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BY EMAIL ONLY
Lord Paddick
House of Lords
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6 January 2022

Dear Brian

Police, Crime, Sentencing and Courts Bill: Serious Violence Reduction Orders

I am writing to follow up the debate in Committee on 17 November on Serious Violence Reduction Orders (SVROs).

I first want to clarify that in order for an SVRO to be made the prosecution must make an application to court for an order in respect of an offender. The court has full discretion as to whether to make an SVRO and can only make one where:

- a) the court is satisfied on the balance of probabilities that a bladed article or offensive weapon was used by the offender in the commission of the offence; or the offender had a bladed article or offensive weapon with them when the offence was committed; or a bladed article or offensive weapon was used by another person in the commission of the offence and the offender knew or ought to have known that this would be the case; or another person who committed the offence had a bladed article or offensive weapon with them when the offence was committed and the offender knew or ought to have known that this would be the case; and
- b) the court considers the SVRO necessary to protect the public (or any particular members of the public) in England and Wales from the risk of harm involving a bladed article or offensive weapon, or to prevent the offender from committing an offence involving a bladed article or offensive weapon.

Possession of a Weapon

You and other Noble Lords raised questions about provisions in the Bill which allow an SVRO to be made if a person had a knife with them when the offence was committed but did not use it. In support of amendment 225, you highlighted that

carrying a knife is not in itself a criminal offence and the criminal offence is only committed when the knife is carried without reasonable excuse or lawful authority.

I want to clarify that new section 342A(3) of the Sentencing Code (as inserted by the Bill) provides that an SVRO can be made if a bladed article or offensive weapon was *used* by the offender in the commission of the offence, or that the offender had a bladed article or offensive weapon *with them* when the offence was committed. Meaning an SVRO can be made where a knife or offensive weapon was in the possession of an offender when the offence was committed but was not used during the commission of the offence.

Whilst you are correct in suggesting that carrying a knife may not be an offence in itself, carrying a knife without reasonable excuse or lawful authority is an offence (provided for by section 1 of the Prevention of Crime Act 1953 and section 139 of the Criminal Justice Act 1988). An SVRO can be made when an offender had a bladed article or offensive weapon with them, and this could include where a person is caught *unlawfully* carrying a bladed article or offensive weapon.

For instance, it was suggested that a person who carries a knife for use at work such as a chef or an electrician or a Sikh who carries a Kirpan for religious purposes, who commits an offence, could be considered for an SVRO simply for being in possession of the bladed article, even if the person did not use the article as a weapon or threatened to use the article as a weapon. In any case where an SVRO might be applied for, the prosecution would first need to consider whether to make an application to the court for an SVRO based on the evidence submitted by the police. The court would then need to be satisfied based on the facts of the case whether the conviction and the subsequent making of an SVRO would be necessary to protect the public or any particular members of the public (including the offender) in England and Wales from the risk of harm involving a bladed article or offensive weapon, or to prevent the offender from committing an offence involving a bladed article or offensive weapon.

In the examples outlined in the debate, it would be difficult to see how a court might consider that an SVRO is necessary to protect the public (or any particular members of the public) from the risk of harm involving a bladed article or offensive weapon, or to prevent the offender from committing an offence involving a bladed article or offensive weapon, if the bladed article was not relevant to the offence and where the individual was in possession of a bladed article with a reasonable excuse such as for use at work or religious purposes. The prosecution will also consider evidence provided by the police before making an application for an SVRO to the court. Our draft statutory guidance on SVRO provides details to the police on the information they should consider when referring a case to the prosecution including specific information on the case, the offender, wider circumstances and local risk and crime factors.

'Ought to have known' Provisions

You and other Noble Lords also questioned provisions in the Bill which allow an order to be made 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.

I want to reiterate that for an SVRO to be made in any circumstances the individual must have been convicted of an offence where a bladed article or offensive weapon was used in the commission of the offence or was with either the offender or another individual who was also convicted of an offence arising from the same set of facts.

This provision would capture a situation where more than one person is convicted of an offence arising from the same set of facts, but not all those individuals used a bladed article or offensive weapon in the commission of the offence, or had such an item with them when the offence was committed. Where a person who did not use the bladed article or offensive weapon, or have such an article with them, but they knew or ought to have known that a bladed article or offensive weapon would be used in the commission of the offence, or that another person was in possession of such an item while the offence took place, an SVRO may be necessary to protect the public or any particular members of the public (including the offender) from the risk of harm involving a bladed article or offensive weapon, or to prevent the offender from committing an offence involving a bladed article or offensive weapon. For instance, a fight or robbery 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 any such case the prosecution must consider whether to make an application for an SVRO and the court must consider whether to grant the Order.

Reasonable excuse defence

Lord Marks spoke to amendment 223 which would permit a reasonable excuse defence to the offence committed under new section 342G(1) of the Sentencing Code where an offender subject to an SVRO tells a constable that they are not subject to such an order when in fact they are.

We have provided a reasonable excuse defence in relation to failing to comply with any of the requirements of the order or any prohibitions because it is possible that a person may have a good reason not to comply, but it is difficult to see any circumstances where it would be reasonable for an offender not to tell an officer that they are subject to an SVRO if they are asked.

Lord Marks referred to examples highlighted by Liberty that suggest that an offender may have committed the proposed offence of telling the police constable falsely that they are not subject to an order even where they honestly believe that the order is no longer in force, or where they do not understand the question because English is not their first language, or for any other reason. The police will be responsible for any monitoring and any action to be taken if an offence is committed in relation to SVROs. Should an individual be prosecuted, it would be for the court to consider all circumstances relating to any offence under new section 34G of the Sentencing Code and to decide on an appropriate sentence based on those circumstances.

In any case, we think that breaching an SVRO should be a serious matter and think it is much fairer to outline what specific behaviours amount to a specific offence. This

would provide clarity to the CPS, police and courts as well as the offenders themselves.

Our draft statutory guidance on SVROs provides details to the police on their powers in relation to SVROs. Including on offences in relation to SVROs, evidence to be submitted to the prosecution when considering an application, how officers should confirm the identity of those subject to an order and how forces are required to have their stop and search records scrutinised by communities. The draft guidance is available at [Police, Crime, Sentencing and Courts Bill 2021: draft guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/police-crime-sentencing-and-courts-bill-2021-draft-guidance).

Regulation-making powers

Finally, I'd like to address the point raised by Lord Coaker who raised concerns about provisions in the Bill which give the Secretary of State the ability to add additional requirements or prohibitions on an offender and suggested it would be helpful for the Committee to have some idea of the sorts of regulations that can be made.

It is possible that the pilot identifies the need to provide additional requirements or prohibitions and we should wait for the conclusion of the pilot to see if it will be necessary to make regulations in order to ensure that any learning from the pilot can be taken into account. The legislation makes it clear that any additional requirements or prohibitions on an offender must be considered appropriate for the purpose of assisting police constables to exercise the powers conferred by new section 342E of the Sentencing Code, being the stop and search power. In addition, regulations under new sections 342B(1)(b) or 342C will be subject to the affirmative procedure. For example, additional requirements or prohibitions might be imposed in order to assist the police to identify offenders who are subject to an SVRO.

I think we agree on the need to do all we can to tackle the scourge of knife crime. The government is committed to ensuring these orders are used fairly and appropriately and we will use the pilot of SVROs to build an understanding of the impact and effectiveness of the new orders before making a decision on whether they should be rolled out nationally. I hope that I have been able to clarify some of the issues raised in Committee.

I am copying this letter to Lord Rosser, Lord Coaker, Lord Marks of Henley-on-Thames, Baroness Armstrong of Hill Top and Lord Moylan, and placing a copy in the library of the House.

A handwritten signature in black ink, appearing to read 'Susan', is centered at the top of the page.

**Baroness Williams of Trafford
Minister of State**