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Position statement **MA response to Government proposals to introduce Knife Crime Prevention Orders: Briefing for House of Lords Committee Stage of the Offensive Weapons Bill**

For further information, please contact Jo Easton at [jo.easton@magistrates-association.org.uk](mailto:jo.easton@magistrates-association.org.uk)

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## About the Magistrates Association

The Magistrates Association (MA) is the independent membership body for the magistracy. We work to promote the sound administration of the law, including by supporting our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the magistracy, the courts and the broader justice system. With 15,000 members across England and Wales, we are a unique source of independent insight and information on the magistracy.

## MA concerns

The MA supports many of the concerns expressed by other charities and organisations in relation to the proposed Knife Crime Prevention Orders. It is almost universally agreed that knife crime is a growing problem, and we support the broad aim of the government's Serious Violence Strategy to seek solutions to reduce this crime through evidence-based interventions. However, we are not convinced enough assessment has gone into identifying whether these orders are either necessary or would be effective.

We do not believe there is a clearly defined gap in existing police and court powers currently used to respond to possession of knives that would show that these orders are needed. It is unclear what situations these orders would be expected to cover, where out of court disposals, Criminal Behaviour Orders or court sentences are not currently available. Neither youth nor adult magistrates have called for additional powers, and especially in relation to Youth Court, courts already have numerous approaches that can be used in response to knife crime. We are also concerned about how these proposals will be implemented and used in practice.

It is particularly concerning that these orders would be used for children and young people (CYP) between the ages of 12 and 17 years. We think the concerns of the Association of Youth Offending Team Managers<sup>1</sup> (as representative of those with the expertise and experience of working with CYP) about the proposals should be sufficient for the government to consider ensuring the orders are not used for CYP. We note concerns that the introduction of these Orders could increase the already alarming disproportionate outcomes for Black and Ethnic Minority (BAME) children, which is surely an unacceptable risk. The Lammy Review found a worrying lack of trust in the justice system amongst some members of the BAME community: introducing these orders, allowing restrictive measures to be imposed on the basis of suspicion alone, could have a negative impact on the overall trust and confidence in the system.

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<sup>1</sup><http://aym.org.uk/2019/01/31/aym-responds-to-govt-proposal-for-a-knife-crime-prevention-order/>

The initial press release about the proposed orders referenced the fact that they could be imposed on 'anyone who police believe is carrying a knife'. This would be very concerning, particularly as the orders would be decided on the balance of probability (as civil orders), they would allow a host of negative and positive requirements to be imposed on an individual, and breach would be a criminal offence with a maximum penalty of two years in prison. The MA would be very worried about the risk of disproportionate outcomes if such severe orders were used merely on the suspicion that someone was in possession of a bladed article. We do note that the draft legislation states: 'the court [must be] satisfied on the balance of probabilities that, on at least two occasions in the relevant period, the defendant had a bladed article with them without good reason or lawful authority'. We cannot see how a court can be satisfied (even on the balance of probabilities) that someone was carrying a bladed article without good reason unless the article was found on them. We do not believe that a police officer's suspicion would be sufficient evidence to use one of these proposed orders.

This leads to the next point, which is that existing criminal law already exists to deal with the offence of carrying a bladed article without good reason. Police can use an out of court disposal (which could include certain requirements, if a conditional caution was used) for low level offences, but generally (especially for adults) we would expect cases where an individual was carrying a knife to be brought to court. The court can then decide if the offence is proven, and if so, sentence appropriately. There is a positive argument to be made for courts to have more options in sentencing these cases (at the very least, access to behavioural change programmes for adults as are already available for youth offenders) but it is unclear what the proposed Prevention Orders would offer that is over and above existing court powers.

It may be that the intention is for these orders to be used by courts where there is not a conviction following a prosecution for the offence of carrying a bladed article (or no admittance of guilt, restricting police powers to order an out of court disposal). But the MA would be very concerned about putting onerous requirements on individuals (especially with such serious repercussions following breach) where there had been insufficient evidence to convict.

Even if our concerns about the evidential basis for these orders were addressed, as yet there is no evidence to show they would be effective in dealing with the very serious issue of knife crime. The draft legislation says that the order should be used if deemed necessary to protect the public or prevent offending with bladed articles. And (as mentioned above) the provisions can either require a defendant to be at a particular place at a particular time or take part in a meeting or activity or prohibit them from being at a particular place, with a particular person, participating in a particular activity, having a particular article with them or using the internet.<sup>2</sup> These are very wide-ranging requirements, and with no direct explanation of how they link to offences with bladed articles, it is not clear what their purpose might be or how courts could know what requirements are going to be effective in reducing the risk of knife crime.

Another practical concern relating to the implementation of these orders is how they will be monitored and enforced. Presumably probation will be asked to monitor and enforce those orders used post-conviction, and police will be asked to monitor and enforce those orders used without a conviction. It is therefore important that sufficient resources are available to those (and any other agencies) who are being asked to take on the role, if these orders are introduced.

The MA therefore supports the following recommendations as set out in the PRT/SCYJ briefing:<sup>3</sup>

- We call on peers to **reject Amendments 73A-U**: this would prevent the introduction of the Knife Crime Prevention Orders into the Offensive Weapons Bill.

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<sup>2</sup> This last requirement is linked to preventing use of the internet where it might 'facilitate or encourage crime involving bladed articles'

<sup>3</sup> <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Parliament/Offensive%20Weapons%20Bill%20HoL%20Committee%20Stage.pdf>

- We call on peers to **support New Clause 77**: this would allow full consultation on the proposed orders.
- We also **support New Clause 87**: this would require the Government to review the causes of serious violence and the effectiveness of different approaches.