



## **Serious Violence Reduction Orders Consultation**

**Home Office**

**Response**

**November 2020**

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## Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.
2. By way of background, JUSTICE convened a working party in November 2019 to examine the causes of disproportionality in the Youth Justice System ("YJS") of England and Wales for black and minority ethnic ("BAME") children and young people.<sup>1</sup> It will make practical recommendations with a view to reducing that disproportionality. In addition, it will seek to ensure that children are not needlessly criminalised by improving the attitudes, processes and procedures in the YJS. While the report is due to be published by the end of 2020, JUSTICE believes it can offer the Home Office its insight with respect to the questions posed by this consultation.
3. This submission addresses JUSTICE's concerns with the proposed Serious Violence Reduction Orders ("SVROs"). Our response to questions 1 to 6 are set out at an annex.

### **Question 7 - Do you have any comments about how the police should use SVROs in practice? Please provide details (maximum 500 words):**

4. JUSTICE appreciates the importance of tackling knife crime. However, this must be done in a fair, proportionate and evidence-based manner. In the first instance, it is not clear why SVROs are necessary. The Home Office's own data indicates that stop and search<sup>2</sup> is ineffective in tackling crime,<sup>3</sup> with its application to knife-related offences suggesting no

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<sup>1</sup> The Working Party's membership and scope is available at <https://justice.org.uk/our-work/criminal-justice-system/criminal-justice-system/current-work-criminal-justice/racial-disparity-in-youth-justice/>

<sup>2</sup> Stop and search is the term given for the power of police officers to stop an individual and search them in a public place. The power is provided for in the Police and Criminal Evidence Act 1984 ("PACE"); the Criminal Justice and Public Order Act 1994; and in the Terrorism Act 2000.

<sup>3</sup> The Home Office itself recognises that these powers do not work. By their own statistics, of all the stops and searches undertaken in the year ending March 2020, 76% resulted in no further action. – See '*Police powers and procedures, England and Wales, year ending 31 March 2020*', Home Office, 27 October 2020, page 1.

statistically significant crime reduction effects.<sup>4</sup> In addition, its disproportionate impact on BAME individuals is also counterproductive by threatening BAME communities' trust in police operations (*see response to questions 8 and 9 below*).

5. JUSTICE is greatly concerned that individuals subject to SVROs would be treated as perpetual criminals upon release from prison because they would be indiscriminately deemed "*likely to go on to commit more violence*" when in the community, simply on the basis of a previous related conviction.<sup>5</sup> This is inapposite; first, prisoners may only be released early where the Parole Board is "*satisfied that it is no longer necessary for the protection of the public that the person should be confined*".<sup>6</sup> As such, an individual prone to violence would not receive parole, rendering SVROs unnecessary. Second, if a prisoner has completed their sentence, then their reintegration into society is coupled with measures aimed at improving behaviour and lifestyle by "*supporting their rehabilitation while protecting the public*".<sup>7</sup> SVROs would frustrate the purpose of probation by extending punishment into the daily life of an ex-offender.<sup>8</sup>
6. SVROs, as proposed, would not require any reasonable suspicion, and safeguards have not been detailed; thereby potentially allowing the police to arbitrarily search an individual, whenever and wherever they wished. This is currently prohibited by existing stop and search requirements, as "*[r]easonable suspicion can never be supported on the basis of personal factors*", which includes "*the fact that the person is known to have a previous conviction*".<sup>9</sup> SVROs would therefore weaken already precarious safeguards and render BAME individuals open to potentially invasive and unjustified scrutiny.
7. Moreover, the use of SVROs could risk breaching Article 8 ECHR – the right to respect for private and family life, home and correspondence. In *Gillan and Quinton v UK*, the European Court of Human Rights ("ECtHR") found that the stopping and searching of a

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<sup>4</sup> R. McCandless, A. Feist, J. Allan, and N. Morgan, '*Do Initiatives Involving Substantial Increases in Stop and Search Reduce Crime? Assessing the Impact of Operation BLUNT 2*', Home Office, 2016.

<sup>5</sup> SVRO Consultation, page 18.

<sup>6</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, s.125. See also '*Guidance to members on LASPO Act 2012 – test for release*', The Parole Board for England and Wales, December 2013, page 3.

<sup>7</sup> <https://www.gov.uk/government/organisations/national-probation-service/about>

<sup>8</sup> The Criminal Justice Act 2003 s.142(1) states that the purpose of sentencing is to punish, reduce crime (including by deterrence), and rehabilitate an offender, whilst offering protection to the public and reparation to those affected by their offences.

<sup>9</sup> PACE Code A, Home Office, 2015, page 6.

person in a public place without reasonable suspicion of wrongdoing could violate Article 8 ECHR, where such powers are not sufficiently circumscribed and contain inadequate legal safeguards to be in accordance with the law. In particular the ECtHR determined that the lack of reasonable suspicion rendered an individual “*extremely vulnerable to an arbitrary exercise of power*” and represented a lack “*of any practical and effective safeguards*”.<sup>10</sup> JUSTICE considers that such a framework could therefore risk violating Article 8 ECHR and be open to challenge in the courts. This could be remedied by incorporating the same ‘reasonable suspicion’ criterion for any stop and search undertaken pursuant to an SVRO.

**Question 8 - Do you have any comments about the ways in which SVROs might impact on communities? Please provide details (maximum 500 words):**

8. While the Home Office is clear that “*no one should ever be targeted because of the colour of their skin*”,<sup>11</sup> JUSTICE is deeply concerned that SVROs could weaken BAME communities trust in the police. By permitting individuals to be searched without reasonable suspicion, there is a risk that BAME individuals could feel unduly targeted. In the words of Detective Sergeant Janet Hills, Chair of the Metropolitan Black Police Association, “[*s*]top and search can have a negative effect on young BAME people’s trust in the police. But to tackle violent crime, communities need to have confidence to contact the police and share information”.<sup>12</sup>
9. When examining the current stop and search regime, JUSTICE’s Working Party found that BAME individuals feel over-policed. This is unsurprising given stop and search powers are more often deployed in deprived than affluent areas,<sup>13</sup> which often have a higher proportion of BAME people. This is a key cause of distrust of policing within BAME communities, with three quarters of BAME young people thinking they and their communities are targeted

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<sup>10</sup> Gillan and Quinton v The United Kingdom, (App No 4158/05) [2010] ECHR, paragraph 70.

<sup>11</sup> SVRO Consultation, page 3.

<sup>12</sup> K. Kalyan & P. Keeling, ‘*Stop & Scrutinise: How to improve community scrutiny of stop and search*’, Criminal Justice Alliance, February 2019, page 1, available at <http://criminaljusticealliance.org/wp-content/uploads/2019/02/CJA-Stop-and-Scrutinise-2019.pdf>

<sup>13</sup> M. Shiner, Z Carre, R. Delsol and Niamh Eastwood, ‘*The Colour of Injustice: ‘Race’, drugs and law enforcement in England and Wales*’, available at [https://www.stop-watch.org/uploads/documents/The\\_Colour\\_of\\_Injustice.pdf](https://www.stop-watch.org/uploads/documents/The_Colour_of_Injustice.pdf)

unfairly.<sup>14</sup> At the same time, while the rates of stop and search continue to rise,<sup>15</sup> its efficacy has remained marginal at best.<sup>16</sup> This is potentially harmful to those communities if it means they feel unable to rely upon the police when their intervention is needed. Crime, for example, may go undetected and those responsible unpunished. It is therefore unclear how SVROs would operate any differently, not least given the removal of any need for the police to have a reasonable suspicion.

10. This lack of trust was further articulated in a roundtable held by the Home Affairs Committee.<sup>17</sup> During that discussion, a black child said that “*we know the police treat Black people differently...it means that we do not feel safe ever.*” Another child said that “*the only interaction that you have with police nowadays is when you are being pulled over, when you are being stopped and searched.*” The child said that his first interaction with the police was at primary school when the police would come with their cars and that “*people loved the police.*” He went on to say that “*my next interaction after that was being pulled over because there were suspicions that I had a knife on me; and I was about six years old coming home from the park.*” Even where SVROs would focus solely on those with previous convictions, it would undoubtedly be damaging for the community to see others subject to searches with no apparent reason.

11. It is in everyone’s interests that trust between BAME communities and the police be restored. To this end, the Government announced a consultation of Knife Crime Prevention Orders in 2019 (“KCPOs”), which would be “*preventative rather than punitive*” by applying positive, diversionary methods alongside restrictions on individuals involved

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<sup>14</sup> P. Keeling, ‘*No Respect: Young BAME me, the police and stop and search*’, (Criminal Justice Alliance), June 2017, p.20, available at <http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617.pdf>

<sup>15</sup> There was a 32% increase in the use of stop and search between March 2018 and March 2019 - ‘*Police powers and procedures, England and Wales, year ending 31 March 2020*’, Home Office, 27 October 2020, page 1, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/841408/police-powers-procedures-mar19-hosb2519.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841408/police-powers-procedures-mar19-hosb2519.pdf)

<sup>16</sup> “*A recent academic study investigated the use of stop and search in London. The study found that [...] stop and search is likely to have at best a very marginal effect on emerging crime problems*”, SVRO Consultation, page 14.

<sup>17</sup> Home Affairs Select Committee, Serious youth violence, Sixteenth report of session 2017-2019, 18 July 2019, available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/1016/101602.htm>

with serious violence.<sup>18</sup> While this new approach is currently being piloted,<sup>19</sup> we are concerned that SVROs could undermine nascent efforts to build confidence in the police within BAME communities by bolstering a policy which is both ineffective at preventing crime and counterproductive in fostering community trust.<sup>20</sup>

**Question 9 - Do you have any further comments about the proposals in this consultation in relation to impact on protected characteristics under the Equality Act 2010: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation? How might any such impacts be mitigated? Please provide details (maximum 500 words):**

12. JUSTICE reiterates the damaging and disproportionate impact stop and search has on BAME communities. People from ethnic minorities are 4.1 times more likely to be stopped by the police, rising to 8.9 times with respect to black people.<sup>21</sup> Arrests are unlikely to follow these encounters, with only 9% of searches for weapons resulting in further action.<sup>22</sup> While some weapons may be taken off the street, this is a high price to pay where there is limited evidence that stop and search reduces serious violence; at best, it shifts violence from one

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<sup>18</sup> *Knife Crime Prevention Orders – Guidance*, Home Office, 15 August 2019, page 4, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/899091/KCPO\\_Draft\\_Framework\\_Guidance\\_final\\_2019\\_08\\_14.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/899091/KCPO_Draft_Framework_Guidance_final_2019_08_14.pdf)

<sup>19</sup> <https://www.gov.uk/government/news/introduction-of-knife-crime-prevention-orders>

<sup>20</sup> Evidence on the effectiveness of stop and search at reducing violent crime is extremely limited. An academic review published in early 2018, using ten years of data from London, examined the potential effect of the tactic on different forms of crime. The researchers found that a 10% increase in stop and search (S&S) was associated with a drop in “susceptible crime” of 0.32% (monthly) or 0.14% (weekly)—a statistically significant but very small effect. When drug offences and drug-related stop and searches were excluded, the size of the effects halved. The study “*struggled to find evidence of an effect of S&S on violent crime*”: a 10% increase in the tactic led to a 0.01% decrease in non-domestic violent crime. The academics concluded that it “*seems likely that S&S has never been particularly effective in controlling crime*”, and yet “*police officers believe that S&S is a useful tool of crime control*”: Tiratelli, M., Quinton, P., & Bradford, B. ‘*Does Stop and Search Deter Crime? Evidence From Ten Years of London-wide Data*’, *The British Journal of Criminology*, Volume 58(5), September 2018, Pages 1212–1231, available at <https://academic.oup.com/bjc/article/58/5/1212/4827589>

<sup>21</sup> *Police powers and procedures, England and Wales, year ending 31 March 2020*, Home Office, 27 October 2020, page 18, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/929573/police-powers-procedures-mar20-hosb3120.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929573/police-powers-procedures-mar20-hosb3120.pdf)

<sup>22</sup> *Police powers and procedures, England and Wales, year ending 31 March 2020*, Home Office, 27 October 2020, page 23, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/929573/police-powers-procedures-mar20-hosb3120.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929573/police-powers-procedures-mar20-hosb3120.pdf)

area to another.<sup>23</sup> Indeed, the cost of the policy is all the more steep when accounting for the detrimental impact on BAME confidence in the police, considering the persisting belief among those populations that they are being unfairly targeted and overpoliced. This belief is strengthened by figures showing that the number of section 60 stops doubled between March and May 2020,<sup>24</sup> despite crime levels having fallen in the period immediately before.<sup>25</sup>

13. The Home Office proposes, however, that SVROs would somehow be better targeted, focusing solely on *“those already convicted of certain knife offences – giving [the police] the automatic right to search [...] without suspicion so that these known criminals could be stopped at any time.”*<sup>26</sup> The Home Office suggests that this would, in contrast to stop and search, allow the police to *“more effectively target their approach”*.<sup>27</sup> However, by the Home Office’s own admission, SVROs would likely impact a considerable number of BAME individuals, given *“adults from some ethnic minority backgrounds are disproportionately more likely to be sentenced for a knife or offensive weapon offence”*.<sup>28</sup> SVROs could result, therefore, in a considerable increase in BAME individuals being unduly searched, exacerbating the belief that the police are over policing and needlessly targeting their communities.
14. JUSTICE also understands that there has been a 73% increase in the number of girls arrested and prosecuted for carrying knives.<sup>29</sup> Behind this statistic, the Working Party has found that domestic abuse, sexual violence, and exploitation are just a number of factors

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<sup>23</sup> Tiratelli, M., Quinton, P., & Bradford, B. ‘Does Stop and Search Deter Crime? Evidence From Ten Years of London-wide Data’, The British Journal of Criminology, Volume 58(5), September 2018, Pages 1212–1231, available at <https://academic.oup.com/bjc/article/58/5/1212/4827589>

<sup>24</sup> During the first COVID-19 (March to May 2020), over 20,000 young black men (a quarter of all black 15 to 25 year old in London) were stopped by the Metropolitan Police, with 80% of stops resulting in no further action – See S. Marsh, ‘Met police increased use of s60 stop and search during lockdown’, The Guardian, 27 July 2020, available at <https://www.theguardian.com/uk-news/2020/jul/27/met-police-increased-use-of-section-60-stop-and-search-during-lockdown>

<sup>25</sup> ‘Police continue to see falls in crime during lockdown’, National Police Chiefs’ Council, 19 June 2020, available at <https://news.npcc.police.uk/releases/police-continue-to-see-falls-in-crime-during-lockdown>

<sup>26</sup> SVRO Consultation, page 2.

<sup>27</sup> SVRO Consultation, page 2.

<sup>28</sup> SVRO Consultation, page 15.

<sup>29</sup> J. Grierson, ‘Female knife possession crimes in England rise by 73%’, The Guardian, 8 August 2019, available at <https://www.theguardian.com/uk-news/2019/aug/08/female-knife-possession-crimes-in-england-rise-by-73>

that put girls at risk of becoming involved in serious violence,<sup>30</sup> with limited support available to those affected.<sup>31</sup> SVROs could risk further criminalising these vulnerable individuals without addressing the underlying causes of their behaviour.

15. JUSTICE urges caution in taking measures which could result in further disproportionate targeting of BAME individuals. We consider that SVROs would act to extend a policy with limited evidence for its effectiveness, at the risk of significantly impacting BAME communities, thereby damaging their confidence in the police. Instead, the Home Office should carefully consider its existing policies, including KCPOs and other diversionary methods. JUSTICE understands that public health approaches, involving multiple agencies to develop a range of interventions, including prevention work for at-risk groups, as well as law enforcement activity directed at offenders, have been shown to have a positive impact.<sup>32</sup> We believe that this would, in turn, help protect against and prevent instances of violent crime.

**JUSTICE**  
**8 November 2020**

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<sup>30</sup> The Working Party found these to be some of the driving factors behind criminality in girls and women.

<sup>31</sup> C. Firmin, '*To stop women and girls carrying knives, tackle the abuse and violence they face*', The Guardian, 9 August 2019, available at <https://www.theguardian.com/commentisfree/2019/aug/09/women-girls-carrying-knives-abuse-violence-offences>

<sup>32</sup> A. McNeill and L. Wheller, '*Knife Crime Evidence Briefing*', College of Policing, (2019), page 2, available at [https://whatworks.college.police.uk/Research/Documents/Knife\\_Crime\\_Evidence\\_Briefing.pdf](https://whatworks.college.police.uk/Research/Documents/Knife_Crime_Evidence_Briefing.pdf)

## ANNEX

### Serious Violence Reduction Orders

#### Response to Consultation Questions 1 to 6

JUSTICE opposes the introduction of SVROs, and does not believe that the Home Office should expand existing stop and search powers. Nevertheless, if the Home Office decide to adopt this policy, we consider the following options (**in bold**) as posing the least risk in further disproportionately targeting BAME individuals and undermining the police's relationship with communities.

**Question 1 - The government thinks that that the best way to make it easier for the police to stop and search known knife carriers is to create a new court order, the Serious Violence Reduction Order (SVRO). Do you agree?**

- a) Yes.
- b) No, Section 1 of the Police and Criminal Evidence Act 1984 should be amended.
- c) No, Section 60 of the Criminal Justice and Public Order Act 1994 should be amended.
- d) No, Criminal Behaviour Orders should be amended.
- e) **No, Knife Crime Prevention Orders should be amended.**

**Question 2 - When should the court have the power to give someone an SVRO?**

- a) **On conviction for a knife offence only.**
- b) On conviction for offenses involving knives or offensive weapons.
- c) On conviction for any offence involving violence.

**Question 3 - Should an SVRO be made automatically on conviction?**

- a) Yes.
- b) No, but there should be a presumption that the order will be made, unless there are compelling reasons for the court not to do so.
- c) **No, making the order should be wholly at the discretion of the court.**

**Question 4 - Should SVROs apply to adults only?**

- a) **Yes, to adults only (18+ only).**
- b) No, to adults and juveniles aged 12 and over.
- c) No, to adults and children aged 14 and over.

**Question 5 - How long should an SVRO last?**

- a) There should be a fixed duration for all SVROs.
- b) The SVRO should last for the length of the sentence handed down by the court.
- c) **There should be a maximum and minimum length - it would then be for the court to decide on the length of the SVRO, within this range. The court should have a power to say when the order should begin.**

**Question 6 - Should we create a separate criminal offence of breach of an SVRO?**

- a) Yes, this offence would be committed by refusing to co-operate when a police officer tries to stop and search a person who has an SVRO, and by a person who has an SVRO being found to be carrying a knife or an offensive weapon again.
- b) **No, because a breach should be treated as a contempt of court.**
- c) No, because we should use existing legal provisions about repeat offenders.