



Ministry
of Justice



Home Office

**Lord Wolfson of Tredegar
QC**

Parliamentary Under Secretary
of State

**Baroness Williams of
Trafford**

Minister of State

Lord Falconer of Thoroton and Lord Rosser

19 October 2021

Dear Richard and Charlie,

POLICE, CRIME, SENTENCING AND COURTS BILL

We are extremely grateful to you and all the other peers who spoke at Second Reading on 14 September for the inciteful and constructive way in which the important issues dealt with in this Bill were addressed.

In winding up at Second Reading I (Baroness Williams) was unable to respond to all of the specific points raised and I thought that it would be helpful to set out the Government's position on a number of these ahead of Committee stage.

Public Order

Recent actions by Insulate Britain have further demonstrated the need to ensure that public order legislation strikes an appropriate balance between protecting the rights of protesters and those of the wider public adversely affected by protest activity. The irresponsible actions we have seen in recent weeks around the M25 and elsewhere have put police officers' and the travelling public's (and indeed the protesters themselves) at serious risk of harm, as well have bringing unacceptable disruption to those simply wanting to get to work or otherwise go about their daily lives. These actions are wholly unacceptable and it is for that reason, as the Home Secretary set out last week, we need to strengthen the measures in the Bill to ensure that the police have the powers they need to tackle such highly disruptive protests and protect the public. We will therefore be bringing forward amendments to the Bill including to:

- Increased sentences for obstructing a highway – raising the maximum penalty for the offence under section 137 of the Highways Act 1980 from a £1,000 fine to six months' imprisonment, an unlimited fine, or both. We will also close a loophole which allows

protesters to cause further disruption on a road when it has been closed by the police for the purposes of clearing demonstrations and moving people on.

- Introduce a new offence of obstructing the construction of key transport infrastructure carrying a maximum penalty of six months' imprisonment, an unlimited fine, or both.
- Introduce a new offence of interfering with the operation of key infrastructure, such as the strategic road network, railways, seaport and airports, carrying a maximum penalty of 12 months' imprisonment, an unlimited fine, or both.
- Introduction of a criminal disruption prevention order, giving the courts the power to impose restrictions on individuals who repeatedly engage in criminal activity at a protest, breach of the order would be a criminal offence carrying a maximum penalty of six months' imprisonment, an unlimited fine, or both.
- Provide for a new offence to criminalise the act of locking-on (this is, where an individual attaches themselves to something or someone else in order to prevent themselves being moved on) that causes or is likely to cause serious disruption. The maximum penalty would be six months' imprisonment, an unlimited fine, or both.
- Introduce new stop and search powers where an officer has a reasonable suspicion that an individual is carrying items they intend to use to cause serious disruption. In addition, officers would have the power to stop and search a person, in a designated area in which a protest is taking place, without suspicion for items that could be used to cause serious disruption (the use of this power would be authorised by a senior police officer).

Further details are available at: [Tougher penalties for protests causing disruption on motorways - GOV.UK \(www.gov.uk\)](http://www.gov.uk).

In relation to the existing new powers in the Bill to impose conditions on a protest in respect of the generation of noise, we have addressed this in detail in our response to the report by the Joint Committee on Human Rights (JCHR). To summarise, the police will only be able to impose conditions on unjustifiably noisy protests that may result in significant harm to others or may cause serious disruption to an organisation. The threshold for being able to do so will be appropriately high. The police will only impose conditions in relation to the generation of noise in cases where it is considered necessary and proportionate. With regards to the terminology used in the Bill, this is again addressed in detail in our response to the JCHR report. Part 3 of the Bill uses many terms, such as intimidation, harassment, alarm and distress that are already used in the Public Order Act 1984.

Baroness Humphrey's observed that the Welsh Government has recommended to the Senedd that it does not give its consent to the noise-related provisions in Part 3 of the Bill. It is the UK Government's view that the power of the police to impose conditions in relation to the noise generated by a public procession, public assembly or one-person protest are strictly within the realms of public order policing and therefore relate to reserved matters, specifically, the maintenance of public order and policing (paragraphs 40 and 41 of Schedule 7A to the Government of Wales Act 2006 respectively). As such, it is our view that these provisions do not engage the legislative consent process.

Unauthorised Encampments

The vast majority of travellers are law-abiding citizens. However, on some occasions, unauthorised encampments can cause harm. It is only right that this Government seeks to protect the citizens who are adversely affected by the actions of some who reside on unauthorised encampments.

Unauthorised encampments which cause harm, disruption or distress mean that the actions of a few damage the reputation of the wider travelling community. Enforcement action will be taken against anyone who causes damage, disruption or distress in the specific conditions and not on the basis of ethnicity or culture, but where a person meets those conditions, no matter their race, ethnicity or lifestyle. Good community relations and community cohesion is more likely to be strengthened by tackling the unauthorised encampments which cause harm as described. People on unauthorised encampments who do not cause significant damage, disruption or distress will not commit the new offence.

The Government is committed to delivering a cross-government strategy to improve the life chances for Gypsy, Roma, Traveller communities. We are committed to tackling all forms of hate crime and are considering a range of options to tackle hate crime beyond the current Hate Crime Action Plan. We are engaging with civil society organisations to explore possible approaches and ensuring travellers' views are taken into consideration.

The Government will be responding to the report from the JCHR on the unauthorised encampments provisions shortly. The Government is grateful for the Committee's report and their recognition of the rights of landowners and the rights of travellers to live a nomadic way of life. We are, however, disappointed that the Committee did not take evidence from local authorities, landowners, businesses and people who have been adversely affected by unauthorised encampments and have had to deal with the consequences of the harm caused.

Baroness Humphrey's also observed that the Welsh Government was withholding its consent from the provisions in Part 4 of the Bill. It is the UK Government's view that the provisions in Part 4 relate to reserved matters and therefore do not engage the legislative consent process. The relevant reservations are: civil or criminal proceedings; the prevention, detection and investigation of crime; maintenance of public order; and policing (paragraphs 8, 39, 40 and 41 of Schedule 7A to the Government of Wales Act 2006).

Serious Violence Reduction Orders

Serious Violence Reduction Orders (SVROs) will be available when an adult has been convicted of a knife or offensive weapons offence, allowing the police to search them without suspicion. These new orders will help deter continued carrying of weapons and help protect offenders from being drawn into further exploitation.

Baroness Armstrong highlighted concerns around the exploitation of women and girls. We know that around 7% of knife and offensive weapons offences are committed by adult women and we would expect most SVROs to be made for people who are male. This is because more males are sentenced for relevant offences than females. However, we are committed to ensuring that our investment addresses the needs of girls and young women who are subject to serious and appalling harm, especially in the context of gang related activity.

The practice of individuals causing others to carry weapons, drugs or other items on their behalf, is commonplace within criminal groups. We have noted the risk of a 'displacement effect' of those subject to SVROs passing their weapons to other, including adults passing their weapons to children, or men passing weapons to vulnerable women and girls. We will continue to monitor this closely during the pilot phase.

Lord Paddick also raised the provisions in the Bill which allow individuals to be given an SVRO if another person who committed the offence used or had with them a bladed article or offensive weapon in the commission of the offence and the offender knew or ought to have known that this would be the case. We included this provision to capture situations where more than one person engages in a knife or offensive weapon related crime but where all offenders knew or ought to have known that a bladed article or offensive weapon was used or in possession while the offence took place. For instance, a fight where the offender(s) in possession of a knife and the offender(s) not in possession of the knife are convicted of offences arising from the same facts.

In order to be given an SVRO in these circumstances the court must be satisfied on the balance of probabilities that the offender knew or ought to have known that another person used bladed article or offensive weapon in the commission of the offence, or that the other person had such an article or weapon with them when the offence was committed.

The Government is committed to help preventing offenders of all ages, genders and backgrounds from becoming involved in serious violence by developing resilience, supporting positive alternatives and delivering timely interventions. Prevention and early intervention are at the heart of our approach to tackling serious violence. That is why, in addition to proposing SVROs to help reduce serious violence now and into the future, we have also invested over £220 million into early intervention projects over ten years. We have also committed a further £130.5 million to tackle serious violence and homicide in 2021/22, including funding for targeted policing and interventions to protect young people from involvement in violence.

The Home Office fund Young People's Advocates in key serious violence hotspots to provide gender-specific specialist one to one support for young women and girls at risk of involvement in gangs, exploitation and abuse. We are providing £398k in 2021/22. A localised understanding and response are also essential to reducing and preventing serious violence. Multi-agency Violence Reduction Units are taking important steps to identify local need and commission support and interventions for people at risk, including women and girls.

Reducing Reoffending / Rehabilitation of Offenders

A number of peers raised the importance of reducing reoffending and rehabilitating offenders through and outside of this Bill. Tackling crime is a top priority for this Government, and we are focusing efforts on making sure that individuals turn their backs on crime when leaving prison. Our approach follows through on the strategy we jointly set out in the Prime Minister's Beating Crime Plan to cut crime and reduce repeat offending through a twofold approach: enhancing rigour, discipline and consequences within the management and supervision of offenders to cut crime and protect the public; and engaging prison leavers with rehabilitative activity in-custody and resettlement support to confront the drivers of crime.

In January this year we announced a £70 million investment to reduce crime and improve public safety by tackling key drivers of reoffending. This included £50 million to enhance Approved Premises, provide greater resettlement support for prisoners before and after release and to provide temporary accommodation to prison leavers at risk of homelessness in five initial probation regions, which launched in July.

We are also investing £80 million to support the expansion of substance misuse treatment services to support the recovery of prison leavers with drug and alcohol addictions and divert them onto effective community sentences and reduce drug-related crime and deaths.

A further £20 million has been invested in the Prison Leavers Project that will test new and innovative ways to reduce reoffending by addressing the challenges people face when they are leaving prison.

We are encouraging prison leavers to turn their backs on crime by increasing employment opportunities, including testing new approaches in several prisons, responding to local and national labour market gaps. In the Beating Crime plan we committed to hold a summit later this year to bring employers together to recruit more prison leavers, and the government is leading by example with the goal of recruiting 1,000 prison leavers into the Civil Service by the end of 2023.

By supporting people into a job, a home and treatment for substance misuse, we can help them escape the vicious cycle of crime and prevent victims by strengthening our community interventions.

A number of peers separately expressed concern about the Government's approach to the changes in sentencing in this legislation. We would like to take this opportunity to emphasise that these changes deliver a targeted, smarter approach to sentencing. Under this Bill it is the most serious sexual and violent offenders who will spend longer in prison, while changes to the community sentencing framework will address the underlying drivers of offending and divert more low-level offenders away from prison. Our problem-solving courts pilots will test how people who might otherwise receive short custodial terms can be better managed in the community and our reforms to the criminal records regime will mean that ex-offenders will have a better chance of accessing employment, removing a major barrier to rehabilitation after release from custody. It is also important to remember that the reforms in this Bill are only one small part of our work to rehabilitate offenders. Work continues on the non-legislative commitments made in the Sentencing White Paper published last year, including the scaling up of the Community Sentence Treatment Requirement Programme, the Pre-Sentence Reports Pilot which was launched in March this year and our refreshed Integrated Offender Management strategy.

Female Offenders / Primary Carers

A number of peers suggested that the Bill be amended to introduce a statutory duty on courts to consider the impact on dependent children when sentencing their primary carer. The Government believes that such a duty is unnecessary, as courts already have sufficient guidance on the factors that should be taken into account when sentencing primary carers through relevant case law and sentencing guidelines. With regard to defendants awaiting trial, there is a presumption in favour of bail, recognising that a person should not be deprived of their liberty unless necessary for the protection of the public or the delivery of justice.

Relatedly, several speakers in the debate raised the issue of female offenders. We remain committed to the vision set out in the Female Offender Strategy and to delivery of all three of its main aims of: fewer women coming into the criminal justice system and reoffending; fewer women in custody (especially on short-term sentences) and a greater proportion of women managed in the community successfully; and better conditions for those in custody.

Publication of the Strategy was the start of a new and significant programme of work to deliver better outcomes for female offenders that will take some years to deliver. We will continue to look at the scope to increase the sustainability of the women's sector as we take the delivery of the Strategy forward.

Various speakers also raised the issue of mothers in prison and they will be interested to know that the new *HMPPS Policy Framework on Pregnancy, Mother and Baby Units and Maternal Separation from Children up to the Age of Two in Women's Prisons* was published on 20 September 2021. Key reforms in the new Framework include:

- An enhanced Pregnancy and Mother and Baby Liaison Officer role in all women's prisons, to ensure timely identification, contact and signposting to support services.
- Increased local and national data collection on pregnancy and births, and breakdown by protected characteristics.
- Guidance on supporting women not engaging with support.

Remote Trials

Lord Thomas of Gresford and Lord Pannick raised concerns about clause 169 and the impact an extension in the use of live links in criminal proceedings might have on fair trials, in particular where jurors are able to participate remotely.

Our key concern is to ensure that, where live links are used, participants are able to participate effectively, and we are satisfied that we have the right safeguards and processes in place for that. Clause 169 sets out a clear and consistent procedure for courts to follow when making decisions on live links, whilst allowing judges the flexibility to use their discretion in determining whether it is in the interests of justice and appropriate in the particular circumstances of the case.

The court must be satisfied that it is in the interests of justice, having considered any representations from parties to the proceedings. Clause 169 also requires that courts take other factors into account before making a decision, including any guidance given by the Lord Chief Justice and Criminal Procedure Rules and the particular circumstances of the case, including the nature of the proceedings and whether the person concerned would be able to participate effectively in the proceedings by live link.

We have no immediate plans to implement provisions which would enable the remote participation of jurors and would not do so without consultation and discussion with the Lord Chief Justice and other criminal justice partners. This is a future-proofing measure to ensure that the courts have the flexibility to use new technology as it develops, in order to improve efficiency and build resilience in the courts system.

If this measure were to be introduced in our courts in the future, it would only be in appropriate circumstances and there is currently no intention for it to become a regular feature of trials. We can foresee some benefits to having this option available, for example, to enable the court to avoid the risks and logistical difficulties of arranging for 12 jurors to attend a crime scene in situ by allowing them to observe trial participants attending the site by video link without having to leave the court room.

Whilst we understand the concerns people have, we believe it would be remiss of us as a Government if we were not open to considering all the potential options available to improve court users experience both now and in the future. Technology is developing in a way that makes it increasingly possible to replicate the in-court experience which may well address these types of concerns in the future.

Baroness Sater raised concerns about the impact of live links on the participation of children in hearings. We agree that it is vitally important that we continue to protect the interests of children and young people in the criminal justice system. That is why we have built additional safeguards into our provisions. Where the child is a defendant, the legislation provides that the relevant Youth Offending Team (YOT) must be given the opportunity to make representations before any direction is made by the court.

Decisions about live links will be made on a case-by-case basis having regard to the welfare needs and particular circumstances of each individual child. The court, with the assistance of the YOT, will determine whether the child's ability to understand the proceedings will be hindered by the live link hearing, making an in person hearing desirable and will balance that factor against the stress and inconvenience of the journey to court.

Police and Crime Commissioners

Lord Bach raised the rules governing who can be a PCC candidate. We acknowledge that these rules are the strictest of all elected roles in Great Britain but are necessary to ensure the highest levels of integrity by the person holding office and to protect public trust in the police's operational independence. This Government wants the public to have a direct say over policing in their area through their locally elected and democratically accountable PCC; PCCs have a statutory responsibility to hold their force and the Chief Constable to account and it is right that they are held to the highest standards.

Inquiry into issues raised by the Wayne Couzens conviction

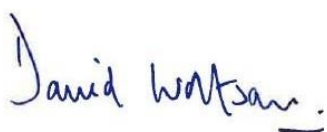
Finally, we wanted to take this opportunity to update you on the actions we are taking in response to the appalling circumstances of the abduction, rape and murder of Sarah Everard by a serving police officer. On 5 October, the Home Secretary announced the launch on an inquiry to investigate the issues raised by this case. The Home Office issued a press release which can be accessed at: [Inquiry launched into issues raised by Couzens conviction - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/home-office-launches-inquiry-into-issues-raised-by-wayne-couzens-conviction).

The inquiry will have two parts and aims to deliver improvements within policing.

The first part of the Inquiry will examine Wayne Couzens' previous behaviour and will establish a definitive account of his conduct leading up to his conviction, as well as any opportunities missed, drawing on the Independent Office for Police Conduct's (IOPC) investigations, once concluded.

The second part will look at any specific issues raised by the first part of the inquiry, which could include wider issues across policing – including vetting practices, professional standards and discipline, and workplace behaviour.

We are copying this letter to Lord Paddick, Lord Marks, Lord Ponsonby, Lord Coaker, Lord Judge, Baroness Humphreys, Lord Bach, Baroness Armstrong, Lord Thomas of Gresford, Lord Pannick and Baroness Sater and placing a copy in the library of the House.



Lord Wolfson of Tredegar



Baroness Williams of Trafford