

CRIME AND POLICING BILL

EUROPEAN CONVENTION ON HUMAN RIGHTS

Fifth Supplementary Memorandum by the Home Office and Ministry of Justice

Introduction

1. This memorandum supplements memoranda dated 23 February 2025¹ and 22² and 24 April³, 10 June 2025⁴ and 3 November 2025⁵ prepared, variously, by 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.
2. This supplementary memorandum addresses the issues arising under the ECHR from further Government amendments tabled on 13 February 2026 for Lords Report stage. This memorandum has been prepared by the Home Office and Ministry of Justice.
3. The amendments considered in this memorandum are:
 - a. **New clause “Aggravated offences”** which extends the aggravated offences under the Crime and Disorder Act 1998 (part of the hate crime legislative framework) to cover the protected characteristics of sexual orientation, transgender identity, disability and sex, to add to the existing provisions, which currently only cover hostility on the basis of race and religion.
 - b. **New clause “Unauthorised encampments: reduction of the no-return period from twelve to three months”** which remedies a declaration of

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 [Crime and Policing Bill: ECHR third supplementary memorandum: 10 June 2025 \(accessible\) - GOV.UK](#)

⁵ [Crime and Policing Bill: ECHR fourth supplementary memorandum: 3 November 2025 \(accessible\) - GOV.UK](#)

incompatibility under section 4 of the Human Rights Act 1998 with respect to criminal offence provisions in the Criminal Justice and Public Order Act 1994 (as amended by the Police, Crime, Sentencing and Courts Act 2022), under which, once an individual is requested or directed to leave land, they commit an offence if they return within a specified time. The amendment reduces the no-return period from twelve to three months.

- c. **New clause “Sexual offences against children under 16”** which amends the Sexual Offences Act 2003 to introduce three new offences of rape of a child under 16, assault of a child under 16 by penetration, and causing or inciting a child under 16 to engage in sexual activity involving penetration.

ECHR analysis: general

4. A number of the Government amendments tabled give rise to substantive ECHR issues, but which have been fully addressed in previous ECHR memoranda for the Bill, and so are not addressed here. Specifically:
 - a. Amendments to clauses 31 to 35: remote sale and delivery of knives and crossbows. The amendments include a regulation-making power to allow for alternatives to producing physical ID documents (e.g. digital ID), extends the provisions to Scotland and Northern Ireland and extends the existing clauses to include all contractors in the chain of delivery. These new provisions are not considered to raise issues additional to those set out in paragraphs 9 to 13 of the memorandum dated 24 April 2025.
 - b. Amendments to clause 41: offence of child criminal exploitation (CCE). The amendment removes the “reasonable belief as to age” element of the CCE offence so a defendant cannot rely on this as a defence. Consideration of the ECHR issues relating to the new CCE offence is set out in the memorandum dated 23 February 2025 (see paragraphs 63 to 69). The Government considers that this analysis, including paragraph 66 relating to strict liability in relation to child victims 13 and under, applies to this amendment, which will make the position consistent for all child victims, i.e. under 18 years.

- c. Amendments to clauses 108 to 110: Stalking Protection Orders (“SPO”). The amendments clarify that the court must apply the civil standard of proof, that is, be satisfied on the balance of probabilities, when deciding whether to make a SPO. ECHR issues arising in relation to Stalking Protection Orders were considered in the memorandum dated 23 February 2025 (see paragraphs 182 to 194). The Government assesses that no additional issues arise in relation to this amendment.
- d. New clause repealing powers under section 60 and 61 of the Police, Crime, Sentencing and Courts Act 2000 to issue code of practice relating to processing of personal data relating to non-criminal hate incidents. A non-crime hate incident is an event or occurrence that is perceived as being motivated by hostility towards a protected characteristic, even though it does not itself amount to criminal conduct. *Miller v The College of Policing*⁶ concluded that the recording of a non-crime hate incident interferes with the right to freedom of expression, the Government is satisfied that the repeal of statutory provisions relating to the non-crime hate incidents code of practice does not itself represent an interference with an individual’s rights under Article 10 (freedom of expression). To the extent that personal data relating to non-crime hate incidents continues to be processed after the repeal comes into force, it will remain incumbent on the police to ensure that any interference with Article 10 is justified.
- e. New clause introducing offence relating to policing of protests outside homes of public office holders. This amendment is a reformulation of one previously tabled for Lords Committee stage and addressed in the memorandum of 3 November 2025 (see paragraphs 21 to 26 of that document). The offence has been amended to narrow the scope so that it focuses only on protests outside of the homes of public office holders, where the protest is taking place because the resident is a public office holder. Given that the scope of the offence has

⁶ [2021] EWCA Civ. 1926.

been narrowed, the Government assessed that no further ECHR issues arise over and above those set out in the memorandum of 3 November 2025.

- f. Amendment to clause 87: removing the current three-year limitation period for personal injury claims brought by victims and survivors of child sexual abuse in respect of their abuse. The amendment removes the provision set out in new section 11ZB(3) of the Limitation Act 1980, thereby eliminating the substantial prejudice test as an additional criterion for dismissing actions. The Government considers that retaining new section 11ZB(2), which allows for the dismissal of actions where the defendant satisfies the court that a fair hearing cannot take place, addresses compliance with Article 6 of the ECHR. Consideration of the ECHR implications associated with this clause is detailed in the memorandum dated 10 June 2025 (see paragraphs 14-23 of that memorandum).
5. It is not considered that any other Government amendments tabled on 13 February give rise to issues under the ECHR. These include a range of measures being tabled which are administrative or procedural in nature: amending, for example, powers to issue guidance or in relation to consultation, commencement date, or Parliamentary procedure relating to secondary legislation.

Offences: Article 5 – Deprivation of liberty; Article 6 – Right to a fair trial

6. Some 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. This memorandum addresses those Articles only where the provisions raise particular points of note not already dealt with in previous memoranda.

7. The detail of the ECHR implications arising from this set of amendments, insofar as considered necessary and appropriate to raise here, is set out below, addressed by measure.

ECHR Analysis: individual measures

- a. Aggravated offences: extending aggravated offences under the Crime and Disorder Act 1998 to the protected characteristics of sexual orientation, transgender identity, disability and sex

8. New clause “*Aggravated offences*” amends Part II of the Crime and Disorder Act 1998 (“the 1998 Act”), to extend the aggravated offences in sections 29 to 32 of that Act, which currently only cover the protected characteristics of race and religion, to also cover sexual orientation, transgender identity, disability and sex. This will provide parity across all five of the characteristics that can form the basis of a hate crime offence, while also making provision for that same set of offences to be aggravated by hostility based on sex (subject to a small carve out pertaining to section 4A of the Public Order Act under section 31(1)(b) of the 1998 Act, with regard to which conduct an aggravated offence already exists under the Protection from Sex-Based Harassment in Public Act 2023). The effect of “aggravation” is that the offences carry more severe penalties on conviction than their non-aggravated counterparts. It is considered that this new clause may have ECHR implications in a relatively limited way, as follows.

Article 14 – Prohibition of discrimination

9. Article 14 is engaged to a limited extent, in conjunction with Articles 8 (right to respect for private and family life) and 10 (freedom of expression), as the aggravated offences are not being extended to cover other protected characteristics such as age (which is a “status” for the purposes of Article 14 ECHR). The decision not to extend aggravated offences to cover hostility based on age, pregnancy, etc creates a differentiation in treatment between protected characteristics under the Equality Act 2010.

10. Article 14 does not require like treatment for people with different protected characteristics. In any event, the Government is satisfied any differential treatment is objectively and reasonably justified, based on the available information in terms of volume of relevant incidents to warrant making this particular change to encompass incidents motivated by hostility towards the specified characteristics. It is considered to be a proportionate means of pursuing the legitimate aims of public safety, the prevention of disorder or crime, and the protection of the rights and freedoms of others.

11. The addition of the protected characteristics of sexual orientation, transgender identity and disability is considered proportionate to the need to provide additional protections to persons from hostility based on those characteristics. The same rationale applies in the context of hostility towards sex. As such, this new clause is not seeking to positively advance the rights of people with these protected characteristics above others, but rather to deter crimes of hatred against those groups in an effective way.

12. The Government is satisfied that it is not necessary or proportionate to add additional statuses such as homelessness, philosophical belief, sex workers, or alternative subcultures to the aggravated offences, for the reasons set out in the Law Commission Report on Hate Crime Laws of 6 December 2021 (see pages 245 to 289 of the report). As such, it is satisfied the measure is compatible with Article 14 ECHR.

b. Unauthorised encampments: reduction of the no-return period from twelve to three months

13. This new measure seeks to remedy a declaration of incompatibility made by the High Court in the case of *R (on application of Smith) v Secretary of State for the Home Department*,⁷ directed to sections 60C(3), 61(4ZA)(a), 62(1A)(a)

⁷ [2024] EWHC 1137 (Admin).

and 62B(2) of the Criminal Justice and Public Order Act 1994 (“1994 Act”) in so far as they identify a twelve month no-return period resulting in various offences related to unauthorised encampments.

14. The amendment reduces the no-return period for unauthorised encampments from twelve months to three months, thereby largely restoring the position that applied before the amendments introduced by the Police, Crime, Sentencing and Courts Act 2022 (“the 2022 Act”) to the 1994 Act. These were intended to support enforcement, but raised concerns about impacts on Gypsy, Roma and Traveller (“GRT”) communities, leading to the *Smith* challenge.

Article 14 – Prohibition of discrimination

15. In *Smith*, the declaration of incompatibility was made on the basis of a violation of Article 14 rights (prohibition of discrimination), read together with Article 8 (right to respect for private and family life), for those in GRT communities. The court found that in order to avoid criminal penalty, individuals would need to use transit pitches when requested or directed to leave land under the various provisions in the 1994 Act. These transit sites have a maximum stay period of three months and there is an accepted shortage of such pitches, hindering the ability of people to move between sites. This rendered it difficult, if not impossible to comply with the legislative time period of twelve months, resulting in a disproportionate burden on the GRT community.

16. With the original section 60C offence, the Government accepts a *prima facie* case of indirect discrimination of those in the GRT community, giving rise to interference with Article 8 and Article 14 rights. However, the position remains that the disproportionate impact on the GRT community is a justified means of pursuing a legitimate aim: to protect the rights and freedoms of landowners and the public, interfered with by the disruptive or damaging unauthorised occupation of land.

17. The court in *Smith* recognised that consultations carried out (before the amendments in the 2022 Act were brought forward) provided evidence that the

existing powers in the 1994 Act were not considered sufficient by many in addressing the significant problems associated with unauthorised encampments.

18. Conditions that must be met before an offence is committed are substantial and narrow the application of the legislation. Significant damage or disruption must have been (or likely to be) caused, or significant distress caused by offensive conduct. The offence can only be committed if the occupier of the land (or their representative) or a constable has requested that the person leave. This requirement means any individual will have adequate warning before finding themselves in breach of section 60C. There is also a statutory 'reasonable excuse' defence in relation to not leaving upon request or re-entering within the no return period.
19. There is statutory guidance which the police must have regard to before acting in reliance on section 60C. This further narrows the circumstances in which a person will, operationally, be considered to meet the conditions in section 60C. It also requires police officers to have regard to the welfare and other consequences of decisions to arrest or to seize vehicles or property.
20. All of the above points, and the fact that the offences can only apply to those trespassing on land (rather than the many people in the GRT community who have chosen to live on pitches at permanent sites), mean that the Government is still firmly of the view that the section 60C offence, and the other offences in the 1994 Act, strike a fair balance with the objective of protecting the interests of the legal occupiers of land.
21. A three month no-return period is considered proportionate given the limited availability of transit pitch sites. The period is long enough for landowners to protect their property from damage, disruption and trespass, whilst not putting any traveller in the impossible position of having to find multiple transit site pitches across twelve months.

22. Any period shorter than three months would fail to protect the landowner's rights not to be subject to significant disruption, damage and distress. If such disruption or damage has already been imposed, the landowner would need time to return the land to its previous condition and use. In any case, a shorter no-return period would seriously undermine the deterrent effect of the legislation, allowing a trespasser to leave and come back after a relatively short period of time.

c. Sexual offences against children under 16

23. This new measure will insert the following provisions into the Sexual Offences Act 2003 ("the SOA"):

- i. New section 8A, which creates a new offence of rape of a child under 16, committed when a person aged 18 or over (A) intentionally penetrates the vagina, anus or mouth of a child under 16 (B) with A's penis;
- ii. New section 8B, which creates a new offence of assault of a child under 16, committed when A intentionally penetrates the vagina or anus of B with a part of A's body or anything else, and that penetration is sexual;
- iii. New section 8C, which creates a new offence of causing or inciting a child under 16 to engage in sexual activity involving penetration, committed when A intentionally caused or incites B to engage in specified acts of penetration, and that penetration is sexual.

24. These offences can only be committed by a person aged 18 or over. Where the child is aged 13, 14 or 15, the Prosecution must also prove that the defendant did not reasonably believe that the child was 16 or over.

25. The amendment engages Articles 5, 7, 8 and 14.

Article 5 – Right to liberty and security

26. As the measure introduces new offences that are punishable with imprisonment, Article 5 is engaged. The three new offences all carry a maximum penalty of life imprisonment. Whilst it is for member states, not the

Court, to decide what the appropriate sentence for any given offence is, the maximum penalty must not be arbitrary. The penalties are consistent with those in sections 5, 6 and 8 of the SOA, which set out comparable offences against children under 13, and reflect the Government's view that penetrative sexual activity between an adult and any child under 16 is significantly harmful, regardless of the circumstances in which it takes place. Further, the Court will be able to take account of all the relevant circumstances of the offence and the offender in the usual way when handing down a sentence. This provides an important safeguard and the Government is satisfied that the measure is therefore compatible with Article 5.

Article 7 – No punishment without law

27. In order to comply with Article 7, an offence and corresponding penalty must be clearly defined in law. The elements of the offences, and the maximum penalties that apply, are clearly set out in a way in which a member of the public can understand. The amendments will not have any retrospective effect. The Government is satisfied that the measure is therefore compatible with Article 7.

Article 8 – right to private and family life, home and correspondence

28. The new offences inserted by the measure will be included in Schedule 3 to the SOA, meaning that offenders will be subject to notification requirements under Part 2 of the SOA. Any interference with an offender's Article 8 rights is justified within the meaning of Article 8(2). There is a clear and rational connection between the offending behaviour and the gravity of the harm which can be caused to victims of sexual offences, and the objectives of the notification requirements which are intended to protect the public. The imposition of notification requirements in these circumstances is therefore a proportionate means of achieving a legitimate aim and the Government is satisfied that the measure is compatible with Article 8.

Article 14 – protection from discrimination

29. The offences set out in the new provisions only apply in cases where A is 18 or older; cases in which A is under 18 will instead continue to be considered under section 13 of the SOA read with sections 9 or 10. Section 13 carries a maximum penalty of 5 years' imprisonment. The difference in sentencing options available to the Court in cases that are, but for the defendant's age, otherwise identical, is likely to engage Article 14, read with Article 5. Any difference in treatment on the ground of age, however, is justified as a proportionate means of achieving the legitimate aim of preventing crime, and protecting the rights of others, in particular the protection of children under the age of 16 from the significant risk of harm that is inherent in engaging in penetrative sexual activity with an adult. While such activity is also harmful when A is under 18, the smaller age gap between A and B in such a case is likely to mean that the harm is less significant, and therefore an alternative offence which attracts a lower maximum penalty, and the difference in treatment this involves, is a proportionate means of achieving that legitimate aim. The Government is therefore satisfied that the measure is compatible with Article 14.

Home Office and Ministry of Justice

13 February 2026