RESEARCH PAPER 01/10
25 JANUARY 2001

The *Criminal Justice and Police Bill*

Bill 31 of 2000-2001

The *Criminal Justice and Police Bill* [Bill 31 of 2000-2001] was introduced in the House of Commons on 18 January 2001. Explanatory Notes to the Bill have also been issued [Bill 31-EN]. The Bill is due to be considered on Second Reading on 29 January 2001.

The Bill seeks to introduce certain new measures for dealing with crime and disorder. It also provides for the disclosure of information by certain Government departments, public bodies and the tax authorities for the purposes of criminal investigations and proceedings. It seeks to provide additional powers of seizure in relation to the investigation and prosecution of crime. It also makes new provision allowing reviews of police detention to be carried out by telephone or video link and allowing for the retention of fingerprint records and samples, including DNA samples.

The Bill also contains provisions about police training and police organisation.

This paper provides an introduction to the Bill and background information on some of its provisions.

Mary Baber

HOME AFFAIRS SECTION

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

00/94	Unemployment by Constituency, November 2000	13.12.00
00/95	The *Vehicles (Crime) Bill* [Bill 1 of 2000-2001]	15.12.00
00/96	The *Hunting Bill* [Bill 2 of 2000-2001]	14.12.00
00/97	The *Tobacco Advertising and Promotion Bill* [Bill 6 of 2000-2001]	20.12.00
00/98	The *Homes Bill* [Bill 5 of 2000-2001]	20.12.00
00/99	Defence Statistics	21.01.00
01/01	Improving NHS performance, protecting patients, modernising pharmacy and prescribing services: the *Health and Social Care Bill* [Bill 9 of 2000-2001]	08.01.01
01/02	Care trusts and long term care in the *Health and Social Care Bill* [Bill 9 of 2000-2001]	08.01.01
01/03	The *Armed Forces Bill* [Bill 4 of 2000-2001]	08.01.01
01/04	Tax Law Rewrite: the *Capital Allowances Bill* [Bill 10 of 2000-2001]	11.01.01
01/05	The *Children's Commissioner for Wales Bill* [Bill 3 of 2000-2001]	15.01.01
01/06	Unemployment by Constituency, December 2000	17.01.01
01/07	The *Social Security Contributions (Share Options) Bill* [Bill 8 of 2000-2001]	22.01.01
01/08	Developments in the Mid-East Peace Process 1991-2000	24.01.01
01/09	The Mid-East Crisis: Camp David, the "Al-Aqsa Intifada" and Prospects for the Peace Process	24.01.01

Research Papers are available as PDF files:

- *to members of the general public on the Parliamentary web site, URL:* ***http://www.parliament.uk***
- *within Parliament to users of the Parliamentary Intranet, URL:* ***http://hcl1.hclibrary.parliament.u****k*

ISSN 1368-8456

Summary of main points

This paper is intended as an introduction to the *Criminal Justice and Police Bill* [Bill 31 of 2000-2001] which was introduced on 18 January 2001.

The first part of the paper is concerned with Chapter I of Part I of the Bill, which seeks to introduce powers enabling the police in England and Wales to impose fixed "on the spot" penalties for certain types of disorderly behaviour. Failure to pay the fixed penalty or request a trial may lead to the imposition of a fine equivalent to one and a half times the penalty. The paper goes on to consider the provisions in the Bill which are intended to provide additional measures for dealing with alcohol-related disorder, including powers for local authorities to prohibit the consumption of alcohol in specified public areas and powers for the police and local authorities to take steps to close licensed premises.

A number of other criminal law provisions, including the extension of child curfew schemes to include children under 16, the imposition of travel restrictions on people convicted of drug trafficking offences by the UK courts and a requirement for the courts to give reasons for granting bail where the prosecution requests that bail be withheld, are considered in the next section of the paper.

The paper then summarises the provisions of Part II of the Bill, which is inended to permit the disclosure of information by Government departments, and certain public bodies, including the Inland Revenue, for the purposes of criminal investigations and proceedings. The paper then considers the measures in Part III of the Bill which are designed to provide the police and other law enforcement agencies with additional powers of seizure where material they are entitled to seize is contained within a larger collection of material, some of which they might not be entitled to seize under their existing powers. Both Parts II and III of the Bill extend to the whole of the UK.

The next part of this paper is concerned with provisions which, amongst other things, add the offences of kerb-crawling and failure to stop and report an accident in which someone is injured to the list of arrestable offences; add the offence of importing indecent or obscene material to the list of serious arrestable offences; permit the use by the police of video and telephone links for making decisions about a person's detention; and enable trial changes to the *Police and Criminal Evidence Act 1984 Codes of Practice* to be made using the negative rather than the affirmative procedure. The paper then goes on to consider provisions amending the current arrangements for the taking and using fingerprint records and samples, including DNA samples. These include provisions designed to permit retention of the records and samples of people who have not been convicted of criminal offences.

The last chapters of this paper are concerned with the Bill's provisions concerning police training, police organisation and the reintroduction of certain police ranks abolished in 1995.

A statistical appendix is set out at the end of this paper.

CONTENTS

I "On the Spot" Penalties for Disorderly Behaviour 8

A. The Government's Proposals 8

B. The Criminal Justice and Police Bill Part I, Chapter I 18

II Alcohol control *[Grahame Danby, Home Affairs Section]* **22**

A. Alcohol consumption in public places in England and Wales 24

1. Existing measures 24

2. Clauses 14-18 of the *Criminal Justice and Police Bill* 25

B. Closure of premises 25

1. Background 25

***2. Criminal Justice and Police Bill* , Clause 19 28**

***3. Criminal Justice and Police Bill*, Clauses 21-30 29**

C. Underage drinking 31

1. The current situation 31

2. Criminal Justice and Police Bill, Clauses 31-33 32

III Other Criminal Law Provisions 34

A. Travel restrictions on drug trafficking offenders *[Alex Sleator, Science and Environment Section]* **34**

1. Existing legal restrictions on passports 37

2. Freedom of movement concerns 38

B. Intimidating Witnesses 39

C. Local child curfew schemes 40

D. Bail 42

IV Disclosure of information by Government departments and public bodies for the purposes of criminal proceedings 43

V Additional Powers of Seizure 46

VI Police Powers of Arrest and Detention 53

A. Arrestable and Serious Arrestable Offences 53

B. Reviews of detention by telephone and video link 54

C. Visual recording of interviews 56

D. Police and Criminal Evidence Act 1984 (PACE) Codes of Practice 56

VII Fingerprints and DNA samples 56

A. Fingerprints 57

B. Intimate searches and samples 59

C. Speculative searches of fingerprint records and DNA databases 60

D. Restrictions on the use and destruction of fingerprints and samples 62

VIII Police Training 65

IX Police Organisation 66

A. Police Authorities, NCIS and NCS 66

B. The Service Authorities for NCIS and NCS 67

C. Police Ranks 68

D. The right to silence in police disciplinary proceedings 69

E. Pensions for members of NCIS and NCS and ACPO staff 70

Appendix: Statistical information on the Criminal Justice and Police Bill
[Grahame Allen, Social and General Statistics Section] **72**

I "On the Spot" Penalties for Disorderly Behaviour

A. The Government's Proposals

In a speech to the Global Ethics Foundation at Tübingen University in Germany on 30 June 2000 the Prime Minister said:

> We are now looking at giving the police more powers to deal with drunken anti-social behaviour which causes offence and misery in too many towns and cities on too many Friday and Saturday nights.
>
> Bizarrely, as the law stands, the police have the power in Britain to levy on the spot fines for cycling on pavements and dog fouling. And yet, they have to deal with drunks who get offensive and loutish and often can do nothing about it without a long, expensive process through the police station, the courts and beyond.
>
> It is perfectly legal for a private company to put a clamp on a car wheel and demand £100 to get it released.
>
> Yet no comparable power exists for our public police force. I believe that should change.
>
> On Monday I meet some of our senior policemen and I want to put to them the idea that their officers get the power to levy on the spot fines for drunken, noisy, loutish and anti-social behaviour. Obviously where real violence and serious criminal intent is involved, the courts must remain the only option. But I am talking about dealing with nuisance drunken behaviour.
>
> A thug might think twice about kicking in your gate, throwing traffic cones around your street or hurling abuse into the night sky if he thought he might get picked up by the police, taken to a cashpoint and asked to pay an on the spot fine of, for example, £100.
>
> If the police want that power and I believe they will, and the public will support it they should get that power.[1]

The prospect of police officers taking money from people on the street provoked some controversy and press reports quoted representatives of police organisations as expressing doubts about the feasibility of the proposal.[2] It was subsequently reported that the Prime Minister was also considering the possibility of giving the police powers to shut down

---

[1] "Values and the power of community" - Prime Minister's Speech to the Global Ethics Foundation, Tübingen University, Germany 30 June 2000
http://www.number-10.gov.uk/news.asp?NewsId=1070&SectionId=32

[2] "Police were not told of plan to fine louts" – *Times* 1 July 2000

licensed premises that were connected with public disorder.[3] Press reports of the meeting between senior police officers and the Prime Minister on 3 July 2000 suggested that the officers had agreed to join a working party to discuss extending the use of fixed penalties to cover drunken disorder on the streets and other disorderly behaviour.[4] In an oral answer to a question from the Conservative Party leader, William Hague, on 5 July 2000 the Prime Minister said that:

> There should be on-the-spot fines for those people who engage in disorderly conduct. It is correct that it may be better to do that by fixed penalty notice, but summary justice, on the spot, is the essence of the proposal.[5]

Press reports of the meeting between the Prime Minister and senior police officers said the officers had also urged the Prime Minister to restore their powers under local bylaws to arrest people for disorderly behaviour. They also said that the police had asked for an extension of the powers under which councils such as Coventry and Liverpool have introduced bylaws prohibiting public drinking in certain areas.[6]

On 2 August 2000 the Home Office published an action plan entitled *Tackling alcohol related crime, disorder and nuisance*. A full copy of this document is available on the Home Office web-site.[7] The action plan included the following comments about the links between alcohol and crime:

> Alcohol misuse contributes significantly to crime levels, through alcohol specific offences, for example being drunk and disorderly in public**,** offences against the licensing laws**,** such as selling or serving alcohol to under-age drinkers, or offences committed under the influence of alcohol: it has been estimated that 40% of violent crime; 78% of assaults and 88% of criminal damage cases are committed while the offender is under the influence of alcohol. Alcohol is often consumed by offenders and victims prior to the offence being committed, and it is inextricably linked to disorder around licensed premises. In addition, fear of alcohol related violence or intimidation may well mean that large numbers of people avoid city centres on weekend evenings.
>
> Against this background, over 70% of the local crime audits conducted by crime and disorder partnerships identified alcohol as an issue: over 40% of the audit documents highlighted drunkenness as an issue, and 60% related public order problems to alcohol.

The plan set out a number of proposals concerning licensed premises and the consumption of alcohol in public places, which are considered in the next chapter of this

---

[3] "Blair to propose 48-hour shutdown for rowdy pubs in summit on lawlessness" – *Guardian* 3.7.2000
[4] "Police chiefs tell Blair spot fines are 'not a goer'" – *Times* 4.7.2000
[5] HC Deb 5 July 2000 c353(O)
[6] "Restore law on louts, say police" – *Daily Telegraph* 4.7.2000
[7] http://www.homeoffice.gov.uk/pcrg/aap0700.htm

paper. It also made the following comments about the use of fixed penalty notices to deal with minor offences of public drunkenness:

> **Consideration to be given to the use of Fixed Penalty Notices to deal with minor offences of public drunkenness.**
>
> to allow for an effective and speedy, on the spot, response to minor offences of public drunkenness, in particular to deal with breaches of local byelaws to restrict alcohol consumption in public places. This may have to be backed up by an additional power for the police to detain, for example, those who are too drunk to confirm their personal details.[8]

An editorial in the *Daily Telegraph* on 4 August 2000 criticised the Government's proposals, saying:

> Most of the targeted offences - disorderly conduct, nuisance, criminal damage, assaults – are already outlawed. The new initiatives only give extra teeth in the speed with which such behaviour is punished. The plan to march yobs to cashpoints has been dropped. But its replacement – fixed penalty fines which must be challenged in court or paid at a later date – carries the same threat to due process: the time saved by not having a full trial necessarily means less time examining a defendant's guilt.[9]

Th editorial went on:

> And who will do all this confiscating and issuing of fines? A law is only effective if it can be enforced. At a time when police numbers have been dropping an prisoners let out of jail early, a proliferation of new laws will do nothing to prevent rising crime; more rigorous policing of existing laws might. [10]

An article by Lance Gray, an inspector in Sussex Police, published in *Police Review* on 8 September 2000, suggested that fixed penalty notices for disorderly conduct could be effective if integrated with other measures aimed at reducing town centre and alcohol-related disorder.[11] Noting that many arrest referral schemes for problem drug users took advantage of the existence of certain key points in an individuals' journey through the criminal justice system when intervention was likely to be more effective than others, the article suggested that fixed penalty notices could also exploit these key points. The article continued:

> It would not be practicable to deal with an aggressive individual at the location of the offence by way of a fixed penalty, but other key points arise following arrest.

---

[8] ibid.
[9] "One too many?" – *Daily Telegraph* 4.8.2000
[10] ibid.
[11] Paying the Penalty – *Police Review* 8.9.2000

> When that detainee emerges from the cell, the morning after the night before, this is the key point at which the offer of dealing with the case by way of fixed penalty could apply. When identity has been satisfactorily established, fingerprints and DNA obtained, and when legal advice has been taken, if requested – and when the evidence of the offence from the EGT[12] has been made available there and then to the detainee and his solicitor - the option of accepting a fixed penalty notice would be more suitable.
>
> There would be no risk of injustice as the detainee has the right to a traditional hearing anyway.[13]

In his speech to the Labour Party conference on 26 September 2000, the Prime Minister said it was "time for zero tolerance of the yob culture" and announced that, amongst other things, the Government proposed to give the police powers to issue fixed penalty fines for loutish behaviour. On the same day the Home Office issued a consultation paper entitled *Reducing Public Disorder: The Role of Fixed Penalty Notices*, giving further details of the Government's proposal. The closing date for responses to the consultation paper was 25 October 2000. A full copy of the consultation paper is available on the Home Office web-site.[14] The paper said:

> The Government believes that there is a need to tackle more effectively disorderly behaviour in public places which is anti-social, disruptive and creates misery for individuals and communities. In this consultation paper the term 'disorderly behaviour' covers a range of practices ranging from offences which might at present attract a fine to behaviour which, while recognisable as an offence, might at present be dealt with by means of an informal warning. It encompasses, for example, incidents of abusive or insulting behaviour, drunkenness, and of criminal damage such as spray-painting graffiti, which can significantly undermine the quality of individuals' and communities' lives. The Government intends to treat such behaviour seriously and is proposing new means to tackle these crimes.
>
> This kind of disorderly conduct is one of the many kinds of criminal behaviour which is often connected to the problem of public drunkenness. Some of it is related to under-age drinking. This consultation paper proposes the use of fixed penalty notices to deal with disorderly behaviour, whether fuelled by alcohol or not. It supports the Government's wider intention to weaken the links between alcohol and crime. In doing so, it takes forward one aspect of the Government's action plan entitled 'Tackling alcohol related crime, disorder and nuisance', published on 2 August; and reinforces the package of measures set out in the White Paper, "Time for Reform: Proposals for the Modernisation of our Licensing Laws" published on 10 April this year, aimed at tackling the underage purchase and consumption of alcohol.

---

[12] Evidence Gathering Team
[13] ibid.
[14] http://www.homeoffice.gov.uk/cpd/sou/rpdrofpn.pdf

> The aim of the fixed penalty notice system is to ensure that police can put an immediate stop to misbehaviour and provide a swift punishment and have in their power a real practical deterrent while taking up as little police time as possible. The Government believes that the immediacy of such a punishment will act as a greater deterrent in some cases than the prospect of a court appearance some way in the future. The greater use of fixed penalty notices should not only reduce the time the police have to spend on paperwork, but also the time they have to spend in making court appearances.[15]

The consultation paper made the following comments about the circumstances in which fixed penalties are currently used:

> A fixed penalty notice is a swift way of dealing with someone believed to be guilty of an offence. Having been issued with a fixed penalty notice, an individual can decide either to pay the fixed penalty, or contest the case in court.
>
> Extending the fixed penalty system is another step towards the Government's aim of modernising the criminal justice system so that it is speedy and effective. Introduction of the fixed penalty system for anti-social behaviour offences will provide immediacy of punishment, by means of a swift fine, in a way that a court appearance at some point in the future does not. The Government is also keen to examine ways of reducing the burden of paperwork on the police, and the time spent in attending court. Again, the extension of the fixed penalty system provides a way forward.
>
> Fixed penalties are of course, most familiar in the context of parking and certain driving offences. These are typically high-volume offences where there is little doubt of the offender's identity or guilt and where there is generally no directly identifiable victim. 3.4 million fixed penalty notices were issued in 1997 by police officers and traffic wardens for such offences (not including the 3.8 million penalty charge notices issued by local parking attendants), with the penalty in question ranging from £20-£40, depending on the offence and where it was committed; and 77% of them were complied with. The long-standing practice of "compounding" by HM Customs and Excise works in a similar way: a fixed penalty may be offered to people entering the country with small quantities of prohibited goods in their possession, and if they pay they will not be prosecuted.[16]

The consultation paper proposed that the fixed penalty system should cover the following offences:

- being found drunk in any highway or other public place or on any licensed premises;

---

[15] *Reducing Public Disorder: The Role of Fixed Penalty Notices* Home Office, September 2000 paragraphs 1-3

[16] ibid. paragraphs 4-6

- being guilty, while drunk, of disorderly behaviour in any public place;
- using threatening, abusive, or insulting words or behaviour, or disorderly behaviour, or displaying any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby;
- involving the purchase of intoxicating liquor by or on behalf of a person under eighteen on licensed premises, or its consumption by or sale to such a person on licensed premises;
- offences relating to drinking intoxicating liquor in a public place in contravention of legislation which the Government proposes to introduce to allow local authorities to adopt powers, currently available under byelaws, to make it an offence to drink intoxicating liquor in a designated public place when asked to stop by a police officer.
- minor cases of criminal damage.

The consultation paper also noted that:

> powers already exist for local authorities to operate fixed penalty notice systems for littering and dog fouling. It is for consideration whether such offences should be linked in some way to the proposed new system.[17]

The paper made the following suggestions about what the level of fixed penalty might be:

> There is no necessary reason why the same fixed penalty should be imposed for each type of offence for which such a penalty is offered, but if there were a uniform sum it might help to bring the reality of the risk they were running home to potential offenders. The sum must clearly not be so low as to pose no deterrent at all, nor so high that most people will prefer to go to court in the hope of receiving a lower penalty there. In order to set the level of the fixed penalty at around or below the current average fine for each offence a range of penalties could be considered - perhaps £50-£100 at the lower range and £100-£200 at the upper.[18]

As far as the age limit for receipt of a fixed penalty was concerned, the paper said:

> The Government proposes to include 16 and 17 year olds in the fixed penalty scheme along with adults, subject to the same maximum fine. A significant amount of disorderly behaviour in public places is committed by people under the age of 18. 16 and 17 year olds account for 13% of minor damage cases, for example. Moreover, offences of underage purchase and consumption of alcohol in licensed premises are, of course, only committed by minors and the system will help to tackle these problems. The Government therefore believes that there are clear arguments for including at least some under 18 year olds. Such arrangements would need to be fitted in with the police reprimand and final

---

[17] *Reducing Public Disorder: The Role of Fixed Penalty Notices* Home Office, September 2000 paragraph 9
[18] ibid. paragraph 11

> warning scheme which provides for a progressive response to tackle early offending patterns.[19]

The consultation paper suggested that the following ancillary powers would be needed to make the system work:

> The Government is determined to ensure that any new fixed penalty notice system is easy to administer, particularly for the police officers who will be called upon to issue the Notices. Where practicable, such notices should be issued at the point where the offence is committed, rather than at the police station. The key requirement will be to establish the name and address of the offender, and the Government's view is that police officers should have powers to detain a person whom they find committing, or having just committed, an offence for which a notice may be issued, while satisfying him or herself of the offender's identity and address, and of such particulars of the offence as may need to be recorded if the offence is eventually prosecuted. If the offender refuses to or is unable to substantiate his or her identity or address, then the officer will be able to arrest him or her in accordance with the provisions of section 25 of the Police and Criminal Evidence Act 1984.
>
> The Government believes that fixed penalties for disorderly behaviour should be payable to the magistrates' court in the same way as existing fixed penalties. As with road traffic offences, there is a strong case for an automatic increase in the level of penalty due if the notice is not paid within a certain number of days. Failure to pay the penalty at all within the statutory period for payment will result in the offender appearing before a magistrates' court for the original offence. It should be possible to build on existing arrangements to ensure that individuals who fail to pay a fixed penalty imposed for disorderly conduct are brought before a court as speedily as possible.[20]

An article in the *Independent* on 27 September 2000 said chief police officers had welcomed the Government's proposals. It quoted a spokesman for the Association of Chief Police Officers (ACPO), Ted Crew, as saying that ACPO had been actively involved in the preparation of the new proposals and that it was keen to give police officers 'non-bureaucratic powers' with the ability to back them up in the event of non-compliance.[21] The article reported that the director of the civil liberties pressure group Liberty, John Wadham, had given the proposals a cautious welcome, saying that they gave people the option of paying up and not bothering with the criminal courts.

In its response to the consultation paper the Justices' Clerks' Society said:

> The consultation paper is framed upon the assumption that the success of the fixed penalty procedures in the context of motoring offences can be repeated in criminal contexts of the type identified in paragraph 9. The obvious reason why

---

[19] ibid. paragraph 12
[20] ibid. paragraphs 16-17
[21] "Drunken vandals could face £200 on-the-spot fines" - *Independent* 27.9.2000

> motoring fixed penalties tend to work is that possession of a vehicle and a driving licence is a reliable means of identification. Unless the "Saturday night drunk" is already known to the police officer issuing the notice, the Society predicts that false details will often be given, leading to wasted enforcement measures and, ultimately, to warrants for arrest being issued and acted upon to no effect. There are significant cost implications in this respect.[22]

The Justices' Clerks' Society suggested that the victims of criminal damage would lose out on compensation if such offences were dealt with through fixed penalty notices and that if threatening behaviour took place on licensed premises, dealing with the offence in such a way would prevent an exclusion order being made. The Society took the view that there would be considerable practical difficulties for the police in the proposals for recording and tracing previous fixed penalties and said it was not convinced that the procedures would reduce the current resource implications for the police in having to attend court, as court procedures resulted from contested cases and fixed penalty notices could be contested. The Society also said it was not optimistic about the levels of recovery of fines that could be expected, adding that in its estimation the chances of recovering a substantial proportion of the penalties from adults were low. It added:

> If there are existing fines for other offences, of which the officer issuing the notice would be unaware, the ability to pay is adversely affected. Overall levels may become unrealistically high, and lead to sums being remitted by the court.[23]

In 1997 the Home Office published the report of a research study on *Enforcing Financial Penalties*, which made the following comments about "writing off" fines:

> If the court cannot trace an offender or for some reason believes the fine to be uncollectible, it can apply to the Lord Chancellor's Department for permission to write off the fine. There has been a huge increase in the amount that is written off annually: in 1986 60,000 fines with a total worth of £4 million were written off but by 1994/95 this figure has risen to 418,844 fines amounting to £33.4 million in uncollectible fines.[24]

The study made the following comments about the remission of fines:

> The court can remit fines either in part or in full if it "thinks it is just to do so having regard to all the circumstances". This is usually interpreted as where either the defaulter's means have changed since the fine was imposed or that the sentencing court did not have any information about the offender's income perhaps because they were not at the court hearing. The 1992 Best Practice

---

[22] *Response to the Home Office consultation paper: Reducing Public Disorder – the role of fixed penalty notices* Justices' Clerks' Society October 2000

[23] ibid.

[24] Claire Whittaker and Alan Mackie, *Enforcing Financial Penalties* Home Office Research Study 165 (1997) p.8

> Guidelines also suggest remitting some of the fine where arrears have accumulated so that repayment of the total is not possible within a reasonable time.[25]

An article in the *Sunday Telegraph* on 9 July 2000 reported that the police and courts had been unable to collect nearly £72 million in fines and costs from convicted criminals and defaulters over the previous year.[26] An article about the fixed penalty proposals published in *Police Review* on 24 November 2000 also drew attention to concern about the enforcement of fines expressed by critics of the Government's proposals. The article commented:

> Under the current arrangements, around 3.5 million fixed-penalty notices are issued by police and traffic wardens annually for parking and motoring offences. The range of fines is £20-£40 and the compliance rate is 77 per cent.
>
> However, critics in police and legal professions point out that a better indication of the pattern of payment of fines and fixed penalties can be found in the figures kept by the Lord Chancellor's Department. These cover fixed penalties and fines imposed by the courts. In the financial year 1998/99, £220 million was received in paid fines. But "write-offs" due to non-payment amounted to £43.6 million. Although it is difficult to get a completely accurate picture of non-payment because there is a variable time lapse between fines and fixed-penalty notices being received, these figures suggest that non-payment of fixed penalties and fines for offences dealt with via the courts are a big problem, say the critics.[27]

The article added:

> Under the Home Office proposals to extend the fixed-penalty system, failure to pay the penalty at all within the statutory period would result in the offender appearing before a magistrates' court for the original offence. Officials were unable to say whether any of the fixed-penalty notices would be written off if they proved unenforceable. The Home Office says: "It should be possible to build on existing arrangements to ensure that individuals who fail to pay a fixed penalty imposed for disorderly conduct are brought before a court as speedily as possible.[28]

In a written answer of 4 July 2000 to a question from Mr Simon Hughes the Home Secretary made the following comments about efforts to improve the enforcement of fines:

---

[25] ibid. p.10
[26] "Government writes off £72m in unpaid fines" - *Sunday Telegraph* 9.7.2000
[27] "A Questionable Penalty" – *Police Review* 24.11.2000
[28] ibid.

> **Mr. Simon Hughes:** To ask the Secretary of State for the Home Department what action he has taken to improve the enforcement of fines.
>
> **Mr. Straw***:* I am working closely with my noble and learned Friend the Lord Chancellor to improve the enforcement of fines.
>
> Research is being carried out under the Government's Crime Reduction Programme to identify best practice in fine enforcement, to introduce a range of enforcement strategies in a number of pilot courts, and to evaluate the relative cost and effectiveness of those strategies. The project is due to be completed in autumn 2001.
>
> In April 2001, responsibility for the execution of fines warrants will be transferred from the police to Magistrates Courts Committees. The fact that responsibility will rest with the courts will provide a sharper and clearer focus than the present arrangements, while the application and monitoring of administrative targets will ensure that the work receives a high priority within individual courts. As a result, more money--including compensation for the victims of crime--should be collected.
>
> Measures in the Access to Justice Act 1999, which are also due to be implemented in April 2001, will allow the courts to check whether other Government agencies hold an up-to-date address for a 'missing' fine defaulter. This should prove helpful in reducing the currently high levels of financial penalties that have to be 'written off' because the offender cannot be traced.
>
> A report on the pilot studies conducted on alternative means of dealing with fine defaulters introduced in the Crime (Sentences) Act 1997 was published in February this year. A decision on the future of these measures will be made in due course.
>
> Finally, following a relaxation in Treasury rules governing receipts, we are exploring the feasibility of developing a scheme which will allow a proportion of the income from fines to be retained ('netted-off') by the courts and used to make further improvements in enforcement rates.[29]

A number of articles have quoted police representatives as giving a qualified welcome to the proposals, while expressing concern about the resources and administrative support available to them.[30] An article in the *Daily Telegraph* on 5 January 2001 said that the chairman of the Police Federation, Fred Broughton, was also concerned that the fixed penalty scheme would not work unless the police had a reliable method of establishing a person's identity.[31]

---

[29] HC Deb 4 July 2000 c169-170W

[30] "A Questionable Penalty" – *Police Review* 24.11.2000 See also "Police raise doubts on anti-crime measures" – *Financial Times* 7.12.2000

[31] "Police leader calls for ID checks to deter hooligans" – *Daily Telegraph* 5.1.2001

B. The Criminal Justice and Police Bill Part I, Chapter I

Provisions designed to implement the proposals in the consultation paper *Reducing Public Disorder: The Role of Fixed Penalty Notices* are set out in Part I of Chapter I of the *Criminal Justice and Police Bill*. This Part of the Bill extends to England and Wales only.

Clause 1(1) provides that the following offences will be capable of leading to a fixed penalty:

- Being drunk in a highway, other public place or licensed premises (Maximum penalty: £200 fine)[32]
- Throwing fireworks in a thoroughfare (Maximum penalty: £5,000 fine)[33]
- Knowingly giving a false alarm to a fire brigade (Maximum penalty: £2,500 fine and 3 months' imprisonment)[34]
- Trespassing on a railway (Maximum penalty: £1,000 fine)[35]
- Throwing stones etc. at trains or other things on railways (Maximum penalty: 1,000 fine)[36]
- Buying or attempting to buy alcohol for consumption in a bar in licensed premises by a person under 18 (Maximum penalty: £1,000 fine) [37]
- Disorderly behaviour while drunk in a public place (Maximum penalty: £1,000 fine)[38]
- Wasting police time or giving false report (Maximum penalty £2,500 fine & 6 months' imprisonment)[39]
- Destruction of, or damage to, property without lawful excuse (Maximum penalty: following conviction on indictment, life if arson, otherwise 10 years imprisonment; following summary conviction, £5,000 fine & 6 months' imprisonment)[40]
- Using public telecommunications system for sending a message known to be false in order to cause annoyance (Maximum penalty: £5,000 and 6 months' imprisonment)[41]
- Threatening, abusive or insulting words or disorderly behaviour etc. within hearing or sight of person likely to be caused harassment, alarm or distress (Maximum penalty: £1,000 fine)[42]
- Consumption of alcohol in designated public place (Maximum penalty: £500 fine)[43]

---

[32] *Licensing Act 1872* s.12
[33] *Explosives Act 1875* s.80
[34] *Fire Services Act 1947* s.31
[35] *British Transport Commission Act 1949* s.55
[36] *British Transport Commission Act 1949* s.56
[37] *Licensing Act 1964* s.169C(3)
[38] *Criminal Justice Act 1967* s.91
[39] *Criminal Law Act 1967*. s.5(2)
[40] *Criminal Damage Act 1971* s.1(1)
[41] *Telecommunications Act 1984* s.43(1)(b)
[42] *Public Order Act 1986* s.5

This list is slightly longer than that set out in the consultation paper (and reproduced on page 11 of this paper). The offences of littering and dog fouling, which were mentioned in the consultation paper, and in respect of which local authorities already have powers to operate fixed penalty notice systems, have not been included in the list of offences to which the powers in this part of the Bill will apply. The Government has also dropped its proposal, set out in the consultation paper, to include 16 and 17 year old offenders in the fixed penalty scheme. Clause 1(2) of the Bill is intended to enable the Home Secretary to make orders adding or removing offences from the list set out in Clause (1)(1). These orders will be subject to annulment under the negative procedure.[44]

The statistical appendix to this paper contains data on prosecutions for the offences listed in Clause 1 (1). Information on the extent to which these prosecutions involve people under the age of 18, who would not be included in the fixed penalty scheme, is not publicly available.

The *Explanatory Notes* accompanying the Bill[45] include the following comments about how the proposals are intended to work:

> Whilst the conduct in question is already criminal, the need to focus police and court resources elsewhere means that much minor offending of this kind escapes sanction or consequence under current arrangements. In the light of the responses to the consultation paper the Government has introduced the provisions set out in clauses 1 to 13. These provisions seek to provide a further means for the police to deal with low level, but disruptive, criminal behaviour.
>
> They allow the police to issue penalty notices on the spot or at a police station for a range of offences. These notices may be issued where there is reasonable cause to think an offence has been committed, and where a penalty notice appears to be an appropriate response. The scheme is a discretionary one. Where a police officer believes that an offence is of such a nature that it should be dealt with by the courts, all the usual powers will be available to him to arrest and charge the alleged offender.
>
> A penalty notice is notice of the opportunity to discharge any liability to conviction of the offence by payment of a fixed penalty. There is thus no criminal conviction or admission of guilt associated with payment of the penalty, though the alleged offender has the right to opt for trial by a court, and the risk of conviction, if he so chooses. Failure to pay the penalty or opt for trial may lead to the imposition of a fine equivalent to one and a half times the penalty on the defaulter.

---

[43] *Criminal Justice and Police Bill 2000-2001* Clause 14

[44] For information on the affirmative procedure, which requires that a measure of secondary legislation be approved by both Houses of Parliament, and the negative procedure, under which such a measure will come into force unless a motion praying against is successfully moved in either House, see the House of Commons Information Office factsheet at http://hcl1.hclibrary.parliament.uk/factsheets_pdf/fs14.pdf

[45] These can be found at http://pubs1.tso.parliament.uk/pa/cm200001/cmbills/031/en/01031x--.htm

> The provisions are intended to be simple and straightforward and allow a considerable discretion to the police in their application. Guidance on the exercise of this discretion will be provided, and will be developed in partnership with the police.

Under Clause 2, where a police constable has reason to believe that a person aged 18 or over has committed one of the offences set out in Clause 1(1), he or she will be able to give the person a "penalty notice" notice, offering the person the opportunity to pay a fixed penalty and thereby discharge any liability to be convicted of the offence to which the notice relates. The notice will have to be given by a constable in uniform, unless it is given at a police station, in which case it may be given by any constable authorised to give penalty notices by the chief officer of police for that area.

Clause 3 seeks to enable the Home Secretary to make orders specifying the amount payable as a fixed penalty in respect of each offences set out in Clause 1(1). The amount may not be more than half of the maximum fine for the offence concerned. Orders made under Clause 3 will be subject to annulment under the negative procedure. The Clause also lists the information that must be included on a penalty notice.

Under Clauses 4 and 5, a person to whom a penalty notice is given will have 21 days beginning with the date on which the penalty notice was given (the "suspended enforcement period") within which to pay the penalty or give notice that he or she wishes to be tried summarily for the offence. The constable giving the penalty notice may also give written notice ("a warning notice") specifying the magistrates' court by which, and the date on which, the offence will be tried if the recipient of the notice makes a request to be tried. If the person does not pay the penalty or make a request to be tried within the 21 day period, a sum equal to one and a half times the amount of the penalty set out in the penalty notice may be registered under Clause 10 of the Bill for enforcement against the person as a fine. Proceedings may not be brought against the person for the offence to which the penalty notice related until the end of the 21 day period.

Clause 6 seeks to enable the Home Secretary to issue guidance to the police about the operation of the scheme. The *Explanatory Notes* say:

> The power to issue guidance is intended to allow the Secretary of State to ensure that police officers are aware of the factors they need to take into account in exercising the wide discretion that is inherent in this scheme. It may also be used to encourage good practice as to the general operation of the scheme.

Proceedings in magistrates' courts are generally commenced by the laying of an information and the issuing of a summons. Where the recipient of a penalty notice requests that he or she be tried for the offence, Clause 7 seeks to provide for the allegation in the notice to be treated as an information and for the warning notice to treated as a summons. This is intended to enable trials in these cases to be held without duplication of paperwork. Clause 7(5) is designed to enable the chief officer of police for the area concerned to discontinue proceedings before they reach trial by serving notice on the

recipient of the penalty notice, stating that no proceedings are to be brought in respect of the offence. The *Explanatory Notes* comment that:

> This is a safeguard against waste of court and police time in cases where, for example, the police believe that there was a legitimate excuse, not evident at the time, for the behaviour in question or that the penalty notice had been incorrectly issued.

Under Clause 8, a statement by a constable which forms part of the penalty notice or is issued with it may be submitted in evidence at any resulting trial. If a person requests to be tried for an offence in respect of which a penalty notice has been given, he or she will be given an additional 7 days, from the date on which the request was made, in which to object to the statement being tendered in evidence.

Clause 9 provides that payment of the penalty may be made by properly addressing, prepaying and posting a letter containing the amount of the penalty to the justices' chief executive specified in the notice. It is not intended that this should prevent payment being made by other means. Where a person claims to have made payment by post and shows that his letter was posted, payment is to be regarded as made at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved.

The procedures that are to be followed where a fine is to be enforced against a recipient of a penalty notice who has neither paid the penalty nor requested a trial are set out in clauses 10 and 11. Clause 11 provides for the registration of sums payable in default as fines. If, in any enforcement proceedings in a magistrates' court following the registration of a penalty as a fine, a defaulter claims that he was not the person to whom the penalty notice concerned was issued, Clause 12 permits the magistrates' court dealing with the enforcement proceedings to set aside the fine and adjourn enforcement proceedings for up to 28 days, to enable the claim to be investigated. When proceedings resume the court will be obliged to accept the defaulter's claim unless it is shown, on a balance of probabilities (that is, that it is more likely than not) that the defaulter was the recipient of the penalty notice. Clause 12 (5) seeks to enable a magistrates' court to set aside a fine imposed under this part of the Bill "in the interests of justice". As an example of when this might be done the *Explanatory Notes* suggest a case where the person against whom a fine is registered appears not to be the person to whom the penalty notice was given. If magistrates do set aside a fine under this provision, they will have to give direction as to how the case should be dealt with.

In its briefing for the second reading debate on the Bill the civil liberties pressure group Liberty makes the following comments about the provisions concerning the fixed penalty scheme:

> We are concerned that these provisions are a further manifestation of the trend to mix criminal and civil law procedures. This dilutes the principles and protections of criminal law in particular the presumption of innocence and the burden of proof. Although these procedures will not attract a criminal conviction, they

> relate to behaviour that is by definition criminal and can lead to a criminal conviction if a penalty is not accepted.
>
> We are particularly concerned that a penalty can be issued if an officer has reason to believe a penalty offence has been committed (Cl. 2 (1)). This is a lesser standard than the criminal burden of proof.
>
> The effect of accepting a fixed penalty notice will be to accept that behaviour to a criminal standard has occurred, therefore we consider that officers imposing the penalty notices should be required to be satisfied to this standard before being able to impose them. A present the bill allows a police officer "who has reason to believe" that someone was involved in an offence, to present a fixed penalty notice. Liberty believes that this is wrong and that the police officer should be able to establish beyond all reasonable doubt that the person has committed the offence.
>
> If a person provided with the notice goes to court to protest his or her innocence rather than pay the fine, the burden of proof the police will be expected to establish is beyond reasonable doubt. The practical implications of this are that there will undoubtedly be a large number of people challenging these notices, causing not only the administrative burden of issuing fixed penalty notices, but also upon the courts.
>
> Liberty is also concerned that this provision will discriminate against more vulnerable sections of society, in particular those on low income who are less likely to be able to pay fixed penalties. The types of behaviour these notice are likely to attach to, e.g. drunkenness, are also likely to be committed to a large extent by vulnerable members of society who are unlikely to be able to pay fixed penalties. As a result of the non-payment of a series of such fines, these people may end up in prison for non payment of debt. We consider this provision has the potential to further marginalise those members of society already suffering from social exclusion.
>
> In conclusion therefore, we think that these proposals are likely to be unworkable, will marginalise vulnerable sections of society, and are undesirable in civil liberties terms because of the dilution of legal protections.

The Law Society has also expressed concern that these provisions give the police discretionary powers to issue fixed penalties whenever they deem a financial penalty to be appropriate. An article in the *Financial Times* on 20 January 2001 quoted the Law Society president, Michael Napier, as saying there needed to be safeguards and proper monitoring to ensure that the power to impose fixed penalties was not abused.[46]

II **Alcohol control** *[Grahame Danby, Home Affairs Section]*

In April 2000, the Government published its white paper, *Time for Reform: Proposals for the Modernisation of our Licensing Laws*.[47] This "sets out the Government's proposals for

---

[46] "Hoaxers to face fixed fines under new police bill" – *Financial Times* 20.1.2001

[47] Cm 4696

modernising and integrating the alcohol, public entertainment, theatre, cinema, night café and late night refreshment house licensing systems in England and Wales." Liquor licensing law operates by imposing controls on both entry and operation. The former comprise licensing requirements administered by specialist panels of magistrates (licensing justices) and which are designed to ensure that the premises and persons responsible are suitable for selling alcohol. Operating controls cover opening hours and sales to children.

The white paper acknowledges complexities and inconsistencies in the current law, which provides for over 40 different kinds of licence or permission. A single integrated licensing scheme, administered by local authorities, is one of the proposals aimed at addressing this. Other problems identified are those related to public order through standard closing hours leading to large numbers of drinkers on the street, late at night and at the same time. This has led to one of the more contentious[48] of the white paper's proposals: the introduction of flexible opening hours, "with the potential for up to 24 hour opening 7 days a week, subject to consideration of the impact on local residents."

Some 1,200 responses[49] were elicited by the white paper, and these have been deposited in the House of Commons Library.[50] A general licensing reform bill aimed at implementing final proposals emerging from the white paper and consultation is not anticipated in the current parliamentary session;[51] a Home Office announcement on wider reforms is reportedly "only weeks away", however.[52] Such a Bill will most likely be informed by the Department of Health's national alcohol strategy, the publication of which is expected shortly. Some measures, affecting Sunday Observance, are being taken forward by means of Deregulation Orders.[53] The present Bill takes forward a number of proposals aimed at combating underage drinking and disorder around licensed premises.

The Government's Action Plan, *Tackling alcohol related crime, disorder and nuisance*,[54] identifies and elaborates on three specific objectives:

- to reduce the problems arising from under-age drinking;
- to reduce public drunkenness;
- to prevent alcohol related violence.

---

48 "IAS's response to government licensing proposals", *Alcohol Alert*, issue 3, 2000 pp 2-9
49 HC Deb 20 November 2000 c 19-20
50 Home Office, deposited paper 00/2000, 29 November 2000
51 "Drip-feed licensing reform concerns", *Morning Advertiser*, 30 November 2000 p 1
52 "Trade's at risk from crime bill", *Morning Advertiser*, 25 January 2001 p 1
53 draft Deregulation (Sunday Licensing) Order 2000; Deregulation (Sunday Dancing) Order SI 2000/3372
54 Home Office Action Plan, *Tackling alcohol related crime, disorder and nuisance*, August 2000 http://www.homeoffice.gov.uk/pcrg/aap0700.htm

A. Alcohol consumption in public places in England and Wales

1. Existing measures

The criminal law already covers conduct that might be associated with drinking in public places, such as theft or obstruction. Section 1 of the *Licensing Act 1902* covers the apprehension of a person found drunk and incapable in a public place. It reads:

> If a person is found drunk in any highway or other public place, whether a building or not, or on any licensed premises, and appears to be incapable of taking care of himself, he may be apprehended and dealt with according to law.

In addition, specific behaviour is covered by existing legislation as follows:

> underage drinking in public (*Confiscation of Alcohol (Young Persons) Act 1997*);
>
> to be drunk or to possess alcohol at designated sporting events (*The Sporting Events (Control of Alcohol etc) Act 1985*);
>
> being found drunk in any highway or public place (section 12, *Licensing Act 1872*);
>
> disorderly behaviour while drunk (section 91, *Criminal Justice Act 1967* provides police with a specific power of arrest);
>
> use of threatening, abusive or insulting words or behaviour (section 5, *Public Order Act 1986*);
>
> affray and threatening behaviour (section 3 and 4, *Public Order Act 1986*);
>
> assault (*Offences against the Person Act 1861*);
>
> vandalism (*Criminal Damage Act 1971*)
>
> anti-social behaviour (Anti-social Behaviour Orders (*Crime and Disorder Act 1998*))

The above list comes from a Home Office explanatory note[55] to accompany Model Byelaw 1 which prohibits the consumption of intoxicating liquor in designated places.[56] Though it provides no power of seizure of alcohol, the model byelaw allows a police officer to warn people against drinking in a place designated by the local authority; the latter is responsible for conducting prosecutions. Local authorities can also submit for Home Office approval a byelaw with different wording, though this may increase the

---

55 http://www.homeoffice.gov.uk/abcu/byelaw/mod1note.pdf

56 http://www.homeoffice.gov.uk/abcu/byelaw/mod1bye.pdf

chances of it being ruled invalid by a criminal court.[57] Liverpool and Manchester[58] City Councils have byelaws which permit the seizure of alcohol being consumed in specified public places, the reported success of which will be seen as supporting the introduction of the corresponding measures in the Bill.[59]

2. Clauses 14-18 of the *Criminal Justice and Police Bill*

Clause 15 allows local authorities to designate, by order, public places subject to controls on alcohol consumption. They will have to follow procedures stipulated in regulations made by statutory instrument, subject to annulment by either House. The local authority will have to be satisfied that the designated place has been a source of disorder, nuisance or annoyance on account of the consumption of intoxicating liquor. The latter includes spirits, wine, beer and cider, but excludes low alcohol (not exceeding 0.5% alcohol) drinks.[60]

Under clause 14, a police officer could require a person drinking in a designated place to stop doing so, and to surrender any intoxicating liquor or suitable containers. As the explanatory notes accompanying the Bill state, it will be an arrestable offence to fail, without reasonable excuse, to comply with the police officer's request. These controls over drinking in designated places thus go further, for example in the powers of arrest, than the model byelaw discussed above. Any order made under the provisions of clause 15 will automatically replace any byelaws in place covering drinking or the seizure of alcohol or containers such as glasses. Public drinking byelaws relating to places which are not designated under clause 15 will lapse after ten years (clause 17).

Local authorities will not be able to designate any premises or area covered by a liquor licence (clause 16).

Clauses 14-18 extend only to England and Wales.

B. Closure of premises

1. Background

The Bill would provide the police with extra powers to close, immediately, licensed premises where disorder is occurring.[61] In the meantime, Home Office advice is that the licensee should first be approached about any disorder problems and, if a solution cannot be reached by agreement, then the police and/or the clerk to the local licensing justices

---

57 Stephen Bailey (ed), *Encyclopedia of Local Government Law*, (Sweet & Maxwell 1999) pp 2277-8

58 "City's crime offensive brings quick results", *Morning Advertiser*, 25 January 2001 p 5

59 "Bylaw banning public drinking to go national", *Guardian*, 3 January 2001 p 8

60 section 201, *Licensing Act 1964*

61 http://www.number-10.gov.uk/default.asp?PageId=2949

could be contacted. The latter can provide advice on applying for revocation of the premises' licence.[62]

One of the proposals of the licensing white paper was the introduction of "Tough new powers for police to deal instantly with violent and disorderly behaviour by closing premises that rogue licence holders have allowed to become the focus of such behaviour".[63] Replying to the Home Secretary's statement on the white paper, Oliver Heald welcomed "the fact that police would be able to close rowdy houses."[64] On a point raised by Owen Paterson, Jack Straw later elaborated on the proposed closure powers:

> The hon. Gentleman is right to say that trouble typically arises from a small number of premises. Part of the present difficulty is that the only power available to magistrates is to remove the licence altogether, and that can take many months. The White Paper proposes that an officer of the rank of inspector or above should have a power to close premises for 24 hours on his or her own volition when faced with a disorderly situation--just as the fire authority can peremptorily close premises--and for there to be an appeal to magistrates or the local authority as appropriate. This and other changes that we propose should make a big difference in controlling the minority of premises and drinkers who cause almost all the trouble.[65]

A survey of 300 English pubs, published in 1990, found that 6% experience fights every week.[66] It is questionable, though, whether these would be of sufficient ferocity to trigger closure orders "in the interests of public safety" (new section 179A(1)). Indeed, the same report concluded:

> It would be Utopian in the extreme to believe that in a society where violence and disorder are everyday facts of life, pubs could be unique oases of passivity and refined civility.[67]

Pub owners and operators supported the broad thrust of the Government's crime and disorder approach at the time of the Queen's Speech in December. Rob Hayward, Chief Executive of the Brewers and Licensed Retailers Association, added one qualification:

> However, we firmly believe that broader licensing reform and the introduction of flexible hours for pub opening times is key to effective reduction in alcohol-related disorder. We are disappointed that this crime and disorder package has

---

62 http://www.homeoffice.gov.uk/ccpd/faqlic.htm
63 *Time for Reform: Proposals for the Modernisation of our Licensing Laws*, Cm 4696, April 2000
64 HC Deb 10 April 2000 c 24
65 HC Deb 10 April 2000 c 32
66 MCM Research, *Conflict and violence in pubs*, 1990
67 ibid. p 39

> been de-coupled from broader licensing reform but heartened by the Government's stated commitment to deliver on it next year [2001].[68]

The BLRA are concerned, however, about the scale and scope of the pub closure proposals, and have called for clear guidance as to how they would work in practice. Their communications director (Mark Hastings) has reportedly[69] said: "What we don't want is a regime that discourages licensees from calling the police out for fear of closure." The Association of Licensed Multiple Retailers is also "uneasy" about the new police powers and the predicted losses faced by the closure of innocent premises.[70] The Home Office suggest that only 15 such premises may be closed as a result of their proximity to disorderly premises. In total, it is estimated that "perhaps less than 800"[71] disorderly premises may find themselves subject to closure (annually)[72] – incurring a cost to their business of between £1 million and £60 million.[73]

Following publication of the present Bill, a leading article in the licensing trade weekly, the *Morning Advertiser* offered the following criticism:

> The boys in blue will be raising a glass to Home Secretary Jack Straw this week. His Criminal Justice Bill gives them everything they'd asked for when it comes to tackling drink aggro. Only they'd better celebrate quietly. If the excitement exceeds vicar's tea party levels, the pub they're drinking in could be closed down very swiftly indeed.
>
> For the industry, however, the new proposed Bill, which will be rushed through Parliament, confirms all the fears that have [been] building for months. Here is a draconian set of measures that bludgeons licensees in no uncertain terms. And there are no proper safeguards in place to guard against arbitrary and over-zealous use of this huge extension of police powers.
>
> To rub salt in the wounds, the Home Office has the gall to admit that some innocent pubs may be closed down – with no prospect of reclaiming lost sales – when police swoop on trouble spots. Adding insult to injury, there is still no prospect of a national ID card to help protect licensees against stiff sentences and test purchasing…[74]

---

68 BLRA news release, *Queen's Speech crime package wins pub approval*, 6 December 2000

69 "Trade's at risk from crime bill", *Morning Advertiser*, 25 January 2001 p 1

70 ibid.

71 explanatory notes, Bill 31–N para 374

72 "Trade's at risk from crime bill", *Morning Advertiser*, 25 January 2001 p 1

73 a figure of 1000 closed businesses is used in the, necessarily uncertain, calculation involved in the regulatory impact assessment.

74 "Trade is forced into last chance saloon", *Morning Advertiser*, 25 January 2001 p 12

2. *Criminal Justice and Police Bill* , Clause 19

Clause 19 amends the *Licensing Act 1964* with the insertion of 11 new sections, 179A to 179K. These introduce new police powers to issue a "closure order" on the licensee or manager of licensed premises where there is, or is likely to be, disorder or where excessive noise is emanating from the premises. A senior police officer, of the rank of inspector or above, would be able to authorise the immediate closure of such premises for a period of 24 hours. Justification for this measure is provided in the Bill's explanatory notes:

> 26. The police have powers under the Licensing Act 1964 to enter licensed premises to deal with criminal activity taking place, including breaches of licensing law and the terms and conditions of the justices' licence. They also have powers under common law to enter and quell disorder. In addition, under section 188 of the 1964 Act, they have powers, where any riot and tumult is happening or expected to happen in any county or borough, to seek a warrant from magistrates closing specified licensed premises for such time as the magistrates may decide. This latter power is generally regarded as applying to instances of widespread breakdowns in law and order, and not localised instances of disorder on licensed premises. Furthermore, having entered and quelled any disorder or disturbance, the police have no powers to close the premises to prevent a recurrence of the problems or to protect the general public. At present, they would have to rely on the voluntary co-operation of the licensee.
>
> 27. Subsequently, they would have to pursue the revocation of the justices' licence in respect of the premises involved through normal procedures under the 1964 Act…

Once a closure order comes into effect, it would have to be considered by relevant magistrates as soon as practicable. New section 179C provides for the extension of a closure order, for a further 24 hours at a time, pending consideration by magistrates. Section 179A(3) addresses the possible reticence some licensees might show in bringing disorder to the notice of the police:

> In determining whether to make a closure order the senior police officer shall consider, in particular, any conduct of the holder of the justices' licence for the premises or the manager of the premises in relation to the disorder or disturbance.

The Home Office intends to back this up with guidance to ensure that the powers are used "fairly and reasonably", and that co-operative licensees who call the police promptly are not penalised.[75]

---

[75] Home Office, *Provisions for combatting alcohol related disorder*, January 2001 http://www.homeoffice.gov.uk/cjp/cjpalcohol.htm

Unless the police cancel a closure order (section 179D), it would be considered by magistrates (not necessarily licensing justices) who would have powers to revoke the order, or to order the premises to remain closed pending further consideration at a (near) future licensing sessions. The latter could, as at present, result in revocation of the liquor licence. In addition, the magistrates could "make any other order as they think fit in relation to the premises" (section 179B(3)(c)). Contravention of either a police closure order or a magistrate's order to keep the premises closed would be punishable by a fine not exceeding £20,000 and/or imprisonment for a term not exceeding three months. Body corporates could also find themselves liable:

> 63. New section 179J(1) provides that where an offence under these provisions has been committed by a body corporate, if the conditions specified apply, a director, manager, secretary or other similar officer of the body corporate may also be guilty of the offence. Both the individual officer and the body corporate may also be guilty of the offence. New section 179J(2) also provides that where the affairs of a body corporate are managed by its members, and there has been any act or default of the kind described in the preceding sub-section by any member, the liability to prosecution and punishment will extend to that member as if he were a director of the body corporate.[76]

New section 179(H) provides powers to deal with persons who fail to leave licensed premises subject to the above orders. In such cases the licensee or manager could ask a constable to help remove a person who refuses to leave. Similar provisions already exist for the removal of drunk or violent people from pubs.[77]

Clauses 19 and 20 extend only to England and Wales.

3. *Criminal Justice and Police Bill*, Clauses 21-30

Clauses 21-30 deal with the problem of alcohol sales in unlicensed premises; the need for measures in this area is discussed in the Bill's explanatory notes:

> 28. Under section 160 of the Licensing Act 1964, it is an offence to use unlicensed premises for the sale of alcohol, and alcohol on such premises may be confiscated. However, the profits of unlicensed drinking establishments are such that the owners of these premises can often absorb the costs of police raids on them, the seizure of alcohol and the prosecution of staff working in such premises. In practice therefore the premises often re-open quickly having been re-stocked and re-staffed. Such premises are regarded by the police as magnets for criminals who prey on unsuspecting customers, often tourists. The Bill provides the police and local authorities with powers to obtain court orders to close down such premises. The provisions are modelled on provisions contained

---

[76] explanatory notes, Bill 31–N

[77] section 174, *Licensing Act 1964*

> within the City of Westminster Act 1996 which allows the police and the local authority to close down unlicensed sex establishments.

The first step in the process of obtaining a relevant court order (a "closure order") would be for a constable or local authority to serve a "closure notice" on the persons responsible for the unlicensed activity (clause 21). Such a notice would also have to be served on any person occupying another part of the premises, whose access would be impeded should a closure order come into effect. This is designed to ensure that any innocent person, perhaps a lodger, could be able to challenge the issue of a closure order. Clause 21(5) allows a closure notice to be served on any other person with control or an interest in the premises, such as the owner, leaseholder or occupier. Closure notices could be served on persons either in person or in the post (clause 29).

Clause 21 also includes provision for the withdrawal of closure notices, to cover, for example, cases where voluntary steps were taken to end unlicensed alcohol sales.

Between 7 days and six months after the service of a closure notice, the constable or local authority could apply to magistrates for a closure order. Their decision to do so would have to be influenced by subsequent developments at the premises (clause 22). Where an application for a closure order is made, the magistrates would have discretion to issue a summons, to all those served closure notices. On hearing the complaint, the court "may make such order as it considers appropriate" if it is satisfied that a closure notice was properly served and that the unlicensed sale of alcohol was continuing, or likely to resume, at the premises (clause 23). A closure order could require immediate closure of the premises and/or immediate cessation of the unlicensed sale of alcohol. Any defendant could also be ordered to pay into court "such sum as the court determines"; this would not be released until the other requirements of the closure order had been met (clause 23). Other conditions attached to a closure order might allow for access by persons (e.g. innocent lodgers) to other parts of the building. Clause 27 gives enforcement powers to either police constables or persons authorised by the local authority. Opening premises in contravention to a closure order could result in a fine not exceeding £20,000 and/or imprisonment for a term not exceeding three months. Clause 28 covers offences by a body corporate.

Clause 24 provides that a closure order made by the court could be terminated by a constable or the relevant local authority, and any sum paid into the court would then be released. However, sub-clause 4 gives the court discretion to include in the closure order any appropriate provisions to deal with any consequences of the order ceasing to have effect.

Clause 25 provides for the discharge of closure orders by the court:

> 81. *Subsections (1)-(4)* provide that where a closure order has been made, any person having an interest in the premises can also make a complaint to the magistrates for an order that the closure order be discharged. This will enable disputes to be decided by the court where, for example, the police and local

> authority are not satisfied that they should issue a certificate under section 24 which would end the effect of the order. This provision also empowers the court to issue a summons requiring the police officer or local government official who served the closure notice, in respect of which the closure order was made, to attend court for the hearing of the discharge complaint. At the same time as the summons, the court is also required to send a notice of the time, date and place of the hearing to any other person on whom the closure notice was served under section 21. The court may not make an order under this section discharging the closure order unless it is satisfied that the need for the closure order has ceased (i.e. if the premises involved will not be used for the unlawful sale of alcohol if re-opened). *Subsection (5)* provides that the hearing of the complaint under this section shall be in accordance with the relevant procedure under the Magistrates' Courts Act 1980.[78]

Clause 26 provides for appeals to the Crown Court against closure orders or decisions in relation to their discharge. Presumably, a police constable or local authority could appeal against a magistrate's decision to discharge a closure order. The clause is explicit in regards to appeals against closure orders: these can be lodged by any person on whom a closure notice was served, or any other person with an interest in the premises.

Clauses 21-30 extend only to England and Wales.

C. Underage drinking

1. The current situation

It is widely acknowledged that the law covering underage drinking is complex; the Government's white paper proposals include clarifying measures, while retaining 18 as the age limit for purchase and consumption in a public place. The scale of underage drinking is well illustrated by the findings of the 1998/99 Youth Lifestyles Survey:

> - Nearly two thirds (63%) of those aged 16-17 and 10% of those aged 12-15 who had drunk in the last year said that they usually bought their alcohol themselves – most often in pubs, bars and nightclubs.
>
> - Around one in seven (15%) of all 12- to 17-year-olds admitted they had been involved in some form of antisocial behaviour during or after drinking most often getting into a heated argument. Frequent drinkers were more likely to have behaved antisocially.
>
> - Frequent drinking was more common amongst offenders aged between 12 and 17 (36%) than non-offenders (20%).

[78] explanatory notes, Bill 31–N

> - Most 12- to 17-year-olds (84%) have drunk alcohol at some point in their lives. Half of those aged 16-17 drank at least once a week. - Drinking increases with age: 14% of 12-13s, 33% of 14-15s and 62% of 16-17s had drunk alcohol in the last week.
>
> - Of parents with the highest level of drinking (three or more times a week), 31% had children who drank frequently. Among parents who had never drunk, only 10% had children who drank frequently.
>
> - Ethnic minority teenagers were less likely to say they drink alcohol. One in 20 non-white 12- to 17- year-olds were frequent drinkers compared with one in four white teenagers.[79]

Other research reinforces a picture of underage people being able to purchase alcohol, unchallenged. One study found that the vast majority of sixteen year olds (88.1% of girls and 77% of boys) were successful in buying alcohol from a variety of outlets.[80]

Section 169 of the *Licensing Act 1964* had covered the serving or delivering of intoxicating liquor to or for consumption by persons under 18. A licensee found guilty of an offence under this section would be fined in the first instance, and on conviction for a second offence could lose his licence. The *Licensing (Young Persons) Act 2000*, now in force, amends this offence (by substituting new sections 169A to 169H) to include any person working at licensed premises who sells alcohol to someone underage. This Act also creates a new offence of purchasing alcohol on behalf of a minor ("proxy purchase").[81]

The *Confiscation of Alcohol (Young Persons) Act 1997* came into force on 1 August 1997. It provides the police with powers to confiscate alcohol from people, in a public place, who are either under 18 or who intend to supply alcohol to a young person.

2. Criminal Justice and Police Bill, Clauses 31-33

Clause 31 would introduce a minor amendment to the 1997 Act above to allow open containers for intoxicating liquor, such as glasses or open bottles, to be confiscated by police. This would make that Act consistent with the confiscation provisions of clause 14. The Clause extends to England and Wales and Northern Ireland.

An offence under section 169A of the *Licensing Act 1964* (sale of intoxicating liquor to a person under 18) currently has the following defence: that the person charged had "no reason to suspect" that the purchaser of alcohol was under 18. This defence would be amended by the present Bill (clause 32) by requiring a defendant to take "all reasonable

---

79 Home Office news release 298/2000, *Lifting the lid on underage drinking*, 2 October 2000

80 "Like a drink, sonny?", *Alcohol Alert*, issue 3 2000 p 15

81 Home Office news release 380/2000, *Royal Assent for Bill to tackle underage sales of alcohol*, 23 November 2000

steps" to establish the age of a purchaser unless "nobody could reasonably have suspected from his appearance" that he was underage. This acknowledges the fact that a variety of "proof of age" cards are now widely available. The Brewers and Licensed Retailers Association have argued for a national proof of age card,[82] though the Home Office sees no need for this.[83] Lord Bassam of Brighton provided further details in a written answer in November 2000:

> Lord Mason of Barnsley asked Her Majesty's Government:
>
> What progress, if any, they are making with the introduction of a nationwide proof of age card designed to help curb under age drinking and the illegal purchase of tobacco and alcohol; and
>
> Whether any pilot schemes are planned to assess the effectiveness of a proof of age card designed to curb under-age drinking and smoking; and, if so, where.
>
> Lord Bassam of Brighton: We have no plans to introduce a national proof of age card and so no plans to pilot one. But we are looking at the possibility of incorporating a proof of age function in the proposed Connexions card; and we support the use of industry-based credible proof of age cards such as the Portman Card and Citizen Card, which are already widely available across the country.[84]

Clause 33 puts on a statutory footing "test purchasing" by children as an aid to licensing law enforcement. Quite apart from any ethical considerations that might arise, the legality of the use of children by police or, as appropriate, local authority inspectors of weights and measures (clause 33(3)) has been questioned.[85] The Government's intention to clarify the law in this respect has already been signalled:

> **Mr. Burstow:** To ask the Secretary of State for the Home Department what assessment he has made of the effectiveness of the use of test purchases of alcohol by minors to enable detection and enforcement of licensing laws.
>
> **Mr. Mike O'Brien:** Because of doubts about the lawfulness of the test purchasing of alcohol by children it has not been widely used. A recent study carried out under the auspices of the Alcohol Education and Research Council showed that children had little difficulty in buying alcohol. A summary of the report of the study was published with the Council's annual report for 1999-2000, a copy of which is in the Library. The researchers concluded from their study that test purchasing would enable more effective enforcement of the minimum age laws. It is the Government's policy, as set out in our White Paper "Time for

---

82 BLRA news release, *Pubs say Government must deliver on proof of age cards*, 6 December 2000

83 http://www.homeoffice.gov.uk/cjp/cjpalcohol.htm *Provisions for combatting Alcohol Related Disorder: Public Drinking*, 18 January 2001

84 HL Deb 16 November 2000 c 44WA

85 "Law to get tighter on under-age sales", *Morning Advertiser*, 30 November 2000 p 16

> Reform", to amend licensing law to provide a clear statutory basis for test purchasing.[86]

As a result of clause 33, police or the local authority inspectors would be able to seek the assistance of persons under 18 to conduct test purchasing operations to establish whether licensees or other staff were abiding by licensing law in respect of sales to minors. The clause provides a defence for both the minors and the officers concerned, who might arguably have otherwise been in breach of sections 169(C) - 169(G) of the *Licensing Act 1964*. It is not clear, at least from the Bill, what criteria would be used in the selection of minors, or what incentives they might be given to participate in such operations. In so far as measures that would be taken "to protect children who are used as agents", the Home Office indicate that the police and local authorities would take "responsible precautions". They point out that test purchasing by children is already an accepted enforcement tool in respect of tobacco.[87]

Clauses 32-34 extend to England and Wales only.

III Other Criminal Law Provisions

A. Travel restrictions on drug trafficking offenders *[Alex Sleator, Science and Environment Section]*

Paragraphs 35 to 39 of the Bill make provision for courts to impose travel restrictions and confiscate the passports of convicted drug traffickers where jail sentences of four years or more are imposed.

One aim of the Government's drug strategy, *Tackling Drugs to Build a Better Britain,*[88] is to reduce the availability of illegal drugs on the streets. A key performance target of the strategy is to reduce access to all drugs amongst young people (under 25) significantly, and to reduce access to the drugs that do the greatest harm, heroin and cocaine, by 25% by 2005 and by 50% by 2008. The Second National Plan set out the target of a 5 per cent increase in the number of trafficking groups disrupted or dismantled primarily involved in Class A drugs, and to maintain an increase in Class A drugs prevented and seized.[89]

The measures proposed under this Bill aim to contribute to the National Drugs Strategy by making it more difficult for convicted drug traffickers to travel overseas and thereby help to prevent and disrupt drug trafficking. The United Kingdom's Anti-Drugs Co-

---

86 HC Deb 27 November 2000 c 444W

87 http://www.homeoffice.gov.uk/cjp/cjpalcohol.htm *Provisions for combatting Alcohol Related Disorder: Public Drinking*, 18 January 2001

88 *Tackling Drugs to Build a Better Britain*, Cm 3945, April 1998

89 Cabinet Office, *Tackling Drugs to Build a Better Britain, National Plan 2000/200,* July 2000

ordinator, Keith Hellawell, indicated his intention to bring forward travel restrictions at the launch of his second National Plan in July 2000.[90]

The Bill gives the courts the power to impose overseas travel banning orders on drug traffickers convicted of certain "trigger" offences, identified by virtue of a direct relationship with overseas travel and subject to a sentencing threshold of four years to distinguish serious cases. Travel restriction orders will last for a minimum of two years. No upper limit is proposed in the Bill. This will be a matter for the courts. The courts are also given the power to confiscate the passports of British nationals for the period of the ban. The powers extend across England, Scotland, Wales and Northern Ireland.

Details of the proposed measures are given in the explanatory notes provided by the Home Office:[91]

> *Clause 35: Power to make travel restriction orders*
>
> This clause sets out the arrangements under which a court may impose a travel banning order on an individual convicted of a drug trafficking offence, as defined in clause 36. The orders will be available to the courts as a sentencing option in respect of offences committed after the date that these measures come into force or in the case of offences added by order under clause 36(1)(c), committed after the coming into force of the relevant order. The court may also order the surrender of any UK passport held by the individual. This means a current passport issued by the government of the United Kingdom, the Channel Islands, the Isle of Man or a dependent territory. It is intended that these new powers should apply to serious cases of drug trafficking and they are therefore only available where the court imposes a sentence of four years or more. The four-year sentencing threshold has been chosen in accordance with sentencing guidelines issued by the Court of Appeal. In such a case the court will be under a duty to consider the making of a travel restriction order. Where the court decides that a ban is not appropriate, it will be required to give reasons.
>
> The period of the banning order will run from the point of the offender's long-term release from custody (e.g. on licence). It will not be triggered by periods on bail or temporary release. It will last for a minimum period of two years.
>
> *Clause 36: Meaning of "drug trafficking offence"*
>
> Clause 36 sets out the offences on conviction of which a travel restriction order may be made. For this purpose a "drug trafficking offence" includes the production and supply of controlled drugs; assisting in or inducing the commission of corresponding offences outside the United Kingdom; and offences of improper importation or exportation of controlled drugs. It also includes

---

90 BBC News online, "Drugs barons face passport seizure", 28 July 2000

91 Criminal Justice and Police Bill Explanatory Notes, Bill 31-EN

conspiracy, attempt and incitement to commit those offences. There is power to designate other offences under the Misuse of Drugs Act 1971 as drug trafficking offences for this purpose (Clause 36 (1)(c)). This might be used for example if offending patterns and behaviour change and/or new offences are created. The power is exercisable by statutory instrument subject to the affirmative resolution procedure.

Clause 37: Revocation and suspension of a travel restriction order

This sets out the revocation and temporary suspension procedures in respect of banning orders made under clause 35 and the framework and the basis under which such applications will be considered. Sub-section (1) (a) provides for the revocation of banning orders where the Court is satisfied that it is appropriate to do so in the light of the person's character, conduct since making the order and the offences of which he was convicted. An application for revocation can only be made after expiry of the minimum period in relation to the order as set out in subsection (7). Sub-section (1) (b) allows the court to suspend the prohibition at any time for a temporary period where there are exceptional compassionate circumstances (e.g. where a person needs to travel overseas for urgent medical treatment). The person concerned will be under a duty to be back in the United Kingdom when the period of the suspension ends and to surrender any UK passport which was returned to him as a result of the suspension.

Clause 38: Offences of contravening orders

This clause sets out the penalties for breach of any requirement of or under an order. Leaving the United Kingdom in breach of a prohibition or failing to return after a suspension is punishable on summary conviction by a maximum of 6 months imprisonment a fine up to the statutory maximum (currently £5000) or both. On conviction on indictment the maximum penalty is 5 years imprisonment, an unlimited fine or both. Failure to comply with a direction to surrender a passport is punishable on summary conviction by a maximum of 6 months imprisonment or a £5000 fine or both.

Clause 39: Saving for powers to remove a person from the United Kingdom

This clause ensures that a travel restriction order shall not prevent a person's removal from the United Kingdom where it is ordered by the Secretary of State or by the courts. There are a number of circumstances where this might apply: deportation and extradition are examples. These various statutory powers will be listed in a statutory instrument which will be subject to the negative resolution procedure. Normally, where a person is removed under this clause, removal will be permanent and there is no need for the banning order to remain in force. The provision in sub-section (2) is to cover circumstances where, following an offender's temporary removal (e.g. to give evidence in criminal proceedings overseas), he or she is returned to the United Kingdom.

1. Existing legal restrictions on passports

Legal restrictions on travel already exist in the measures to limit travel of football hooligans which were introduced under the *Football Offences and Disorder Act 1999*. Measures also exist under Section 37 of the *Criminal Justice Act 1991* which prevent those released on licence from travelling abroad without the prior permission of the supervising officer.

In Europe, Italy has similar powers to those proposed in the Bill to restrict travel of convicted drug traffickers for up to 3 years, under Article 55 of Law 309.[92]

There is no statutory basis for the issue or withdrawing of passports. Note no 7 on page 3 of the EC British passport states that "This passport remains the property of Her Majesty's Government in the United Kingdom and may be withdrawn at any time".[93] In 1958, it was stated in answer to a PQ in the House of Lords that no-one has a right to a passport:

> **The Joint Parliamentary Under-Secretary of State for Foreign Affairs (The Earl of Gosford):** My Lords, the protection of a British-born subject does not derive from the possession of a passport but is the exercise of one of the normal functions of a sovereign State. No British subject has a legal right to a passport.
>
> The grant of a United Kingdom passport is a Royal prerogative exercised through Her Majesty's Ministers and, in particular, the Foreign Secretary.[94]

More recently, on 30 July 1998, Lord Lester of Herne Hill asked whether the Government would consider giving the present arrangements for issuing and withdrawing passports a statutory basis. Lord Williams of Mostyn replied:

> **Lord Williams of Mostyn:** The Government have no plans to change the present system under which passports are issued in the United Kingdom at the discretion of my right honourable friend the Home Secretary, and by my right honourable friend the Foreign Secretary in overseas posts, both exercising the Royal Prerogative.
>
> In practice, refusal and withdrawal of passport facilities to United Kingdom nationals is confined to certain well defined categories, of which Parliament has been informed from time to time. Although the issue of passports is a discretionary power under the Royal Prerogative, it is constrained as any statutory power might be, and the exercise of the discretion may be reviewed by the courts.
>
> The system has worked well and it has been generally accepted, under successive Administrations, that the exercise of the Royal Prerogative has not been abused.[95]

---

92 Home Office, personal communication, 23 January 2001

93 Arabella Thorpe, The *Football (Offences and Disorder) Bill*, Bill 17 of 1998-99, Research Paper 99/41, 14 April 1999, pp 27-31

94 HL Deb 209 16 June 1958 c 860

There is also a general common law right to leave the United Kingdom.[96] This was discussed in some detail in the Library research paper on the Bill that became the *Football (Offences and Disorder) Act 1999*.[97]

2. Freedom of movement concerns

Doubts have been expressed about the proposal to require surrender of passports in the context of free movement provisions under Community law and human and civil rights conventions. Council Directive 73/1148 provides for the abolition of restrictions on the movement and residence of nationals of a member State as providers or recipients of services. Article 8 of the directive provides that Member States shall not derogate from its provisions save on grounds of 'public policy, public security or public health'. Article 3 of Council Directive 64/221 provides that previous criminal convictions shall not in themselves constitute grounds for the taking of measures to exclude the national of a Member State on public policy grounds. In *R v Bouchereau*[98] the European Court of Justice held that:

> In so far as it may justify certain restrictions on the free movement of persons subject to Community law, recourse by a national authority to the concept of public policy presupposes, in any event, the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society.

The *Bonsignore* case[99] made it clear that exclusion cannot be justified for *general* preventive or deterrent reasons - Article 3(1) requires that measures taken on grounds of public policy, etc., "shall be based exclusively on the personal conduct of the individual concerned".

Article 2(2) of Protocol 4 of the *European Convention on Human Rights* (ECHR) and Article 12(2) of the *International Convenant on Civil and Political Rights 1966* (ICCPR) provide that "Everyone shall be free to leave any country, including his own". The UK has not ratified Protocol 4 of the ECHR and it is not included in the *Human Rights Act 1998* so no obligation arises here. The UK has, however, ratified the ICCPR which states in Article 12(3) that the right to leave one's own country "shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals…" [100]

---

95 HL Deb 592 30 July 1998 238WA

96 Blackstone, Commentaries I 265

97 Arabella Thorp, The *Football (Offences and Disorder) Bill*, Bill 17 of 1998-99, Research Paper 99/41, 14 April 1999 p 27-31

98 [1978] QB 732

99 Case 67/74 [1975] ECR 297

100 Arabella Thorpe, The *Football (Offences and Disorder) Bill*, Bill 17 of 1998-99, Research Paper 99/41, 14 April 1999 p 27-31 p 31

Liberty has commented on the proposed travel restriction orders:

> These orders are similar in nature to football banning orders introduced. We raised concerns over the introduction of such orders, which also apply to the current proposals. We have concerns that these orders impinge on the individual's right to freedom of movement, and to receive goods and services throughout the EU. In individual circumstances the imposition of such orders, or the refusal to suspend or revoke such orders, may breach this country's obligations under the EC treaty. In particular we are concerned that there is no upper limit as to the length of the order.[101]

B. Intimidating Witnesses

Interfering with witnesses or otherwise trying to influence the course of trials may involve the commission of offences under common law. Section 51 of the *Criminal Justice and Public Order Act 1994* also made it a statutory offence, punishable by up to 5 years' imprisonment and a fine following conviction on indictment, for a person to intimidate, harm or threaten to harm:

- a witness or potential witness involved in the investigation of a criminal offence or in proceedings for a criminal offence; or
- a juror or potential juror in proceedings for a criminal offence.

Section 51 was amended by provisions in Schedule 4 of the *Youth Justice and Criminal Evidence Act 1999* that have not yet been brought into force.

Clauses 40-42 of the *Criminal Justice and Police Bill*, which extend to England, Wales and Northern Ireland, are designed to create offences similar to those in section 51 of the 1994, as a means of protecting witnesses in proceedings other than those for criminal offences. Like the offences under section 51 of the 1994 Act, those under Clauses 40 and 41 will be punishable by up to 5 years' imprisonment following conviction on indictment.

The Liberty briefing for the second reading debate on the Bill makes the following comments about these provisions:

> We support the extension of protection of witnesses from intimidation to civil as well as criminal proceedings. However we have concerns over the presumption, to be rebutted by the defendant, that the defendant intended to pervert, etc. if it can be proved he did an intimidatory act etc. We would suggest this presumption be removed and that it be for the prosecution to prove all elements of the offence.

---

[101] Liberty, Criminal Justice and Police Bill Second Reading Briefing, January 2001

> We are also concerned about the widening of definition of who may be a witness. We consider the definition is too wide, in particular in respect of those who may be able to give evidence, as opposed to those who actually are witnesses in court proceedings.

C. Local child curfew schemes

Section 14 of the *Crime and Disorder Act 1998* was intended to enable local authorities in England and Wales to introduce local child curfew schemes, banning children under the age of 10, other than those under the effective control of a parent or a responsible person aged 18 or over, from being in particular places during specified hours between 9 p.m. and 6 a.m. Before making such a scheme a local authority would have to consult the local chief officer of police and such other persons as it considered appropriate. The local authority would also have to apply to the Secretary of State for confirmation of the scheme. Information on the background to the introduction of the curfew provisions in the 1998 Act, and the arguments for and against their introduction, can be found in Library research paper 98/43 on *The Crime and Disorder Bill*.[102] Home Office guidance to local authorities on the curfew schemes is available on the Home Office web-site.[103]

No applications from local authorities for child curfew schemes have been received by the Home Office since the implementation of section 14 of the 1998 Act. The Home Secretary, Jack Straw, has been quoted as saying that he should have allowed the orders to apply to older youths and had failed to take into account the "conservatism of the social services departments for not wishing to go ahead with these [orders] for their own reasons".[104] In a written answer of 28 November 2000 the Home Office minister, Charles Clarke, said that, following consultations with local authorities and the police, the Government proposed to extend the upper age limit for curfew schemes to 15 and was considering what other improvements might be made.[105]

Clause 43 of the *Criminal Justice and Police Bill* seeks to extend the maximum age of children who are to be subject to child curfew schemes from "under 10" to "under 16". Clause 44 is designed to enable chief officers of police to initiate child curfew schemes and apply to the Secretary of State for confirmation of them. Before making such a scheme the chief officer of police will have to consult every local authority whose area lies within the area which is to be subject to the curfew and any other persons or bodies the chief officer considers appropriate. Local authorities will retain the power to make child curfew schemes if they wish. Children found in breach of any curfew established under section 14 of the 1998 Act may be returned home, or taken to a place of safety if there are serious concerns about their safety in the family home. Under section 14, the

---

[102] http://hcl1.hclibrary.parliament.uk/rp98/rp98-043.pdf
http://www.parliament.uk/commons/lib/research/rp98/rp98-043.pdf

[103] http://www.homeoffice.gov.uk/cdact/curfews.htm

[104] "Straw admits child curfews were 'an error'" – *Independent* 11.12.2000

[105] HC Deb 28 November 2000 c527W

local authority must investigate the circumstances of any contravention of a ban imposed by a curfew scheme. Clauses 43 and 44 extend to England and Wales only.

Critics of the original provisions in what became the 1998 Act suggested that there was no need for measures as "draconian" as curfews. They also expressed concern that the curfew provisions might breach Article 5 of the European Convention on Human Rights, which provides a right to liberty, of which a person may only be deprived by "lawful" means in certain prescribed circumstances; or Article 8, which provides a right to private and family life.[106] An article in the *Daily Telegraph* about the Government's decision to extend curfew schemes to the under-16s said the Home Secretary had insisted that the measure complied with the European Convention. It quoted Paul Cavadino, director of policy for the National Association for the Care and Rehabilitation of Offenders (NACRO) as saying:

> This measure will impose severe restrictions on the vast majority of law-abiding children. It will stop them going to football, or swimming or music lessons.[107]

The article added:

> Ministers have admitted that the power to imposed "blanket curfews" on areas may cause an outcry because even innocent teenagers could be confined to their home from 9 p.m. to 6 a.m. if they lived in an area that was under curfew.[108]

The Liberty briefing for the second reading of the *Criminal Justice and Police Bill* includes the following comments about the proposed extension of child curfew orders:

> Liberty opposed the imposition of the original child curfew orders for up to 10-year-olds. We are not aware of any occasions on which such orders have been used. We had concerns regarding the wide-ranging nature of the powers and lack of restrictions. These concerns remain and are increased by the proposals that order should apply for up to age 16, and can also be sought by a Chief Officer of Police. We are concerned that the giving of this power to the police as well as the local authority is a move away from the principle of welfare of the child towards the criminal process, and believe this is inappropriate.
>
> We have expressed concerns in respect of the previous legislation as to the computability of any such order with the Human Rights Act, and in particular articles 5 and 8 of the Convention. We consider in particular that these provisions are unlikely to comply with Article 8, the right to respect for private and family life, and that they are to widely drawn to be proportionate or necessary in a democratic society. We suspect that the reason no orders have yet been applied for is that local authorities have been unable to show that such orders would be either a proportionate response to any problems, or necessary in a democratic

---

[106] See Library research paper 98/43 p.46-47 for a summary of the arguments used in relation to the provisions in what became the 1998 Act

[107] "Straw proposes curfews for under-16s in problem areas" – *Daily Telegraph* 4.12.2000

[108] ibid.

> society, and therefore would be unable to resist any challenge in the courts. In these circumstances we oppose the increase in powers and ambit of such orders.
>
> We also have worries about the practical effects of any such blanket curfews. Firstly if police will be available to enforce these sanctions, surely they are also available to deal effectively with any young people who are breaking the law. Secondly imposing blanket curfews could prevent innocent young people who are out on legitimate business from entering the curfew area. This could lead to them staying out or going home by a different and perhaps more dangerous route.

In October 1997 Strathclyde Police introduced a Child Safety Initiative to deal with unsupervised children under the age of 16 on the streets at night in 3 areas of Hamilton. The initiative was the subject of a research study published by the Scottish Office in 1998.[109] The study found that there was general support for the initiative, particularly from parents, with most people believing that its main purpose was to protect children. Data collected by the police suggested that the initiative did not have a strong impact on crime in the areas concerned during the evaluation period.

D. Bail

In criminal proceedings, where a magistrates' court or the Crown Court

- withholds bail;
- imposes conditions in granting bail;
- varies any conditions of bail; or
- imposes conditions in respect of bail,

section 5 of the *Bail Act 1976* requires the court to give reasons for having done so, with a view to enabling the person to consider making an application in the matter to another court.

Paragraph 9 of Part I of Schedule I to the 1976 Act requires a court to give reasons for granting bail to a defendant charged with murder, manslaughter, rape, attempted murder and attempted rape, where representations are made that there are substantial grounds for believing that the defendant, if released on bail, would fail to surrender to custody, commit an offence while on bail, interfere with witnesses or obstruct the course of justice. There is no requirement on the courts in cases other than these to give reasons for granting bail.

Clause 128 of the *Criminal Justice and Police Bill*, which extends to England and Wales only, inserts into section 5 of the *Bail Act 1976* a requirement that, wherever a magistrates' court or the Crown Court grants bail to a person who appears or is brought

---

[109] *Evaluation of the Hamilton Child Safety Initiative*, Scottish Office Central Research Unit 1998. A summary of the findings of the study is at http://www.scotland.gov.uk/cru/documents/crf24-00.htm

before a criminal court in proceedings for a criminal offence and who applies for bail, the court must give reasons for its decision, if the prosecutor has made representations against the granting of bail. The court will also have to give the prosecutor a note of the reasons for its decision.

IV Disclosure of information by Government departments and public bodies for the purposes of criminal proceedings

Public bodies which are creatures of statute, such as local authorities and many others, cannot lawfully do anything which is not expressly or implicitly authorised by legislation. This is also the case where public bodies which are not themselves established by statute, such as departments of state, are involved in exercising statutory functions. Where legislation permits the communication of information between public bodies, for particular purposes, details of these cases may be shared by the bodies concerned. Where there is no such provision, however, the communication of information about individual cases between central government departments, or between central and local government bodies, may be held by the courts to be *ultra vires* and therefore unlawful.

The Queens' Speech contained a couple of proposals for legislation designed to allow communication of details of individual cases between government departments. The *Social Security Fraud Bill*, which has been introduced in the House of Lords, includes provisions designed to provide statutory authorisation for information exchange in cases involving allegations of benefit fraud, including the exchange of information with overseas authorities.

The draft *Proceeds of Crime Bill*, which was also announced in the Queen's Speech, will also apparently include provisions enabling the Inland Revenue and other agencies to become involved in assisting in the confiscation of criminals' assets.

Clauses 45-48 of the *Criminal Justice and Police Bill*, which extend to the whole of the UK, are intended to improve arrangements for the disclosure of information by government departments and a number of other public bodies for the purposes of criminal investigations being carried out in the UK or elsewhere. Schedule 1 of the Bill lists a number of existing disclosure provisions and Clause 45 extends these to include permission for the voluntary disclosure of information for the following purposes, set out in Clause 45(2):

> (a) the purposes of any criminal investigation whatever which is being or may be carried out, whether in the United Kingdom or elsewhere;
> (b) the purposes of any criminal proceedings whatever which have been or may be initiated, whether in the United Kingdom or elsewhere;
> (c) the purpose of initiating or bringing to an end any such investigation or proceedings, or of facilitating a determination of whether it or they should be initiated or brought to an end.

Clause 45(3) gives the Treasury the power to make orders adding any provisions contained in subordinate legislation to the provisions, listed in Schedule 1, to which Clause 45 applies. Any such orders will be subject to annulment under the negative procedure. Clause 45 will not permit the making of any disclosure which is prohibited under the Data Protection Act 1998.

Clause 46 is intended to enable the Secretary of State to give directions, prohibiting the disclosure of information which could otherwise be disclosed for the purposes of overseas criminal investigations or criminal proceedings under Clause 45, where it appears to him that it would be more appropriate for the matter to which the overseas investigation or proceedings relates to be dealt with by the UK authorities, or by the authorities of a third country.

Clause 47 is designed to enable information held by, or on behalf of the Commissioners of Inland Revenue or the Commissioners of Customs and Excise to be disclosed, for the purposes of criminal investigations or criminal proceedings being carried out in the United Kingdom or elsewhere. The Clause includes an element of retrospectivity, in that it extends to information obtained before the Clause is brought into force. It will not be permissible for information obtained in this way to be further disclosed by the recipient, except for the purposes for which it was originally disclosed and with the consent of the Commissioner by whom, or on whose behalf, it was originally disclosed.

For the purposes of Clauses 45-47 "criminal investigation" means the investigation of any crime and "crime" is defined by Clause 48 as any conduct which:

> (a) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or
>
> (b) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences;

A press notice of 23 January 2001 from the Tax Faculty of the Institute for Chartered Accountants in England & Wales included the following concerns about Clause 47:

> The latest Bill reflects a worrying trend. It follows on from the changes brought about by the Lord Grabiner Report into the 'Informal Economy, such as the section 144, FA 2000 offence of fraudulent evasion of income tax and a number of Special Commissioners' decisions which set worrying precedents on such issues as legal privilege such as R v Special Commissioners ex-parte Morgan Grenfell & Co Ltd. Taxpayer's rights are clearly affected by these changes and as the Tax Faculty has pointed out previously there is a genuine concern that these type of strong arm measures may make taxpayers begin to mistrust the revenue

> authorities and slip into the realms of non-compliance - the exact opposite of what is intended.[110]

An earlier press notice from the Faculty included the following comments about the proposal:

> A proposal granting the Inland Revenue special powers to pass on confidential information about taxpayers will undermine the integrity of the tax system, according to the Institute of Chartered Accountants' tax experts. The proposal would damage the Revenue's obligation of taxpayer confidentiality that underpins the UK tax system and provides the basis for the current climate of tax compliance.
>
> The Tax Faculty insists that extensive public consultation is essential to ensure that citizens' rights remain intact.

The press notice quoted Robert Maas, Chairman of the Tax Faculty's Technical Committee, as saying:

> If the Inland Revenue can use and pass on information it has received for tax purposes for non-tax purposes, taxpayers will no longer trust the Inland Revenue and taxpayers with something to hide will be discouraged from declaring all income and gains.
>
> For example, no one whose non-compliance with tax obligations is being investigated will accept the offer of protection from prosecution that the Inland Revenue currently offers in return for complete openness if he or she believes there is the slightest chance that the information will be used in Court by another department or country.[111]

In its briefing for the second reading debate on the Bill Liberty says:

> We recognise the need for there to be a proper flow of accurate information between official bodies. However balanced against this is an individual's right to privacy. We are concerned that these proposals are wide ranging and do not provide proper checks to protect an individual's right to privacy, to guarantee accuracy and appropriate use of information.

It is intended that the provisions of the Bill concerning information disclosure should come into force 2 months after the Bill receives Royal Assent.

---

[110] *"Criminal Justice Act gives Revenue and Customs new powers"* Tax Faculty of the Institute for Chartered Accountants in England & Wales press notice 23 January 2001 www.taxfac.co.uk/news/news.cfm?articleid=811&cfid=91433&cftoken=30080420

[111] "Inland Revenue's new powers will undermine integrity of the tax system" Tax Faculty of the Institute for Chartered Accountants in England & Wales press notice 11 December 2000

V Additional Powers of Seizure

Part III of the Bill (Clauses 49-69), which extends to the whole of the UK, seeks to confer additional powers of seizure on the police, customs officers,[112] and those other law enforcement agencies who already have powers of seizure under over 70 provisions set out in Schedule 2 of the Bill. These powers include the general police powers of seizure set out in the *Police and Criminal Evidence Act 1984*. The Government's reasons for providing these new powers are set out in the Bill's *Explanatory Notes* as follows:

> The decision of the Divisional Court in R v Chesterfield Justices and Chief Constable of Derbyshire ex parte Bramley, which was given on 5th November 1999, brought into focus the difficulties faced by the police and other law enforcement agencies where material they are entitled to seize is contained within a larger collection of material some of which they might not be entitled to seize. The Bramley case made clear that the Police and Criminal Evidence Act 1984 does not entitle the police to seize material for the purposes of sifting it elsewhere.
>
> The background to the judgement is that an application for judicial review was brought by Andrew Bramley, a car dealer, who challenged the seizure by Derbyshire Constabulary of documents, including correspondence with his solicitors, from his premises outside Sheffield. Before the hearing of the judicial review challenge, Derbyshire Constabulary conceded that the search warrant and seizure were unlawful and paid Mr Bramley £1,000 in damages. But, because of the importance of the issues raised by the case and uncertainties in the law, the parties agreed that the Divisional Court should be asked to rule on the legal principles. Both the Attorney General and the Law Society intervened in the case and were represented at the hearing.
>
> Lawyers for the police argued that provided the police reasonably believed the material they wished to seize was not legally privileged, they had the right to remove it to examine its contents elsewhere to determine what was and was not within the scope of the warrant. Rejecting this claim, Lord Justice Kennedy, who was sitting with Mr Justice Turner and Mr Justice Jowett, said common sense would suggest that a policeman executing a warrant should be able to do a preliminary sift of documents and then take all, or a large part of them, to sort out properly elsewhere. However, if a police officer seized items which were later found to be outside the scope of the warrant, the current provisions of PACE provided no defence to an action of trespass to goods based on unjustified seizure. In some cases the damages could be "significant". The Divisional Court suggested that this problem could only be overcome by the introduction of primary legislation.
>
> Whilst Bramley concerned the police and PACE, the principle applies to the powers of seizure given to a range of law enforcement agencies. The difficulty

[112] under Clause 66

> facing the police and these other law enforcement agencies is that there are circumstances where it is not practicable to establish on the premises subject to the search, which material can be seized and which cannot. This may be because of the simple bulk of the material. It may be because relevant material is contained within the same document or set of documents as material which is protected from seizure. The most difficult circumstances relate to material held on computer media. It may be impossible to establish which material is relevant and seizable without processing the data forensically. That may involve removing the computer and/or imaging the entire contents of its hard disks and/or removing CD Roms or floppy disks.

The *Explanatory Notes* summarise the Government's intentions in relation to the provisions of Part III as follows:

> The new clauses do two separate things. First they deal with the problem identified by Bramley. They give the police and other law enforcement agencies, powers to remove material from premises so that they can examine it elsewhere, where it is not possible to examine it properly on the premises, due to constraints of time or technology. Second, they recognise the fact that with the advent of modern technology and the expansion in the use of computers, it is often important for investigators to be able to seize and forensically examine an entire disk or hard drive, in order to determine when individual documents have been created, amended and/or deleted. This inevitably means retaining all the material on the hard drive, including possibly legally privileged material. The new clauses give the police and others the power to retain this inextricably linked material. The clauses also provide for a number of safeguards to prevent abuse and to allow for a mechanism whereby an application can be made to a Judge for the return of material seized. In certain circumstances there will be an obligation on the police and others to secure the material in question pending the determination of such an application.
>
> Because the Bramley principle applies equally to all powers of seizure given to the police and other law enforcement agencies the new powers are free standing powers which can only be exercised where a person could have exercised an existing power of seizure. Schedule 2 to the clauses lists all these existing powers. There are over 70 of them and in addition to those used by the police they include powers available to the Serious Fraud Office, the Financial Services Authority, the Inland Revenue, Customs & Excise, the Department of Trade and Industry and the Office of Fair Trading. The underlying policy is that whilst the police and others can use the new powers to remove material to examine elsewhere they are only able to retain material which they have power to seize under their existing powers. The only exception to that is the new power to retain inextricably linked material.

The *Explanatory Notes* go on to describe the intended effects of the provisions of Part II in some detail.

Clause 49 is designed to provide an additional power of seizure from premises. Under Clause 49(1) where a constable or other person who is on premises exercising an existing power of search:

> a) finds anything that he has reasonable grounds to believe may be, or may contain, something for which he is authorised to search the premises; and
> b) any of the powers of seizure listed in Part I of Schedule 2 or the power of seizure conferred by Clause 49(2) would entitle him to seize whatever that thing might be or might contain; and
> c) it is not reasonably practicable in the circumstances for the officer to determine, on the premises themselves, whether or not what has been found is something that the constable is entitled to seize, or the extent to which it contains something that he is entitled to seize,

the constable or other person with authority to search will be entitled to take from the premises as much of what he has found as will be needed to determine whether or not he is entitled to seize the items or any part of them.

The *Explanatory Notes* envisage this power being used where there is a large bulk of material.

Under Clause 49(2) where a constable or other person, who is on premises exercising an existing power of search:

> a) finds anything which he would be entitled to seize under any of the powers of seizure listed in Part I of Schedule 2, but which is contained in something that he has no power to seize, and
> b) in the circumstances it would not be reasonably practicable to separate the seizable property from that in which it is comprised

the constable or other person may seize both the seizable property and the property in which it is contained, in order to examine it elsewhere.

Subsection (3) of Clause 49 defines what is meant by "reasonably practicable" for the purposes of the powers set out in Clause 49(1)-(2) by confining the factors which may be taken into consideration to the following:

> (a) how long it would take to carry out the determination or separation on those premises;
> (b) the number of persons that would be required to carry out that determination or separation on those premises within a reasonable period;
> (c) whether the determination or separation would (or would if carried out on those premises) involve damage to property;
> (d) the apparatus or equipment that it would be necessary or appropriate to use for the carrying out of the determination or separation; and
> (e) in the case of separation, whether the separation-
> (i) would be likely, or

> (ii) if carried out by the only means that are reasonably practicable on those premises, would be likely,
> to prejudice the use of some or all of the separated seizable property for a purpose for which something seized under the power in question is capable of being used.

Clause 50 provides powers of seizure from the person to police constables and other people exercising existing powers of search under any of the provisions set out in Part II of Schedule 2 or under Clause 50(2). The Clause is broadly similar to Clause 49. The *Explanatory Notes* say:

> It is necessary because, for example, individuals might have on them handheld computers or computer disks which might contain items of electronic data which the police would wish to seize. Alternatively, they could be carrying a suitcase containing a bulk of correspondence which could not be examined in the street.

Clause 51 will require a person exercising a power of seizure under Clauses 49 or 50 to provide the occupier and/or some other person or persons from whom material has been seized with a notice specifying what has been seized; the grounds on which it has been seized; the possibility of applying to a judge for the return of seized material; and about applying to attend any examination of the seized material.

Provisions concerning the examination and return of seized property are set out in Clause 52. The *Explanatory Notes* describe their intended effect as follows:

> *Subsection (2)* deals with the examination and *subsection (3)* sets out what material does not need to be returned. The aim is to enable the police and others to retain whatever they could have seized had the examination taken place on the premises. *Subsections (3)* and *(5)* permit the retention of inextricably linked material. This is material which it is not reasonably practicable to be separated from material that can be seized without prejudicing the use of that seizable material. For example, it means the police or others may retain a whole computer hard drive which contains a certain document which is evidence of an offence if the rest of the hard drive is needed to prove when that document was created, amended or deleted. *Subsection (4)* refers to giving the occupier or some other person with an interest in the property an opportunity to be present at the examination.

"Inextricably linked" property is thus seized property which it is not reasonably practicable to separate from property which is entitled to be seized:

> without prejudicing the use of the rest of that property, or a part of it, for the purposes of which (disregarding that item) its use, if retained, would be lawful.[113]

[113] Clause 52(3) &52(5); Clause 53(2)

The full definition of "inextricably linked property" is set out in Clause 61, which also provides that such property should not be examined, copied or used for any purpose other than for facilitating the use in any proceedings of property to which it is inextricably linked.

Under the *Police and Criminal Evidence Act 1984* (PACE), and other legislation, certain categories of material are either protected from seizure or subject to additional procedures. Communications between professional legal advisers and their clients made in connection with the giving of legal advice to the client, or made in connection with or in contemplation of legal proceedings, are "items subject to legal privilege"[114] and are protected from seizure. Journalistic material held in confidence and personal records which are held in confidence (such as records acquired or created in the course of a person's trade, business, profession or other occupation or office which is held in confidence) are considered "excluded material".[115] A police constable wishing to obtain access to "excluded material" must apply to a circuit judge for an order under Schedule 1 of PACE. A further category of material for the purposes of PACE is "special procedure material", which includes confidential material created in the course of a business and journalistic material which does not otherwise constitute excluded material. An application for access to special procedure material must be made to a circuit judge under Schedule 1 of PACE.

Clause 53 of the Bill is intended to require the return of seized items which appear to be or to contain items subject to legal privilege, as soon as is reasonably practicable after the seizure, unless the items are inextricably linked to other seizable material. The obligation to return legally privileged material will apply not only where the powers under Clauses 49 and 50 are used, but also where use is made of any of the powers of seizure specified in Parts I and II of Schedule 2 or of any other statutory power of seizure conferred on a constable. A full definition of "legal privilege", covering both the definition in PACE and definitions in relation to a number of other statutory powers of seizure, is set out in Clause 64.

Clause 54 is designed to make similar provision to that in Clause 53 in respect of "special procedure material" and "excluded material" as defined by PACE. Material which is required to be returned should be returned to the person from whom it was seized, unless it appears that someone else has a better right to it, in which case it should be returned to that other person.[116]

Clause 55 is intended to authorise the retention of seized property in certain circumstances. The *Explanatory Notes* comment that:

---

[114] *Police and Criminal Evidence Act 1984* s.10
[115] ibid. s.11
[116] Clause 57

> It mirrors the power given to a constable under section 19 of PACE which arises independently of a power of search and gives a constable the power to seize evidence of an offence or property obtained in consequence of the commission of an offence if it is necessary to do so to stop it being lost or destroyed etc. Clause 55 ensures that where a constable has been involved in the seizure of material under clause 49 or 50 it is possible to retain evidence of any offence or property obtained in consequence of the commission of an offence if it is necessary to do so to stop it being lost or destroyed etc, even if this is not material which was being searched for.

Items subject to legal privilege will not be able to be retained under this provision unless they are inextricably linked to items that are to be retained under it.

Clause 56 lists a number of statutory provisions under which property that has been seized may be retained. It is intended to ensure that these provisions are not used to justify the retention of anything which should be returned under the new provisions in the Bill.

A person with a relevant interest in property that has been seized will have the right under Clause 58 to apply to the "appropriate judicial authority" for its return. In England and Wales and Northern Ireland, the appropriate judicial authority will be a Crown Court judge; in Scotland, it will be a sheriff. Where powers of seizure under section 448(3) of the *Companies Act 1985*, Article 441(3) of the *Companies (Northern Ireland) Order 1986* and section 28(2) of the *Competition Act 1998* are concerned, the appropriate authority will be the High Court in England and Wales and Northern Ireland and the Court of Session in Scotland.[117] The Government hopes that this will provide a quick and easy means of challenging both the new powers and, in certain circumstances, the exercise of existing powers of seizure. The grounds on which seizure may be challenged may be broadly summarised as follows:

- that there was no power to make the seizure;
- that the seized property consists of excluded material, special material or items subject to legal privilege to which the new rules have not been correctly applied;
- that the property is not inextricably linked to property the retention of which is authorised.

The Explanatory Notes summarise the powers the Government intends the courts to have in relation to applications under Clause 58 as follows:

> On such an application the Court can order the return of material or, amongst other things, order that it be examined, for example, by an independent third party. *Subsections (5)(b), (6) and (7)* enable the police or other body in

[117] Clause 63

> possession of the property to make an application to keep any material which they would otherwise be obliged to return if it would immediately become appropriate to issue a warrant enabling them to seize that material or to demand its production in the circumstances set out in *subsection (7)(b)*. This means, for example, that the police will not have to return material which might be of value to them and then have to immediately obtain a warrant to seize it back. *Subsection (8)* means that the Court can also authorise the retention of not just what the police or others could seize under a warrant but also any material which is inextricably linked to it.

Where a person makes an application under Clause 58 for the return of property which has been seized the police and others will in certain circumstances have a duty, under Clause 59, to secure the material seized. The duty will involve ensuring that the person who has possession of the seized property does not examine it, copy it, or put it to any use to which its seizure would ordinarily allow it to be put, except with the consent of the applicant or in accordance with the directions of the court. The circumstances in which Clause 59 seeks to establish that a duty to secure material will arise are described in the *Explanatory Notes* as follows:

> Whilst it can only arise following the seizure of material under clause 49 or 50, there is no duty to secure simply where it is alleged that the police or others have possession of irrelevant material. Indeed the whole point of the new powers is that the police can seize a bulk of material in order to separate out the relevant from the irrelevant. The circumstances where the duty to secure arises are where an application under clause 58 is made and at least one of the conditions set out in *subsections (2) and (3)* is satisfied. In particular the duty to secure will arise whenever it is claimed that the material seized includes legally privileged material which should be returned. This means that the person from whom the material is seized can, by making such an application, prevent the police or others looking at any material seized under clauses 49 or 50 pending the hearing before the judge. This gives further protection to legally privileged material. Similar protection is given to special procedure material and excluded material where the legislation containing the underlying power of seizure itself protects those categories of material.

The Government will provide guidance on the use of the powers of seizure in Part III of the Bill and the procedures linked to their application in an expanded version of the Code of Practice for Searching of Premises by Police Officers and the Seizure of Property found by Police Officers on Persons or Premises (Code B) issued under the *Police and Criminal Evidence Act 1984*. The procedure for making applications to Crown Court judges will be set out in the Crown Court Rules.[118]

Clause 84 of the Bill, which extends to England and Wales only, seeks to amend the *Police and Criminal Evidence Act 1984* to enable the Secretary of State to make orders

---

[118] *Explanatory Notes* paragraph 167

directing that the provisions of Schedule 1 of the 1984 Act which relate to special procedure material, and other related provisions of the 1984 Act, should apply for the purposes of investigations of serious arrestable offences conducted by, or on behalf of, officers of the Department for Trade and Industry. It is intended that the provisions should be able to be applied to investigations of offences committed, or suspected of having been committed, before Clause 84 comes into forces. Orders made under Clause 84 will be subject to annulment under the negative procedure.

Clause 85 of the Bill, which applies across the UK, is designed to amend the 1984 Act to enable section 4 of the *Summary Jurisdiction (Process) Act 1881* (which includes provision for the execution of process of English courts in Scotland) and equivalent provisions in the *Petty Sessions (Ireland) Act 1851* (which provides for the execution of process of English courts in Northern Ireland) to apply to orders and warrants for special procedure material and excluded material. It also makes equivalent provision for the execution in other UK jurisdictions of process of courts in Northern Ireland in relation to warrants and orders for special procedure material and excluded material made under Schedule 1 to the *Police and Criminal Evidence (Northern Ireland) Order 1989*.[119]

An article in the *Financial Times* on 20 January 2001 said the Law Society was very concerned about the increased powers for the police to seize material and considered that there were no safeguards to prevent confidential or third party information being taken.[120]

VI Police Powers of Arrest and Detention

A. Arrestable and Serious Arrestable Offences

Section 24 of the *Police and Criminal Evidence Act 1984* provides the police with a power of arrest without warrant in respect of a number of specified offences, listed in section 24(2), which are known as "arrestable offences". Clause 70 of the Bill, which extends to England and Wales only, adds the offences of kerb-crawling; and failure to stop and report an accident in which personal injury was caused, to the list of arrestable offences in section 24(2) of the 1984 Act. The *Explanatory Notes* give the Government's reasons for doing this as follows:

> Making these offences arrestable enables the police to take offenders into custody and question them rather than having to summons them to appear at a magistrates' court to answer the charge.

[119] SI 1989/1341 (N.I. 12)
[120] "Hoaxers to face fixed fines under new police bill" – *Financial Times* 20.1.2001

A number of provisions in the *Police and Criminal Evidence Act 1984* give the police and others exercising the powers of police constables special powers in relation to "serious arrestable offences". These provisions include

- Road checks (section 4)
- Issuing by judges of orders and warrants requiring excluded material and special procedure material to be made available to police constables (section 9 and Schedule 1)
- Authority for the police to detain a person without charge for up to 36 hours (section 42)
- Magistrates' warrants of further detention without charge (sections 43 and 44)
- Delay in allowing notification of a person's arrest (section 56)
- Delay in allowing access to legal advice (section 58)

The current meaning of "serious arrestable offence" is set out and the offences concerned are listed in sections 116 and Schedule 5 of the *Police and Criminal Evidence Act 1984* (PACE).

Clause 71 of the *Criminal Justice and Police Bill*, which extends to England and Wales and Northern Ireland, is designed to add the offence of importing or bringing into the United Kingdom indecent or obscene articles, which is already an arrestable offence, to the list of serious arrestable offences set out in Schedule 5 of the 1984 Act. This is intended to enable the additional powers available in respect of these offences to be used in relation to the offence of importing indecent or obscene material.

B. Reviews of detention by telephone and video link

Section 40 of PACE requires the police to carry out reviews of the detention of any person in police detention at regular intervals, the first review being required not more than 6 hours after detention is first authorised, with subsequent reviews at intervals of not more than 9 hours. A review may be postponed if in view of all the circumstances it is not practicable to carry it out at the time when it becomes due. It should then be carried out as soon as practicable after the latest time specified for it. Where a person has been arrested and charged, the reviews should be carried out by the custody officer. Where the person has been arrested and not charged, they should be carried out by an officer of at least the rank of inspector who has not been directly involved in investigation

Clause 72 of the Bill inserts a clause 45A into PACE which is intended to allow video-conferencing facilities to be used for the purpose of making certain decisions about detention where the police officer making the decision about detention is not in the same police station as the arrested person but has access to video-conferencing facilities to communicate with people at that station.

Clause 72 is also designed to insert a new section 40A into PACE so that:

- where it is not reasonably practicable for an officer of at least the rank of inspector to be present in the police station to carry out a review of the detention of a person who has been arrested but not charged; and
- where the review is not one which is authorised by regulations made under section 45A to carried out using video-conferencing facilities

the review may be carried out by an officer of at least the rank of inspector who has access to a means of communication by telephone to people in the station where the arrested person is being held. An officer other than the officer carrying out the review may be required to make any record in connection with the carrying out of the review which the reviewing officer would otherwise have been required to make. It is intended that the arrested person or his solicitor should be able to make representations to the reviewing officer orally by telephone or in writing. The *Explanatory Notes* say that telephone reviews will only be used in very limited circumstances.

Clause 73 of the Bill is designed to enable an inspector to authorise delay in allowing a person who has been arrested to notify someone of his arrest. At present such an authorisation must be given by an officer of at least the rank of superintendent. In its briefing for the second reading debate on the Bill Liberty says:

> We are aware of no cogent evidence requiring this lowering of rank for authorisation. The decision not to notify of arrest is an important one, and a substantial incursion into the rights of a defendant in a police station. Its importance is reflected in the level of officer needed to make such a decision. It is less likely that a lower ranking officer will be able to consider, critically and independently, whether such authorisation should be given.

Clauses 72 and 73 of the Bill extend to England and Wales only.

Clause 74 of the Bill, which extends to England and Wales and Northern Ireland, is designed to amend Schedule 8 of the *Terrorism Act 2000* to permit the use of live television and video links at hearings by judicial authorities concerning extensions of detention under the 2000 Act. The *Explanatory Notes* say:

> This is in line with similar arrangements for immigration and bail hearings. The decision whether the hearing will be conducted by video link is at the discretion of the judicial authority who must first hear any representations the detainee wishes to make as to venue. The judicial authority must be satisfied that the detainee can see and hear proceedings and be seen and be heard. Clause 74 applies to England, Wales and Northern Ireland only.

In its briefing for the second reading debate on the Bill Liberty says it opposes the provisions in this part of the Bill concerning reviews of detention by telephone or video link. It adds:

> The rights and protections given to a defendant in PACE are of fundamental importance, and should not be eroded for administrative convenience, such as flooding of roads. Reviews are an important mechanism to determine both whether continuing detention is justified, and to check the conditions of such detention. If a defendant is unable to speak personally to the reviewing officer then there is potential for abuse of a defendant's situation in a police station.

C. Visual recording of interviews

Clause 75, which applies only to England and Wales, aims to insert a new section 60A into the *Police and Criminal Evidence Act 1984* which will enable the Secretary of State to issue a code of practice for the visual recording of interviews held by police officers at police stations. The new section will also enable the Home Secretary of State to make an order requiring interviews to be visually recorded and for the recording to be in accordance with the code of practice. Any order made under the section will be subject to annulment under the negative procedure.

D. Police and Criminal Evidence Act 1984 (PACE) Codes of Practice

The general power for the Secretary of State to issue Codes of Practice under the *Police and Criminal Evidence Act 1984* is set out in section 66 of the Act. Section 67 of the Act requires the codes to be prepared in draft for consultation and for the final draft to be laid before Parliament for approval by each House of Parliament under the affirmative procedure. Clause 76 of the Bill is designed to enable modifications to the Codes for trial purposes to be made under the negative procedure rather than the affirmative procedure.[121] They will therefore be subject to annulment by either House of Parliament rather than subject to the approval of both Houses. Such modifications will be confined to particular areas, offences or offenders or period of time, up to a maximum of 2 years. Where a permanent amendment to the Codes is to have general application the requirements of section 67 of the 1984 Act concerning publication in draft and the use of the affirmative procedure will still apply. Clause 76 extends to England and Wales only.

In its briefing for the second reading of the Bill Liberty criticises Clause 76, saying of the protections afforded by the 1984 Act and its Codes of Practice that:

> These are not administrative matters but matters relating to the deprivation of the freedom of the individual, and their treatment in custody. As such they are matters for full parliamentary debate, not regulations.

VII Fingerprints and DNA samples

Provisions giving the police powers to take fingerprints and samples from people in connection with the investigation and prosecution of criminal offences are set out in the

[121] see footnote 44

Police and Criminal Evidence Act 1984 (PACE). *The Criminal Justice and Public Order Act 1994* made a number of significant amendments to these provisions. The changes introduced in 1994, which followed recommendations in the *Report of the Royal Commission on Criminal Justice,*[122] are discussed in Library research paper 94/1 on *Crime and Public Order – the Criminal Justice and Public Order Bill [Bill 9 of 1993/94]*.

In July 1999 the Home Office published a consultation paper entitled *Proposals for Revising Legislative Measures on Fingerprints, Footprints and DNA Samples* which set out the background to the current powers for the police to take fingerprints and samples, which are set out in the *Police and Criminal Evidence Act 1984* (PACE), and proposed a number of changes. The paper is available on the Home Office web-site.[123] Some of the changes proposed in the paper are intended to reflect developments in modern technology in this area. The consultation paper includes a chapter on DNA and the current and possible future use of DNA profiles in criminal investigations. The Government is reported to be hoping to build the national DNA database from 1 million samples to 3.5 million samples over the next 3 years.[124]

The proposals in the consultation paper form the basis of the provisions in Clauses 77-83 of the Bill. With the exception of Clause 82, which extends to Northern Ireland only, and Clause 83, which extends to England and Wales and Northern Ireland, these provisions extend to England and Wales only.

A. Fingerprints

Clause 77 is intended to amend PACE by allowing the police to take further fingerprints from an individual who has been charged with, or convicted of a recordable offence, from whom fingerprints have already been taken, if the fingerprints taken on the previous occasions were incomplete or if they are of insufficient quality to allow satisfactory analysis, comparison or matching. This will also be permitted where individuals have been cautioned for recordable offences or where young offenders have been given warnings or reprimands for recordable offences under the *Crime and Disorder Act 1998*.

"Recordable offences" are those offences set out in regulations made by the Secretary of State under section 27 of PACE.[125] The offences consist of all offences punishable with imprisonment, along with a number of other statutory offences.[126]

---

[122] Cm 2263 July 1993

[123] http://www.homeoffice.gov.uk/ppd/finger.htm or http://www.homeoffice.gov.uk/ppd/fingdna.pdf

[124] "Police to get new powers on DNA testing" – *Daily Telegraph* 20.1.2001

[125] *Police and Criminal Evidence Act 1984* s.118

[126] *National Police Records (Recordable Offences) Regulations 1985*, SI 1985/1941, as amended by SI 1989/694 and SI 1997/566

In its briefing for the second reading debate on the Bill Liberty said it did not support the extension of compulsory fingerprinting to those cautioned of a recordable offence. It added:

> A caution is not a criminal conviction. We consider these proposals further erode the nature of a caution as a low-level informal method of disposing of cases.

Clause 77 will also amend section section 61 of PACE by allowing the taking of fingerprints from a person detained at a police station without the person's consent to be authorised by an officer of the rank of inspector or above, rather than superintendent or above as at present. The Home Office consultation paper of July 1999 gave the following reasons for proposing this change:

> A senior officer may not always be in a position to give her/his immediate attention to the request for authorisation and the ensuing delay, while unlikely to be a problem when it occurs in a police station, may be less acceptable to both the subject of the check and the police officer instigating the check if this occurs "on the street". It would therefore seem sensible to increase the range of officers permitted to give the authorisation required.[127]

Provisions enabling officers of at least the rank of inspector, rather than superintendent, to authorise intimate searches, are set out in Clauses 78 and 79 of the Bill. The Bill's provisions concerning intimate searches are described in the next section of this paper. Liberty has said it is opposed to the lowering of the rank required to authorise the taking of fingerprints and samples without consent, as it is to the lowering of the rank required to authorise delay in notifying someone of a person' arrest.[128]

Clause 77 will permit the fingerprints of a person who has been arrested, fingerprinted and bailed to re-appear at a court or a police station to be retaken without consent if the court or a police officer of at least the rank of inspector authorises it. Authority may only be given in this case if there are reasonable grounds for believing that the person who has answered to bail is not the person from whom the fingerprints were previously taken or the person who has answered to bail claims to be a different person from the person who was previously fingerprinted.

Clause 77(6) is designed to enable fingerprints to be taken without consent from people who have been cautioned for recordable offences or given warnings or reprimands for recordable offences under the *Crime and Disorder Act 1998*, as well as form those who have been convicted of recordable offences.

---

[127] *Proposals for Revising Legislative Measures on Fingerprints, Footprints and DNA Samples* Home Office July 1999 paragraph 19

[128] see part B of Chapter V of this paper

Clause 77(8) seeks to extend the definition of "fingerprints", currently set out in section 65 of the *Police and Criminal Evidence Act 1984*, to include records in any form of the skin pattern and other physical characteristics or features of any of a person's fingers and either of the person's palms. The records may be in any form and produced by any method.

B. Intimate searches and samples

As the previous section of this paper has already noted, Clause 78 seeks to reduce from superintendent to inspector the lowest rank of police officer who may authorise an intimate search under section 55 of the *Police and Criminal Evidence Act 1984* and who may authorise such a search by a person other than someone with the specified qualification. Clause 79 also reduces from superintendent to inspector the lowest rank of police officer who may authorise the taking of intimate and non-intimate samples.

Clause 79(2) is designed to enable intimate samples, which may currently only be taken by a registered medical practitioner, to be taken by a registered nurse.

An "intimate sample" is defined by section 65 of the *Police and Criminal Evidence Act 1984* as:

a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
b) a dental impression;
c) a swab taken from a person's body orifice other than the mouth

A "non-intimate sample" is defined in the same section of the 1984 Act as:

a) a sample of hair other than pubic hair;
b) a sample taken from a nail or from under a nail;
c) a swab taken from any part of a person's body including the mouth but not any other body orifice;
d) saliva;
e) a footprint or a similar impression of any part of a person's body other than a part of his hand.

Clause 79(5) provides for the word "footprints", in the definition of non-intimate samples set out in section 65 of the 1984 Act, to be replaced by the term "skin impression", the definition of which extends beyond impressions of the foot to cover impressions made by any means of any parts of the body other than the hand.

Clause 79(3) seeks to enable an inspector to authorise the retaking of a skin impression from a person in detention or custody, without the person's consent, if an impression previously taken in the course of the investigation has proved insufficient.

Clause 79(6) states that samples may be regarded as "insufficient" where:

> as a consequence of-
>
> (a) the loss, destruction or contamination of the whole or any part of the sample,
>
> (b) any damage to the whole or a part of the sample, or
>
> (c) the use of the whole or a part of the sample for an analysis which produced no results or which produced results some or all of which must be regarded, in the circumstances, as unreliable,
>
> the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the sample

C. Speculative searches of fingerprint records and DNA databases

Section 63A of the *Police and Criminal Evidence Act 1984*, which was inserted by the *Criminal Justice and Public Order Act 1994*, allows fingerprints, samples and the information derived from them to be checked against other fingerprints and samples held by the various territorial police forces within the UK. This enables DNA profiles, for example, to be checked against the DNA database.

Clause 80 of the *Criminal Justice and Police Bill* is designed to extend the power in section 63A of the 1984 Act to enable fingerprints, DNA samples and the profiles derived from DNA samples to be checked against records held by a wider range of forces, such as the Ministry of Defence and Armed Forces police forces; the British Transport Police; public authorities involved in the investigation of crime or the charging of offenders "in any part of the British Islands"; and police and law enforcement authorities in countries or territories outside the UK.

The Home Office consultation paper included the following remarks about searching foreign DNA databases:

> Moves are afoot both within the EU and Interpol to facilitate the linking of member states' national DNA databases so that profiles held on one can be searched against profiles held on another. This will allow, for example, the DNA profile of a person charged with a serious sexual offence in the UK to be checked against the DNA profiles derived from crime stains recovered in any other country with a DNA database. However, as with fingerprints, the position as regards checks against samples held by foreign forces, the Ministry of Defence, the Armed Forces and Interpol (ICPO) requires clarification.[129]

Clause 80(2) also seeks to enable fingerprints or DNA samples provided for the purposes of elimination by people who are not suspects (for example in mass screenings of particular populations) to be entered on the database for the purpose of checking them against fingerprint and DNA records held by the other police forces specified in section

---

[129] *Proposals for Revising Legislative Measures on Fingerprints, Footprints and DNA Samples* Home Office July 1999 paragraph 53

63A. These records and samples will only be entered on the database if the person who provided them gives consent in writing. Any consent given will not be capable of being withdrawn.

The consultation paper *Proposals for revising legislative measures on fingerprints, footprints and DNA samples* also set out the Government's view of the need to retain DNA samples from volunteers:

> To date 110 mass DNA screens have been undertaken in the investigation of serious crime. Police experience has shown that certain individuals will fit the profile of possible suspects in more than one investigation and may therefore be approached a number of times to act as volunteer donors in mass screening exercises. This is because section 64 of PACE provides that if a volunteer DNA profile is negative when checked against the specific crime scene profile then the sample must be destroyed once the due legal process surrounding the specific offence in question is completed. Also, DNA profiles obtained voluntarily in the course of the investigation of a specific offence cannot be used in connection with the investigation of another offence.
>
> There is concern that an increasing number of people will refuse to give further samples if they continue to be approached by the same or a different police force on different occasions for different offences. Some volunteers have already queried why the initial sample and DNA profile cannot be retained and reused. The police believe that amendment of section 64 to permit the retention of samples, and the DNA profiles derived from samples, for use in future investigations would be mutually beneficial as volunteers would need to be approached by the police on only one occasion. The practicalities of this would need to be considered but clearly appropriate safeguards would be required to ensure, as a minimum, that samples were indeed being given and retained voluntarily and the right to withdraw consent at any time was available.[130]

In its briefing for the second reading debate on the Bill Liberty says:

> We object to the addition of public authorities to the list of bodies authorised to carry out speculative searches of the DNA database. We consider the functions for which such searches can be justified, i.e. detection of crime, are distinct functions of the police and related agencies, which are subject to codes of practice, training, discipline and complaints mechanisms.
>
> The proposed legislation is too widely drafted and may for example include local authorities that have a role in prosecuting noise nuisance cases. These bodies would not be subject to the checks, regulations, discipline or complaints mechanisms of the police and we are concerned that there would be insufficient safeguards and potential for abuse.

---

[130] *Proposals for revising legislative measures on fingerprints, footprints and DNA samples* Home Office July 1999 paragraphs 50-51 see [130] http://www.homeoffice.gov.uk/ppd/finger.htm

D. Restrictions on the use and destruction of fingerprints and samples

Section 64(1) to (3) of the *Police and Criminal Evidence Act 1984* provides that if fingerprints or samples are taken from a person in connection with the investigation of an offence and:

a) he is cleared of the offence; or
b) it is decided that he shall not be prosecuted for the offence and he has not admitted it and been dealt with by way of being cautioned by a constable; or
c) he is not suspected of having committed the offence;

the fingerprints or samples must be destroyed as soon as is practicable after the conclusion of the proceedings, or after the decision not to prosecute is taken, or as soon as they have fulfilled the purpose for which they were taken.

An exception to the requirement that samples be destroyed was, however, created by Section 57 of the *Criminal Justice and Public Order Act 1994*, which added two new subsections (subsections (3A) and (3B)) to Section 64 of the 1984 Act. Section 64(3A) states that samples which are required to be destroyed need not be destroyed if they were taken for the purpose of the investigation of an offence of which a person, from whom such a sample was taken, has been convicted. Information derived from the sample of any person who would otherwise be entitled to its destruction under subsections (1), (2) or (3) of section 64 of the 1984 Act may not, however, be used in evidence against the person so entitled or for the purposes of any investigation of an offence.

Section 64(3B) states that where samples are required to be destroyed under section 64 (1), (2) or (3) and subsection (3A) does not apply, information derived from the sample of any person entitled to its destruction under subsection (1), (2) or (3) above shall not be used-

(a) in evidence against the person so entitled; or
(b) for the purposes of any investigation of an offence.

In a written answer of October 31st 1995 David Maclean, who was then a Home Office minister, summarised the previous Government's view of arrangements for the retention and use of DNA samples as follows:

> **Mr. Beith:** To ask the Secretary of State for the Home Department if persons asked to give DNA samples during the investigation of crimes are notified that the samples will be retained for future reference, whether or not they are charged with or convicted of the crimes under investigation
>
> **Mr. Maclean:** When members of the public volunteer to give samples as part of a mass screening, the samples taken are compared only with the sample found at the scene of the crime under investigation. The samples are destroyed at the end

> of the investigation and the profiles derived from them are not retained on the DNA database.
>
> When a sample is taken from a person suspected of involvement in a recordable offence, the police are required to inform the person that the sample may be the subject of a speculative search. Whether and for how long the samples will be retained is dependent upon the outcome of the investigation.
>
> Samples taken from persons convicted of or cautioned for a recordable offence will be retained for the same period as the offender's criminal record on Phoenix. Samples taken from people who are acquitted or not proceeded against will be retained if another person from whom a sample has been taken in the same investigation is convicted of an offence. These samples may be needed for further comparative analysis if it is subsequently suggested that there has been a miscarriage of justice.
>
> DNA profiles will be retained in a searchable form on the DNA database only if the suspect is convicted of or cautioned for a recordable offence or if action against that individual is ongoing.[131]

Clause 81 (2) of the *Criminal Justice and Police Bill* is intended to remove the obligation to destroy fingerprints and samples when the individual from whom they were taken is not prosecuted or is cleared. The Government's reasons for making this change are set out in the *Explanatory Notes* as follows:

> An additional measure has been included to allow all lawfully taken fingerprints and DNA samples to be retained and used for the purposes of prevention and detection of crime and the prosecution of offences. This arises from the decisions of the Court of Appeal (Criminal Division) in R v Weir and R v B (Attorney General's reference No 3/199) May 2000. These raised the issue of whether the law relating to the retention and use of DNA samples on acquittal should be changed. In these two cases compelling DNA evidence that linked one suspect to a rape and the other to a murder could not be used and neither could be convicted. This was because at the time the matches were made both defendants had either been acquitted or a decision made not to proceed with the offences for which the DNA profiles were taken. Currently section 64 of PACE specifies that where a person is not prosecuted or is acquitted of the offence the sample must be destroyed and the information derived from it can not be used. The subsequent decision of the House of Lords overturned the ruling of the Court of Appeal. The House of Lords ruled that where a DNA sample fell to be destroyed but had not been, although section 64 of PACE prohibited its use in the investigation of any other offence, it did not make evidence obtained as a failure to comply with that prohibition inadmissible, but left it to the discretion of the trial judge. The Bill removes the requirement of destruction and provides that fingerprints and samples lawfully taken on suspicion of involvement in an offence or under the

[131] HC Deb Vol 265 c.166(W) 31.10.1995

> Terrorism Act can be used in the investigation of other offences. This new measure will bring the provisions of PACE for dealing with fingerprint and DNA evidence in line with other forms of evidence.

Clause 81 inserts relatively complex new provisions into section 64 of *the Police and Criminal Evidence Act 1984*, the intended effects of which are described in the *Explanatory Notes* as follows:

> *Subsection (2)* removes the obligation to destroy fingerprints and samples when the individual is cleared of the offence for which they were taken or a decision is made not to prosecute. The obligation to destroy is replaced by a rule to the effect that any fingerprints or samples retained can only be used for the purposes related to the prevention and detection of crime, the investigation of any offence or the conduct of any prosecution. The term "use" includes retaining fingerprints and information derived from samples on databases that will allow speculative searches. Thus if a match is established between an individual who has been cleared of an offence at a subsequent crime scene the police are able to use this information in the investigation of the crime.
>
> *Subsection (3)* and *(4)* have the effect that if a person, who is not a suspect, provides a sample or fingerprints voluntarily e.g. for the purposes of elimination, there is no obligation for him to allow his samples or fingerprints to be retained or used other than for the purpose for which they were taken. He will be asked whether he wishes to consent to their retention and use. Where consent is not given the fingerprints or samples must be destroyed and the information derived from them can not be used in evidence against the person concerned or for the purposes of investigation of any offence.

Provisions corresponding to Clause 81 for Northern Ireland are set out in Clause 82, and equivalent amendments to the *Terrorism Act 2000* are set out in Clause 83.

In its briefing for the second reading debate on the Bill Liberty makes the following comments about retention of the DNA samples and fingerprint records of people who have not been convicted:

> We oppose this provision as another infringement of basic rights of individuals. The taking and retention of DNA and fingerprint samples infringes individuals' right to privacy. Clearly samples can be taken and kept of suspected or convicted criminals already, for the purposes of prevention of crime. However these proposals extend the keeping of samples to those who have been convicted of no offence. There is no logical difference between this and the compilation of a mass DNA base of all individuals. Neither could be said to be a proportionate infringement of individuals right to privacy.
>
> Apart from the huge civil liberties implications of such measures, a practical effect would without a doubt be to prevent people from coming forward voluntarily to give samples for the purposes of elimination. Although DNA is often considered as being an infallible source of information, this is not the case, and there have been celebrated examples of mistaken identity. A DNA database of people who have committed offences, coupled with random others, may well

> prevent the police from properly investigating crimes on the basis that they already have someone whose DNA matches. This will not help to produce the targeted and focused policing that Liberty supports and believes works.

Some critics have suggested that the need for a larger database of DNA profiles for the purposes of comparison could be addressed by the introduction of automatic screening of the general population. An article in the *Daily Telegraph* on 20 January 2001 quotes the Home Secretary Jack Straw as saying, in response to a question asking why the Government was not proposing to introduce general screening, that the new measures in the Bill represented a proportionate response.[132]

VIII Police Training

A number of reports on police training have been published in recent years. In April 1999 Her Majesty's Inspectorate of Constabulary published *Managing Learning: A Study of Police Training*. The Police Federation published two reports on police training in 1998 and 1999[133] and a report on the organisation and funding of police training by Sir William Stubbs was published in July 1999. Police training also came under scrutiny in the context of the inquiry by Sir William MacPherson into the death of Stephen Lawrence.[134] The Home Affairs Committee conducted an inquiry on police training and recruitment and published a report on the subject in June 1999.[135] In November 1999 the Government published its response to this report[136] and the Home Office published a consultation document on *Police Training.*[137]

The Government received responses to its November 1999 consultation paper from all the main national police organisations, including the staff associations, police authorities and the Association of Chief Police Officers (ACPO). The *Explanatory Notes* for the *Criminal Justice and Police Bill* say that almost all of those who responded welcomed the opportunity to examine and debate police training, which was seen as key to what the police service does and can achieve. They also say that most of the responses broadly welcomed the Government's proposals.

The Government's proposals following consultation were published in *Police Training: The Way Forward*, published by the Home Office in May 2000.[138] The provisions in Part V of the *Criminal Justice and Police Bill* are designed to implement those measures in the

---

[132] Police to get new powers on DNA testing" – *Daily Telegraph* 20.1.2001

[133] *Project Forward* Police Federation (May 1998); *Police Training – What Next?* Police Federation (July 1999)

[134] *The Stephen Lawrence Inquiry* CM 4262 (2 volumes) February 1999.

[135] *Police Training and Recruitment* Fourth Report from the Home Affairs Committee Session 1998-99 HC 81 (2 volumes) 28 June 1999

[136] *Government reply to the Fourth Report from the Home Affairs Committee Session 1998-99: Police Training and Recruitment* HC 77 30 November 1999

[137] DEP 99/1858

[138] DEP 00/836

Government's proposals that require primary legislation. Other measures which are underway and which do not require primary legislation are summarised in the Explanatory Notes. The provisions in Part V of the Bill, which apply only to England and Wales are summarised in the *Explanatory Notes* as follows:

> Part V creates a new Central Police Training and Development Authority as a Non-Departmental Public Body (NDPB). The Authority will build on the services currently provided by National Police Training, which was established by the Home Office in 1993 with a remit to design, deliver and accredit training programmes for core policing operations. As an NDPB, the new Authority will have greater independence from the Home Office. The Bill allows the Secretary of State, in consultation with stakeholders, to establish a mandatory core curriculum and qualifications for police. It also strengthens the powers of the Secretary of State to require improvements in the quality of police training following an inspection undertaken by Her Majesty's Inspectorate of Constabulary.

IX Police Organisation

A. Police Authorities, NCIS and NCS

The *Police and Magistrates' Courts Act 1994* introduced a number of changes in police organisation, police ranks and the constitution of police authorities. The background to the measures in the legislation that became the 1994 Act is described in Library research paper 94/59 on *The Police and Magistrates' Courts Bill*. The 1994 Act and other police legislation was subsequently consolidated in the *Police Act 1996*. The *Police Act 1997* contained provisions which, amongst other things, provided a statutory basis for the National Criminal Intelligence Service (NCIS), the National Crime Squad (NCS) and the Service Authorities for NCIS and NCS. The provisions of the 1997 Act concerning NCIS and NCS were discussed in Library Research Paper 97/21 on *The Police Bill [Bill 88 of 1996/97]: National Policing Structures*.[139]

Clause 103 of the *Criminal Justice and Police Bill* is designed to amend the *Police Act 1996* by providing for the appointment of vice-chairman of police authorities. The *Explanatory Notes* say that most police authorities already appoint vice-chairmen and this provision is designed to make such appointments statutory. Clause 104 is designed to amend the *Police Acts* of 1996 and 1997 by removing the age limit which currently prevents people of more than 70 years of age from being members of police authorities; the service authorities for NCIS and NCS; or the selection panels that select independent members for the police and service authorities.

The payment of allowances to members of police authorities and the service authorities for NCIS and NCS is currently determined by the Secretary of State. Clause 105 seeks to

---

[139] http://hcl1.hclibrary.parliament.uk/rp97/rp97-021.pdf

amend the 1996 and 1997 Acts so as to enable these authorities to determine members' allowance payments for themselves. When making arrangements for members' allowances the authorities will have to have regard to any guidance on the payment of allowances given by the Secretary of State. The Secretary of State will also have the power to make regulations imposing limits on these payments. Any such regulations will be subject to the negative procedure.

B. The Service Authorities for NCIS and NCS

Under arrangements set out in Parts I and II of the *Police Act 1997*, the National Criminal Intelligence Service (NCIS) and the National Crime Squad (NCS) are currently maintained by service authorities which operates along similar lines to the police authorities that maintain police forces in England and Wales. The NCIS and NCS service authorities are funded through levies issued to police authorities in England and Wales. The NCIS service authority, as a UK-wide authority, also receives separately negotiated contributions from Scotland and Northern Ireland.

Clauses 109 and 112 of the Bill are designed to replace the provisions for levies with new provisions for annual grants which will be made to the service authorities by the Secretary of State. This part of the Bill also contains a number of other provisions which are seen as consequent upon the move to direct central government funding for the service authorities. These provisions are summarised in the *Explanatory Notes* as follows:

> Currently, the Audit Commission audits the accounts as is the case for police authorities. This Bill changes the auditing arrangements to provide for the National Audit Office to take on this role.
>
> As a result of the change in funding arrangements, this part of the Bill also disapplies a wide range of local government enactments that apply to the NCS Service Authority. Provision equivalent to that made by these local government enactments applies to the NCIS Service Authority by virtue of orders under section 44 of the Police Act 1997. Section 44 is also being repealed by the Bill and, accordingly, the orders under that section will cease to have effect.
>
> With the abolition of levies on police authorities, provision is made to reduce the number of members of the Service Authorities who are appointed to those Authorities by virtue of their membership of police authorities. At the same time, the NCIS and NCS Service Authority membership is being widened to encompass HM Customs and Excise and the Security Service. Also, changes to the criteria made by the Bill mean a wider range of police authority members will now be eligible for appointment as such members.
>
> At present, Directors General for NCIS and NCS are appointed (and removed) by the Service Authorities with the approval of the Secretary of State. The Bill provides for their appointment (and removal) by the Secretary of State. This is because under the new funding arrangements the Permanent Secretary of the Home Office will become the Departmental Accounting Officer (DAO) for NCIS and the NCS, and the Director General of each service will be that service's

> Accounting Officer (AO). The DAO is responsible for providing funds to both services and for ensuring that the financial and management controls applied by the services conform with the propriety and good financial management requirements applied by the department. The DAO is also accountable to Parliament for those funds. The Accounting Officer (AO) for NCIS and NCS is responsible for the overall organisation, management and staffing of the services and for ensuring that there is a high standard of financial management as a whole. The AO is responsible to Parliament for the resources under his control. By providing for the Secretary of State to make the appointments, the Bill enables him to ensure that each person appointed is competent to fulfil the role of Accounting Officer.[140]

The provisions of this Part of the Bill concerning NCIS extend to the whole of the UK.

C. Police Ranks

The ranks of deputy chief constable (and its equivalent rank of deputy assistant commissioner in the Metropolitan Police) and chief superintendent were abolished by the previous Government, with effect from 1 April 1995, when provisions in the *Police and Magistrates' Courts Act 1994* were brought into force. Abolition of these ranks had been recommended by the Sheehy report, published in 1993.[141] Police legislation was consolidated in the *Police Act 1996*, section 13(1) of which now provides that the ranks that may be held in a local police force in England and Wales must include, in addition to chief constable and assistant chief constable, the ranks of superintendent, chief inspector, inspector, sergeant and constable.

Concern was expressed during the passage through Parliament of the Bill that became the *Police and Magistrates' Courts Act 1994* that abolition of the ranks of deputy chief constable, deputy assistant commissioner in the Metropolitan Police and chief superintendent might leave gaps in the chain of command in times of emergency.[142] In a written answer to a question from Mrs Brinton on 2 March 1999 the Home Secretary, Jack Straw, said that following consultation with police service interests and the agreement of the Police Advisory Board, he had given approval for the ranks of Chief Superintendent and Deputy Chief Constable to be reintroduced as soon as possible.[143] Provisions designed to reintroduce the ranks of Deputy Assistant Commissioner of he Metropolitan Police, Deputy Chief Constable and Chief Superintendent are set out in Clauses 120-123 of the *Criminal Justice and Police Bill*. The Bill's *Explanatory Notes* set out the Government's reasons for re-introducing these ranks as follows:

---

[140] *Explanatory Notes* paragraphs 282-285

[141] *Report of the Inquiry into Police Responsibilities and Rewards* Cm 2280

[142] Extracts from the debate in the House of Lords on the abolition of these ranks can be found in Library Research Paper 94/59 p.19-22

[143] HC Deb 2 March 1999 c635W

> The abolition of the rank of deputy chief constable has given rise to concerns about the selection procedures for assistant chief constable (designate) and the arrangements for the direction and control of a police force. Under the present arrangements an assistant chief constable (designate), has responsibility for managing the police force in the absence of the chief constable. He or she is selected from among the serving assistant chief constables in the force by the chief constable. This procedure differs from other appointments to senior positions which are made by the police authority following the post being advertised and an open selection procedure. Selection by Chief Constable alone may provide an unintended obstacle to the career development of assistant chief constables. The rank of deputy assistant commissioner in the Metropolitan Police which is deemed equivalent to deputy chief constable is also re-introduced in the Bill.
>
> The arrangements for the direction and control of a force are being improved by providing that in the absence of both the chief constable and deputy chief constable the police authority would be able to temporarily designate one of the assistant chief constables to direct and control the force in their absence.
>
> The abolition of the rank of chief superintendent has led to inconsistencies and confusion with many police forces still using the term chief superintendent. It is now considered that there are advantages in having two superintendent ranks in terms of both command structures and personal positions.[144]

D. The right to silence in police disciplinary proceedings

Section 34 of the *Criminal Justice and Public Order Act 1994* permits inferences to be drawn in criminal proceedings from an accused person's failure, when being questioned under cautioned or charged, to mention any fact relied on in his defence in those proceedings, where the fact is one which, in the circumstances existing at the time, the accused could reasonably have been expected to mention. The background to the introduction of this and other provisions of the 1994 Act relating to what is colloquially referred to as the "right to silence" is described in Library Research Paper 94/1 *on Crime and Public Order – the Criminal Justice & Public Order Bill [Bill 9 of 1993/94]*.

In its report on *Police Disciplinary and Complaints Procedures*, published in December 1997, the Home Affairs Committee noted that:

> At present, if it is decided to instigate proceedings against an officer for a possible breach of the discipline code (whether following observation or an allegation from within the police, or following a complaint) then the investigating officer will notify the accused officer and caution the officer along the lines of the traditional criminal caution. The Criminal Justice and Public Order Act 1994 modified the criminal caution and right to silence in an important way in that,

---

[144] *Explanatory Notes* paragraphs 287-289

> although it would remain open to a defendant to say nothing, adverse inferences could be drawn where the defendant chose to do so in certain circumstances. This change had not been accompanied by an equivalent change to the caution in use in police proceedings. There is however universal agreement that the new caution would be more appropriate.[145]

The Committee recommended that the modifications to the right to silence in criminal proceedings, provided for in the 1994 Act, be applied also to police disciplinary proceedings.[146]

In its reply to the Committee's report the Government said it accepted the Committee's recommendation.[147] The need for a modified caution had already been accepted by all police staff associations and it was implemented on 1 April 1999, when new police discipline procedures were brought into effect.

Clause 124 of the Bill duly seeks to implement the Home Affairs Committee's recommendation concerning the right to silence by amending section 50 of the Police Act 1996 to enable regulations to be made applying section 34 of the 1994 Act in a modified form to those procedures which might lead to a sanction being imposed on a member of a police force. The *Explanatory Notes* say:

> Such regulations would allow a modified caution to be given when an officer is notified of an allegation of misconduct. If the officer then chooses to remain silent, the tribunal at the subsequent hearing will be able to draw inferences from this.

E. Pensions for members of NCIS and NCS and ACPO staff

When the *Police Act 1997*, which provided a statutory basis for NCIS and NCS, was being considered by Parliament it was decided that the two organisations should not adopt the Police Pension Scheme, but would have parallel pension schemes. The Explanatory Notes to the Bill say it later being clear that the schemes that had been envisaged could not be approved. Clause 125 is therefore designed to amend the *Police Pension Act 1976* to enable senior officers with fixed term appointments to NCIS and NCS to be included in the Police Pension Scheme.

The civilian staff of the ACPO secretariat initially came as members of the civil staff of the Metropolitan Police Service on secondment and were members of the Metropolitan Civil Staff Superannuation Scheme. As members of the secretariat are now employees of

---

[145] *Police Disciplinary and Complaints Procedures* First Report From The Home Affairs Committee Session 1997-98 HC 258-I p.xxxvi

[146] ibid. paragraph 109

[147] *Government Reply To The Procedures First Report From The Home Affairs Committee Session 1997-98: Police Disciplinary and Complaints Procedures* April 1998 p.xii

ACPO rather than members of the civil staff of the Metropolitan Police Service, and because the Metropolitan Civil Staff Superannuation Scheme is to be wound up following organisational changes made in the *Greater London Authority Act 1999*, the Government has decided to include the civilian staff of ACPO in the Principal Civil Service Pension Scheme. Clause 126 is designed to implement this change. The *Explanatory Notes* say that as the terms of the two schemes are the same, the switch will not result in any change to the pension entitlement of the staff concerned.

Appendix: Statistical information on the Criminal Justice and Police Bill *[Grahame Allen, Social and General Statistics Section]*

The statistical section of this paper looks at the latest data that is available on the broad areas covered in the *Criminal Justice and Police Bill*. Particular reference is given to court preceding statistics for offences where there are proposals in the bill to introduce spot penalty fines for disorderly behaviour, drug trafficking offender statistics and statistics relating to alcohol-related offences.

A. On the spot penalties for disorderly behaviour

Table 1, at the end of this section, shows the number of defendants aged 18 and over who were proceeded against, convicted, and fined at magistrates' courts in England and Wales, between 1995 and 1999, for those offences where fixed penalty notices are proposed in the *Criminal Justice and Police Bill*. Where possible the statistics are given for each offence-creating provision as identified in Part I Chapter I of the Bill. Where data are not available for specific offences, the group of offences of which the offence is a part is employed instead. Offences where this is applicable are accordingly highlighted in the summary text below.

Section 91 of the *Criminal Justice Act 1967* (c.80)

This offence is described as "buying or attempting to buy alcohol for consumption in a bar in licensed premises by a person under 18".[148] From table 1 it can be seen that the number of defendants aged 18 and over who were proceeded against, convicted, and fined at magistrates' courts in England and Wales for this offence increased by 39%, 43% and 39% respectively between 1995 and 1999. The number of offenders fined as a proportion of those convicted fell from 83% in 1995 to 81% in 1999, suggesting that a greater proportion of those defendants found guilty of this offence are receiving sentences other than fines, such as community service orders or imprisonment.

Section 12 of the *Licensing Act 1872* (c.94)

This offence is described as "being found drunk in a highway or other public place whether a building or not, or a licensed premises".[149] Court statistics are not readily available for this exact offence in all years. However, in 1999 there were 3,800 defendants aged 18 or over proceeded against at magistrates' courts for this offence. 3,500 were found guilty and of these 2,600 or 76% were ordered to pay a fine.

Section 80 of the *Explosives Act 1875* (c.17)

---

148 *Criminal Justice and Police Bill* Part I Chapter I.

149 *Criminal Statistics 2001 Codes*, Volume III, Part 1, Appendix 1, Part 1, Home Office

This offence is described as "throwing, casting or firing any fireworks in or into any highway, street, etc public place".[150] Consistent figures from the courts are not readily available for this offence. However, in 1999 there were 18 defendants aged 18 or over proceeded against at magistrates' courts for Explosives Acts offences. 15 were found guilty, and of these all but one defendant was sentenced to pay a fine.

Section 31 of the *Fire Services Act 1947* (c.41)

Described as "knowingly giving a false alarm to a fire brigade",[151] the number of defendants aged 18 and over who were proceeded against, convicted, and fined at Magistrates' Courts in England and Wales has fallen by 33%, 28% and 40% respectively between 1995 and 1999. This reduction coincides with a fall in the observed number of malicious false alarm fires attended by Fire Brigades in the UK of 30% over the period, from 115,000 in 1995 to a provisional 81,000 in 1999.[152]

Section 43(1)(b) of the *Telecommunications Act 1984* (c.12)

Described as "using public telecommunications system for sending message known to be false in order to cause annoyance",[153] data are not available for this subsection of the *Telecommunications Act 1984*. However table 1 gives the number of defendants aged 18 and over who were proceeded against, convicted, and fined at magistrates courts in England and Wales for all offences under Section 43 of the *Telecommunications Act 1984* between 1995 and 1999.

Section 5 of the *Public Order Act 1986* (c.64)

This offence is described as "threatening, abusive or insulting words or disorderly behaviour etc within hearing or sight of person likely to be caused harassment, alarm or distress".[154] The figures in table 1 represent only those defendants who committed an offence where the offence was not racially aggravated. This section of the *Public Order Act 1986* was as amended by the *Crime & Disorder Act* Section 31 (1)(c), (5).[155] Making the act of "racially aggravated harassment, alarm or distress" a separate offence. [156]

---

[150] ibid
[151] *Criminal Justice and Police Bill* Part I Chapter I
[152] *Fire Statistics United Kingdom 1999* Home Office Statistical Bulletin 20/00 8 November 2000.
[153] ibid
[154] ibid
[155] Provided by the Crime and Criminal Justice Unit of the Research, Development and Statistics Directorate, Home Office.
[156] *Criminal Statistics 2001 Codes*, Volume III, Part 1, Appendix 1, Part 1, Home Office.

Table 1
Number of Defendants Proceeded Against at the Magistrates Courts and Convicted at All Courts for Selected Summary Non Motoring Offences by Result England & Wales Aged 18 and Over

	1995				1996				1997			
	Total Proceeded against	Total Convicted	Fined	Fined as % of total Convicted	Total Proceeded against	Total Convicted	Fined	Fined as % of total Convicted	Total Proceeded against	Total Convicted	Fined	Fined as % of total Convicted
Section 31 of the Fire Services Act 1947	85	65	20	31%	75	58	19	33%	60	46	11	24%
Sections 55 and 56 of the British Transport Commission Act - not available separately	1,163	947	882	93%	1,150	982	923	94%	1,828	1,491	1,419	95%
Section 169c(3) of the Licencing Act 1964	4	2	1	50%	2	1	1	100%	5	2	2	100%
Section 91 of the Criminal Justics Act 1967	20,733	16,201	13,463	83%	25,646	20,014	16,638	83%	29,915	23,481	19,003	81%
Section 5(2) of the Criminal Law Act 1967	72	56	17	30%	54	41	14	34%	67	53	14	26%
Section 1(1) of the Criminal Damage Act 1971 - summary only	29,220	19,216	6,663	35%	29,470	19,471	6,772	35%	30,046	20,303	6,664	33%
Section 43 of the Telecommunications Act 1984 - subsection 1 b not available separately	1,305	861	343	40%	1,250	802	236	29%	1,276	822	210	26%
Section 5 of the Public Order Act 1986 - excludes offence of racially aggravated (this section as amended by Crime and Disorder Act)	18,896	11,984	8,212	69%	20,327	13,142	8,976	68%	21,205	14,078	9,518	68%
Other Sum Non Mot Offences	425,112	344,400	295,685	86%	498,733	414,379	364,405	88%	413,191	334,206	284,492	85%
Total Sum Non Mot Off E&W	496,590	393,732	325,286	83%	576,707	468,890	397,984	85%	497,593	394,482	321,333	81%

Table 1 Continued
Number of Defendants Proceeded Against at the Magistrates Courts and Convicted at All Courts for Selected Summary Non Motoring Offences by Result England & Wales
Aged 18 and Over

	1998				1999				Percentage change 1998 to 1999		
	Total Proceeded against	Total Convicted	Fined	Fined as % of total Convicted	Total Proceeded against	Total Convicted	Fined	Fined as % of total Convicted	Total Proceeded against	Total Convicted	Fined
Section 31 of the Fire Services Act 1947	44	33	10	30%	57	47	12	26%	-33%	-28%	-40%
Sections 55 and 56 of the British Transport Commission Act - not available separately	1,911	1,638	1,568	96%	1,665	1,327	1,276	96%	43%	40%	45%
Section 169c(3) of the Licencing Act 1964	5	1	1	100%	4	3	1	33%	0%	50%	0%
Section 91 of the Criminal Justics Act 1967	31,247	24,842	20,210	81%	28,876	23,174	18,716	81%	39%	43%	39%
Section 5(2) of the Criminal Law Act 1967	94	54	14	26%	69	49	15	31%	-4%	-13%	-12%
Section 1(1) of the Criminal Damage Act 1971 - summary only	31,002	21,341	7,355	34%	31,297	21,796	7,403	34%	7%	13%	11%
Section 43 of the Telecommunications Act 1984 - subsection 1 b not available separately	1,154	722	187	26%	1,110	645	172	27%	-15%	-25%	-50%
Section 5 of the Public Order Act 1986 - excludes offence of racially aggravated (this section as amended by Crime and Disorder Act)	21,446	14,692	9,935	68%	20,851	14,452	9,578	66%	10%	21%	17%
Other Sum Non Mot Offences	467,880	373,976	321,089	86%	436,503	345,107	291,677	85%	3%	0%	-1%
Total Sum Non Mot Off E&W	554,783	437,299	360,369	82%	520,432	406,600	328,850	81%	5%	3%	1%

Source: IRS 6665, Crime and Criminal Justice Unit of the Research, Development and Statistics Directorate, Home Office

B. Alcohol related crimes

Actual data on offences where the offender was under the influence of alcohol at the time they committed an offence are not routinely collected. Because of this, the published data analysis is normally based on victims of crime survey data, where respondents are asked in confidence about the factors surrounding incidents that have occurred to them. The main source of this type of information is the British Crime Survey (BCS) and the analysis in this section relies heavily on the information the 2000 BCS[157] provides.

Table 8 below reproduces table A6.11 from the 2000 BCS and shows the proportion of respondents who believed that the offender was under the influence of drink or drugs when they had been victims of violent crime incidents, as reported in the 1998 and 2000 BCS.

Table 8
Whether offender/s under the influence of drink or drugs in violent incidents (1998 and 2000 BCS)

	All violence		Domestic		Mugging		Stranger		Acquaintance	
	1998 %	2000 %	1998 %	2000 %	1998 %	2000 %	1998 %	2000 %	1998 %	2000 %
Under influence of drink										
Yes	41	40	33	44	15	17	57	53	44	36
No	49	50	59	55	50	68	31	34	52	54
Don't know	10	9	8	2	35	15	12	13	4	10
Unweighted N	*942*	*1,052*	*195*	*229*	*150*	*125*	*250*	*308*	*347*	*390*
Under influence of drugs										
Yes	17	18	11	12	15	19	22	16	18	22
No	54	56	79	81	28	45	36	39	57	56
Don't know	29	26	10	7	57	36	42	45	24	22
Unweighted N	*942*	*1,052*	*195*	*229*	*150*	*125*	*250*	*308*	*347*	*390*

Notes: (a) In 1998 there was one incident of acquaintance violence where the offender was said to be under school age.
(b) Not asked if offender identified as under school age.
(c) Results for mugging should be treated with caution due to the small number of incidents.

Source: *The 2000 British Crime Survey England and Wales* Home Office Statistical Bulletin 18/00 17 October 2000

Table 8 shows that the victims of violent crimes responded that they believed that 40% of all violent incidents, 44% of domestic incidents and 17% of mugging incidents had occurred when the offender was under the influence of alcohol. The relatively low number of mugging incidents where the respondent judged the offender was under the influence of drink, in both the 1998 and 2000 BCS, could reflect the findings of the BCS that 53% of mugging offences occurred in the morning or afternoon, while 61% of all violent incidents and 66% of domestic incidents were reported to have occurred in the evening or at night.[158] In the majority of stranger violence incidents (53%), the offender was more likely to have been judged by the victim to have been under the influence of drink than not, while in the majority of acquaintance incidents (54%) the offender was less likely to have been judged by the victim to have been under the influence of drink.

[157] *The 2000 British Crime Survey England and Wales* Home Office Statistical Bulletin 18/00 17 October 2000

[158] ibid. Table A6.7

Location of violent incidents

Table 9 below reproduces table A6.8 from the 2000 BCS and shows the location of violent incidents as reported by the victims in the 1998 and 2000 BCS.

Table 9
Location of violent incidents (1998 and 2000 BCS) (a)

	All violence		Domestic		Mugging		Stranger		Acquaintance	
	1998 %	2000 %	1998 %	2000 %	1998 %	2000 %	1998 %	2000 %	1998 %	2000 %
Around the home (b)	30	26	86	74	15	17	3	4	16	15
Around work (c)	13	17	<1	1	6	3	10	17	24	31
Street (d)	23	23	4	9	55	62	25	28	23	15
Pub or club (e)	20	19	3	5	4	4	39	33	23	22
Transport (f)	2	3	..	<1	5	5	4	8	1	<1
Other location	13	12	7	10	15	8	19	10	13	17
Unweighted N	*1,007*	*1,125*	*201*	*241*	*165*	*137*	*274*	*337*	*367*	*410*

Notes: (a) Excludes don't knows.
(b) Includes home premises, whether inside/outside or garage/shed, home car park or nearby street to home.
(c) Includes work premises, whether inside/outside or work garage car parks.
(d) Includes streets near work/college/sports ground/public entertainment/train or tube stations etc., subway, park/open spaces, waste grounds, and street markets.
(e) Includes pub/club premises, whether inside or nearby street/car parks.
(f) Includes train/tube/bus stations, airports; in 2000 'transport' category includes travelling in a car or in a taxi.
.. indicates there were no incidents in this category.
<1 indicates less than 0.5%.
Results for mugging should be treated with caution due to the small number of incidents.
Source: *The 2000 British Crime Survey England and Wales* Home Office Statistical Bulletin 18/00 17 October 2000

The results from the 2000 BCS, as shown in table 9, suggest that 19% of all violent incidents, 33% of violent incidents where the offender was a stranger, and 22% of incidents of violence where the offender was an acquaintance, occurred in pub or club premises, whether inside or in a nearby street or car park.

C. Drug Trafficking Offences

Part I of Chapter III of the *Criminal Justice and Police Bill* includes provision to restrict the ability of drug trafficking offenders to travel outside the UK. This section investigates drug trafficking; offences, court statistics on drug trafficking defendants and confiscation orders for drug trafficking offences.

Table 2 and the figure below it show the number of persons found guilty, cautioned, given a fiscal fine or dealt with by compounding[159] for drug offences in the UK between 1995 and 1998. As complete 1998 court data for Northern Ireland are unavailable, estimates of the number of persons found guilty, cautioned, given a fiscal fine or dealt with by compounding for drug offences in the UK for 1998 are provided, based on the available data from 1997.

[159] The payment of a penalty *in lieu* of prosecution.

Table 2
Persons found guilty, cautioned, given a fiscal fine or dealt with by compounding for drug trafficking offences (a)
United Kingdom

	1995	1996	1997	1998 (b)
All drug offences	93,631	95,199	113,154	128,786
Of which				
Drug trafficking offences	15,852	16,399	17,604	18,505
As a percentage of all drug offences	17%	17%	16%	14%

Notes: (a) Offences of unlawful production of drugs, unlawful supply, possession with intent to supply unlawfully and unlawful import or export
(b) 1998 data are House of Commons Library estimates due to court appearance data for Northern Ireland not being available

Source: *Drug Seizure and Offender Statistics, United Kingdom, 1998* Home Office Statistical Bulletin 3/00 16 February 2000

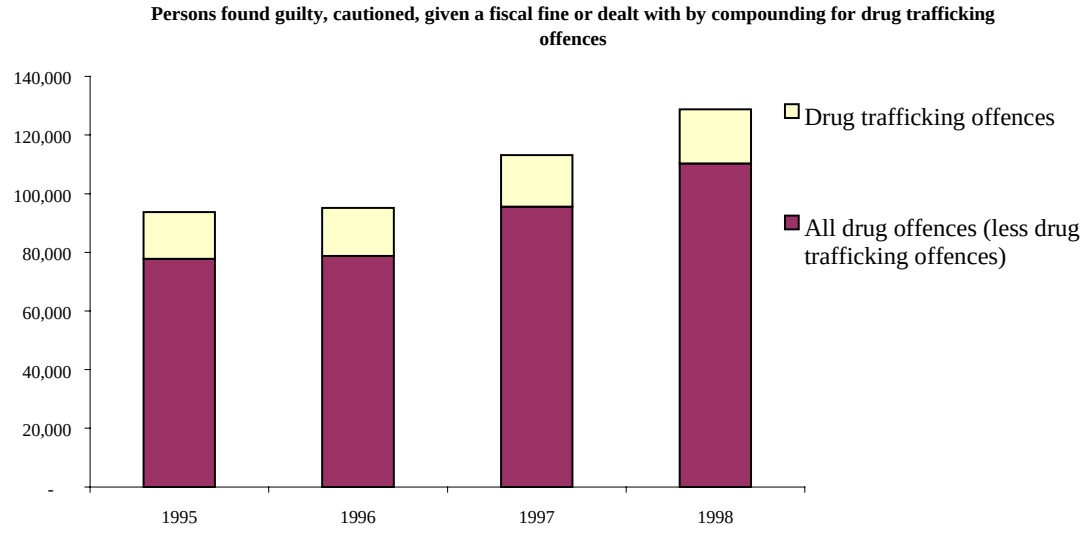

Table 2 shows that the number of persons found guilty, cautioned, given a fiscal fine or dealt with by compounding for all drug offences and for drug trafficking offences in the UK increased between 1995 and 1998 by an estimated 38% and 18% respectively. The number of persons found guilty, cautioned, given a fiscal fine or dealt with by compounding for drug trafficking offences as a percentage of all drug offences fell between 1995 and 1998, from 17% in 1995 to an estimated 14% of all drug offences in 1998.

A comparison of drug trafficking offences, as a percentage of all drug offences, for each police force and other authorities in the UK in 1998 is provided in the appended table 5 at the end of this section.[160]

[160] This is the data for the UK for 1998 prior to the calculation of the estimates that appear in table 2.

Table 3

Males aged 21 and over sentenced for indictable drug offences at the Crown Court: plea rates and custodial sentencing

England and Wales 1998

	Trafficking	Possession	All drug offences
Pleaded guilty (%)	82%	91%	82%
Custody rate			
Guilty	77%	27%	68%
Not guilty	90%	29%	86%
Average sentence length (mths)			
Guilty	31	8	32
Not guilty	48	11	63

Source: *Criminal Statistics England and Wales 1999* Home Office Cm 5001 December 2000

Table 3 above gives the plea rates and custodial sentencing rates of males, aged 21 and over, sentenced for indictable drug offences at the Crown Court in England and Wales in 1998. The table shows that in 1998 male drug trafficking offenders over 21, who were sentenced for indictable drug offences at the Crown Court in England and Wales, were less likely to have pleaded guilty (82%) than male drug possession offenders (91%). They were more likely to be given a custodial sentence than male drug possession offenders and all male drug offenders, which may be due to the relative seriousness of the offences for which they were tried. They were also more likely to be placed in custody if they pleaded not guilty (90%) than if they entered a plea of guilty (77%).

Male drug trafficking offenders over 21 who pleaded not guilty, and were given custodial sentences at the Crown Court in 1998, received a higher average sentence length (48 months) then those who pleaded guilty (31 months) and those who were found guilty of drug possession offences (8 and 11 months according to plea). However, all male drug offenders over 21, were given higher average sentences (32 and 63 months) at the Crown Court than male drug trafficking offenders (31 and 48 months) and those who were found guilty of drug possession offences (8 and 11 months). For comparison, the average length of sentence for males, aged 21 and over, given immediate sentence for all indictable offences at the Crown Court in England and Wales in 1998 was 24 months[161].

Table 4 below shows the number of offenders ordered to pay confiscation orders for drug trafficking offences and the amount confiscated between 1995 and 1999.

[161] *Criminal Statistics England and Wales 1999* Home Office, Cm 5001, December 2000.

Table 4
Offenders ordered to pay confiscation order for drug trafficking offences by amount
England and Wales

	Offenders sentenced at Crown Court for drug trafficking				
	1995	**1996**	**1997**	**1998**	**1999**
Total sentenced for drug trafficking offences (a)	6,199	7,373	8,370	6,998	6,577
Confiscation order not made	4,637	5,816	6,904	5,755	5,568
Confiscation order made					
under £1,000	1,117	1,117	1,032	855	682
£1,000 and under £3,000	224	217	224	185	147
£3,000 and under £10,000	120	118	127	111	99
£10,000 and under £30,000	56	64	56	56	45
£30,000 and under £100,000	20	32	19	26	23
£100,000 and under £300,000	12	6	6	7	9
£300,000 and under £1 million	9	1	1	1	2
£1 million and over	4	2	1	2	2
Total with order made	1,562	1,557	1,466	1,243	1,009
Orders made as a percentage of eligible offences	25	21	18	18	15
Total amount confiscated (£)	18,337,490	10,471,336	5,620,003	6,970,535	16,107,414
Average amount of confiscation order (£)	11,740	6,725	3,834	5,608	15,964

Notes: (a) Excludes offenders committed for sentence or where the sentence should have been awarded at the magistrates' court.

Source: *Criminal Statistics England and Wales 1999* Table 7.21, Home Office, Cm 5001, December 2000

As can be seen, the number of drug trafficking offences where a confiscation order was made, the orders made as a percentage of eligible offences and the total amount confiscated fell over the period. The number of drug trafficking offences, where a confiscation order was made, decreased from 1,500 in 1995 to 1,000 in 1999, a fall of 35%. The number of orders made as a percentage of eligible offences fell from 25% to 15% over the same period. However, the average amount ordered to be confiscated increased by £4,000, or 36%, from £12,000 in 1995 to £16,000 in 1999. This is likely to be due to a change in the size of confiscation orders made whose value was £1 million and over.

Table 5

Persons (a) found guilty, cautioned, given a fiscal fine or dealt with by compounding for drug offences by police forces and other authorities (b) by type of offence, 1998

United Kingdom

	All Offences	Trafficking offences ‡(C)	As % of All offences
England			
Avon & Somerset	2,074	353	17%
Bedfordshire	984	111	11%
Cambridgeshire	1,185	177	15%
Cheshire	2,266	296	13%
Cleveland	1,171	165	14%
Cumbria	1,274	240	19%
Derbyshire	1,399	232	17%
Devon & Cornwall	2,993	451	15%
Dorset	1,008	204	20%
Durham	493	206	42%
Essex	2,425	367	15%
Gloucestershire	1,386	148	11%
Greater Manchester	5,668	922	16%
Hampshire	3,041	505	17%
Hertfordshire	1,139	147	13%
Humberside	1,439	294	20%
Kent	3,286	493	15%
Lancashire	4,154	470	11%
Leicestershire	1,418	255	18%
Lincolnshire	1,128	136	12%
Merseyside	5,178	440	8%
Metropolitan (inc City of London)	29,385	2,349	8%
Norfolk	1,477	221	15%
Northamptonshire	1,107	204	18%
Northumbria	4,135	563	14%
North Yorkshire	1,358	169	12%
Nottinghamshire	1,770	291	16%
South Yorkshire	2,863	522	18%
Staffordshire	1,827	306	17%
Suffolk	1,404	292	21%
Surrey	1,241	132	11%
Sussex	1,924	316	16%
Thames Valley	2,335	429	18%
Warwickshire	705	120	17%
West Mercia	2,326	382	16%
West Midlands	6,353	709	11%
West Yorkshire	5,817	1,007	17%
Wiltshire	910	166	18%
Total England	112,046	14,790	13%
Wales			
Gwent	2,230	303	14%
Dyfed-Powys	2,125	242	11%
North Wales	1,720	233	14%
South Wales	3,169	485	15%
Total Wales	9,244	1,263	14%
Scotland			
Central	23	5	22%
Dumfries and Galloway	224	43	19%
Fife	489	150	31%
Grampian	962	162	17%
Lothian and Borders	844	230	27%
Northern	122	4	3%
Strathclyde	1,836	330	18%
Tayside	514	139	27%
Other authorities	1	1	100%
Total Scotland	5,015	1,064	21%
Northern Ireland			
Royal Ulster Constabulary	383	n.a.	n.a.
Total Northern Ireland	383	n.a.	n.a.
H.M. Customs and Excise UK	1,152	1,152	100%
All offenders			
England	112,046	14,790	13%
Wales	9,244	1,263	14%
Scotland	5,015	1,064	21%
Northern Ireland	383	n.a.	n.a.
Grand Total	**127,840**	**18,269**	**14%**

Notes:

(a) As a person may be found guilty, cautioned or dealt with by compounding for more than one type of offence columns cannot be added together to produce sub-totals or totals.
(b) Offenders dealt with following joint operations involving H.M Customs and Excise and the police are generally recorded against H.M. Customs and Excise.

(c) Unlawful import of export, unlawful production of drugs other than cannabis, unlawful supply and possession with intent to supply unlawfully.

Source: *Criminal Statistics England and Wales 1999* Area Tables, Home Office, Cm 5001, December 2000

D. Arrestable Offences

Part IV of the Bill proposes to amend Section 24(2) of the *Police and Criminal Evidence Act 1984* to include two new offences in the list of offences for which there is a power of summary arrest.[162]

Kerb crawling

The first of these is the offence of kerb crawling, which is presently an offence under Section 1 of the *Sexual Offences Act 1985* with a maximum sentence of £1,000. [163] Table 6 below shows the number of defendants aged 18 and over who were proceeded against, convicted, and fined at magistrates' courts for kerb crawling in England and Wales between 1995 and 1999.

Table 6
Number of Defendants Proceeded Against at the Magistrates Courts England and Wales

	Kerb Crawling			
	Total Proceeded against	Total Found Guilty	Fined	Fined as % of total Convicted
1995	1,344	1,148	1,088	95%
1996	1,339	1,162	1,124	97%
1997	1,045	887	854	96%
1998	903	766	738	96%
1999	759	651	623	96%
Percentage Change 1995 to 1999	-44%	-43%	-43%	

Source: *Criminal Statistics England and Wales 1999* Home Office Cm 5001 December 2000

As can be seen there were an average 1,100 defendants per annum aged 18 and over who were proceeded against at magistrates' courts for kerb crawling in England and Wales, between 1995 and 1999. The number of defendants aged 18 and over who were proceeded against, convicted and fined at magistrates' courts for kerb crawling in England and Wales all fell by just over 40%. However, the number of defendants fined at magistrates' courts for kerb crawling as a percentage of those found guilty increased slightly from 95% in 1995 to 96% in 1999.

---

[162] *Criminal Justice and Police Bill* Explanatory notes Part IV p33
[163] *Criminal Statistics 2001 Codes,* Volume III, Part 1, Appendix 1, Part 1, Home Office

Vehicle accident offences

The second offence that is to be included in the list of offences for which there is a power of summary arrest is failure to stop after an accident where personal injury is caused. This is presently an offence under Section 170 of the *Road Traffic Act 1988* for which in 2001 the maximum sentence is 6 months, £1,000 or both. [164]

Table 7 below shows a summary of how motoring offences have been dealt with by official police action between 1961 and 1999.

Table 7

Motoring offences dealt with by official police action

England and Wales *Thousands*

	Accident Offences	Licence, insurance and record keeping offences	Total
1961	20	330	1,335
1971	31	651	3,907
1981	58	1,058	7,079
1991	54	1,267	8,397
1995	34	1,372	6,018
1996	33	1,304	6,030
1997	33	1,278	6,074
1998	32	1,255	5,995
1999	30	1,228	5,582

Source: *Motoring Offences England and Wales 1998 and 1999*
Home Office Statistical Bulletin 26/00 19 December 2000

Table 7 shows that the number of accident offences where persons have failed to stop after, or report, an accident, vehicle information offences including insurance offences, and the total number of motoring offences have generally increased over the period. However, it must be remembered that the basis on which these statistics have been compiled has changed from year to year and comparisons between years should be made with caution.[165]

[164] *Criminal Statistics 2001 Codes*, Volume III, Part 1, Appendix 1, Part 1, Home Office

[165] *Motoring Offences England and Wales 1998 and 1999* Home Office Statistical Bulletin 26/00 19 December 2000