where a magistrates' court makes or refuses to make orders or variations to them, the subject of the order or the authorised person may appeal to the Crown Court.[324]

315 Clause 43(1)
316 Clause 43(2)
317 Clause 43(4)
318 Clause 44(2)
319 Clause 44(3)
320 Clause 44(3); Explanatory Notes, para 585
321 Clause 45(4)
322 Clause 45(2)
323 Clause 46(1)
324 Clause 47

The offence of engaging nuisance begging

Clause 48 would create the offence of engaging in nuisance begging. A person could only commit the offence if age 18 or over. The offence would be punishable on summary conviction by up to one month in prison, a level 4 fine (£2,500), or both.

Nuisance rough sleeping

The proposed statutory scheme for nuisance rough sleeping is similar to that for nuisance begging. The Bill would create nuisance rough sleeping directions, nuisance rough sleeping prevention notices, and nuisance rough sleeping orders.

How would the bill define nuisance rough sleeping?

The Bill would not directly define nuisance rough sleeping. Instead, **clause 61** outlines 'nuisance rough sleeping conditions'. If a condition is met, a nuisance rough sleeping direction, prevention notice, or order would be available.

There would be two types of conditions. The first would be that a person is or appears to be sleeping rough or intending to, and that person does "something that is a nuisance".

The second would be that the person is part of a group that is or appears to be sleeping rough or intending to, and someone in the group does "something that is a nuisance".

A person would do "something that is a nuisance" if they:

- cause or do something capable of causing damage, disruption, harassment or distress
- create a health, safety or security risk
- do something preventing the determination of whether there is a health, safety or security risk.

Damage would include damage to a place, property or the environment (defined to include excessive noise, smells, litter or deposits of waste).

Disruption would include interference with the use of a place or access to water, energy or fuel.

Distress would be defined in the same way as for nuisance begging (broadly, any distress caused by threatening or abusive behaviour).

Health, safety or security risk would include a risk to the health and safety of people, or to the security of people, place or property.

Nuisance rough sleeping directions

Clause 51 would empower authorised persons to issue nuisance rough sleeping directions, also known as "move on" directions.[325] The clause largely mirrors clause 38, which would provide the corresponding power to issue nuisance begging directions.

A nuisance rough sleeping direction could be issued by an authorised person, to a person appearing aged 18 or over, where the authorised person is satisfied on reasonable grounds that a nuisance rough sleeping condition is met. The direction could require the person to leave a specified area for up to 72 hours and take with them any litter or other things the authorised person thinks they are responsible for. The direction would have to, so far as practicable, avoid interfering with the person's attendance at a place "where they normally work" or attend for education.

As with nuisance begging directions, the direction would have to be issued in writing, however there would be more detailed requirements for the written content of a nuisance rough sleeping direction. The direction would have to state the name of the person to whom it is given; describe the things indicating to the authorised person that a nuisance rough sleeping condition has been or is likely to be met; state whether the authorised person is satisfied that the condition has been or is likely to be met; and state that it is an offence to fail to comply with the direction.

It would be an offence to fail to comply with a nuisance rough sleeping direction, punishable on summary conviction by imprisonment for up to one month, a level 4 fine (£2,500), or both.

Nuisance rough sleeping prevention notices

Clauses 52 would provide a power for authorised persons to issue nuisance rough sleeping prevention notices. **Clause 53** would prescribe the written requirements for such notices. **Clause 54** would provide rights of appeal against these notices, and **clause 55** would allow for their variation or discharge. The statutory framework would mirror that for nuisance begging prevention notices (see above).

One notable difference from nuisance begging prevention notices is that a nuisance rough sleeping prevention notice may be given either where an authorised person believes a nuisance rough sleeping condition has been met, **or** where a nuisance rough sleeping – or "move on" - direction has been given to the person in the previous six months.

A person would commit an offence by failing to comply, without reasonable excuse, with a nuisance rough sleeping prevention notice. The offence would be punishable on summary conviction by up to one month in prison, a level 4 fine (£2,500), or both.

[325] See Explanatory Notes, para 605

Nuisance rough sleeping prevention orders

Clause 56 would provide the basis for nuisance rough sleeping prevention orders, which could be made by a magistrates' court on the application of an authorised person. **Clause 57** would prescribe the requirements for nuisance rough sleeping prevention orders; **clause 58** would set their maximum duration (five years); **clause 59** would provide for their variation or discharge; and **clause 60** would provide rights of appeal to the Crown Court. The framework for nuisance rough sleeping prevention orders mirrors that for nuisance begging prevention orders (see above).

Offence of trespassing with intent to commit a criminal offence

Clause 62 would make it an offence for a person to trespass on any premises with the intent to commit a criminal offence. A person who commits the offence would be liable on summary conviction for up to three months in prison or a level 3 fine (currently £1,000), or both. The clause would recreate the offence of being on enclosed premises for an unlawful purpose, previously set out in section 4 of the Vagrancy Act 1824.

Other matters

Power to require person's details

Clause 63 would create a power for an authorised person to require details of a person's name, date of birth and address (if any). The power would be exercisable if the authorised person intends to give or apply for any nuisance begging/rough sleeping directions, notices or orders.

Failure to comply with the request for identification details, or giving false details, would be an offence punishable on summary conviction by up to one month in prison, a level 4 fine (£2,500), or both.

The relevant local authority

As noted, an "authorised person" would be either a police constable or a relevant local authority. **Clause 64** would provide a table for identifying the applicable local authority, which would be the local authority where the nuisance begging/rough sleeping occurred or where a notice or order was given or made.

7.3 Comment

The Home Office Impact Assessment published alongside the Bill states that the proposed measures will encourage people who beg and sleep rough to

engage with support[326] whilst providing the police and local authorities with powers they need to address legitimate public concerns:

> The government wants to help vulnerable individuals on the street into the appropriate support while ensuring police and local authorities can respond effectively to address legitimate public concerns over rough sleeping and other street activity where it is causing a public nuisance, such as by obstruction of doorways and pavements, and to clear the debris, tents and paraphernalia, while ensuring those genuinely homeless and with complex needs are directed to appropriate support[327]

Elsewhere the Impact Assessment states that whilst the new measures risk increasing demand for new support services, stakeholders do not expect this increase to materialise:

> While not expected by stakeholders, there is potential for an observed increase in demand for support services resulting from the concentration of the new legislative powers. This could lead to a longer term increase in support capacity required, that may not be covered within the currently provided funding from DLUHC.[328]

The Impact Assessment contends that the Bill's provisions will "help communities, local areas and businesses feel safer and encourage more use of public spaces".[329] It highlights the following potential benefits:

- Improved sense of safety, security and quality of life for members of the public.
- Reduction in begging and homelessness and associated increase in employment and quality of life for those receiving the support they need, and subsequent increases in tax receipts.
- Reduction in rough sleeping resulting in a fall in mental and physical health needs
- A reduction in organised begging groups
- Increased footfall in areas previously negatively affected by rough sleeping and begging, increasing economic prosperity.
- Time saving from specific and tailored tests to open prevention notices and orders
- Improvements in data collection on the use of powers related to vagrancy[330]

Whilst the Impact Assessment does suggest that one potential measure of success for the new provisions would be their use by police forces, it separately notes that areas with lower enforcement figures might reflect

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326 Home Office, Criminal Justice Bill Overview IA, 13 November 2023, p17
327 Home Office, Criminal Justice Bill Overview IA, 13 November 2023, p7
328 As above, p37
329 As above, p17
330 As above, p29

greater success with outreach and engagement among homeless groups, which remains the first step for supporting this group.[331] Importantly, the Government highlights that begging would remain lawful where it does not constitute a nuisance:

> begging in a way which does not cause a nuisance continues to be lawful; persons can continue to beg in localities other than those prohibited provided that they do so in a way that does not cause harm, distress or nuisance to others, disorder or health and safety risks.[332]

Voluntary sector organisations have long raised concerns that the use of enforcement measures against rough sleepers criminalises homelessness,[333] puts people into even more debt and "fast-tracks" them into the criminal justice system.[334]

Crisis, a homelessness charity, commissioned a survey of over 3,000 people that suggests public opinion also does not support criminal justice responses to rough sleeping and begging. 71% thought that arresting people for rough sleeping was a waste of police time and 52% said it should not be a criminal offence.[335]

Many charities have therefore been critical of the Government seeking to replace the Vagrancy Act with alternative legislation that will continue to provide criminal offences for rough sleeping and begging. They argue that it is a counterproductive approach that leaves vulnerable people in an even more marginalised position and fails to address the root causes for rough sleeping and begging.[336] Responding to the publication of the Criminal Justice Bill, Crisis' Chief Executive, Matt Downie, said that the new powers could cause further harm to people who are homeless:

> We've always been clear that there is no need for replacement powers for the Vagrancy Act, so it's deeply disappointing to see that the government has pressed ahead and introduced new, punitive measures. Hidden among the detail are powers to move people on who are sleeping rough, and criminalise them if they don't comply.
>
> While we're relieved to see that the worst of the proposals to criminalise the use of tents have not been included, we know that fining or moving people on who have nowhere to go does not solve homelessness. The government says it wants police and local authorities to provide support to people rough sleeping,

331 As above, p51

332 Home Office/MoJ, Criminal Justice Bill. European Convention on Human Rights Memorandum, page 36, para 181

333 The Guardian, Charities warn councils against criminalising rough sleepers, 22 May 2015

334 Liberty, If the Government is serious about ending homelessness, it needs to scrap Public Space Protection Orders, 23 August 2018.

335 Crisis, Over 70% of the public think arresting people sleeping rough is a waste of police time, 23 January 2020.

336 For example: Crisis, Replacing the Vagrancy Act will not make our streets safer, 11 May 2022; and Centrepoint, There's no need to replace the Vagrancy Act. Just scrap it, 28 April 2022.

> but the only way for this to genuinely work is to provide safe accommodation alongside help.[337]

In 2020, Crisis commissioned an independent public opinion consultancy to survey over 3,000 people. Their findings suggested that public did not support a criminal justice response to rough sleeping and begging. 71% thought that arresting people for rough sleeping was a waste of police time and 52% said it should not be a criminal offence.[338]

[337] Crisis responds to the government publishing the Criminal Justice Bill, Crisis, 15 November 2023

[338] Crisis, Over 70% of the public think arresting people sleeping rough is a waste of police time, 23 January 2020.

8 Anti-social behaviour

8.1 Background

On 26 March 2023, the Government announced a new action plan to "crack down" on anti-social behaviour (ASB).[339] This new Anti-Social Behaviour Action Plan focused on the following key areas:

- Tougher punishment: plans for out of court disposals with conditions to repair any damage caused to be issued within 48 hours of an ASB offence were outlined. The Government also promised to crack down on drugs by prohibiting nitrous oxide (which is now controlled under the Misuse of Drugs Act 1971) and expanding the powers that police have to test suspects for drugs on arrest. Finally, this section pledged to strengthen "powers in the social and private rented sector to evict or sanction tenants who persistently commit anti-social behaviour". [340]

- Reducing rough sleeping and begging: to direct "vulnerable individuals on the streets" into support, "while cracking down on conduct that is anti-social, intimidating, or criminal", the plan states that the Government "will introduce new powers for local authorities and the police, coupled with improved multi-agency working between local partners".[341]

- Building local pride: the plan looks at "revitalis[ing] communities and town centres" by developing initiatives to support high streets to fill empty shops, support local markets and support the restoration of parks and green spaces.[342]

- Prevention and early intervention: plans to invest in more opportunities that give young people "somewhere safe to go, something engaging to do, and someone trusted to talk to … to steer young people away from bad life choices" are outlined. The Government also said it will expand the eligibility criteria for the Turnaround programme, an early intervention scheme with Youth Offending Teams to cut youth crime by providing targeted, wraparound support to children and young people at risk of offending.[343]

339 Gov.uk, Action plan to crack down on anti-social behaviour, 26 March 2023
340 Anti-Social Behaviour Action Plan, Department for Levelling Up, Housing and Communities, Home Office, 27 March 2023, pp13-21
341 As above, pp27-28
342 As above, pp29-33
343 As above, pp34-37

- Improving data, reporting and accountability for action: The Government said over the next 12 months it will also look at how to make it simpler and clearer for the public to report ASB by developing "a digital one-stop-shop". It will also relaunch the process for enabling victims to challenge where they feel there has been an unsatisfactory response. The plan also includes commitments to make improvements to how data on ASB is recorded so that it can be better understood and to enable agencies to be better held to account for their role in tackling ASB. [344]

- Making communities safer: The plan commits to taking a "hotspot enforcement" approach, where the police target the presence of uniformed officers on a more regular basis in specific areas that have been identified as areas of higher crime or ASB. The Government also said that it will "increase the upper limits for [certain] on-the-spot fines" including fines for fly-tipping and graffiti.[345]

The consultation

As part of the ASB Action Plan, the Government launched a review of Community Safety Partnerships and a consultation on antisocial behaviour powers that public services have under the Anti-social Behaviour, Crime and Policing Act 2014 to tackle ASB.[346]

The consultation considered the relationship between Community Safety Partnerships (CSPs) and Police Crime Commissioners (PCCs) in tackling ASB. CSPs were introduced by the Crime and Disorder Act 1998 to bring together "local partners to formulate and deliver strategies to tackle crime and anti-social behaviour (ASB) in their communities".[347] CSPs are made up of the police, fire and rescue authorities, local authorities, health partners and probation services.

The consultation also looked at changes to existing ASB powers, including extending the time limit of dispersal powers and providing this power to local authorities, giving the police the power to issue Public Space Protection Orders (PSPOs), and lowering the age limit of who can be issued a Community Protection Notice (CPN).

Following the consultation, the Government is proposing the following changes regarding ASB and has included relevant measures in the Bill:

- Create a duty for PCCs to promote awareness of ASB Case Reviews and to provide a route for victims to query the outcomes.

344 As above, pp38-41

345 As above, pp22-26

346 Home Office, Community safety partnerships review and antisocial behaviour powers, 27 March 2023

347 Home Office, Community safety partnerships review and antisocial behaviour powers: government response, 14 November 2023

- Extend the power to implement dispersal orders to local authorities.
- Extend the timeframe for a dispersal order from 48 hours to 72 hours, with a mandatory review at 48 hours.
- Extend the power to implement a PSPO to the police.
- Lower the age at which a CPN can be issued from 16 to 10 and increase the upper limit for a Fixed Penalty Notice for breaches of a PSPO and a CPN from £100 to £500.
- Extend the timeframe that relevant agencies can apply for a Closure Order from 48 hours after service of a Closure Notice through the courts to 72 hours and extend the Closure Power to registered housing providers.
- Extend the power of arrest to all breaches of a Civil Injunction.
- Extend the powers available under the Community Safety Accreditation Scheme (CSAS) to allow CSAS officers to enforce breaches of Community Protection Notices and PSPOs.[348]

8.2 The Bill

Injunctions and powers of arrest

Police forces and local authorities can apply to the courts for an injunction to be issued against any person (aged ten or older) who has committed persistent ASB. Injunctions can prohibit individuals from engaging in certain behaviours and/or require them to do certain things, for example, prohibit an individual from entering a certain area or from being drunk in a public place.

Under section 4 of the Anti-social Behaviour, Crime and Policing Act 2014 a court may attach a power of arrest to an injunction if it thinks that:

- the ASB the individual has engaged or threatens to engage in involves the use of violence against others; or
- there is a significant risk of harm to other people.[349]

By attaching a power of arrest to an injunction, the police may arrest an individual without a warrant, if there is reasonable cause to suspect that the person is in breach of a condition of their injunction.[350]

348 Home Office, Community safety partnerships review and antisocial behaviour powers: government response, 14 November 2023

349 Anti-social Behaviour, Crime and Policing Act 2014, s4, pt 1

350 Explanatory notes to the Criminal Justice Bill 010 2023-24, para 663

Clause 65 of the Bill would remove the requirement for the court to think that either the ASB the individual has engaged in or threatened to engage in included the threat of violence against others or that there is a significant risk of harm to others from the individual before it could attach a power of arrest to an injunction. Instead, the court would be able to attach a power of arrest when it deemed it "appropriate to do so".

Dispersal orders and closure notices extensions

Dispersal Orders

Section 35 of the Anti-social Behaviour, Crime and Policing Act 2014 allows a police officer to disperse individuals or groups causing or likely to cause anti-social behaviour in public places or common areas of private land (such as shopping centres or parks).[351] These dispersal orders enable officers to direct individuals or groups to leave a specified area and not return for up to 48 hours.[352] A dispersal order must be authorised by an inspector, but once authorised, any police officer can use this power.

Clause 66 of the Bill would increase the timeframe that a dispersal order can be put in place for from 48 to 72 hours.[353] Clause 66 would also require a police officer of at least the rank of inspector to review any dispersal order set to last more than 48 hours "as soon as reasonably practical" after 48 hours has passed.

Closure Notices

Police inspectors and local authority staff members designated by their Chief Executive can issue 'Closure Notices' which temporarily restrict access to premises associated with ASB for up to 24 hours. Under section 77 of the 2014 Act, a Closure Notice may last up to 24 hours unless it is issued by an officer of at least the rank of Superintendent or the local authority's Chief Executive, in which case the notice can be extended for up to 48 hours.[354] Both the police and local authorities have the power to apply to the courts to for a 'Closure Order' to extend the restrictions to a premise for up to six months.

Clause 66(3) would extend these limits so that a Closure Notice could last up to 48 hours, rising to 72 hours if issued by an officer of at least the rank of Superintendent or the local authority's Chief Executive.

If an application has been made for a Closure Order and the court decides not to make the Order, it can instead extend a closure notice for up to a further 48

351 Section 35 Anti-social Behaviour, Crime and Policing Act 2014

352 For further detail, see section 2 of the Library briefing Rough Sleepers: Enforcement Powers (England)

353 Clause 66(2)

354 Section 77 Anti-social Behaviour, Crime and Policing Act 2014,

hours, as set out in section 81 of the 2014 Act.[355] **Clause 66(4)** would extend this period to a maximum of 72 hours.

Community protection notices: minimum age

Local authorities, police officers and certain designated social landlords can issue a Community Protection Notice (CPN) to a person aged 16 or over, or to a business or organisation whose persistent ASB is having a "detrimental effect" on the quality of life of those in the locality.[356]

A CPN can require the recipient to stop doing specified things, do specified things or take reasonable steps to achieve a specified result. For example, a CPN may be issued to an individual who has rubbish in their garden requiring them to clear it.

Clause 67 would lower the age limit for a CPN to 10 years old.

Public spaces protection orders and expedited orders

Local authorities have the power to issue a Public Space Protection Order (PSPO) to prohibit specific activities in a designated public area for up to three years (the PSPO can be renewed for up to three years each time). Whilst the power to issue a PSPO sits with the local authority, before issuing one they must also consult with the local police. Failure to comply with a PSPO is a criminal offence and so the police are involved in the enforcement of the PSPO.

Section 59A of the 2014 Act enables a local authority to make an expedited PSPO covering an area outside a school, or a vaccine or test and trace centre, where protests are having (or are likely to have) the effect of harassing, intimidating or impeding those who work and use the services of the relevant site. Expedited PSPOs can be implemented by a local authority without consultation but the consent of the chief of police for the police area or a person authorised by the appropriate school or NHS authority in question is required.

Clause 68 would grant senior police officers the power to make PSPOs and expedited orders, applying the same provisions and tests as a local authority. To avoid overlapping provisions in PSPOs, any PSPO or expedited order made by a senior police officer may not include any provisions included in a PSPO or expedited order made by a local authority, and vice versa.

Closure Notices and Closure Orders

Police inspectors and local authority staff members designated by their Chief Executive can issue 'Closure Notices' which temporarily restrict access to

355 Explanatory Notes, para 668

356 Section 43(1) Anti-social Behaviour, Crime and Policing Act 2014

premises associated with ASB for up to 24 hours. Superintendents or the local authority's Chief Executive can extend a Closure Notice for up to 48 hours.[357]

Clause 69 of the Bill would extend this power to registered social housing providers ('RSH providers'), regarding their own premises. The approval of an individual who is part of the RSH provider's senior management would be needed for the 48-hour extension.[358]

Both the police and local authorities have the power to apply to the courts for a 'Closure Order' to extend the restrictions to a premise for up to three months. Clause 69 would apply the existing powers of police inspectors and local authorities to RSH providers regarding closure orders, as well as those for appeals and enforcement.

Fixed penalty notices

Those who breach a CPN or PSPO can be issued with a Fixed Penalty Notice (FPN) as an alternative to prosecution.[359] The 2014 Act sets the upper limit for a FPN at £100. **Clause 70** would increase this maximum to £500.

The chief officer (in most police forces the Chief Constable, or in the Metropolitan Police Force the Commissioner) can grant accreditation to certain employees. These accredited employers are known as Community Safety Accreditation Scheme (CSAS) officers. The accreditation allows CSAS officers to exercise powers set out in schedule 5 to the Police Reform Act 2002, which includes issuing FPNs for certain breaches such as littering.[360]

Clause 70 amends schedule 5 of the 2002 Act, so that CSAS officers may also issue FPNs for breaches of PSPOs and CPNs.[361]

ASB Case Reviews

The 2014 Act sets out a provision for ASB case reviews (previously known as Community Triggers), which allows persistent victims of ASB to request relevant bodies undertake a case review if, for example, they do not believe there has been an appropriate response to their complaints.[362] Any individual, community or business can make an application for a case review and the relevant bodies must carry out the review if a certain (variable) threshold of complaints is met.

357 Part 4, Chapter 3 Anti-social Behaviour, Crime and Policing Act 2014,
358 Schedule 7 Criminal Justice Bill
359 Section 52 and section 68 Anti-social Behaviour, Crime and Policing Act 2014
360 Explanatory Notes to the Police Reform Act, para 248
361 Explanatory Notes, para 681
362 Section 104 Anti-social Behaviour, Crime and Policing Act 2014

Clause 71 of the Bill would create a duty for local policing bodies to raise awareness of ASB case reviews in their police areas, and to provide a route for victims to query decisions.[363]

Clause 71 would also add requirements for relevant bodies to publish information on these reviews, including:

a) the number of complaints about anti-social behaviour made to the relevant bodies in the period;

b) the types of incident to which those complaints are related;

c) the locations in which those incidents occurred, including whether any parts of the local government area appear to the relevant bodies to have a high prevalence of such incidents;

d) the number of ASB case reviews carried out by those bodies in the period;

e) the outcome of those ASB case reviews.[364]

Currently, local policing bodies (LPBs) may be consulted in the making and revising of the review procedures. The Bill would insert new section 104A into the 2014 Act, adding a requirement for LPBs to review responses to ASB. This may be completed in response to an application or on their own initiative, regardless of whether another body has completed a review.[365] The Bill also requires LPBs to promote awareness of the opportunity to make an application for an ASB review, as well as the procedure for doing so.[366]

The Bill sets out further details of these reviews, including definitions of what a 'relevant' applicant is, the process for joint review procedure if multiple policing areas are involved in a review and what should be done when an applicant is dissatisfied.[367]

Crime and disorder strategies

Clause 72 of the Bill seeks to strengthen the relationship between PCCs and CSPs, widening the regulation-making power to include the publication and dissemination of other material relating to a strategy (or its formulation or implementation) and extending certain provisions.[368]

Section 6 of the Crime and Disorder Act 1998 requires the CSP in a local area to collaborate in formulating a plan to tackle crime and disorder in their area.[369] Subsection 3 of the Bill places additional powers and duties on LPBs

363 Explanatory Notes, para 686
364 Clause 71(2)(b)
365 Clause 71(3)
366 Clause 71(3)(4)-(5)
367 Clause 71(3)
368 Explanatory Notes, paras 713-714
369 As above, para 706

and CSPs regarding these plans, allowing LPBs to make recommendations to the responsible local authority on certain areas.[370] The CSPs must consider the recommendations, but if they choose not to implement them, they must share their reasons for not doing so.[371]

Comment

The Government's plan to encourage policing, local authorities, and other agencies to work more closely together to "effectively combat" ASB has been praised by the National Police Chief Council (NPCC).[372] The NPCC noted plans to deliver faster local restorative justice outcomes and the adoption of a hotspot enforcement approach as areas of particular interest.

The Action Plan has been described as a "positive step in the right direction" by RESOLVE, a Centre of Excellence focused on community safety and ASB.[373] It supports plans for the ASB Case Reviews, particularly plans to promote awareness of how and when they can be used.

However, RESOLVE has questioned the policies regarding young people, such as the lowering of the age limit for CPNs, and challenged the perception that youths are the main perpetrators of ASB, highlighting that they are instead "very often the silent victims of ASB".[374]

The Chartered Institute of Housing (CIH) welcomed the changes outlined in the ASB Plan but has noted that such policies "must be used in conjunction with support to help people address negative behaviour". Tackling the root causes of ASB behaviour, more consistent funding and appropriate tenancy sustainment were measures the CIH advised should be taken alongside the plan.

The CIH also highlighted the need for the plan to be "viewed carefully to safeguard all involved" as cases of ASB may be misidentified, notably in situations involving domestic abuse.[375]

370 As above, para 712
371 Clause 72(3)
372 NPCC, NPCC response to Anti-Social Behaviour Action Plan, 27 March 2023
373 RESOLVE, RESOLVE responds to the Government's ASB Action Plan
374 As above
375 Chartered Institute of Housing, CIH response to the Anti-social Behaviour Action Plan, 30 March 2023

9 The police

9.1 Ethical policing and a duty of candour

Background

There have been calls for the police (both at the individual officer level and at an organisational level) to be subject to a statutory 'duty of candour'. Such a duty is a feature of the law regulating medical professionals, and it has been described by the General Medical Council and the Nursing and Midwifery Council as "a professional responsibility to be honest when things go wrong".[376]

Bishop James Jones called for police officers to be subject to a statutory duty of candour as part of his 2017 report into the experiences of families bereaved by the 1989 Hillsborough disaster.[377] Similar calls were made by the Daniel Morgan Independent Panel in its 2021 review of the police handling of the 1989 murder of Daniel Morgan.[378]

In 2020, the Home Office introduced a statutory duty for individual police officers to "give appropriate cooperation during investigations, inquiries and formal proceedings".[379] set out in the Police (Conduct) Regulations 2020.

The College of Policing, which is responsible for issuing professional standards in policing, issued a Code of Ethics in 2014 (this does not refer to a duty of candour). In 2021 the College launched a public consultation on reviewing the Code,[380] following which the College appointed a committee to develop a revised code (in line with its standard process for developing new guidelines).[381] The committee is still considering the development of the code. However, the College of Policing indicated (in its response to the report of the Daniel Morgan Independent Panel) that it intended to "embed a duty of

376 General Medical Council/Nursing and Midwifery Council, Guidance on the professional duty of candour, undated

377 The Right Reverend James Jones KBE, The patronising disposition of unaccountable power: A report to ensure the pain and suffering of the Hillsborough families is not repeated, 1 November 2017, paras 2.101-2.109

378 Daniel Morgan Independent Panel, The report of the Daniel Morgan Independent Panel, June 2021, para 501

379 Police (Conduct) Regulations 2020, Schedule 2

380 College of Policing, Help shape the Code of Ethics review, 29 July 2021

381 College of Policing, Code of Ethics review: Public consultation on scope and recruitment of committee members (PDF), November 2021. Minutes of the Committee's meetings are available on the College of Policing website: see Scope for the Code of Ethics review published [accessed 23 November 2023]

candour in the refresh of the Code of Ethics, to which chief officers must legally have regard".[382]

The Bill

Clause 73 would add a new section 39B to the Police Act 1996, which would require the College of Policing to issue a code of practice about ethical policing. The code would be required to set out actions that a chief officer of police should take "for the purpose of securing that persons under the chief officer's direction and control act ethically".

The reference to "acting ethically" would include "acting in an open and transparent way in relation to the way in which the police have conducted themselves". There would be exceptions where acting in such a way would be against the interests of national security, could prejudice the prevention, detection, investigation or prosecution of crime, or would affect immunity or privilege relating to disclosure.

The College of Policing would be required to consult a range of bodies when creating the code, including the Independent Office for Police Conduct. The College would also be required to review the code at least every five years and to produce a report on the conclusions of each such review, which the Secretary of State would be required to lay before Parliament.

9.2 Police misconduct: appeals

Background

In October 2022, the then policing minister Jeremy Quin announced "an internal review into the process of police dismissals to raise standards and confidence in policing across England and Wales".[383] The announcement came in the wake of a number of high-profile incidents of serious police misconduct and criminality, and the publication of the interim findings of an independent review (conducted by Baroness Louise Casey) into culture and standards in the Metropolitan Police Service.[384]

The Home Office review was launched in January 2023 with the aims of ensuring that "the process of police dismissals is fair and effective" and "the public can be confident that those falling far short of the high standards expected of them can be removed from policing".[385] The terms of reference noted that one of the aspects the review would consider was "the available appeal mechanisms for both officers and chief constables, where they wish to

382 College of Policing, Daniel Morgan Independent Panel – policing's response (PDF), 15 June 2023, p4

383 HCWS327 [on Casey Review: Police Dismissals], 18 October 2022

384 For background see Commons Library Insight, Casey Review: Misconduct in the Met and officer dismissal, 17 May 2023

385 Home Office, Review into the process of police officer dismissals: terms of reference, January 2023

challenge disciplinary outcomes or sanctions, ensuring that options are timely, fair and represent value for public money".[386]

The outcome of the review was published in September 2023.[387] It made 18 recommendations for reform, including:

- creating a rebuttable presumption of dismissal where gross misconduct is proven;
- requiring misconduct hearing panels to be chaired by senior police officers, rather than legally-qualified chairs as is currently the case, with support from a legally-qualified panel member and an independent panel member;
- improving the use of Regulation 13 of the Police Regulations 2003, which deals with the discharge of probationary officers;
- amending the Police Act 1996, to provide a statutory right of appeal for Chief Constables to the Police Appeals Tribunal;
- introducing a statutory list of criminal offences, conviction of which would automatically amount to gross misconduct; and
- amending the Police Regulations 2003 to make it a requirement of the office of constable to hold and maintain vetting.[388]

The Explanatory Notes indicate that "the majority of the recommendations will be implemented via secondary legislation".[389] However, the recommendation to amend the Police Act 1996 to provide a statutory right of appeal for Chief Constables to the Police Appeals Tribunal requires primary legislation.

The Bill

Clause 74 would amend section 85 and Schedule 6 of the Police Act 1996, which set out the existing framework for the Secretary of State to make rules specifying the circumstances in which police officers (or former officers) can appeal to the Police Appeals Tribunal against the finding or outcome of misconduct proceedings.

The Home Office review noted that Chief Constables who disagree with the outcome of misconduct proceedings, for example if a misconduct panel decides not to dismiss an officer, are not covered by section 85 and can currently only challenge decisions by bringing judicial review proceedings:

386 As above

387 Home Office, Home Office Review: The process of police officer dismissals, 18 September 2023

388 See Annex A of Home Office, Home Office Review: The process of police officer dismissals, 18 September 2023 for a full list of recommendations

389 Explanatory Notes (PDF), para 152

> The circumstances under which a Chief Constable may challenge the decision of a misconduct panel in relation to an officer serving in their force are very different. In the absence of a statutory right of appeal, Chief Constables' only recourse to challenge a decision by a misconduct panel is by way of judicial review.
>
> Some Chief Constables have raised concerns about the significant impact of officers not being dismissed by misconduct panels, where the Chief Constable believes that decision to be unreasonable and lenient. It is understandable that decisions which are, or could be perceived as, unduly lenient could adversely impact 2 of the 3 purposes of the misconduct regime: maintaining public confidence and upholding high standards.[390]

The review therefore recommended that Chief Constables should be given a statutory route to appeal to the Police Appeals Tribunal, alongside other recommendations designed to give Chief Constables a greater role in misconduct proceedings:

> This review makes wider recommendations which are expected to reduce the risk of unduly lenient decision-making. However, providing Chief Constables with a statutory right of appeal to the PAT would nevertheless bring helpful parity to the system. Whilst Chief Constables – or other senior officers – will now chair misconduct hearings, decisions will continue to be made on a majority basis and so the argument for a statutory appeal right for Chief Constables remains valid. This appeal right should be limited to decision at misconduct hearings only and not extended to performance proceedings, where final decisions are made internally, with proceedings chaired by senior officers.[391]

Clause 74 would implement this recommendation by amending section 85 to enable the Secretary of State to make rules enabling a chief officer of police to appeal to the Police Appeals Tribunal against decisions relating to members (or former members) of their force, or special constables (or former special constables) appointed for their police area.[392] Similar provision would be made in relation to local policing bodies (police and crime commissioners) to appeal where the decision related to a chief officer (or former chief officer).

Related amendments would be made to Schedule 6, dealing with matters such as the composition of the police appeals tribunal and the date on which a tribunal decision would take effect.

Equivalent amendments would be made to the Ministry of Defence Police Act 1987 to make similar provision for Ministry of Defence Police proceedings.

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390 Home Office, Home Office Review: The process of police officer dismissals, 18 September 2023, section 6.2

391 As above, section 6.6

392 Paragraph 726 of the Explanatory Notes (PDF) states that in practice this will involve amendments to the existing Police Appeals Tribunals Rules 2020

Comment

The Home Office recommendations have been welcomed in some quarters. For example, Metropolitan Police Commissioner Sir Mark Rowley welcomed the increased role for chief officers, saying he was "grateful to the Government for recognising the need for substantial change that will empower chief officers in our fight to uphold the highest standards and restore confidence in policing".[393] Sir Mark has made repeated calls for chief officers to have the 'final say' on who serves as officers in their forces.[394]

However, not all stakeholders agree. The Police Federation of England and Wales (PFEW) has previously commented that having misconduct panels chaired by legally qualified chairs makes the misconduct process "fairer and more transparent".[395] PFEW National Chair Steve Hartshorn criticised the final Home Office recommendations as "a huge retrograde step" and said:

> A return to the dark days, a return to kangaroo courts, whereby an officer is already guilty in the eyes of the chief officer before any evidence is heard, and they already know what outcome they want to see, is deeply concerning.
>
> There may be an independent panel behind them, with a legally qualified person, and the outcome is determined by a majority panel, but giving chief constables the power to challenge could see them appeal until they get the outcome they want, which is not necessarily in the best interest of those involved in the case.[396]

In its Policing Priorities report, published in November 2023, the Home Affairs Committee criticised the Home Office review as "too narrow in scope", and said more wide-ranging action is needed to build trust in policing and ensure officers are 'fit to serve'.[397] On the particular proposal to give chief officers a statutory right of appeal, the Committee commented that "giving chief officers more say over dismissals will not on its own deliver a more consistent interpretation of "gross misconduct" or higher quality of investigations".[398]

393 Metropolitan Police, Response to Home Office police dismissals review, 31 August 2023

394 See for example 'Give me more power to sack officers - Met chief', BBC News, 6 April 2023 and 'Met Police chief Mark Rowley slams Home Office for dragging heels over police dismissal reforms', Evening Standard, 18 July 2023

395 Police Federation, Misconduct process fairer and more transparent due to legally qualified chairs, 27 October 2022

396 Police Federation, Home Office police dismissal process changes are a 'huge retrograde step', 31 August 2023

397 Home Affairs Committee, Policing priorities, HC 635, 10 November 2023, para 39

398 As above, para 41

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