

Consultation Options Assessment

Title: Consultation on personal liability measures on senior executives of online platforms or marketplaces

Type of measure: Primary Legislation

Department or agency: Home Office

OA number: HO COA 1006

Contact for enquiries: Owen Hanson

Date: 08 November 2024

1. Summary of proposal

1. The government is implementing its manifesto commitment to impose personal liability measures on executives who flout the laws on the sale of knives by requiring online marketplaces and social media platforms to swiftly remove illegal content around knives.
2. This illegal content would be defined as content related to the sale of prohibited weapons under section 141 of the Criminal Justice Act 1988¹, the sale of flick knives and gravity knives under section 1 of the Restriction of Offensive Weapons Act 1959² and the marketing of a knife which suggests it is suitable for combat or encourages/simulates violent behaviour as under sections 1³ and 2⁴ of the Knives Act 1997.
3. The government wants to provide the police with the power to be able to issue “content removal notices” to online platforms and marketplaces and their senior executives.
4. The notices will require online marketplaces and platforms to take down specific pieces of illegal content posted by individuals who are offering illegal prohibited offensive weapons for sale or illegally marketing knives in ways which suggests their suitability for combat or encourages violence through the use of the knife as a weapon.
5. The content removal notice would first be sent to the online platform or marketplace and require it to take down the content within 48 hours. If the company fails to act on this

¹ Criminal Justice Act 1988 (legislation.gov.uk): <https://www.legislation.gov.uk/ukpga/1988/33/section/141>

² Restriction of Offensive Weapons Act 1959 (legislation.gov.uk): <https://www.legislation.gov.uk/ukpga/Eliz2/7-8/37/section/1>

³ Knives Act 1997 (legislation.gov.uk): <https://www.legislation.gov.uk/ukpga/1997/21/section/1>

⁴ Knives Act 1997 (legislation.gov.uk): <https://www.legislation.gov.uk/ukpga/1997/21/section/2>

the police will issue a second content removal notice to a senior executive in that company. If the senior executive fails to ensure the take-down of the content within 48 hours, they would be liable for civil action. Both the company and the senior executive would have the right to review the illegality of the content on receipt of their respective content removal notices and the senior executive would have the right to object once informed that they were being taken to civil court.

6. We are proposing that the fine for not complying with the content removal notice would be up to £10,000, determined by the court. We believe that a fine at this level is sufficient to act as a deterrent and would change behaviours, whilst retaining proportionality.

2. Strategic case for proposed regulation

What is the problem under consideration?

7. Police have reported that one of the biggest problems in addressing knife crime is private sellers or resellers using social media platforms to illegally sell knives. An individual sells a knife illegally where they sell or offer for sale prohibited offensive weapons, sell or offer for sale knives to persons under the age of 18 years and to market knives in ways which encourages violence or promotes their suitability for use in violent attacks.
8. These private sellers or resellers are selling on prohibited offensive weapons and knives for profit, the government has been made aware by policing of incidents where these knives have been sold to persons under the age of 18 years and have been later used in knife attacks and homicides.
9. These sellers are committing criminal offences under sections 141 of the Criminal Justice Act 1988, section 1 of the Restriction of Offensive Weapons Act 1959 and sections 1 and 2 of the Knives Act 1997.
10. However, there is need for swifter action by online companies to take down the specific content posted by these sellers to prevent people, including persons under the age of 18 years, from being able to purchase a prohibited offensive weapon or knife.
11. The government has committed to making the streets safer, and to reduce knife crime by 50 per cent in the next decade. This pledge includes holding the executives of online companies who flout the law on knife sales to account through tough sanctions.

What evidence is there to support the problem statement?

12. In the year ending June 2024, police recorded a total of 50,973 offences, involving a sharp instrument. This was a four percent increase compared with the year ending in June 2023 (49,187 offences). There were also notable increases seen in the number of robberies involving a knife or sharp instrument, which was up eleven per cent compared with the previous year. Of all recorded homicides of the same year, the proportion of homicides where a knife or sharp instrument was used as the method of killing was 44 per cent, a slight increase compared to the 42 per cent the previous year.⁵

⁵ Crime in England and Wales - Office for National Statistics (ons.gov.uk) - Figures Exclude Greater Manchester Police <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingjune2024#homicide>

13. In the year ending in March 2024, there were over 18,000 cautions and convictions made for possession of a knife or offensive weapon, accounting for 29 per cent of total offences. This was a slight decrease of two per cent compared with the previous year.⁶
14. The government's comprehensive approach in improving preventive measures aims to reduce the number of offences involving a sharp instrument, and the number of people carrying offensive weapons. This approach includes the new 10-year Young Futures programme⁷ and tougher actions taken against offenders.
15. Between April 2023 and April 2024, there was a three per cent increase in the number of hospital admissions for assault with a sharp object⁸. There is cause for government intervention so that fewer people are admitted into hospital for knife related injuries. Reducing the supply of illegally marketed knives or prohibited offensive weapons by making social media platforms and online marketplaces do more to swiftly take down content will help achieve this.

Why is government action or intervention necessary?

16. Knife crime is a complicated issue, requiring multi-faceted solutions, and the government is determined to put measures in place to reduce violence involving knives.
17. The government is launching a public consultation to gauge respondent's opinions on imposing civil sanctions on executives of social media platforms or online marketplaces. Specifically, those which do not swiftly take down illegal content when notified by the police.
18. We are aware that private sellers or resellers are using social media platforms and marketplaces to sell knives and other weapons illegally. This includes the sale of prohibited offensive weapons and the marketing of knives in ways which encourages violence or promotes their suitability for use in violent attacks. Some of these knives have been sold to under-18s and then used in knife attacks and homicides. The police tell us that there have been several cases where individuals have bought knives in bulk from legitimate knife sellers and resold them via social media. One individual purchased 261 knives online which were delivered to his home address. The weapons, which were primarily machetes, hunting and combat style knives, were then resold to his criminal network and a number of individuals linked to county lines drug dealing.
19. The government is keen to gain a more precise understanding of the scale of reselling of knives on large social media platforms and online marketplaces. Particularly the extent to which social media platforms and online marketplaces are already addressing the problem, for example through content moderation teams and the taking down of such content.
20. The government recognises that there should be provision for some defences for social media companies and online marketplaces in relation to non-compliance with content

⁶ Knife and Offensive Weapon Sentencing Statistics: January to March 2024 - GOV.UK (www.gov.uk)
<https://www.gov.uk/government/statistics/knife-and-offensive-weapon-sentencing-statistics-january-to-march-2024/knife-and-offensive-weapon-sentencing-statistics-january-to-march-2024>

⁷ More information can be found in the governments press release on the launch of a new coalition to tackle knife crime.
<https://www.gov.uk/government/news/government-to-launch-new-coalition-to-tackle-knife-crime>

⁸ Crime in England and Wales: Other related tables - Office for National Statistics (ons.gov.uk):
<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/crimeinenglandandwalesotherrelatedtables>

removal notices. This may be where the company could encounter technical issues which might delay the take down of the content within the set period of time.

21. The government is also aware that there needs to be some defence available to senior executives for when the senior executive was too new in post to be considered responsible for failing to comply with content removal notices or had no knowledge of being named as the senior executive with responsibility for ensuring the content removal notice was actioned.

What gaps or harms would occur if government doesn't intervene?

22. Knife crime impacts victims through emotional and physical harm, as well as inflicting costs on the economy and wider society (for example through loss of output, and costs to health and victim services, police, and the wider criminal justice system). The extent to which personal liability on online executives reduces knife enabled crime will determine the extent to which these costs are reduced.

3. SMART objectives for intervention

23. As part of the government's pledge to make the streets safer, and to honour the manifesto commitment to introduce tough sanctions on executives of online companies who flout the law on knives, the government is exploring imposing personal liability on the executives of online companies who flout the law on the sale of knives. The intended outcome is to disrupt the activities of private sellers or resellers, reducing knife-enabled crime by using the deterrent of senior executives being personally liable to make social media platforms and online marketplaces do more to quickly take down illegal content which is flagged to them.
24. The primary objective is to make sure that social media platforms and online marketplaces remove illegal content flagged to them within a short period of time. This includes content under section 141 of the Criminal Justice Act 1988, section 1 of the Restriction of Offensive Weapons Act 1959 and sections 1 and 2 of the Knives Act 1997.
25. At the same time the government wants to make sure that legal content is not inadvertently taken down and companies and executives are not unfairly penalised for being unable to remove illegal content in time due to circumstances beyond their control.

4. Description of proposed intervention options and explanation of the logical change process whereby this achieves SMART objectives

Option 0 – Do Nothing

26. The Home Office does not introduce new regulations to complement those laid out in the Online Safety Act 2023 (OSA 2023) to include civil or sanctions for executives. This risks the government failing to meet its objective of reducing knife crime by 50 per cent

in the next decade and its manifesto commitments to hold executives personally accountable for flouting rules around the online sale of knives.

Option 1 – Civil Sanctions

27. The Home Office has conducted research on the feasibility of a proposal to impose a civil sanctions regime ensuring the personal liability of senior executives of social media platforms and online marketplaces which do not take down illegal content quickly enough when notified by the police. This will be tested in the public consultation.
28. The consultation will seek views on this proposed option, how it will operate in practice and appropriate defences and penalties.
29. The Home Office will also be using the public consultation to develop an estimate of the size of the online market and the scale at which private sellers and resellers are operating within the online market for knives. The Home Office will also be proactively engaging with online companies to make sure they have the chance to contribute to the consultation and feed into the further development of the impact assessment.
30. This proposal will follow tried and tested methods. Civil courts issuing fines for a breach of a statutory duty are an accepted part of the UK legal landscape.
31. There is already a legislative framework in place in relation to online safety. The OSA 2023⁹ also places a duty on online marketplaces and social media platforms to have proportionate systems in place to, amongst other duties, swiftly remove illegal content when they become aware of it. If there is a systemic failure by companies to remove illegal content, companies can be fined up to £18 million or 10 per cent of their qualifying worldwide revenue, whichever is greater. The content which the government want companies to take down is content which is already breaching the existing law.
32. The government would introduce this proposal as primary legislation as part of the upcoming Crime and Policing Bill.

5. Summary of long-list and alternatives

33. Holding the executives of online companies to account who flout the law on the sale of knives is a government manifesto commitment.
34. The Home Office are consulting on how to deliver this commitment by seeking views on our proposed imposing of civil personal liability on senior executives. Additionally, working to develop an estimate of the size of the online market and the scale at which private sellers and resellers are operating within the online market for knives, as well as consulting specifically with the online companies on the proposals.
35. There was no longlist of options as this is a manifesto commitment. It was not possible to exempt small and micro businesses / medium-sized businesses from the scope of the policy as this would undermine the purpose of the proposed personal liability for civil sanctions (to protect public safety). Additionally, the police are likely to focus on the large businesses (for example, online marketplaces such as Amazon, eBay and Meta)

⁹ Online Safety Act 2023
<https://www.legislation.gov.uk/ukpga/2023/50/contents>

and large social media platforms (for example, SnapChat, TikTok Instagram) as illegal content on these platforms will have the greatest reach.

6. Description of shortlisted policy options carried forward

36. Two options have been carried forward:

- **Option 0 – Do Nothing**
- **Option 1 – Civil sanction for executives whose companies persistently breach content removal notices.**

37. Purpose of the Consultation:

- a) Gauge support for the government's proposed approach of imposing civil personal liability and the likely impacts compared to the business-as-usual scenario.
- b) Provide more information on what stakeholders and the public consider to be a fair amount of time to give companies to remove illegal content. This will follow once informed of it by the police through a content removal notice.
- c) Gather views on the right threshold for initiating legal proceedings.
- d) Help the government develop an estimate of the size of the online market for knives, and the scale at which private sellers and resellers are operating within the online market for knives.
- e) Gather evidence of any potential costs associated with implementing this measure on businesses, for example the potential cost to social media platforms and online marketplaces of hiring any new content moderators.
- f) Gather input on what defences should exist for non-compliance.
- g) Gather views on whether our proposed penalty is set at the right level.

7. Monitoring and evaluation

38. The effect of imposing personal liability on senior executives of social media platforms and online marketplaces who fail to take action to prevent the illegal sale of knives and other weapons will be monitored using feedback/evidence from the police on how quickly companies are taking down illegal content and through MoJ statistics relating to the prosecution of relevant offences. The Home Office will also keep under review the impact of the measures on business, particularly the impact of any additional cost to companies from hiring extra content moderators.

8. Minimising administrative and compliance costs

39. There will be an administrative cost to social media platforms and online marketplaces for complying with the content removal notices being issued by the police. The Home Office cannot make an estimate at this time but the consultation will gather information on how much online platforms will have to change their processes. The government will ensure that this process is as streamlined as possible and produce guidance to help businesses understand the process.

Declaration

Department: Home Office – Public Safety Group

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Minister
Responsible:

Minister for Policing, Fire and Crime Prevention

I have read the Consultation Options Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed:



Date:

11/11/2024

Summary: Analysis and evidence

For Consultation OAs, it is not a requirement to complete all the below, but please complete as much as you can where possible. For each shortlisted option, include a column in the below table.

Price base year:

PV base year:

<p>This table may be reformatted provided the side-by-side comparison of options is retained</p>	<p>0. Business as usual (baseline)</p>	<p>1. Shortlist Option 1</p> <p>Civil sanction for executives whose companies persistently breach content removal notices.</p>
<p>Net present social value (with brief description, including ranges, of individual costs and benefits)</p>		<p>Home Office analysts are currently unable to provide a reliable NPSV estimate. This upcoming consultation will help us to gather additional information that can be used to quantify the impacts of this measure by filling current evidence gaps and enabling us to develop a more accurate appraisal estimate. The primary costs associated with this measure may include potential changes in staffing for social media platforms, training and familiarisation costs, and potential impacts on the CPS system, such as increased court cases and the polices resource allocation. The main anticipated benefit is the public safety benefits gained through a potential reduction in knife crime.</p>
<p>Public sector financial costs (with brief description, including ranges)</p>	<p>...</p>	<p>While specific CJS costs for this option are currently unavailable, a previous Justice Impact Test for the Online Safety Bill provides a useful reference given the similar nature of the measure. This Bill was deemed to have a negligible impact, with costs primarily associated with the appeals body. These were estimated at £3,500 per case, with approximately 10 cases expected annually and an additional £7,000 start-up cost. The upcoming consultation will help the Home Office understand the expected number of cases this could lead to a year. The Home Office recognises that there may be opportunity costs associated with potential refocusing of the polices resources. However, the exact extent of this impact is currently unknown and will be a main focus of the consultation process.</p>

<p>Significant un-quantified benefits and costs (description, with scale where possible)</p>	<p>...</p>	<p>The Home Office anticipate that the measure will contribute to improved public safety by reducing serious violence. However, due to the lack of sufficient evidence, we are unable to quantify the exact extent of this reduction at this stage. Future assessments will likely employ a breakeven analysis, utilising the 'economic and social costs of crime' report to determine the number of homicides, robberies, and violent injuries that would need to be prevented to justify the policy's costs.</p>
<p>Key risks (and risk costs, and optimism bias, where relevant)</p>		<p>One of the main challenges is the lack of granular data on the precise origins of knives used in crimes. While the Home Office can track overall trends in knife crime, current data does not pinpoint specific sources of knives, such as online marketplaces or retail outlets.</p> <p>Additionally, the effectiveness of the measure could be impacted by potential displacement effects, where offenders buy or get knives from other locations.</p>
<p>Results of sensitivity analysis</p>	<p>...</p>	<p>...</p>

Annex

Evidence Base

Monetised impacts

1. Home Office analysts are currently unable to provide a reliable estimate for the monetisable costs and benefits. This consultation will help the Home Office analysts to gather additional information that can be used to quantify the cost and benefit implications of this measure and therefore develop a more accurate appraisal estimate. The costs and benefits that the Home Office expect to create and monetise in future analysis are outlined in the non-monetised impacts.

Non-monetised impacts

Costs

Familiarisation Costs

2. The proposed option will require setup costs via familiarisation, as staff from online platforms and the police become accustomed to the new measure. From responses to the consultation, the Home Office will develop an estimate of the number of employees from online platforms and the police who will need to familiarise themselves with the new measure.

Staffing Costs

3. This measure may create ongoing staffing costs for both online platforms and the police. Online platforms may employ more content moderators to identify and remove harmful content, while the police may require additional resources to monitor compliance and potentially investigate related offenses. This impact may vary in size and scope across forces and platforms themselves. While the measure does not provide additional funding for the police in terms of staff, possible reallocation of existing resources would present opportunity costs. The exact extent of this is currently unknown. Seeking views on what the police should be and will be is a main focus of the consultation process. Once the government knows what the police is the Home Office will engage with them to ascertain costings.
4. These costs may be minimal as this measure only adds an additional deterrent and consequence for legislation already in place. Staffing numbers may not change in either the police or online media companies, however, the impact may differ across potential enforcement bodies and companies. Through the responses to the consultation the Home Office hope to obtain the FTE impact for both online companies and the police and the potential drivers of this.

Criminal Justice System (CJS) costs

5. The Home Office anticipates costs associated with prosecutions and potential appeals. However, given the likely income levels of online executives, legal aid costs are not anticipated.

6. While specific CJS costs for this option are currently unavailable, a previous Impact Assessment for the OSA 2023¹⁰ provides a useful reference given the similar nature of the measure. The OSA 2023 was deemed to have a negligible impact, with costs primarily associated with the appeals body. These were estimated at £3,500 per case, with approximately 10 cases expected annually, and an additional £7,000 start-up cost. The upcoming consultation will help the Home Office understand the expected number of new cases this measure could lead to a year.

Benefits

Public safety

7. This policy aims to introduce personal liability for senior executives of online companies who fail to identify and take down content relating to the sale of prohibited offensive weapons, the sale of knives to persons aged under 18 years, and content that markets knives in a way which suggests that they are suitable for combat or encourages/simulates violent behaviour.
8. The Home Office anticipate that the measure may contribute to improved public safety through reducing serious violence. However, due to an absence of sufficient evidence, the Home Office are unable to quantify the exact extent of this reduction at this stage. One of the main challenges is the absence of granular data on the precise origins of knives used in crimes. While the Home Office can track overall trends in knife crime, data does not allow it to pinpoint specific sources of knives, such as online marketplaces or retail outlets. Furthermore, the effectiveness of the measure could be impacted by potential displacement effects, where offenders buy or get knives from other locations.
9. The proposal could also lead to an increase in public confidence. This benefit will not be monetised for the final Impact Assessment due to an absence of evidence on the specific drivers of fear of knife crime, and the extent to which the proposals will affect this.

Expected overall impacts

10. Currently, there is an absence of evidence for the Home Office to accurately estimate the overall impact of the measure. The Home Office anticipate staffing costs to be the largest associated cost. Following the consultation Home Office analysts should have the relevant information to be able to consider the necessary crime reduction required to breakeven. Analysts will use the economic and social costs of crime report to determine the number of homicides, robberies, and violent injuries that would need to be prevented to justify the policy's costs.
11. The consultation will help gather essential data and evidence to fill current gaps and enable a more accurate assessment.

¹⁰ Online Safety Bill IA:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1061265/Online_Safety_Bill_impact_assessment.pdf#page=62

Distributional Impacts

12. The benefits associated with the measure are likely to be more concentrated in areas where knife crime is more geographically concentrated, such as the West Midlands and London¹¹.

Impacts on wider government priorities

Business Environment

13. This measure is unlikely to have an effect on the attractiveness of the UK market to online platforms, as this is adding additional deterrence for current legislation (the OSA 2023). Private sellers or resellers on the platforms that are impacted are unlikely to be registered or legitimate businesses. This will add more protection to legitimate online knife sellers.

International Considerations

14. There are not expected to be any international impacts of this measure.

Natural capital and Decarbonisation

15. There is not expected to be an environmental impact of the legislation.

¹¹ ONS police force area data tables (March 2024):
<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/policeforceareadatatables>

Statutory Equalities Duty

All Consultation OAs are required to have the Statutory Equalities Duty reviewed by the SRO before signoff.

Mandatory specific impact test - Statutory Equalities Duties	Complete
<p>Statutory Equalities Duties</p> <p>The public sector equality duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations in the course of developing policies and delivering services. [Equality Duty Toolkit]</p> <p>Our view is that the policy will not impact on any of the protected characteristics. We are consulting on the policy and will be engaging with the online companies to understand their executive structure and make-up to identify whether there is any evidence which suggests any impacts.</p> <p>The SRO has agreed these summary findings. <i>(you must get SRO agreement here)</i></p>	<p>Yes</p>