

## CRIMINAL JUSTICE BILL

### EUROPEAN CONVENTION ON HUMAN RIGHTS

#### Supplementary Memorandum by the Home Office and Ministry of Justice

#### Introduction

1. This memorandum supplements memorandums dated November<sup>1</sup>, December<sup>2</sup> 2023, January<sup>3</sup>, 8 May<sup>4</sup> and 10 May 2024 prepared by the Home Office and Ministry of Justice, which addressed issues under the European Convention on Human Rights (“ECHR”) in relation to the Criminal Justice Bill.
2. This supplementary memorandum addresses the issues under the ECHR that arise in relation to Government amendments, tabled on 14 May 2024 for Commons 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 “*Assault of retail worker*”.
  - b) New clause “*Requirements in certain sentences imposed for third or subsequent shoplifting offence*”.
4. It is not considered that any other amendments tabled on 14 May give rise to issues under the ECHR.

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<sup>1</sup> Accessible here: [ECHR memo \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>2</sup> Accessible here: [4240 \(parliament.uk\)](https://parliament.uk)

<sup>3</sup> Accessible here: [ECHR \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>4</sup> Accessible here: [Supplementary Memorandum \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

***New clause: "Assault of retail worker"***

5. This new clause creates an offence if a person carries out a common assault on a retail worker while that retail worker is at work at a retail premises.
6. A person who commits the offence will be liable, on summary conviction, to imprisonment for a term not exceeding the maximum term for summary offences (currently six months) or to a fine or both.
7. The provision further provides (by way of amendments to the Sentencing Code) that where a person is convicted of this offence, and that person has already, as an adult, incurred at least two previous sentences for the same offence and if the court imposes a community order/suspended sentence in respect of the third offence, the community order/suspended sentence must include (subject to the exceptions below): (a) a curfew; (b) an exclusion requirement; or (c) electronic whereabouts monitoring.
8. The court, however, will have a discretion to disapply the direction to impose these requirements if the court is of the opinion that there are exceptional circumstances which (i) relate to any of the offences or the offender which justify the court not imposing such a requirement or if it is not possible to impose a curfew or monitoring requirement (e.g., due to technical reasons relating to the offender's residence).
9. The provisions engage Article 6 but are considered compatible with that Article.

Article 6 ECHR

10. Article 6 ECHR requires that there be a right to a fair trial. The creation of a new criminal offence of assaulting a retail worker engages that right. The provision complies with the criminal limb of Article 6, as the usual safeguards applicable to

persons being prosecuted for an offence (such as the right to legal advice) will apply.

11. For a successful prosecution, it will be for the court to find that the defendant has fulfilled all elements of the offence to the criminal standard of proof.

12. The provision directs the court to impose certain requirements when imposing a community order or suspended sentence on the third occasion of a conviction of the offence, but the court does have the power to exercise its discretion not to impose such a requirement where it is just to do so, or where the imposition is not possible.

13. As such, the new clause is compatible with Article 6.

***New clause: "Requirements in certain sentences imposed for third or subsequent shoplifting offence"***

14. New clause "*Requirements in certain sentences imposed for third or subsequent shoplifting offence*" creates a new duty on courts to impose a requirement that can be electronically monitored if the court imposes a community order or a suspended sentence order on a person convicted of shoplifting who has on at least two previous occasions been sentenced for shoplifting offences committed anywhere in the UK.

15. This measure only applies to adult offenders and at least two of the previous sentencing occasions must have been in respect of shoplifting offences that were committed when the offender was an adult. The court will be required to impose either a curfew requirement, an exclusion requirement or an electronic whereabouts monitoring requirement.

16. The duty will not apply if there are exceptional circumstances relating to the offences or the offender that justify not including a requirement that can be electronically monitored. For example, if the consent of the homeowner whose cooperation is required to install the monitoring equipment is not given.

17. The Government considers this measure engages Articles 7 and 8 of the ECHR.

Article 7 ECHR

18. Article 7 (no punishment without law) provides, “*Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed*”. The maximum penalty for shoplifting goods worth £200 or under is generally 6 months (as section 22A of the Magistrates’ Courts Act 1980 makes low-level shoplifting a summary offence unless the defendant elects for Crown Court trial). The maximum penalty for theft generally is 7 years, and this applies to shoplifting of goods of a value in excess of £200 or for low value shoplifting where the defendant elects for Crown Court trial.

19. The measure will only apply in circumstances where the court is already considering imposing a community order or a suspended sentence order, and if it were considering such a sentence, the court would already be able to impose an electronically monitored requirement if appropriate. The measure therefore does not impact the overall type of penalty that will be imposed (discharge, fine, community sentence, custodial or suspended sentence order), it merely requires the imposition of certain requirements for a third (or more) sentencing occasion for shoplifting where the court is already considering a community order or suspended sentence order, all of which are currently available to a sentencing court.

20. The measure is therefore compatible with Article 7.

Article 8 ECHR

21. Article 8 (right to respect for private and family life). This is a qualified right which can be interfered with if the interference is in accordance with the law and is necessary for the economic wellbeing of the country, for the prevention of disorder or crime, or for the protection of the rights and freedoms of others.
22. An electronically monitored curfew requirement may serve two purposes – it is a punishment as it requires the offender to be at a particular place during the curfew period, and secondly, it may prevent the offender from going out at a time when they are likely to commit further shoplifting offences. A curfew is a valid punitive requirement that may be imposed whether or not the offender tended to offend during the evenings or at night.
23. An electronically monitored exclusion requirement interferes with an individual's private life by preventing the offender from going to a particular area or place. Its use may be justified if it is to prevent the offender from going to a shop or shopping area where they were convicted of shoplifting offences, and would protect the rights of shop owners not to have their goods stolen by that offender and would protect their economic well-being.
24. An electronic whereabouts monitoring requirement interferes with an individual's private life because their movements are subject to constant monitoring whilst the requirement is in place. Its use may be justified as it can inform the probation services if the offender is visiting other shopping areas (not covered by an exclusion order) where there may be the potential to commit further offences.
25. The measure is therefore compatible with Article 8.

**Home Office and Ministry of Justice**  
**14 May 2024**