Dear Sally,

OFFENSIVE WEAPONS BILL – KNIFE CRIME PREVENTION ORDERS

I am very grateful for the Joint Committee on Human Rights continued interest in the Offensive Weapons Bill. In your letters of 20 and 26 February you raise a number of issues in relation to the proposed Knife Crime Prevention Orders (KCPOs). I hope the following response will assist with the Committee’s further consideration of this important measure. As you will be aware the KCPO provisions were added to the Bill at Lords Report stage and now form Part 2 of the Bill.

Compatibility with Convention Rights

As the supplementary memorandum that we provided to the committee on 29 January makes clear, we believe that these new orders are compatible with Convention rights. Although the requirements attached to an order are not expressly limited and therefore might potentially engage with a number of Convention rights, there is a duty on the police and CPS when applying for an order, and on the court when making an order, to act compatibly with the ECHR under section 6 of the Human Rights Act 1998 as well as the Equality Act 2010. It is right that there is scope to ensure that appropriate restrictions and requirements are available to help protect the public from harm and prevent future offending and which can be targeted to the needs and behaviours of the particular respondent. Such requirements and restrictions would be specific to the particular circumstances of each individual case and could only be agreed by the court where they were necessary and proportionate to the harm they are seeking to address and, as identified, where the proposed requirements and restrictions are ECHR compliant. The orders are subject to appeal. Individual orders could be subject to judicial review on human rights grounds.
It is worth noting that other civil preventative orders can place similar requirements and restrictions on individuals and have not been found to be incompatible with ECHR. Often these orders can last for a longer duration and a breach of these orders is punishable by up to five years imprisonment rather than the maximum penalty of two years available under a KCPO.

Why we have not replicated the gang injunction model

We looked at a range of potential models when developing the KCPO proposals. This included gang injunctions, anti-social behaviour injunctions, criminal behaviour orders but also stalking prevention orders (which have recently been approved by Parliament), sexual harm prevention orders and sexual risk orders. These orders adopt different approaches. Anti-social behaviour injunctions and sexual harm prevention orders can, for example, be made against people as young as 10.

Gang injunctions only apply where an individual is involved in gang violence. As I made clear at Report stage on 26 February, the main cohort that KCPOs are aimed at are habitual knife carriers. Habitual knife carriers cover all ages and are not always associated with a gang. The Government also remains of the view that KCPOs should be available in relation to people aged 12 and above. The police tell us that the age at which people carry knives is getting younger and if we wish to address the issue of knife crime then the measures we take must apply to young people.

Similarly, although breach of a gang injunction is treated as a civil contempt of court rather than a criminal offence, the advice we have from the police is that making breach of an order a criminal offence is important if we want these orders to be taken seriously. For the orders to be effective, those subject to an order need to understand how important it is that they comply with the measures imposed by the court. It will be a matter for the police to determine the appropriate enforcement action and, in turn, for the Crown Prosecution Service to determine whether there is enough evidence to charge and, importantly, whether it is in the public interest to bring the case to court.

Protections for young people

The aim of KCPOs is preventative rather than punitive and they contain a number of safeguards in relation to young people. Any application for an order against a young person will need to be discussed with the relevant youth offending team and we would expect, in appropriate cases, for local authority children’s safeguarding units to also be consulted. Proceedings will also take place in the Youth Court.

The court is also required to review the continued necessity of the order after 12 months and in the case of young people we would expect such reviews to take place more frequently.
Section 11 of the Children Act 2004 also places a duty on the police and youth offending teams to make arrangements to ensure that they have regard to the need to safeguard and promote the welfare of children when discharging their functions.

Finally, we will be piloting KCPOs prior to their national roll out and a report will be provided to Parliament on the outcome of the pilots. A key part of this report will be an assessment of how KCPOs have been applied in relation to young people and whether they have achieved the aim of helping to divert them away from violent offending.

Guidance

As your letter notes, the Government will issue guidance in relation to the operation of KCPOs. We have given a commitment that we will consult publicly on this guidance before KCPOs are brought into force and this will include consulting with community groups and youth organisations as well as other interested parties. This consultation will begin at the earliest opportunity.

Baroness Williams of Trafford