

CRIME AND POLICING BILL

EUROPEAN CONVENTION ON HUMAN RIGHTS

Third Supplementary Memorandum by the Home Office and Ministry of Justice

Introduction

1. This memorandum supplements memorandums dated 23 February 2025¹, 22 April² and 24 April³ prepared by (variously) the Home Office, Ministry of Justice, Department for Transport and Ministry of Defence, which addressed issues under the European Convention on Human Rights (“ECHR”) in relation to the Crime and Policing Bill (“the Bill”).
2. This supplementary memorandum addresses the issues under the ECHR from Government amendments tabled on 10 June 2025 for Commons Report stage. It has been prepared by the Home Office and Ministry of Justice.
3. The amendments considered in this memorandum are:
 - a. New clause “*Causing internal concealment of item for criminal purpose*” will create 2 new offences (hereafter referred to as “**coerced internal concealment**”). The first offence relates to child victims (subsection (1)) and the second offence relates to adult victims (subsection (2)). The offences will criminalise persons (“A”) who cause another person to conceal a specified item (such as drugs, sim cards, mobile telephones, money or weapons) inside that person’s body where A knows, reasonably suspects or intends the item to be used in connection with criminal conduct. Where the victim is an adult, the offence will require that the concealment results from compulsion, coercion, deception or controlling or manipulative behaviour by the perpetrator. These will be either way offences, subject to a maximum penalty of 10 years’ imprisonment.
 - b. New clause “*Removal of limitation period in child sexual abuse cases*” will amend the Limitation Act 1980 (“the Limitation Act”), to implement recommendations from the Independent Inquiry into Child Sexual Abuse (IICSA) and support survivors and victims of child sexual abuse⁴, as follows:
 - i. **Retrospective removal of the 3-year limitation period for personal injury claims brought by victims and survivors of child sexual abuse in respect of their abuse.** Currently, these claims fall under section 11 of the Limitation Act and are subject to a 3-year time limit. Section 33 of the Limitation Act allows for a

¹ [ECHRMemo.pdf](#)

² [Crime and Policing Bill: ECHR supplementary memorandum 22 April 2025 - GOV.UK](#)

³ [Crime and Policing Bill: ECHR second supplementary memorandum: 24 April 2025 - GOV.UK](#)

⁴ [IICSA final report](#). See in particular recommendation 15.

discretionary extension of this time limit, in essence requiring the claimant to demonstrate that the defendant will receive a fair trial. The new clause will retrospectively amend section 11 to remove the limitation period for child sexual abuse related personal injury claims in civil courts in England and Wales brought by victims and survivors in respect of their abuse.

- ii. **Reversal of the burden of proof when considering whether a fair trial is possible in civil child sexual abuse cases, meaning it will be for the defendant to establish that it is not possible for a fair hearing to take place or that they would be substantially prejudiced were the action to proceed.** The new clause will amend the Limitation Act to say that where a question arises as to whether a fair trial is possible in respect of civil child sexual abuse cases, it will be for the defendant to establish that the lapse of time has made a fair trial impossible. For claims arising before the coming into force of these new provisions, if the defendant cannot prove to the court that a fair hearing is impossible, they may demonstrate substantial prejudice but the court must then balance the claimant's interest in proceeding with the action against the potential prejudice to the defendant to decide whether the action should proceed.
- iii. The rationale for these reforms lies in the unique nature of civil cases involving child sexual abuse and the necessity for a tailored approach. The IICSA received evidence indicating that victims frequently experience feelings of shame and guilt, leading to delays in filing claims within the 3-year statutory limit. Consequently, most claims necessitate court permission to proceed, which imposes an additional burden on victims as they must justify their delay.
- c. New clauses "*Threatening, abusive or insulting behaviour towards emergency workers*" and "*Threatening, abusive or insulting behaviour likely to harass, alarm or distress emergency workers*" will create two new offences of **racially or religiously abusing or harassing emergency workers carrying out their duties**. The maximum penalty on conviction for threatening, abusive or insulting behaviour towards an emergency worker will be 2 years' imprisonment or a fine (or both). The maximum penalty for behaviour likely to harass, alarm or distress an emergency worker will be a fine not exceeding level 4 on the standard scale.
- d. New clauses "*Extraction of online information following seizure of electronic devices*", "*Extraction of online information: ports and border security*", "*Extraction of online information following agreement etc.*" and "*Lawful interception of communications*" (the extraction of online information clauses) will:
 - i. Provide a clear legal basis for the police and other law enforcement bodies in the United Kingdom to **extract information from online**

accounts in criminal investigations, and in relation to an individual's **involvement in terrorism or hostile state activity**.

- ii. Amend the powers to extract information from electronic devices in Chapter 3 of Part 2 of the Police, Crime, Sentencing and Courts Act 2022 to provide a clear legal basis for **extraction of information from a user's online account**, with the access voluntarily granted by the account user and the user's agreement to the extraction of information (except in limited cases), **for the purposes of the prevention, detection, investigation or prosecution of crime, safeguarding purposes and the purposes of investigating deaths**.
 - iii. Amend Chapter 2 of Part 2 of the Investigatory Powers Act 2016 to permit the interception of certain communications for the purpose of enabling access to online information in connection with specified powers.
 - e. New clause "*Power to give directions to critical police undertakings*" will confer a power on the Secretary of State to **give directions to critical police undertakings** in order to drive efficiency savings and ensure the necessary preparations are made, where appropriate, for the transfer of these services into a new national policing body.
 - f. New clause "*Extradition: cases where a person has been convicted*" will amend the Extradition Act 2003 to specify that in **extradition proceedings, a right to re-trial may be subject to a domestic finding of deliberate absence**.
 - g. An amendment to Schedule 9 will insert into the **Armed Forces Act 2006** new subsections 177DA(3) to (5), to ensure that the **deprivation order power under section 177C of that Act** will extend to photographs and films that relate to the offence of requesting the creation of a purported intimate image without consent or reasonable belief in consent.
4. A number of the Government amendments tabled give rise to ECHR issues analogous to those addressed in previous ECHR memorandums for the Bill, and so are not addressed here. Specifically:
- a. A number of the amendments will **create new criminal offences**, which may result in an individual's arrest and/or imprisonment and therefore deprivation of their liberty and so engage Article 5 of the ECHR. Proceedings taken in respect of such offences will be criminal in character, and so engage the criminal limb of Article 6 of the ECHR. The Government is satisfied that the measures will be compatible with Articles 5 and 6, for the reasons set out for other new offences in the memorandum dated 25 February 2025.
 - b. Amendments to clauses 112 and Schedule 14 will extend the protection provided by that clause to **specified war memorials** to other memorials of

national significance. The amendments are not assessed to raise ECHR issues additional to those set out in the memorandum dated 25 February 2025 (see paragraphs 236 to 239 of that memorandum).

- c. Amendments to clause 130 (amending the Offensive Weapons Act 2019) and clause 132 (amending the Crossbows Act 1987) will impose a 2-stage age verification procedure on those involved in the **sale and delivery of knives**, and the **sale or letting for hire and delivery of crossbows or parts of crossbows, to a collection point** (respectively). The ECHR issues are the same as those raised by the imposition of the same requirements on those involved in the sale and delivery of knives and crossbows (see paragraphs 5 to 18 of the second supplementary memorandum dated 28 April 2025).
 - d. Amendments to clauses 139 and 141 will include modification of the provision relating to monitoring of the electronic devices of persons subject to **Youth Diversion Orders**. They will include clarification of what is meant by “electronic communications device” and clarify that the types of conditions that may be imposed on a respondent’s possession or use of electronic communication devices include conditions similar to those that may be imposed under the Terrorism Prevention and Investigation Measures Act 2011. Consideration of the ECHR issues raised by YDOs, including electronic monitoring, are set out in the memorandum dated 25 February 2025 (see paragraph 366 of that memorandum).
5. It is not considered that any other Government amendments tabled on 10 June 2025 give rise to issues under the ECHR.

Offence of coerced internal concealment

6. Clause “*Causing internal concealment of item for criminal purpose*” will introduce 2 new criminal offences of coerced internal concealment. The first offence relates to child victims (subsection (1)) and the second offence relates to adult victims (subsection (2)).
7. It will create 2 new either-way offences, where:
- a. a person (A),
 - i. in the case of a child-victim, intentionally causes a child to conceal a specified item (such as controlled drugs, sim cards, mobile telephones and money) inside the child’s body. It does not matter how the item gets inside the child’s body (i.e. whether by an act of the child, the defendant or another person).
 - ii. in the case of an adult-victim, compels, coerces, deceives, or engages in controlling or manipulative behaviour towards another person (“B”), as a result of which a specified item is concealed inside B’s body. It does not matter how the item gets inside B’s body (i.e. whether by an act of B, the defendant or another person).

and (in both cases)

- b. A knows, reasonably suspects or intends that the item has been or will be used in connection with criminal conduct (i.e. for criminal purposes).
8. Consequential amendments will also be made to clause 56, including adding the new offence to the list of criminal lifestyle offences in the Proceeds of Crime Act 2002 ("POCA").

Article 6 – Right to a fair trial

9. Article 6 of the ECHR may be engaged by the offence targeted at child victims (subsection (1)) in particular because, where the victim is a child, it need not be proved the defendant had knowledge or reasonable belief as to their age (i.e. it is strict liability as to age). It need only be proved that the person intentionally caused the child to internally conceal a specified item for a criminal purpose, as opposed to having been compelled, coerced, deceived, controlled or manipulated to do so (as is required for adult victims).
10. As outlined, the offence will contain *mens rea* elements: it must still be proven that the defendant intentionally caused the child to internally conceal a specified item, and that the defendant intended, knew or reasonably suspected that the item had been or would be used in connection with a criminal offence. The Government is satisfied that the strict liability aspect as to whether the victim is a child is justified and Article 6 compliant. The European Court of Human Rights ("ECtHR") has established strict liability is not in itself incompatible with Article 6⁵, nor is its imposition incompatible with the presumption of innocence. The House of Lords⁶ confirmed this and the more general proposition that Article 6(2) does not affect the substance of the matters which may be legitimately proscribed by the content of the criminal law, provided that the burden of proving the matters selected for proscription is on the prosecution⁷. As such, the Government is satisfied that Article 6 will not be engaged by these offences.
11. Even if Article 6 were found to be engaged, the ECtHR has held that presumptions of fact or of law operate in every criminal-law system and are not prohibited in principle by the Convention⁸, provided they are confined within reasonable limits which strike a balance between the importance of what is at stake and the rights of the defence. Any interference must be reasonably proportionate to the legitimate aim sought to be achieved⁹. The Government is satisfied that any interference will be justified and reasonably proportionate to the legitimate aim sought to be achieved (namely, of protecting the rights and

⁵ *R v Muhamed* [2002] EWCA Crim 1856; *Barnfather v Islington Education Authority* [2003] EWHC 418 (Admin)

⁶ *R v G* [2009] AC 92, paras 27-31, per Lord Hope; para. 46 per Baroness Hale

⁷ See also *AB (Appellant) v Her Majesty's Advocate (Respondent)* (Scotland) [2017] UKSC 25 which affirmed the interpretation in *R v G*

⁸ *Falk v. the Netherlands*, Application No. 66273/01

⁹ *Janovic v. Sweden*, Application No. 34619/97; *Salabiaku v. France*, Application No. 10519/83

freedoms of others and preventing crime and disorder) by protecting an extremely vulnerable cohort of victims – children – who are deserving of greater protection in law. There is also judicial discretion as to sentence: this will be an either way offence and the court may take relevant factors into account when sentencing. The burden will always be on the prosecution to prove beyond reasonable doubt that the child was under 18. The Government is therefore satisfied that the provisions will be fully compatible with Article 6.

12. Adding CIC as a criminal lifestyle offence in POCA may also engage Article 6, as section 10 of POCA provides that a number of assumptions are to be made by the court in determining the benefit from criminal conduct during confiscation proceedings, which include requiring the defendant to account for the last 6 years of financial activity to prove that it does not represent benefit from crime (i.e. a reverse burden). However, the Government is satisfied that any interference will be justified as the defendant may seek to disapply the criminal lifestyle assumptions, including by demonstrating that application of an assumption would lead to a serious risk of injustice (see section 10(6)(b) of POCA). Moreover, assumptions by way of reverse burden have long been held to be a “*fair and proportionate response to the need to protect the public interest*”¹⁰ and not to constitute an unlawful interference with Article 6(1). There is also further provision in this Bill to ensure that the serious risk of injustice test is not construed unduly narrowly, and the criminal lifestyle assumption will only apply if the court is asked to apply them by the prosecutor (see paragraphs 2 and 3 of Schedule 14 to the Bill). As such, the Government is satisfied that the measure will be compatible with Article 6.

Article 8 and Article 1, Protocol 1 – Rights to respect for private and family life, home and correspondence and peaceful enjoyment of property

13. Adding CIC as a criminal lifestyle offence in POCA may engage the Article 1, Protocol 1 (A1P1) rights of the offender (and potentially of third parties) and potentially Article 8 (due to the significant overlap between the scope of A1P1 and Article 8, since the concept of “home” under the latter provision might fall within the concept of “property” under the former). Confiscation orders require offenders to divest themselves of interests in property (including money) so that they may pay a sum equivalent in value to their benefit from crime. Assumptions to be made in case of criminal lifestyle increase the likelihood of an order being handed down, unless they are disapplied. The Government is satisfied that any such interference with Article 8 and/or A1P1 will be justified: it will fall within the second paragraph of A1P1 (which allows States to control the use of property to secure the payment of penalties¹¹) and will be in pursuit of a legitimate aim and reasonably proportionate. The purpose of the confiscation regime is fundamentally to deprive offenders of the benefit of crime.

Implementation of recommendations from the Independent Inquiry into Child Sexual Abuse (IICSA) and support survivors and victims of child sexual abuse

¹⁰ *R v Benjafield* [2002] UKHL 2, [2003] 1 AC at para 8, per Lord Steyn

¹¹ *Phillips v UK*, Application No. 41087/97, para. 50-51

14. New clause “*Removal of limitation period in child sexual abuse cases*” will remove the 3-year limitation period for personal injury claims brought by victims and survivors of child sexual abuse in respect of their abuse. The clause will also reverse the burden of proof for establishing whether a fair trial is possible in such cases so that the defendant will be required to demonstrate this.

Article 6 – Right to a fair trial

15. A change to the law of limitation may engage defendants’ rights under Article 6 of the ECHR. However, the Government is satisfied that this measure will strike a proportionate balance between the interests of defendants and the interests of the victims of child sexual abuse and will therefore be compliant with Article 6.
16. The ECtHR has stated that limitation periods constitute one of the legitimate restrictions on the right to a tribunal as they serve several important purposes, namely to: ensure legal certainty and finality by protecting potential defendants from stale claims which might be difficult to counter; and prevent any injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time¹².
17. However, Article 6 does not provide a specific right to benefit from limitation periods. The ECtHR held that in some cases, for example in cases concerning compensation for victims of bodily harm, making the victim subject to a limitation which expired before the date on which the injury was assessed might infringe their right to a tribunal¹³. In such cases, the balancing of individual interests, which may well be contradictory, is a difficult matter and Contracting States must have a broad margin of appreciation in this respect.
18. Applying the changes to the Limitation Act 1980 retrospectively will also engage Article 6. It is well-established in the case-law of the ECtHR that the defendant’s rights recognised by Article 6 could be infringed by the enactment of retrospective legislation which affects the result of pending proceedings. As highlighted in *Zielinski*: “*The Court reaffirms that while in principle the legislature is not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing laws, the principle of the rule of law and the notion of fair trial enshrined in Article 6 preclude any interference by the legislature — other than on compelling grounds of the general interest — with the administration of justice designed to influence the judicial determination of a dispute*”¹⁴.
19. However, the Government is satisfied that the proposal does not exceed what is reasonable and proportionate to fulfil the policy objective.

¹² *Sanofi Pasteur v. France*, Application No. 25137/16

¹³ *Eşim v. Turkey*, Application No. 59601/09

¹⁴ *Zielinski and Pradal and Gonzalez and Others v. France*, Joined Applications Nos. 24846/94, 34165/96 and 34173/96 *European Court of Human Rights* para. 57.

20. It is noted that the IICSA recommended that the legislative changes to the limitation period should include express protection of the right to a fair trial, recognising that “*doing so has the benefit of providing clarity and recognises that the removal of the primary limitation period does not compromise defendants’ basic rights*”¹⁵. The clause does this by specifying that the court must dismiss the action if it is satisfied that it is not possible for a fair hearing to take place.
21. The imposition of a reverse burden may raise concerns in terms of compatibility with Article 6. However, even in relation to criminal proceedings, it is well-established that Article 6(1) and (2) (right to a fair trial and presumption of innocence) does not prohibit rules which transfer an evidential burden to the accused, provided the overall burden of proving guilt remains with the prosecution¹⁶. Neither does Article 6(2) necessarily prohibit the operation of presumptions of law or fact. However, any rule which shifts the burden of proof, or which applies a presumption operating against the accused must be confined within reasonable limits¹⁷.
22. These measures can be therefore considered justified as long as they do not exceed what is reasonably necessary to fulfil the policy objective. The Government is satisfied that they will carefully balance defendants’ right to a fair trial with the rights and needs of victims of child sexual abuse. They acknowledge both the profound and enduring impact of such abuse and the specific vulnerabilities of victims, which can render participation in legal proceedings extremely challenging and distressing. Further, they seek to enhance the victims’ access to justice by removing unnecessary barriers. Any interference which will be imposed on a defendant’s right to a fair trial is deemed justified and proportionate to the seriousness of the matter.
23. The Government is satisfied that the proposal does not exceed what is reasonable and proportionate to fulfil the policy objective, and that it is compatible with the ECHR.

Protection of emergency workers from racially or religiously motivated abuse

24. Clauses “*Threatening, abusive or insulting behaviour towards emergency workers*” and “*Threatening, abusive or insulting behaviour likely to harass, alarm or distress emergency workers*” seek to protect emergency workers from racial or religious abuse and harassment, while carrying out their duties, by creating new offences relating to threatening, abusive or insulting behaviour towards an emergency worker and behaviour likely to harass, alarm or distress an emergency worker.
25. A number of offences under the Public Order Act 1986 have an exception where the offence (including any racially or religiously aggravated version of the offence) cannot occur in a private dwelling. The policy aim of the new offences is to protect emergency workers from this kind of abuse if they need to enter a

¹⁵ See IICSA final report, page 258, para 95.

¹⁶ *Lingens and Leitgens v Austria*, Application No. 9815/82

¹⁷ *Salabiaku v France*, *ibid*.

dwelling in the course of their duties. The Government is satisfied this aim is justified and the measure will be proportionate.

Article 8 – Right to respect for private and family life, home and correspondence

26. Article 8 of the ECHR may be engaged by the provision as it will limit the ability of an individual to express themselves in their own dwelling. However, Article 8 is a qualified right.

27. The Government is satisfied that removing the dwelling exception in relation to criminal liability for racial and religious abuse against emergency workers carrying out their duties, is justified. Statements that spread, incite, promote or justify violence, hatred, or intolerance against a person or group of persons threaten social cohesion and constitute a risk of violence and of the violation of the rights of others. Therefore, the Government is satisfied that the measure will be proportionate to achieve the legitimate aims of protecting the rights and freedoms of others and preventing disorder or crime and protecting public safety, namely that impacting on emergency workers.

Article 10 – Right to freedom of expression

28. Expression that promotes or justifies violence, hatred, xenophobia or another form of intolerance cannot normally claim protection under Article 10 of the ECHR¹⁸, so much of the behaviour caught by these offences will not engage Article 10.

29. To the extent that Article 10 will be engaged, it is a qualified right and the Government is satisfied that, in line with the requirements of Article 10(2), the restriction will be clearly prescribed by primary legislation, necessary in a democratic society and proportionate to achieve the aim of protecting the rights and freedoms of others, preventing crime and disorder and maintaining public safety.

30. Incitement to violence and hatred is one of the limits which should never be overstepped in the exercise of freedom of expression.¹⁹ Hence, the weighting of the balance between the emergency worker's Article 8 and Article 14 rights, against the perpetrator's Article 10 rights, means that the proposed measure is justified. Further, the narrow scope of the interference with the perpetrator's Article 10 right means that where this right is engaged, the measure will go no further than is necessary to protect the rights of emergency workers performing their duties.

Extraction of online information etc.

18 *Perinçek v. Switzerland*, Application No. 27510/08), para. 230; *Zemmour v. France*, Application No. 63539/19, para. 49

19 *Zemmour v. France*, *ibid.*, para. 50

31. Clauses "*Extraction of online information following seizure of electronic devices*", "*Extraction of online information: ports and border security*", "*Extraction of online information following agreement etc.*" and "*Lawful interception of communications*" are concerned with the extraction of online information from electronic devices, and matters associated with that extraction. As these clauses all engage ECHR rights in a similar matter, they are dealt with collectively for the purpose of this memorandum. The extraction of online information clauses will:
- a. In "*Extraction of online information following seizure of electronic devices*", "*Extraction of online information: ports and border security*", provide a clear legal basis for the police and other law enforcement bodies in the United Kingdom to extract information from online accounts in criminal investigations and in relation to an individual's involvement in terrorism or hostile state activity.
 - b. In "*Extraction of online information following agreement etc.*", amend the powers to extract information from electronic devices in Chapter 3 of Part 2 of the Police, Crime, Sentencing and Courts Act 2022 ("the PCSCA") to provide a clear legal basis for extraction of information from a user's online account, with the access voluntarily granted by the account user and the user's agreement to the extraction of information (except in limited cases where the user of the online account is deceased, missing, or a child or adult without capacity whose life is at risk / is at risk of serious harm) for law enforcement purposes, safeguarding purposes and the purposes of investigating deaths.
 - c. In "*Lawful interception of communications*" amend Chapter 2 of Part 2 of the Investigatory Powers Act 2016 ("the IPA") to permit the interception of 2-factor authentication information used in a process to verify a person, for the purpose of enabling access to online accounts in connection with the powers covered above.

Article 8 – Right to respect for private and family life, home and correspondence

32. When online information is extracted, the information is likely to include personal data of the online account holder, as well as potentially private information of third persons, so Article 8 of the ECHR may be engaged. The protection of personal data is of fundamental importance to a person's enjoyment of the right to respect for private and family life.
33. These clauses will give rise to particular Article 8 issues as follows:
- a. Pursuant to clause "*Extraction of online information following seizure of electronic devices*", where an electronic device is lawfully seized or detained, online accounts accessed by the device may be accessed, examined and information (including personal information) extracted. The period for which information may be retained will be dependent on the power used to obtain it.

- b. Pursuant to clause “*Extraction of online information following agreement etc.*”, in the context of amendments to the PCSCA, online information may be extracted without consent where a person is missing or is a child or adult without capacity at risk of serious harm/ risk to life.
 - c. Pursuant to clause “*Lawful interception of communications*”, in the context of amendments to the IPA, the extraction of information from online accounts may first require interception of communications to access the account. The interception of private communications for that purpose will engage Article 8, as will communications which are intercepted incidentally which may include communications with third persons and sensitive personal data.
34. The Government is satisfied that in each of the cases outlined above – and in other instances where the extraction of online information and preceding steps gives rise to lesser interferences with Article 8 rights – any interference will be in accordance with the law and necessary and proportionate in a democratic society in the interests of national security, public safety and for the prevention of disorder or crime.
35. The extraction of online information will be in accordance with the law as it will be prescribed in primary legislation, with clear and detailed safeguards as set out below. These provisions will address a gap in the law highlighted by the Law Commission’s 2020 report on search warrants²⁰, which raised concerns around the application of existing search and seizure powers to electronic material more generally and recommended the creation of express powers to search and copy online information when executing a search warrant.
36. In the absence of these powers, law enforcement agencies are limited in the data they can access from electronic devices obtained in the course of their lawful activities. These new powers to access online information will not expand the existing underlying powers that enable, for example, the seizure of the relevant electronic device. All the safeguards that apply in respect of those existing powers, ensuring the proportionality of the interference in fundamental rights, will apply equally to these new clauses. For example, a mobile phone seized in a criminal investigation may be seized and retained in compliance with the detailed safeguards in the Police and Criminal Evidence Act 1984 and PACE Code B. Those safeguards will continue to apply to devices where the police seek to extract online information.
37. Further, the numerous new safeguards in place for the exercise of these powers will ensure that they are exercised proportionately, going no further than is necessary to achieve their legitimate ends.
- a. In the context of clause “*Extraction of information following seizure of electronic devices*”, the safeguards in place will include:

²⁰ [Search warrants – Law Commission](#) – published on 7 October 2020.

- i. The power only being exercised if a senior officer has approved its use;
 - ii. Limiting the online information that can be extracted, to information which was accessible by means of an online account before the device was seized, and that which it is necessary and proportionate to extract;
 - iii. A senior officer being satisfied that there are reasonable grounds to believe that the online information includes information that is relevant to a reasonable line of enquiry which is being, or is to be, pursued for a purpose for which the power can be exercised and it is not reasonably practicable to obtain that information by other means;
 - iv. A Code of Practice about the exercise of the power which will provide further detail on the safeguards.
- b. In the context of detecting, disrupting and deterring terrorism and hostile state activity, Schedule 7 to the Terrorism Act 2000 ("Schedule 7") and Schedule 3 to the Counter-Terrorism and Border Security Act 2019 ("Schedule 3") include safeguards such as:
 - i. Limiting the information that can be extracted to information which was accessible by means of the device before the search or examination began;
 - ii. The relevant powers are only exercisable for so long as the device is detained under either paragraph 11 of Schedule 7 or paragraph 11 of Schedule 3;
 - iii. Extracted information may only be retained for limited purposes, such as the purpose of determining whether a person is involved in terrorism or hostile state activity.
- c. In the context of amendments to the PCSCA, where information is extracted from an online account without consent:
 - i. Where a person is missing or is a child or adult without capacity, the power may only be exercised where there is reasonable belief that the person's life is at risk or there is a risk of serious harm to the person (section 40(3) and (4) PCSCA (as amended)). In such circumstances there is a compelling argument that accessing the information is necessary and proportionate to protect the right to life and to protect the individual from serious harm;
 - ii. Additionally, the Code of Practice about the exercise of the power will provide further detail on safeguards.
- d. In the context of the power to authorise the interception of communications:
 - i. The power will only permit interception for the purpose of gaining access to an online account, in connection with the powers to extract online information covered above and involves a communication that seeks to verify the identity of the person attempting to access the online account;
 - ii. As the interception of communications will typically require a device to have an active connection to a telecommunications network (the

most common example being a mobile phone), there is a risk that incidental communications will also be intercepted. Safeguards will limit this risk to that which is necessary and proportionate: subsection (4) will make clear that interception which is incidental to or reasonably connected with activity to enable access to an online account will be lawful, but there will cease to be lawful authority for the interception at the point it becomes apparent that a communication does not assist in enabling access to the online account;

- iii. In addition, the Code of Practice on the use of these powers will set out processes and technological steps to reduce the likelihood of the interception of incidental communications and minimise any interference that results, such as by the effective use of device settings or software to minimise the visibility of communications received by the device.

38. In all instances where online information is extracted, the information accessed will then be used in a range of circumstances to assist in detecting and preventing crime and to counter terrorism and state threats activity. In addition, the relevant principles of the Data Protection Act 2018 will apply to the police and law enforcement bodies when extracting online information and subsequently processing it in line with their existing legal obligations.

39. The Government is therefore satisfied that these clauses will be compatible with Article 8.

Power for the Secretary of State to give directions to critical police undertakings

40. New clause "*Power to give directions to critical police undertakings*" will give the Secretary of State the power to give a direction to a "critical police undertaking", as defined in the Bill. A direction may require the undertaking to take any action that the Secretary of State considers is calculated to promote the efficiency and effectiveness of the police.

Article 1 of Protocol 1 – Right to peaceful enjoyment of property

41. The Government is satisfied that the proposed measure will be capable of being exercised compatibly with the A1P1 ECHR rights of critical police undertakings. A direction that requires an undertaking to (for example) provide information to the Secretary of State is unlikely to engage A1P1 in the first place. A direction that requires an undertaking to (for example) deal with an asset in a particular way may engage A1P1.

42. The Government is satisfied that any such direction is likely to be prescribed by law, in the public interest (that is, public safety) and strike a fair balance between the interests the community and the individual. The Government notes in this regard that critical police undertakings tend to be operated on a not-for-profit basis. Their sole purpose is to improve the delivery of public services and not to generate any private benefit. Further a critical police undertaking must by

definition be wholly or partly funded by grants from the Secretary of State, which means that the undertaking will already be subject to a high degree of Government oversight.

43. A company share with an economic value and voting rights is generally regarded as a possession within the meaning of A1P1. However, the Government does not consider that the proposed measure will interfere with the A1P1 rights of persons who own or control critical police undertakings. The ECtHR has recognised that, as a matter of general principle, shareholders cannot be regarded as victims of acts and measures affecting their companies save in exceptional circumstances on a case-by-case basis²¹. It follows that the giving of a direction is unlikely to be viewed as a deprivation of shareholders' property rights or a control on their use. This is even less likely where the affected undertaking is limited by guarantee rather than by shares, as membership of a company limited by guarantee is generally non-transferrable and does not confer any right to a return of capital.

Right to re-trial in extradition proceedings

44. New clause "*Extradition: cases where a person has been convicted*" concerns the criteria a judge must consider in deciding whether to proceed to the next step of the extradition hearing in a case where the requested person has been convicted in their absence.
45. Sections 20 (for Part 1 cases) and 85 (for Part 2 cases) of the Extradition Act 2003 ("the EA"), deal with conviction cases, where the person has already been tried for the offence for which extradition is sought and has been found guilty. Where a person has been convicted in their absence but the judge finds that they did not deliberately absent themselves from the trial for the purposes of section 20(3) or 85(3), the judge must then decide whether the person would be entitled to a retrial or review amounting to a retrial on return to the requesting territory (sections 20(5) and 85(5) respectively).
46. Prior to the Supreme Court case of *Merticariu v Judecatoria Arad Romania*²², a right to retrial/ appeal subject to a finding of deliberate absence in the requesting state was considered sufficient for the court to proceed to the next stage of the extradition hearing. The Supreme Court, however, found that the natural and ordinary meaning of the wording of sections 20 and 85 was that the judge must assess whether the requested person has an entitlement to retrial subject only to procedural steps to invoke that right.
47. Clause "*Extradition: cases where a person has been convicted*" will amend sections 20 and 85 of the 2003 Act so that an entitlement to retrial/appeal which is conditional upon the requesting state court finding that the requested person was not deliberately absent will be sufficient for a judge to proceed to the next step of the extradition hearing.

Article 6 – Right to a fair trial

²¹ *Albert and others v Hungary*, Application No. 5294/14

²² [2024] UKSC 10, [2024] 4 All ER 527, [2024] 1 WLR 1506, [2024] All ER (D) 30 (Mar)

48. The criminal limb of Article 6 of the ECHR will be engaged by this amendment, as sections 20 and 85 of the EA safeguard the right of an accused person to be present at trial. Proceedings that take place *in absentia* are not themselves incompatible with Article 6 of the Convention. However, a breach of Article 6 may occur where a person who has not waived their right to be present at trial is convicted in absentia and subsequently unable to obtain a fresh determination.
49. The clause ensures an adequate level of protection for Article 6 rights, whilst also facilitating extradition cooperation and respecting the legal processes of requesting states. For States which require a domestic finding that the requested person did not deliberately absent themselves, the requested person will have access to retrial/appeal upon their return, provided that they have not waived the right to be present. The requesting state will often be better placed to make this determination, and the requested person will have access to remedies in the requesting state, and the ECtHR in states that are parties to the Convention. Furthermore, sections 21 and 87 of the EA contain additional safeguards to ensure that extradition is not incompatible with Convention rights. As such, the Government is satisfied that this amendment will comply with Article 6.

Availability of deprivation orders in service courts in respect of the offence of requesting the creation of a purported intimate image without consent or reasonable belief in consent

50. An amendment to Schedule 9 will insert into the Armed Forces Act 2006 (“the AFA”) new subsections 177DA(3) to (5), to ensure that the deprivation order power under section 177C of that Act will extend to photographs and films that relate to the offence of requesting the creation of a purported intimate image without consent or reasonable belief in consent.
51. The measure will engage A1P1 but is assessed to be compatible with the right protected under that Article.

Article 1 of Protocol 1 – Right to peaceful enjoyment of property

52. Subsections 177DA(3) and (4) will apply where a person commits a service offence, as respects which the corresponding offence under the law of England and Wales is the offence of requesting the creation of a purported intimate image without consent or reasonable belief in consent (in section 66F of the Sexual Offences Act 2003, as inserted by clause 137 of the Data (Use and Access) Bill). They will provide that a purported intimate image which is connected with the offence, or anything containing it, is to be regarded for the purposes of section 177C(3) of the AFA as used for the purpose of committing the offence. An image will be connected with the offence if it appears to be of a person who was the subject of the request to which the offence relates (whether or not it is the purported intimate image requested), and it was in the offender’s possession, or under the offender’s control, as a result of that request (subsection (5)).
53. This will ensure that a service court has the power under section 177C of the AFA to make an order depriving the offender of the photograph or film in question upon conviction for this offence. This is necessary to avoid causing additional

harm to victims, arising from knowledge that the offender retains the photographs and films that they unlawfully requested the creation of, and is therefore in the public interest.

54. The effect of the order will be that the property will be taken into the possession of a member of a service police force, or if neither a service police force nor the tri-service serious crime unit has been involved in the matter, the offender's commanding officer (section 177C). If a third party has a claim to the property, they may, within 6 months of the date of the order, seek an order of a judicial authority or a commanding officer for return of the property (section 94A).
55. A1P1 entitles legal persons to the peaceful enjoyment of their possessions. Possessions include non-physical assets such as intellectual property, licences, and interests in businesses, and would therefore include images. However, this is a qualified right, and it is permissible to deprive someone of their possessions "*in the public interest and subject to the conditions provided for by law and by the general principles of international law*". Furthermore, the second paragraph of Article 1 sets out that "*the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties*" falls outside the qualified prohibition on deprivation of possessions in the first paragraph.
56. Forfeiture and confiscation are generally considered permitted 'control of property' under Article 1(2), rather than 'deprivation of possessions' and it is therefore the Government's view that this measure will not engage A1P1.
57. However, to the extent that the measure could be considered to engage A1P1 the Government is satisfied that the interference will be a proportionate means of achieving a legitimate aim. The measure will mean that the service court has the power to make a deprivation order under its existing powers in section 177C of the AFA. Were offenders allowed to retain images which they had as a result of their offending behaviour, this would compound the harm caused. It is therefore in the public interest for courts to have the power to deprive offenders of these images. However, deprivation orders under the Sentencing Act 2020 are not to be made as a matter of routine and can only be made when there has been a sufficient investigation to justify a finding that the property is the product of the offence and where the court is satisfied that the order is proportionate and justified. We consider the same principles are likely to apply in the service courts. Consequently, not only is the measure itself justified, the courts will apply it in a way which ensures that the power is exercised in a proportionate way.

Home Office and Ministry of Justice
10 June 2025