

CRIME AND POLICING BILL

EUROPEAN CONVENTION ON HUMAN RIGHTS

Fourth Supplementary Memorandum by the Home Office and Ministry of Justice

Introduction

1. This memorandum supplements memoranda dated 23 February 2025¹ and 22² and 24 April³ and 10 June 2025⁴ prepared, variously, by the Home Office, Ministry of Justice, Department for Transport and Ministry of Defence, which addressed issues under the European Convention on Human Rights (“ECHR”) in relation to the Crime and Policing Bill.
2. This supplementary memorandum addresses the issues arising under the ECHR from further Government amendments tabled on 3 November 2025 for Lords Committee stage. This memorandum has been prepared by the Home Office and Ministry of Justice.
3. The amendments considered in this memorandum are:
 - a. Disregards and pardons scheme for anyone convicted or cautioned as a child for the offence of loitering or soliciting: New clauses “*Disregarding convictions and cautions for loitering or soliciting when under 18*” and “*Pardons for convictions and cautions for loitering or soliciting when under 18*” introduce a new automatic disregard and pardon scheme for individuals who received a caution or conviction for an offence of persistently loitering or soliciting in public place for the purposes of prostitution, contrary to section 1 of the Street Offences Act 1959, where the offence was committed while the individual was under the age of 18;
 - b. Public processions and assemblies: cumulative disruption: New clause “*Public processions and assemblies: duty to take account of cumulative disruption*” amends sections 12 and 14 of the Public Order Act 1986 to require that, when considering whether the serious disruption to the life of the community threshold is met, a senior police officer must take into account any relevant cumulative disruption, which is defined as including concurrent and repeated public processions and public assemblies in the same area.

¹ [ECHR Memo.pdf](#)

² [Crime and Policing Bill: ECHR supplementary memorandum 22 April 2025 - GOV.UK](#)

³ [Crime and Policing Bill: ECHR second supplementary memorandum: 24 April 2025 - GOV.UK](#)

⁴ [Crime and Policing Bill: ECHR third supplementary memorandum: 10 June 2025 \(accessible\) - GOV.UK](#)

- c. Protests outside the homes of public office holders: New clause "*Harassment of and representations to a person in their home*" expand sections 42 and 42A of the Criminal Justice and Police Act 2001 (protests outside homes) to cover protests about something done in the past. It also makes it an offence to protest outside the homes of public office holders if the protest is in relation to their role as public office holder, if protestors are seeking to persuade public office holders to do something they are not under any obligation to do, or if they are seeking to persuade them not to do something they are entitled or required to do.
- d. Criminalising the possession and publication of pornography portraying strangulation or suffocation: New clause "*Pornographic images of strangulation or suffocation: England and Wales and Northern Ireland*" inserts new sections into the Criminal Justice and Immigration Act 2008 (CJIA 2008) to make it a criminal offence to possess or publish a pornographic image that portrays strangulation or suffocation. New clause "*Pornographic images of strangulation or suffocation: Scotland*" inserts new sections into the Civil Government (Scotland) Act 1982 (CG(S)A 1982) to make equivalent provision for Scotland.
- e. Extraction of online information: Amendments to clause 169 and new clause "*Prevention and investigation measures: online information*", provide a clear legal basis for the police in the UK to access, examine and extract remotely stored electronic data ("RSED") from online accounts when monitoring compliance with an Electronic Communications Devices (ECD) measure imposed under specified legislation.
- f. Time limits for prosecuting intimate images offences: Insertion of new paragraph 6A into Part 1 of Schedule 9 (amendments of the Sexual Offences Act 2003), which amends section 66H of the Sexual Offences Act 2003 (time limits for prosecuting summary offences) in order to extend the time limit for the prosecution of all summary-only intimate image offences.
- g. Deprivation orders in respect of images relating to the breastfeeding voyeurism recording offence: Amendment to paragraphs 18 and 21 of Part 1 of Schedule 9 (amendments of the Sexual Offences Act 2003), which provide for the availability of deprivation orders relating to intimate image offences under the Armed Forces Act 2006 and Sentencing Act 2020 respectively, in order to make deprivation orders available in respect of images relating to the offence of breastfeeding voyeurism recording at section 67A(2B) of the Sexual Offences Act 2003.

4. The following amendments are considered to raise ECHR issues, but are not addressed in detail in this memorandum, as the issues arising are the same as those set out in the memorandum dated 25 February 2025. Specifically:
- a. Child criminal exploitation prevention orders (CCEPOs): New Schedules “*Child criminal exploitation prevention orders: Scotland*” and “*Child criminal exploitation prevention orders: Northern Ireland*” make equivalent provision to clauses 42 to 55 of and Schedule 5 to the Bill, to enable courts in Northern Ireland and Scotland to make CCEPOs (see paragraphs 70 to 85 of the memorandum dated 25 February 2025).
 - b. Child sexual abuse material: New clauses “*Child sexual abuse image generators: Northern Ireland*” and “*Child sexual abuse image generators: Scotland*” make equivalent provision for Scotland and Northern Ireland to that contained in clause 63 which provides for a new offence which criminalises the making, possession, adaptation or supply of digital files or models designed to create child sexual abuse material. New clause “*Possession of advice or guidance about child sexual abuse or CSA images: Scotland*” makes equivalent provision for Scotland to that contained in in section 69 of the Serious Crime Act 2015, as amended by clause 64, which provides for the so-called “paedophile manual” offence. (see paragraphs 92 to 93 of the memorandum dated 25 February 2025).
 - c. Management of sex offenders – restrictions on replacement driving licences in Northern Ireland: An amendment to clause 94 makes equivalent provision to new section 93I of the Sexual Offences Act 2003 under clause 94(2) of the Bill, which will confer a power on the Department for Infrastructure (Northern Ireland) to make regulations that prevent a person from being granted a replacement driving licence in a new name if certain conditions are met (see paragraphs 175 to 181 of the memorandum dated 25 February 2025).
 - d. Child abduction: New clause “*Child Abduction: Northern Ireland*” makes equivalent provision for Northern Ireland to that contained in clause 104 which makes it an offence for a parent or person with similar responsibility, at any time after a child is taken or sent out of the UK with the appropriate consent, to detain that child outside the UK without the appropriate consent.

Disregards and pardons scheme for anyone convicted or cautioned as a child for the offence of loitering or soliciting

5. The Serious Crime Act 2015 amended section 1 of the Street Offences Act 1959 (“the 1959 Act”) to restrict the offence of persistently loitering or soliciting in a public place for the purposes of prostitution to individuals aged 18 or over. This amendment came into force in May 2015.

6. New clauses “*Disregarding convictions and cautions for loitering or soliciting when under 18*” and “*Pardons for convictions and cautions for loitering or soliciting when under 18*” introduce a new automatic disregard and pardon scheme for individuals who received a caution or conviction for an offence contrary to section 1 of the 1959 Act, where the offence was committed while the individual was under the age of 18.

Article 14 – prohibition of discrimination (in conjunction with Article 8 – right to respect for private and family life)

7. The new disregard and pardon scheme for cautions or convictions under section 1 of the 1959 Act operates on an automatic basis. The qualifying criterion is that the individual was under the age of 18 at the time the offence was committed. The only information required to determine eligibility is the individual’s date of birth and date of offence, which is information already held within antecedent records, allowing implementation without requiring individuals to apply or provide further information.
8. In contrast, the disregard scheme for cautions and convictions received for historic same-sex sexual activity offences, established under Chapter 4 of Part 5 of the Protection of Freedoms Act 2012, requires individuals to apply to the Secretary of State. Each application is subject to an individualised assessment to determine whether the conduct would still constitute a criminal offence under current law.
9. This difference in approach engages Article 14, read in conjunction with Article 8, as it results in differential treatment between individuals seeking redress for historic injustices. That differential treatment may be on the ground of a status within Article 14, namely sex or sexual orientation. Specifically, individuals affected by historic same-sex offences, many of whom were criminalised on the basis of their sexual orientation, must undertake an application process, whereas individuals cautioned or convicted of loitering or soliciting under the age of 18 benefit from automatic redress.
10. The application process is deemed necessary for the same-sex sexual activity disregard scheme to ensure that only cautions or convictions for consensual, decriminalised conduct are disregarded. Some historic same-sex offences may still constitute criminal behaviour today (e.g. non-consensual acts, offences involving minors, or public sex acts). Therefore, the Secretary of State requires additional factual information to determine eligibility. This procedure has been intentionally designed to account for the complex nature of the offences involved, and to ensure that each case is handled with legal precision for accuracy and fairness.

11. On this basis, the Government is satisfied that the differential impact arising from the additional procedural requirements of the same-sex disregard scheme is objectively and reasonably justified; it is a proportionate means of pursuing the legitimate aims of public safety, the prevention of disorder or crime, and the protection of the rights and freedoms of others.
12. As outlined above, the application scheme protects public safety and prevents disorder or crime by ensuring that those involved in same-sex offences which still constitute criminal behaviour do not benefit from the disregards scheme. Further, in relation to the rights of others, the automatic disregard scheme for section 1 is designed to minimise the risk of re-traumatisation, particularly for individuals who were victims of child sexual exploitation. The absence of an application requirement is intended to avoid unnecessary engagement unless explicitly requested by the individual.

Public processions and assemblies: duty to take account of cumulative disruption

13. Sections 12 and 14 of the Public Order Act 1986 (“the 1986 Act”) permit the police to impose conditions on public processions and public assemblies. New clause “*Public processions and assemblies: duty to take account of cumulative disruption*” amends sections 12 and 14 of the 1986 Act to require that, when considering whether the serious disruption to the life of the community threshold is met, a senior police officer must take into account any relevant cumulative disruption, which is defined as including concurrent and repeated public processions and public assemblies in the same area.

Articles 10 and 11 – right to freedom of expression and assembly

14. This new clause may interfere with an individual’s rights under Article 10 (freedom of expression) and Article 11 (freedom of assembly and association), which are likely to be engaged when the police exercise powers under sections 12 and 14 of the 1986 Act to impose conditions on public processions and public assemblies.
15. Articles 10 and 11 are qualified rights. The Government is satisfied any interference with Articles 10 and 11 is in accordance with the law and justified as a proportionate and necessary interference in pursuit of a legitimate aim.
16. The legitimate aims pursued are public safety, the prevention of disorder and crime, and the protection of the rights of others. Ongoing protest activity places considerable pressure on the police, especially when protests are concentrated in a small number of places. This detracts from the ability of the police to prevent disorder and crime or protect the rights of others. Further, cumulative disruption

can put a toll on communities, such as the impact on the Jewish community of the regular and continued protests at Swiss Cottage.

17. The Government believes it is necessary to mandate consideration of cumulative disruption to ensure that the cumulative impact of repeated public processions and public assemblies is properly taken into account when considering whether the serious disruption to the life of the community threshold is met. The police currently have discretion under sections 12 and 14 of the 1986 Act to consider cumulative disruption, as they are required to have regard to the circumstances in which the protest is held when considering whether the statutory thresholds are met. Making it mandatory for police to consider is intended to provide explicit flexibility and consistency across police forces.
18. This new clause provides the public with greater clarity and foreseeability in terms of what the police will take into account when considering whether to exercise their powers under sections 12 and 14 of the 1986 Act. It does not alter the core threshold test, or safeguards applicable within the power. If a senior police officer reasonably believes that statutory threshold is met, the police can exercise existing powers to impose conditions on protests but only conditions that are necessary to prevent the disruption. The powers do not act as an outright ban on protest, especially since the threshold for imposing conditions remains high.
19. The police have a duty pursuant to section 6 of the HRA 1998 to act compatibly with convention rights when exercising their powers and duties and there is extensive guidance in respect of the use of their public order powers. The Crown Prosecution Service and the court must do the same when carrying out their functions, such as when making charging decisions and sentencing. These provide additional safeguards against disproportionate interference.
20. As such, the Government is satisfied the clause is compatible with Articles 10 and 11.

Policing of protests outside the homes of public office holders

21. New clause "*Harassment of and representations to a person in their home*" make it an offence to protest outside the private residence of a public office holder if the protest is in relation to that public office holder's role, something that the public office holder is not under any obligation to do, or something that the public office holder is entitled or required to do. The offence will be punishable summarily by imprisonment for a term not exceeding the general limit in the magistrates' court, a Level 4 fine (£2,500) or both. It is a defence for a person to show that they were not aware that the premises were used by the public office holder as a dwelling.

Articles 10 and 11 – right to freedom of expression and freedom of assembly

22. This offence may interfere with rights under Articles 10 (freedom of expression) and 11 (freedom of assembly) ECHR, by limiting the places where these rights can be exercised in the context of certain protests. Articles 10 and 11 are qualified rights. The Government is satisfied any interference with these rights is sufficiently precise, in accordance with the law, and justified as a proportionate and necessary interference in pursuit of a legitimate aim.
23. The offence pursues the legitimate aim of protection of Article 8 rights for public office holders and their family members. It also seeks to preserve the integrity of the democratic process by mitigating the risk of public office holders being influenced to behave in a particular manner or being deterred from standing for public office due to concern for their safety or that of their families. There has been an increased risk of violence against, and pressure on public office holders, particularly in light of the murders of Jo Cox MP and Sir David Amess MP. It is in that context that this clause seeks to protect the rights of public officer holders in their homes, an example of which was a recent protest outside the home of an MP apparently in response to the MP's voting record in relation to the conflict in Gaza.
24. The measure is proportionate to the legitimate aim of protection of Article 8 rights for public office holders and their family members and the social need to preserve the integrity of democratic processes as it only seeks to limit protest outside of the personal residences of public office holders and only where the protest relates to the role of the public office holder, where the protestors are seeking to persuade the public office holder that they should not do something that they are entitled or required to do, or that they should do something that they are not under any obligation to do. Additionally, there is a defence available where the individual can demonstrate that they were not aware that the premises were used by a public office-holder as a dwelling.
25. The fact that under section 6 of the Human Rights Act 1998 the police and the CPS have a duty to act compatibly with the ECHR when making decisions around arrest, charge and prosecution provides an additional safeguard against disproportionate interference.
26. As such, the Government is satisfied that the new offence is compatible with Articles 10 and 11 ECHR.

Criminalising the possession and publication of pornography portraying strangulation or suffocation

27. New sections are inserted into the CJIA 2008 for England and Wales and Northern Ireland to make it an offence to possess or publish an image if: the image is pornographic; the image portrays, in an explicit and realistic way, a person

strangling or suffocating another person; and a reasonable person looking at the image would think that the persons were real. Similar provision is made for Scotland by inserting new sections into the CG(S)A 1982. The ECHR rights potentially engaged are those in Articles 5, 6, 7, 8, 10 and Article 1 of Protocol 1.

Article 5 - right to liberty and security

28. Article 5 is engaged as the maximum penalty upon conviction is imprisonment for a term not exceeding 2 years for the possession offence and a term not exceeding 5 years for the publication offence. The amendment falls within the authorised circumstances prescribed by Article 5(1)(a) where deprivation of liberty is lawful, namely detention after conviction by a competent court. Matters of appropriate sentencing fall, in principle, outside of the scope of the Convention. However, for completeness, the maximum penalty for the possession offence is in line with the offence of possession of pornographic images depicting necrophilia and bestiality at section 67(3) of the CJIA 2008 and the maximum penalty for the publication offence is the same as the publication of obscene articles offence in the Obscene Publications Act 1959. The Government considers these offences are of a similar level of seriousness as the new offences and therefore the sentences are not arbitrary and are proportionate to the nature and severity of offending. The procedural safeguards required by Article 5(2) to (4) are assured through the ordinary procedure of the criminal justice system.

Article 6 – right to a fair trial

29. The Article 6(2) presumption of innocence is engaged as the amendment transfers both the legal and evidential burden for the defences to the Defendant. However, the Government is satisfied that reversing the burden of proof is proportionate and legitimate, subject to reasonable limits, and is not arbitrary, and is therefore justified.

30. The offences are relatively serious but transferring both the evidential and legal burden does not place an undue burden on the Defendant. This is because the material information required to prove the defences is solely or primarily within the knowledge of the Defendant (*Sheldrake v Director of Public Prosecutions Attorney General's Reference* (No 4 of 2002) [2003] EWCA Crim 762). For example, the Defendant should know that they: had a legitimate reason for possessing or publishing the image; had not seen the image and did not know it was a pornographic image; had been sent the image without asking and did not keep it for an unreasonable time; or participated in the consensual act and no serious harm was caused. Such circumstances are specific to, and within the knowledge of, the particular Defendant and therefore, requiring the Defendant to produce this information and then prove it on the balance of probabilities is proportionate. In contrast, requiring the prosecution to prove that these circumstances did not exist

would be an unnecessary burden and significantly limit the ability to prosecute the offences.

31. Additionally, the defences for the new offences are based on well-established defences that already exist for the possession of extreme pornography offence at sections 65 and 66 of the CJIA 2008. There is relevant precedent for switching both burdens to the Defendant in such situations where the information is within their knowledge (*Pin Chen Cheung* [2009] EWCA Crim 2963) and those defences are considered to be compatible with Article 6(2).

Article 7 – no punishment without law

32. Article 7 is engaged in so far as it requires the offences and corresponding penalties to be clearly defined in law. In relation to the key question of foreseeability, the new offences are clear on what an “image” is and what makes such an image “pornographic”. There is helpful reference to the term “publish” including giving or making an image available to another person by any means. More generally, the terms “publish”, “possession”, “strangling” and “suffocating” are well understood concepts and used elsewhere in the criminal law. For example, the term “possession” is used undefined in the possession of extreme pornography offence at section 63 of the CJIA 2008 and “strangulation” and “suffocation” in section 75A of the Serious Crime Act 2015 offence which criminalises such behaviour in ‘real life’. Therefore, the penalties for the new offences are clearly set out and the public will have sufficient familiarity with the concepts in the offences to identify the kinds of acts that would fall within it. The offences are prospective. However, possession is a continuing act and similarly where something is published online, this publication can also be continuing. This means that a person in possession of an image portraying strangulation or suffocation may have to permanently delete or otherwise get rid of the image before the offence comes into force or to the extent a person continues publishing an image online, they may have to cease this publication to avoid committing the offence. Communications before commencement will make this clear. A person could therefore reasonably foresee they risked committing the offence and the government is satisfied that the measure is compatible with Article 7.

Article 8 – right to respect for private and family life, home and correspondence

33. Article 8 is engaged as the new possession offence criminalises the private possession of pornography portraying strangulation or suffocation. The offence will be clearly set out in primary legislation and the Government is satisfied that any interference with an individual's right to private life is justified under Article 8(2) in that the offences are necessary in a democratic society in furtherance of the legitimate aims of the protection of health and morals, the prevention of crime and the protection of the rights and freedoms of others.

34. In *Chocholac v Slovakia* [2022] (No.81292/17) the European Court of Human Rights (ECtHR) found that a ban on prisoners possessing any pornographic material for their private use breached Article 8 in that the ban was general and indiscriminate, and it did not permit the required proportionality assessment in an individual case. The possession of pornographic images portraying strangulation or suffocation offence is not a general and indiscriminate ban. Instead, the offence is clearly targeted, criminalising the possession of a specific type of pornographic image in furtherance of the legitimate aims. There is clear evidence that porn shapes sexual activity and expectations, particularly in young people, and evidence suggests that depictions of strangulation in porn are normalising practices of strangulation in sex. The evidence suggests that pornography may encourage emulation, which could lead to more illegal strangulation or suffocation in real life under section 75A of the Serious Crime Act 2015. The evidence particularly focusses on the act of strangulation, but the Government considers that acts of suffocation are analogous and similarly harmful. In light of the recognised health risks of such behaviour, the Government considers there is a clear public policy interest in restricting the availability of such pornography to limit this normalisation and the new possession offence directly addresses the important legitimate aims of protecting health and reducing crime. As such, in relation to images that portray strangulation and suffocation, the public interest outweighs any private right to possess such material.
35. The possession offence is subject to defences, which ensure that the offence is the least restrictive way of achieving the legitimate aims and is therefore proportionate. Particularly relevant to Article 8 is the fact that a person can still privately possess pornography that they have created with a consenting person(s) so long as serious harm is not caused. This defence is considered appropriate as private possession of your own image does not go to the core harm that the policy intends to address – that is minimising the mainstream dissemination of this material.
36. Additionally, the Government considers that the new offences enhance the protection of Article 8 rights to the extent the person has not consented to their image being possessed or published. The right to one's image and photographs is a well-recognised element of Article 8, and possession and publication of pornographic images without consent of the person(s) in the image will go against these protections. In the case of the non-consensual sharing of sexually explicit images (so called "revenge pornography"), the ECtHR considered the protection of Article 8 required a criminal law response (*M.S.D v Romania*, 2024). The Government is satisfied that the measure is compatible with Article 8.

Article 10 – right to freedom of expression

Publication offence

37. Article 10 is engaged because the publication offence prohibits a person from publishing images portraying strangulation or suffocation and this has an impact on that person's ability to communicate. This is particularly relevant in terms of publication online, where Article 10 applies to communication on the internet, whatever the type of message being conveyed (including photographs) and even when the purpose is profit making (*Ashby Donald and Others v France*, 2013).
38. There is also an argument that Article 10 is engaged as the publication offence prohibits a person who has created a pornographic image portraying strangulation or suffocation from publishing that image to anyone other than the other persons who directly participated in the act and this could be categorised as restricting their artistic expression. Artistic expression is covered by the Article 10 protections (*Muller & others v Switzerland* (10737/84)) and the ECtHR has accepted that publication of obscene images engages Article 10, but that criminal prohibitions may nonetheless be justified (*Hoare v The United Kingdom* (31211/96); *Perrin v The United Kingdom* (5446/03); *Karttunen v Finland* (1685/10)).
39. On the basis Article 10 is engaged, the publication offence will be clearly set out in primary legislation and the Government is satisfied that the offence is necessary in a democratic society in furtherance of the legitimate aims of the protection of health and morals, the prevention of crime and the protection of the rights and freedoms of others.
40. The main purposes of criminalising the publication of pornographic images portraying strangulation and suffocation is the protection of health (particularly the health of young people) and the prevention of crime. The ECtHR has found that the fact that offending publications were capable of inciting young people to consume tobacco products was a relevant and sufficient reason to justify the interference with Article 10 (*Ponson v France* (Application No. 26935/05)). The Government considers the analysis set out in paragraph 34 concerning the evidence of the impact of pornography on the sexual activity and expectation of young people applies equally to the analysis for the new publication offence for Article 10 purposes. For the same reasons therefore, there is a clear link between the new publication offence and the legitimate aims of the protection of health and the prevention of crime and as such, the public interest outweighs any private right to publish such material.
41. Any interference with Article 10 must be balanced with the protection of others' Article 8 rights, where that is relevant in any individual case (see paragraph 36 above).

42. The available defences, and the exclusion for classified works ensure that the new publication offence is the least restrictive way of achieving the legitimate aims and is therefore proportionate. Particularly relevant for these purposes is the fact that there is a defence if the person directly participated in the act portrayed and only published the image to the other person(s) who also directly participated in the consensual act so long as no serious harm was caused. In this sense, therefore, a person can still exercise their right to freedom of expression by creating such images of themselves and sharing those images with the other person(s) who are in the image. Additionally, images that are contained within work that has been classified by the British Board of Film Classification are excluded from the publication offence (so long as they are not extracted for the purposes of sexual arousal). This ensures that a filmmaker is not prevented from expressing themselves by publishing a non-pornographic film where the particular sex scene showing strangulation or suffocation is part of the narrative of the film.

Possession offence

43. Once you create an image, you possess it, so the effect of the possession offence is to generally prohibit the creation of pornographic images portraying strangulation and suffocation. There is an argument therefore that the possession offence indirectly engages Article 10 as it could be seen as inhibiting a person's artistic expression in creating the images. However, the Government considers this indirect impact is too remote to engage Article 10, particularly given the available defence that permits the possession of pornography that you have created with a consenting person(s) so long as serious harm is not caused. In the event the new possession offence was found to engage Article 10, the Government is satisfied this would be justified for the same reasons as the new publication offence.

Article 1 of Protocol No 1 – right to property

44. Article 1 of Protocol 1 to the ECHR entitles legal persons to the peaceful enjoyment of their possessions, including images. The new possession offence will be prospective, however A1P1 is engaged because due to possession being a continuing act a person will have to permanently delete or otherwise permanently get rid of such pornographic images to avoid committing the offence when it comes into force.

45. Additionally, it is acknowledged that the new publication offence directly targets those who publish images, including where they do so for commercial gain. Given the intent is to limit the proliferation of pornographic images portraying strangulation or suffocation, there may be an indirect impact (although this is difficult to assess or quantify) on the income of commercial pornography platforms. Also, the new offences will be priority offences under the Online Safety Act 2023 and therefore if a service provider generates income from content published by its users, then since it will have proactive duties to prevent and remove the illegal

content, they may be deprived of any income that could be made from the image. There is an argument therefore that A1P1 is engaged to the extent that the income of individuals or commercial pornography providers is reduced because of the new offences coming into force.

46. Any direct interference (or to the extent that such indirect interferences with A1P1 are protected) is a proportionate means of achieving the legitimate aims of protection of health and morals, the prevention of crime and protecting the rights and freedoms of others, on the same basis as Article 8 and 10.. Requiring persons to permanently delete or otherwise get rid of pornographic images portraying strangulation or suffocation before the offence comes into force is consistent with the position that possession of such images should be limited in the public interest. The possession of extreme pornography offence at section 63 of the CJIA 2008 was amended by the Criminal Justice and Courts Act 2015 to criminalise pornographic images depicting rape and the decision then was that persons in possession of such images had to delete or otherwise get rid of them to avoid committing a criminal offence. There is therefore relevant precedent for this approach. The available defences and exclusions apply, and persons will be able to continue to possess pornography that does not portray strangulation and suffocation. Additionally, individuals and commercial producers of pornography will be able to continue producing other pornography, such that this is the least restrictive means of achieving the objective. As such, the government is satisfied the measure is compatible with A1P1.

Time limits for prosecuting intimate images offences

47. Section 66H of the Sexual Offences Act 2003 (SOA 2003), inserted by section 138 of the Data (Use and Access) Act 2025 (DUAA 2025), creates an exception to the time limit for prosecuting summary-only offences in section 127(1) of the Magistrates' Courts Act 1980 (MCA 1980), of six months from the commission of an offence. This exception applies to two new offences: creating a purported intimate image of an adult, and requesting the creation of a purported intimate image of an adult, which are set out in new sections 66E and 66F of the SOA 2003, and were also inserted by section 138 of the DUAA 2025. This exception allows prosecutions to instead be brought within six months of evidence coming to the prosecutor's knowledge which the prosecutor thought was sufficient to justify a prosecution, so long as this is no longer than three years since the offence was committed. It further provides that a certificate signed by or on behalf of a prosecutor, stating the date on which evidence which the prosecutor thinks is sufficient to justify a prosecution came to their knowledge, is conclusive evidence of that fact.

48. This measure will amend section 66H of the Sexual Offences Act 2003 to extend the same exception to section 127(1) of the MCA 1980 to the "sharing", "taking"

and “installing” summary-only offences (respectively at section 66B(1) and new section 66AA(1) of the SOA 2003, to be inserted by paragraph 2 of Schedule 9 to the CPB; and new section 66AC(1) of the SOA 2003, to be inserted by paragraph 2 of Schedule 9 to the Bill).

Article 6 – right to a fair trial

49. To the extent that the measure engages Article 6 ECHR, the Government is satisfied that it is compatible with the rights protected under that Article.
50. Article 6(1) provides, among other things, that in the determination of any criminal charge against them, everyone is entitled to a fair and public hearing *within a reasonable time*. That “reasonable time guarantee” runs from the date of charge (*Neumeister v Austria*⁵, § 18) until its final determination, including the exhaustion of all ordinary avenues of appeal (*Delcourt v Belgium*⁶, §§ 25-26; *König v Germany*⁷, § 98; *V v United Kingdom*⁸ [GC], § 109).
51. However, a person is deemed to be subject to a “charge” within the meaning of Article 6 when they are “officially notified” of the allegation, or “substantially affected” by the proceedings taken against them (*Deweert v Belgium*⁹, § 46). It could therefore be argued that, in some circumstances (for example, release on pre-charge bail with conditions), the reasonable time guarantee begins to run from before the formal date of charge.
52. The amendment increases the time that may elapse between the date of commission of the offence and the date of formal charge. Should circumstances mean that the reasonable time guarantee begins to run some time before formal charge this means that the time to conclude proceedings could be increased. Article 6 is therefore arguably engaged.
53. However, to the extent that Article 6 is engaged, the Government is satisfied that any interference is justified, necessary and proportionate for the following reasons:
- a) The length of any increase in the period of time covered by the reasonable time guarantee would be limited by the date of formal charge also needing to be within six months of evidence coming to the prosecutor’s knowledge which the prosecutor thought was sufficient to justify a prosecution;

⁵ Application no. 1936/53

⁶ Application no. 2689/65

⁷ Application no. 6232/73

⁸ Application no. 24888/94

⁹ Application no. 6903/75

- b) In the majority of cases, the defendant is either charged promptly after arrest, or released without bail such that the person is not deemed to be subject to a “charge”. In such cases, the increase in the time that may elapse between the date of the commission of the offence and the date of formal charge will have no effect on the time period covered by the reasonable time guarantee, because the reasonable time guarantee will only begin to run from the date of formal charge.
- c) Moreover, the reasonableness of the time period under Article 6(1) is assessed across the entirety of the proceedings, including any appeal, and not solely at the pre-charge or early investigative stage. As demonstrated in recent cases such as *Pretto v Italy*¹⁰, a modest extension at the outset is unlikely, in itself, to render the overall duration unreasonable.

54. As such, the Government is satisfied that the measure is compatible with Article 6 of the ECHR.

Deprivation orders in respect of images relating to the breastfeeding voyeurism recording offence

55. This amendment will amend Chapter 4 of Part 7 of the Sentencing Act 2020 (SA 2020) and Chapter 1 of Part 8 of the Armed Forces Act 2006 (AFA 2006), to ensure that the deprivation order power under section 153 of the SA 2020 and section 177C of the AFA 2006 will extend to photographs and films that relate to the offence of breastfeeding voyeurism recording (BVR) under section 67A(2B) of the SOA 2003. It will do so by amending section 154A of the SA 2020 and section 177DA of the AFA 2006 to provide that such a photograph or film is to be regarded, for the purposes of section 153 of the SA 2020, and section 177C of the AFA 2006, as used for the purposes of committing the relevant offence.

56. In addition, the Government is taking the opportunity to consolidate the various provisions dealing with deprivation orders in respect of intimate image offences, and the clause therefore includes reference to the offences of creating, and requesting the creation of, a purported intimate image (sections 66E and 66F of the SOA 2003, as inserted by section 138 of the DUAA 2025) and taking or recording an intimate image (proposed new 66AA of the SOA 2003, to be inserted by paragraph 2 of Schedule 9 to the CPB), without consent or reasonable belief in consent.

Article 1, Protocol 1 – right to peaceful enjoyment of property

¹⁰ Application no. 7984/77

57. The measure engages Article 1 of Protocol No 1 to the ECHR but the Government is satisfied that it is compatible with the rights protected under that Article.
58. Section 154A of the SA 2020 and section 177DA of the AFA 2006 will be amended to provide that the photograph or film to which the offence of BVR relates is to be regarded for the purposes of section 153 of the SA 2020 and section 177C of the AFA 2006 as used for the purpose of committing the offence. This will ensure that the court has the power under Chapter 4 of Part 7 of the SA 2020 and Chapter 1 of Part 8 of the AFA 2006 to make an order depriving the offender of the photograph or film in question upon conviction for the offence of BVR.
59. The effect of the order under the SA 2020 will be that the property will be taken into the possession of the police (section 156). If a third party has a claim to the property, they may, within 6 months of the date of the order, seek an order of a magistrates' court for return of the property. The effect of the order under the AFA 2006 will be that the property will be taken into the possession of a member of a service police force, or if neither a service police force nor the tri-service serious crime unit has been involved in the matter, the offender's commanding officer (section 177C). If a third party has a claim to the property, they may, within 6 months of the date of the order, seek an order of a judicial authority or a commanding officer for return of the property (section 94A). The measure therefore engages A1P1. However, the interference is necessary to avoid causing additional harm to victims, arising from knowledge that the offender retains the photographs and films that they unlawfully recorded, and is therefore in the public interest.
60. Deprivation orders under the SA 2020 are not to be made as a matter of routine and can only be made when there has been a sufficient investigation to justify a finding that the property is the product of one of the offences and where the court is satisfied that the order is proportionate and justified (*R v Wright-Hadley (Stephen)*¹¹). We consider the same principles are likely to apply in the service courts. Consequently, not only is the measure itself justified, the courts will apply it in a way which ensures that the power is exercised in a proportionate way.
61. Therefore, to the extent that the measure engages Article 1 of Protocol 1, the Government is satisfied that any interference is a proportionate means of achieving the legitimate aim of the protection of the rights of others.

Remotely Stored Electronic Data/Access to Online Accounts for ECD Measures in S/TPIMs & YDOs

¹¹ [2022] EWCA Crim 446

62. Amendments to clause 169 and new clause “*Prevention and investigation measures: online information*”, provide a clear legal basis for the police in the UK to access, examine and extract remotely stored electronic data (“RSED”) from online accounts when monitoring compliance with an Electronic Communications Devices (ECD) measure imposed under:

- a) Terrorism Prevention and Investigations Measure (TPIM) notice under section 2 and paragraph 7(1) of Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011 (“TPIM Act 2011”);
- b) State Threats Prevention and Investigation Measure (STPIM, or S/TPIM when referred to collectively with TPIMs) under a Part 2 notice under section 39 and paragraph 8 of Schedule 7 to the National Security Act 2023 (“NS Act 2023”);
- c) a Youth Diversion Order (“YDO”) under Chapter 1 of Part 14 of this Bill.

63. As these amendments all engage ECHR rights in a similar manner, they are dealt with collectively for the purpose of this memorandum.

64. The ECHR considerations are analogous to those raised in the supplementary ECHR memorandum dated 10 June 2025¹² at paragraph 31 onwards in relation to the RSED powers contained in this Bill at clauses 130-137 (“the core RSED provisions”). This memorandum addresses only Article 8 issues which arise in relation to these new clauses specifically. Similarly, consideration of the ECHR issues raised by ECD measures in YDOs, are set out in the memorandum dated 25 February 2025 (see paragraph 366).

Article 8 – right to respect for private and family life

65. The safeguards in place to ensure that these provisions are exercised proportionately are bespoke to these clauses (and differ from those safeguards present for the main RSED clauses¹³). The ECD measures are subject to judicial scrutiny, which provides a bespoke safeguard as these measures are approved (S/TPIMs) or imposed (YDOs) by the Court, and will have already been scrutinised and tailored to the individual case at the point of application, with detailed evidence of risk provided to the court to justify the imposition of the measure and its proportionality. In addition, should the subject of the ECD measure wish to challenge its imposition, or its continued imposition, or apply to vary the measure,

¹² [Third Supplementary Memorandum by the Home Office and Ministry of Justice to the Crime and Policing Bill ECHR memos](#)

¹³ The safeguards for the core RSED provisions at clauses 130-137 are detailed in paragraph 37 of the third Supplementary Memorandum by the Home Office and Ministry of Justice to the Crime & Policing Bill ECHR memo and include a process to obtain authorisation from a senior officer, or, in the case of S/TPIMs a Code of Practice governing the use of the powers. These safeguards are not present here.

there are bespoke procedures set out in the legislation and this Bill to allow for this to take place.¹⁴

66. These new powers to access online information will not expand the existing (or proposed, in the case of YDOs) underlying powers that enable the monitoring of compliance with an ECD measure. All the safeguards that apply in respect of those powers, ensuring the proportionality of the interference in fundamental rights, will apply equally to these amendments - S/TPIMs and YDOs are imposed with the authority of the court and each measure will be individually scrutinised as set out below.

67. For S/TPIMs any additional interference would be justified as necessary in the interests of national security, specifically to reduce the risk of a terrorist attack or hostile state activity. The Secretary of State must consider it necessary, for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity or foreign power (hostile state) threat activity¹⁵, to impose the specific measures contained in the S/TPIM notice on the individual. Before imposing measures on an individual, the Secretary of State must seek the court's permission to do so – except in cases of urgency, where the notice must be immediately referred to the court for confirmation. If the court gives permission, or confirms measures imposed urgently, it must give directions for a full review hearing at which the court will review the Secretary of State's decisions in relation to imposing the measures. The Secretary of State is under a duty to keep the necessity of the measures under review while they remain in force. The measure is therefore considered proportionate as it can only be imposed where a court has assessed the decision and concluded that it is necessary for public protection.

68. In the case of YDOs, any additional interference would be justified as necessary in the interest of national security and public safety. ECD measures allowing monitoring of an electronic device for compliance purposes may only be applied where the court assesses there is evidence that the individual has committed a terrorism offence; or a non-terrorism offence with a terrorism connection; or has conducted themselves in a way that is likely to facilitate the commission by them or another person of a specified terrorism offence; and the court considers the order is necessary for the purposes of protecting the public from a risk of terrorism or other serious harm¹⁶. The court will tailor measures to the particular harms they seek to prevent on a case-by-case basis, ensuring proportionality.

¹⁴ Review: s.9 TPIM Act 2011, s.45 NS Act 2023; Variation: s.12 TPIM Act, s.48 NS Act 2023 and clause 177..

¹⁵ s.3 TPIM Act 2011, s.33 NS Act 2023.

¹⁶ "Terrorism" has the meaning given by section 1 of the Terrorism Act 2000. "Serious harm" is defined in clause 111 and includes, for example, harm from conduct that involves serious violence against a person.

69. Taking the above together with the overarching analysis in the 10th June Memorandum in relation to RSED, the Government is therefore satisfied that these clauses are compatible with Article 8.

Home Office and Ministry of Justice
3 November 2025