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Lord Ponsonby
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18 March 2019

Dear Fred

OFFENSIVE WEAPONS BILL

I am writing following the Parliamentary Clerks' advice of 15 March in relation to the admissibility of the amendments that you tabled for Third Reading of the Offensive Weapons Bill.

As you know, the Clerks' view is that in accordance with paragraph 8.146 of the Companion, the amendments do not fulfil any of the principal purposes of Third Reading amendments listed in para 8.144 because the advice is that the issues raised are not unclear in the Bill as it stands.

However, your amendments reflect concerns that a requirement on the police to consult with the Youth Offending Team (YOT) is not sufficient to guarantee that the YOT's view will inform the Court's decision-making process. I am therefore addressing your points in writing and I hope that this provides the reassurances you are seeking in relation to ensuring that the views of the relevant YOT are available to the Court.

The Government's view is that it is open to the Court to require seeing the YOT's assessment although this is not expressly stated in the Bill. The Courts will be aware that the police have a duty to consult with the YOT and, where relevant, it's not unreasonable to consider that the Court may ask the police to see the outcome of the consultation. This approach, (a duty to consult prior to making an application) mirrors the approach taken in anti-social behaviour injunctions made under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014.

The consultation requirement in the Bill allows the YOT and the police to agree how best to carry out this consultation and to reassure the Court that the consultation has taken place. This could take the form of a report, or the YOT youth worker could attend the hearing with the police, or the police could produce a report containing the views of the YOT or refer to the same in any evidence submitted to the court etc. We believe that it is not necessary to spell out in the legislation that the YOT must produce a report because it is implied in the consultation requirement that some form of report, or assessment, will be produced by the YOT and that the police must take account of that report or assessment in deciding whether

to make an application and the content of that application.

However, in order to make the point clearer, we will state in the guidance that we expect the police and the CPS to share with the court the outcome of any consultation with the YOT if requested. In addition, we will reinforce the message during the pilots that we will run before the legislation is rolled out to all police forces.

Your amendments also require a pre-injunction report to be obtained from the YOT prior to the first full hearing where without-notice application was made (either with an interim KCPO being made or no interim KCPO being made). Additionally, they provide the Court with a discretionary power to consult the YOT themselves when deciding whether it is necessary or just to make an interim order.

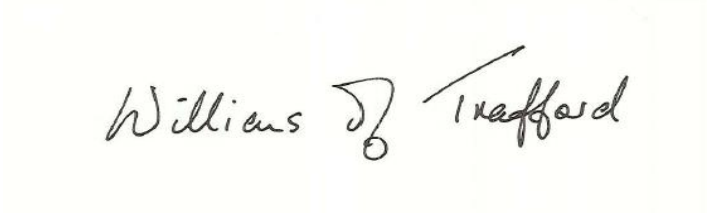
We do not consider that an express power for the Court to consult YOT teams directly is necessary. Additionally, the police must consult the YOT about the appropriateness of the application before the full hearing, so the YOT will have a chance of providing evidence in due course. Interim applications without consultation requirement are not unique to KCPOs and other civil orders take this approach.

Your amendments also seek to make it a requirement for the Court to receive evidence from the YOT in relation to suitability and enforceability of any requirement to be included in the order if the defendant is under 18 years of age. We believe this amendment is not needed. The Bill already provides a power for the court to require evidence from the individual responsible for promoting, supporting and monitoring compliance with any requirement included in the order. The individual could be the YOT, but could also be a community group, a charity, etc. If the individual promoting, supporting and monitoring compliance with the order is a YOT, the Bill already provides for the YOT to give evidence. If the YOT is not the individual that will ensure compliance with the order, it would not be appropriate for the YOT to comment on the suitability and enforceability of the requirement.

Your amendments also seek to limit the duration of an interim KCPO to 28 days. The Bill provides that an interim order has effect until the determination of the full hearing takes place. The approach taken in the Bill provides flexibility. Sometimes the full hearing will be held before 28 days, sometimes after 28 days and in that case, it is important that the order remains in place. An interim order would only be issued in exceptional circumstances, when there is an urgency to manage the defendant to protect the community or the defendant himself or herself and the Bill provides that a full hearing must always take place. Given the exceptional circumstances in which an interim order would be appropriate, the order should not cease to have effect before a court has had a chance to consider the evidence in a full hearing.

I hope this letter reassures you that the Bill already provides the safeguards that your amendments are seeking, and that these safeguards will be reflected in guidance.

I am copying this letter to Lord Kennedy, Baroness Hamwee and Lord Paddick, and placing a copy in the library of the House.



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