



Policing and Crime Bill – new clauses (Injunctions to prevent gang-related violence)

Suggested amendments for Committee Stage House of Commons

February 2009

**For further information contact
Sally Ireland, Senior Legal Officer (Criminal Justice)
E-mail: sireland@justice.org.uk Tel: 020 7762 6414**

Introduction and summary

1. JUSTICE is a British-based human rights and law reform organisation, whose mission is to advance justice, human rights and the rule of law. JUSTICE is regularly consulted upon the policy and human rights implications of, amongst other areas, policing, criminal law and criminal justice reform. It is also the British section of the International Commission of Jurists.

2. This document has been issued in response to the publication of new clauses to the Policing and Crime Bill relating to ‘injunctions against gang-related violence’. We have serious concerns about these provisions, in particular that:
 - **They can amount to an allegation of serious criminal conduct, and result in sanctions equivalent to community sentences, but bypass the procedural guarantees of a criminal trial, and as such may contravene Article 6 ECHR;**
 - **The provisions are extremely vague; ‘gang’ is nowhere defined;**
 - **They are not reserved for serious cases, and include ‘violence against property’ in the definition of ‘gang-related violence’;**
 - **They are likely to be used against children and young people but no special considerations are laid down for cases involving under-18s;**
 - **They can be used in order to protect an individual; particularly in the case of adults this is an inappropriate use of an injunction.**

3. We believe that these provisions should not form part of the Bill. We are particularly concerned that they have been introduced at such a late stage of Committee proceedings when much of the Bill is still to be debated. However, we do suggest amendments here that, if they were adopted, would ameliorate some of the worst aspects of the provisions. We emphasise that these amendments would not solve all the human rights issues arising from these new clauses and that they are merely probing amendments at this stage. Consequential amendments will be necessary if our suggested amendments are adopted.

New clause 11 – Injunctions to prevent gang-related violence

Amendments

Line 2, leave out “on the balance of probabilities” and insert “beyond reasonable doubt”

Line 9, before “to protect” insert “in the case of a respondent aged under 18,”

Line 12, leave out paragraph (b)

Line 15, at end insert –

- “(6) In this section “gang” shall mean a group of people who perceive themselves or are perceived by others to be a discernible group, where:
- (a) the group is formed for the purposes of carrying out criminal activity; or
 - (b) the group have engaged in criminal activity together on more than one occasion.

Briefing

The first of these amendments addresses the standard of proof for a relevant injunction. In the well known case of *McCann*¹ the House of Lords held in relation to anti-social behaviour orders (ASBOs), that given the seriousness of the matters involved, at least some reference to the heightened civil standard of proof – *which was all but indistinguishable from the criminal standard* – should apply. They decided that as a matter of pragmatism, the criminal standard of proof should be applied in ASBO cases.

‘Injunctions to prevent gang-related violence’ will in many cases involve more serious matters than those raised in ASBO applications – which can address relatively minor issues involving nuisance neighbours and minor disorder. They represent a much more serious slight upon the reputation of a respondent. It is therefore inappropriate for a lower standard of proof to apply. Further, while ASBOs can only impose prohibitions, these injunctions could include mandatory requirements of indefinite duration – equivalent or more serious than many community sentences following criminal convictions. The procedural guarantees of the

¹ *R v Manchester Crown Court, ex parte McCann* [2002] UKHL 39

criminal process as guaranteed under Article 6(3) European Convention on Human Rights (ECHR), and the criminal standard of proof – should therefore apply.

The second amendment here would prevent the use of an injunction against a person aged 18 or above to protect him from gang-related violence. We do not believe that adults, outside the mental health or mental capacity context, should be the subject of compulsory protective interventions of this nature.

The third amendment would remove the capacity of the injunction to impose positive requirements. This extremely open-ended power would allow courts to impose requirements equivalent to a community sentence, including curfews; attending certain programmes; etc. Such sentences should not be imposed without a criminal conviction; the fact that their stated purpose is to prevent violence, or the assistance or encouragement of violence, is not determinative of whether they amount to a criminal sanction for the purposes of the ECHR.

The fourth amendment would define a 'gang'; the lack of definition in the legislation makes it extremely vague and therefore possible that the powers would be used to target young people who habitually spend time in groups that are not criminal in character.

New clause 12 – Contents of injunctions

Amendments

Line **11**, leave out paragraphs (3) and (4)

Line **23**, leave out “and requirements”

Line **27**, leave out “or (3)”

Briefing

These amendments would remove the references to positive requirements from the contents of the injunctions, for the reasons outlined above. They would therefore be able to contain only prohibitions.

New clause 13 – Contents of injunctions: supplemental

Amendments

Line 3, leave out “or requirement”

Line 6, at end insert –

“except that

- () no injunction shall remain in force for a period longer than 2 years from the date it is made.”

Line 13, leave out paragraph (b)

Line 16, leave out “or requirement”

Line 16, at end insert –

- () If the respondent is aged under 18, the court shall order the applicant and respondent to attend a review hearing 12 months after the injunction is made, unless it is discharged or otherwise ceases to be in force before that date.

Briefing

The first, third and fourth of these amendments would remove the reference to positive requirements from this clause for the reasons given above. The second addresses the duration of these injunctions. There are no time limits in these provisions, raising the extremely worrying prospect of indefinite regimes of requirements and prohibitions being imposed upon people, with no recourse to the criminal courts. The amendment would provide that the maximum duration for such an injunction should be two years.

The fifth amendment here addresses children and young people, whose circumstances and behaviour may change a great deal over time. Periodic review is particularly important in these circumstances. This amendment would provide for a mandatory review of injunctions made against children and young people under these provisions after 12 months.

New clause 18 – Interim injunctions: adjournment of without notice hearing

Amendments

Clause stand part

Briefing

Where an injunction application has been made without notice in these circumstances we believe that it is inappropriate to place prohibitions and requirements upon the respondent, who has had no hearing or opportunity to make representations. If the respondent is about to commit a criminal offence then they can be arrested for it. It is also inappropriate to enforce an injunction of which the respondent is unaware, when it prohibits otherwise lawful behaviour (such as attending a particular location) or makes requirements.

New clause 26 – Interpretation

Amendments

Leave out line 16

Briefing

Line 16 of this clause provides that “gang-related violence” for the purposes of these provisions can include violence against property. The use of such extreme coercive measures, without recourse to the criminal courts, is particularly inappropriate if used to restrain not violence against people but property damage – or indeed the encouragement or assistance of property damage.

JUSTICE
February 2009