

CRIME AND POLICING BILL
EUROPEAN CONVENTION ON HUMAN RIGHTS
Supplementary Memorandum by the Home Office

Introduction

1. The Government published a memorandum addressing issues under the European Convention on Human Rights (“ECHR”) on introduction of the Crime and Policing Bill (“the Bill”) in the House of Commons on 25 February 2025¹.
2. This supplementary memorandum addresses the issues under the ECHR from Government amendments to the Youth Diversion Orders (“YDO”) provisions (contained in Chapter 1 of Part 14 of the Bill) tabled on 22 April for Commons Committee stage. Specifically, the strengthening of the operation of YDOs by giving courts an express power to impose electronic monitoring and introducing notification requirements.
3. This memorandum has been prepared by the Home Office.

New YDO Clauses on Electronic Monitoring & Notification Requirements

4. New clauses “*Electronic monitoring of compliance with order: England and Wales*”, “*Conditions for imposing electronic monitoring requirement: England and Wales*” and “*Data from electronic monitoring in England and Wales: code of practice*” strengthen the operation of YDOs, by:
 - giving courts an express power to impose electronic monitoring.
 - introducing notification requirements and a criminal offence specifically linked to breach of the notification requirement.
5. The measures engage Articles 5 and 8 ECHR but are assessed to be compatible with the rights protected under those Articles.

New clauses “*Electronic monitoring of compliance with order: England and Wales*” and “*Conditions for imposing electronic monitoring requirement: England and Wales*” deal with the imposition of electronic monitoring on individuals subject to a YDO.

Article 8

6. The physical wearing of an electronic monitoring tag and the collection of data of an individual’s whereabouts will interfere with the Article 8 rights of the individual.
7. The justification for any interference with Article 8 is as follows:
 - a) *In accordance with the law*: The legislation is clear and precise and accessible as envisaged by *Malone v UK*².

¹ [ECHR Memo.pdf](#)

² [1985] 7 EHRR 14

- b) *Pursuing a legitimate aim*: Electronic monitoring will improve the effectiveness of YDOs which are intended to disrupt individuals' involvement in terrorism and divert them from the wider criminal justice system. It will enable law enforcement authorities to monitor and enforce compliance with YDOs more effectively. Any processing of personal data, gathered in the course of electronic monitoring, will be for these legitimate aims, in the interests of national security and public safety.
- c) *Proportionate*: An independent court will be responsible for imposing the requirement and has the discretion to decide whether it is necessary to do so to protect the public in each case. The court will be bound to consider each application on a case-by-case basis. The court will consider factors including the risk the individual poses to the public, the nature of the crimes they are considered to be at risk of being involved with or have been convicted of, the individual's personal circumstances (for example, religion, education, employment), and any other relevant circumstances. It must act compatibly with convention rights when deciding whether to impose the electronic monitoring condition or not (section 6 of the Human Rights Act 1998). Any imposition of electronic monitoring can be discharged or varied by the court and would be subject to the review of the appellate courts (if appealed), which provides further procedural safeguards. The Secretary of State will be required to publish a Code of Practice relating to the processing of data gathered in the course of electronic monitoring, setting out the expectations, safeguards and broad responsibilities for the collection, retention and sharing of information gathered on such orders. Police forces who hold the data will also be required to process the data in accordance with the Data Protection Act 1998.

New clause "Notification requirements" deals with the imposition of notification requirements for YDO subjects.

8. An individual subject to a YDO may be required to notify the police of their name, address, and educational establishment and any change to these.

Article 8

9. The notification requirements engage Article 8 as they interfere with a person's right to privacy by requiring the individual to notify the police of certain personal information including their name, address and educational establishment. The more personal information a person is required to provide to the police, the greater the interference with a person's right to their private and family life under Article 8.
10. The notification condition is not mandatory for orders. The Court will only impose it where it considers it necessary to protect the public, based on the individual facts of the case. In making that determination, the Court must act compatibly with convention rights (section 6 of the HRA 1998).
11. The justification for any interference with Article 8 rights is as follows:

- a) *In accordance with the law*: The measure is drafted in clear and precise terms which provide that including notification requirements is an option available to the court when imposing a YDO where the court considers it appropriate in all the circumstances, including that it must be necessary for protecting the public.
- b) *Pursues a legitimate aim*: This measure pursues the legitimate aim of protecting national security and public safety. Without the notification requirements it might be possible for an individual to evade the monitoring and enforcing of compliance with their YDO by the police, thus undermining the aim of the YDO, namely, to reduce terrorism risk and protect the public.
- c) *Proportionate*: Suitable safeguards are in place to ensure proportionality of any interference. The subject has the right to apply to vary or discharge a YDO. The Government considers it proportionate to require information on name, address and (where applicable) educational establishment as the minimum necessary in cases in which notification requirements are appropriate. This is a narrow data set which is not unduly intrusive and is necessary to enable effective monitoring of the individual by the police. The court may, however, impose additional notification conditions on the individual (over and above this core data set) but this is also subject to where it is considered necessary in the circumstances and to protect the public. Proportionality is thus ensured by the requirement for measures to be necessary to protect the public, and the fact the Court must act compatibly with convention rights (section 6 of HRA 1998). Additional safeguards are provided by the ability of the subject of the order to appeal against the making or terms of the order or to seek variation or discharge of the order.

12. Police forces who hold the data will also be required to process the data in accordance with the Data Protection Act 2018.

Article 5

13. Article 5 is also engaged as breach of a YDO, and the notification of information known to be false are criminal offences which can result in the arrest and detention of an individual.

14. The Government is satisfied the penalties are proportionate to the nature and severity of the offending. The penalty and power of arrest are in accordance with a procedure prescribed by law and fall within the permissible grounds in Article 5(1), namely: the lawful detention of a person after conviction (Article 5(1)(a)); the lawful arrest or detention of a person for non-compliance with the lawful order of a court (Article 5(1)(b)); and the lawful arrest or detention of a person effected for the purpose of bringing him or her before the competent legal authority on reasonable suspicion of having committed an offence (Article 5(1)(c)). The protections provided for by Article 5(3) in respect of arrest, and any subsequent detention, are met by the ordinary safeguards in the criminal justice system and an offender subject to the order is able to appeal against conviction and sentence.