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# *The Anti-Terrorism, Crime and Security Bill: Part X:* **Police powers**

**Bill 49 of 2001-02**

*The Anti-Terrorism, Crime and Security Bill* [Bill 49 of 2001-02] seeks (amongst other things) to amend the *Terrorism Act 2000*. The Bill has attracted some controversy, not least in its proposals to extend the powers of the police, including the Ministry of Defence Police and British Transport Police.

This paper covers those parts of the Bill which deal with police powers. Papers covering other aspects of the Bill will be produced in time for the Second Reading Debate on 19 November 2001.

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## **Summary of main points**

The *Anti-Terrorism, Crime and Security Bill* seeks to amend various police powers, to ensure that the Government has the necessary means to counter the present threat from international terrorism.

The Bill would extend the power of the police, including the Ministry of Defence Police and British Transport Police. These measures have attracted some controversy. While the Government take the view that they are necessary to safeguard national security, others have argued that the measures might endanger human rights. This paper therefore seeks to examine some of the relevant issues and the background to the Bill's various measures.



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## **I Part X of the Bill: Police powers**

### **A. Current law**

#### **1. Fingerprinting of terrorist suspects**

The Library's research paper on the *Terrorism Bill 2000* is available on the parliamentary intranet.<sup>3</sup>

Schedule 8 of the *Terrorism Act 2000* makes provision for the taking of fingerprints from terrorist suspects. Fingerprints or non-intimate samples may be taken from the detained person without the appropriate consent only if he is detained at a police station and a police officer of at least the rank of superintendent authorises the fingerprints or sample to be taken, or he has been convicted of a recordable offence and, where a non-intimate sample is to be taken, he was convicted of the offence on or after 10th April 1995 (or 29th July 1996 where the non-intimate sample is to be taken in Northern Ireland).<sup>4</sup>

An officer may give an authorisation as described above only if in the case of a person detained under section 41, the officer reasonably suspects that the person has been involved in an offence under any of the provisions mentioned in section 40(1)(a), and the officer reasonably believes that the fingerprints or sample will tend to confirm or disprove his involvement, or in any case, the officer is satisfied that the taking of the fingerprints or sample from the person is necessary in order to assist in determining whether he falls within section 40(1)(b).<sup>5</sup>

The use of fingerprints or samples taken under this power is confined to terrorist investigations only.

#### **2. Searches of detained persons**

Section 54 of the *Police and Criminal Evidence Act 1984* (as amended) requires the custody officer at a police station to record everything which a person brings with him when he is arrested at the police station or brought there following arrest elsewhere or committed to custody by a court (section 54 (1)).

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<sup>3</sup> The *Terrorism Bill* [Bill 10 of 1999-2000] Research Paper 99/101 13 December 2001 – available at <http://hcl1.hclibrary.parliament.uk/rp99/rp99-101.pdf>

<sup>4</sup> paragraph 4

<sup>5</sup> paragraph 6

The custody officer may seize and retain any property. The person may be searched by a constable if the custody officer considers it necessary to enable him to carry out these duties, to the extent that the custody officer considers necessary (section 54 (6) and (8)), although intimate searches may not be conducted under this section (section 54 (7)).

### 3. Removal of face coverings

The *Criminal Justice and Public Order Act 1994* (as amended) enables police officers to require the removal of face coverings where these are worn to conceal identity. The Act provides :

[(1) If a police officer of or above the rank of inspector reasonably believes—

- (a) that incidents involving serious violence may take place in any locality in his police area, and that it is expedient to give an authorisation under this section to prevent their occurrence, or
- (b) that persons are carrying dangerous instruments or offensive weapons in any locality in his police area without good reason,

he may give an authorisation that the powers conferred by this section are to be exercisable at any place within that locality for a specified period not exceeding 24 hours.]

[...]

(4) This section confers on any constable in uniform power—

- (a) to stop any pedestrian and search him or anything carried by him for offensive weapons or dangerous instruments;
- (b) to stop any vehicle and search the vehicle, its driver and any passenger for offensive weapons or dangerous instruments.

[(4A) This section also confers on any constable in uniform power—

- (a) to require any person to remove any item which the constable reasonably believes that person is wearing wholly or mainly for the purpose of concealing his identity;
- (b) to seize any item which the constable reasonably believes any person intends to wear wholly or mainly for that purpose.]

(5) A constable may, in the exercise of [the powers conferred by subsection (4) above], stop any person or vehicle and make any search he thinks fit whether or not he has any grounds for suspecting that the person or vehicle is carrying weapons or articles of that kind.

[...]



Section 4A was inserted by section 25 of the *Crime and Disorder Act 1998*.

## **B. The *Anti-Terrorism, Crime and Security Bill* [Bill 49 of 2001-02]**

**Clause 88** of the Bill would amend the provisions of the *Terrorism Act 2000* by adding the establishment of a person's identity to the grounds for taking fingerprints. As the Explanatory Notes observe:<sup>6</sup>

197. [...] At present fingerprints may only be taken from a person detained under the Act to establish if he has been involved in certain offences under the Act or to establish if he has been concerned in the commission, preparation, or instigation of acts of terrorism.

**Clause 89** would add a new section 54A to the *Police and Criminal Evidence Act 1984* (PACE), whereby a police officer of at least the rank of inspector could authorise the search or examination of a person detained in a police station to ascertain whether he carries any mark identifying him as involved in committing an offence or for facilitating his identification. Such a search or examination could be carried out only where the suspect had withheld consent or where it was not practicable to obtain consent (sub-section 2) or where the person has refused consent or there are reasonable grounds for doubting that he is who he claims to be (sub-section 3).

Other provisions within the new section 54A include:

- Where a search or examination or the taking of a photograph are authorised, only constables and persons who are designated for the purposes of this section by the relevant chief officer of police, may carry out the search or examination or take the photograph. This subsection also applies section 117 of PACE, the use of reasonable force, to the exercise of the powers conferred by subsection (1) and (5) to designated non-constables (**sub-section 6**).
- A person may not carry out a search or examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex. Where a search involves the removal of more than outer clothing it will fall within the definition of a strip search for the purposes of PACE Code C and will be subject to the safeguards contained in the code in relation to the conduct of such a search (**sub-section 7**).
- Intimate searches (those of body orifices other than the mouth) may not be carried out under new Section 54 A (**sub-section 8**).

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<sup>6</sup> The *Terrorism Bill* [Bill 10 of 1999-2000] Research Paper 99/101 13 December 2001 – available at <http://hcl1.hclibrary.parliament.uk/rp99/rp99-101.pdf>

- A photograph of an identifying mark can be used by or disclosed to any person for the purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution and they can be subsequently retained, but then only used for a related purpose (**sub-section 9**).

Section 61 (4) of PACE sets out the grounds on which an officer of at least superintendent rank can authorise the taking of fingerprints of a person detained at a police station without the appropriate consent, where the officer has reasonable grounds (a) for suspecting the involvement of the person whose fingerprints are to be taken in a criminal offence and (b) for believing that his fingerprints will tend to confirm or disprove his involvement. **Sub-section 2 of clause 89** amends the grounds in s.61 (4)(b) so that an officer may authorise the taking of a person's fingerprints if the prints will facilitate the identification of the person. This power will only apply to a person who is detained at a police station and refuses to identify himself or there are reasonable grounds for doubting whether he is the person who he says he is. (**sub-section 2b**).

The Explanatory Notes describe the impact of the amendments to section 61 (4) of PACE, as amended by section 82 of the *Criminal Justice and Police Act 2001*:<sup>7</sup>

211. The effect of the amendments to section 61 (4) of PACE as amended by section 82 of the Criminal Justice and Police Act 2001 is that fingerprints taken for identification purposes will be retained in the same way in which fingerprints taken in order to prove or disprove involvement in a crime are now retained. In other words, fingerprints will be retained regardless of whether the person is proceeded against or convicted, but can be used only for the purposes of the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

**Clause 90** makes similar amendments to extend the powers on fingerprinting to Northern Ireland.

**Clause 91** would create a power to photograph people detained at police stations in England and Wales with or without consent. This would include the power to insist on the removal of (or to remove) any item or substances (such as face paint) covering all or part of the person's face or head (**sub-section 2**). Photographs would be taken by constables or others designated for the purpose by the relevant chief officer of police (**sub-section 3**). Clause 91 would make similar provision for Northern Ireland.

**Clause 93** would add a new section 60AA to the *Criminal Justice and Public Order Act 1994*, creating a wider power in Great Britain to require the removal of disguises. The Explanatory Notes observe that:<sup>8</sup>

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<sup>7</sup> The *Terrorism Bill* [Bill 10 of 1999-2000] Research Paper 99/101 13 December 2001 – available at <http://hcl1.hclibrary.parliament.uk/rp99/rp99-101.pdf>

222. *Subsection (1) of new section 60 AA* sets out the circumstances in which these powers may be used. These circumstances are where

- an authorisation under section 60 of the Criminal Justice and Public Order Act 1994 is in force; or
- an authorisation under subsection (3) is in force.

223. Currently an authorisation under section 60 may be given where a senior officer reasonably believes incidents involving serious violence may take place in any locality. It gives the police powers to stop and search pedestrians and vehicles for offensive weapons or dangerous instruments. It also gives power to require the removal of face coverings worn for the purpose of concealing identity and to seize any such items.

224. *Subsection (2)* of that section confers power on any constable in uniform:

- to require the removal of any item which he reasonably believes a person is wearing wholly or mainly for the purpose of concealing his identity;
- to seize any item which he reasonably believes any person intends to wear wholly or mainly for that purpose.

225. *Subsection (3)* describes the circumstances which must exist before the authorisation, referred to in subsection (1)(b), in order for an authorisation to be given. The circumstances are that a police officer of or above the rank of inspector reasonably believes that:

- activities may take place in that area that are likely, if they take place, to involve the commission of offences; and
- it is expedient in order to prevent or control the activities to give an authorisation.

226. The authorisation means that the powers mentioned in para 219 shall be exercisable at any place within that locality for a period of 24 hours.

227. *Subsection (4)* provides that an officer of or above the rank of superintendent may direct that the authorisation referred to in *subsection (3)* shall continue in force for a further 24 hours if it is expedient to do so, having regard to offences which have been committed in connection with the activities in respect of which the authorisation was given, or are reasonably suspected to have been so committed.

228. *Subsection (5)* states that if an authorisation under subsection (3) is given by an inspector, he must, as soon as it is practicable to do so, inform an officer of or above the rank of superintendent.

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<sup>8</sup> The *Terrorism Bill* [Bill 10 of 1999-2000] Research Paper 99/101 13 December 2001 – available at <http://hcl1.hclibrary.parliament.uk/rp99/rp99-101.pdf>

229. *Subsection (6)* specifies the contents of an authorisation. It must be in writing signed by the officer giving it and specify the grounds on which it is given; the locality in which the powers are exercisable; the period during which those powers are exercisable. A direction under *subsection (4)* shall also be given in writing or, where that is not practicable, be recorded in writing subsequently.

230. *Subsection (7)* creates an offence of failing to remove an item when required to do so by a constable in the exercise of his power under this section. The penalty for this offence is, on summary conviction, imprisonment for a term not exceeding one month or a fine not exceeding level 3 on the standard scale.

231. *Subsection (8)* states that the powers conferred by this section are in addition to, and not in derogation, of any power otherwise conferred.

232. *Subsections (2)-(4)* of Clause 67 make minor consequential amendments to the Criminal Justice and Public Order Act 1994 and the *Police and Criminal Evidence Act 1984*, making a power of arrest available for the offence in s.60AA(7).

**Clause 94** would amend the *Public Order (Northern Ireland) Order 1987*, with consequential amendments, to make similar provision for Northern Ireland.<sup>9</sup> **Clauses 95 and 96** would make further amendments to the *Public Order (Northern Ireland) Order 1987*, to make provisions on stop and search in anticipation of violence similar to those contained within section 60 of the *Criminal Justice and Public Order Act 1994* and to enable the Secretary of State to make regulations on the retention and disposal of seized material.

## II Ministry of Defence Police: Clauses 97, 98 and 100

Some of the measures within the Bill apply to both the Ministry of Defence Police and the British Transport Police. For completeness – and because of some differences in the policy background – this paper deals separately with each force.

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<sup>9</sup> Statutory Instrument 1987/463 (NI 7)

## **A. Background**

The Ministry of Defence Police (MDP)<sup>10</sup> is a national civilian police force whose key role is the investigation and prevention of crime within the defence estate. Its jurisdiction is defined in the *Ministry of Defence Police Act 1987*. Its officers have full constabulary powers within the area of their jurisdiction, and all uniformed officers are firearms trained.

The MDP was formed in 1971 from the unification of separate service constabularies. It became an MOD Agency in 1996 and the force is headed by a Chief Constable who is also the chief executive of the Agency. Since 1987 MDP officers have had the authority to operate on property in the vicinity of defence land when an officer from a local force requests them to do so but, beyond this definition, the jurisdiction of the MDP is confined to the defence estate and Crown property.

In January 2001 the MDP employed 3,629 police officers, which represents a reduction from the 5,000 in the force in 1987.<sup>11</sup> This reduction has arisen from a decision to replace some of the armed guarding posts filled by MDP officers with the new Military Provost Guard Service of locally engaged Service personnel. The grounds for this decision were that police officers with full constabulary powers were over-qualified for a straightforward guarding role and that using personnel specifically engaged for guarding duties would provide a more appropriate and cheaper option. The reduced number of MDP officers has affected the way they perform their duties: the MDP now includes 16 area policing teams, each covering a number of MoD establishments. The force makes increased use of mobile patrols, involving travel between defence establishments, which has brought MDP officers into greater contact with the public than was previously the case.

## **B. Summary of proposals**

Part 10 and Schedule 7 of the Bill proposes that the Ministry of Defence Police (MDP) be allowed to act outside MOD land when asked by a constable from the police forces listed. The MDP will also be able to act outside MOD land when responding to a specific incident and in an emergency. The proposals also allow the MDP to provide assistance, on request, to other forces, and extend to them certain powers in the *Terrorism Act 2000*.

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<sup>10</sup> The MDP should not be confused with the Service Police (also known as military police), which act as the specialist police forces of the armed forces and are manned by Service personnel. They are: the Royal Navy Regulating Branch; the Royal Marines Police; the Royal Military Police; and the Royal Air Force Police.

<sup>11</sup> Select Committee on the Armed Forces Bill, 13 March 2001, HC 154-II 2000-01, Appendix 6 p234.

## 1. Clause 97: Jurisdiction of MOD police

According to the Explanatory Notes the jurisdiction of the force has been reviewed “in light of the threat of terrorism and the changed deployment pattern of the MDP”.<sup>12</sup> The clause extends the MDP’s jurisdiction, by amending section 2 of the 1987 Act.

*Subsection (2)* of the clause repeals the existing power of the MDP (section 2(2) of the 1987 Act) to act on land in the vicinity of defence land in response to specific requests from a local police force. These powers are replaced by *subsection (4)*, which allows the MDP, where a request is made by a constable of a Home Department police force, the Police Service of Northern Ireland, the BTP or the UKAEAC, to assist him in the execution of his duties. The new powers are restricted to a particular incident, investigation or operation to which assistance is requested, they are not restricted to the vicinity of defence land. The powers will be exercisable in the area under the jurisdiction of the requesting police department.

*Subsection (4)* also deals with occasions on which MDP officers face emergencies where their normal jurisdiction would not apply. This might occur when it is not possible for the MDP to get timely authority from the local police force to deal with an incident. *Subsection (4)* allows an MDP officer in uniform or in possession of documentary evidence that they are members of the MDP, to act without a request for assistance from another police force, in limited circumstances. These circumstances include when an MDP officer has reasonable grounds for suspecting that:

... an offence is about to be committed, is being committed or has been committed, or where he reasonably believes that action is necessary to save life or prevent or minimise injury.<sup>13</sup>

Under the 1987 Act, the MDP has jurisdiction to investigate the alleged commission of offences by defence personnel anywhere in the UK not covered by section 2(2) of the Act. The Bill introduces *subsection (3)* which extends the jurisdiction to offences against defence personnel such as bribery.

## 2. Clause 98: Provision of assistance by MOD police

This clause allows the MDP to provide assistance, where requested by the chief police officers listed in the Bill, to enable their force to “meet any special demand on its

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<sup>12</sup> *Anti-terrorism, Crime and Security Bill*, Explanatory Notes, 12 November 2001, para 237.

<sup>13</sup> *ibid*, para 243.

resources”.<sup>14</sup> The clause inserts a new section (section 2A) in the 1987 Act. According to the Explanatory Notes, the new section provides that:<sup>15</sup>

... where MDP officers serve with other forces as a part of such assistance, they come under the direction of the chief officer of the force with which they are serving for the time being and have full powers of a constable of that force, (i.e. without the jurisdictional limits applying to MDP officers).

### **3. Clause 100: Further provisions**

This clause and Schedule 7 extends certain powers in the *Terrorism Act 2000* to the MDP. An amendment to section 34 of the *Terrorism Act 2000* will allow the MDP and BTP, under certain circumstances, to “designate areas in which cordons may be erected for the purposes of terrorist investigations”.<sup>16</sup> This will allow a uniformed MDP constable to order a person or vehicle to leave the cordoned area and any adjacent area, to remove any vehicle and restrict access.

An amendment to section 44 of the *Terrorism Act 2000* proposes to extend the stop and search powers of the MDP and BTP. In certain circumstances the BTP and MDP will be allowed to specify areas or places in which for up to 28 days the BTP or MDP can “stop and search vehicles, their occupants and pedestrians for the prevention of terrorism”.<sup>17</sup> Authorisation for such action to be carried out by any uniformed constable can be made by an assistant chief constable, or higher. Such orders must be confirmed by the Secretary of State within 48 hours.

## **C. Earlier Proposals**

Many of the proposals relating to the extension of the jurisdiction of the MDP are similar to ones proposed under the *Armed Forces Bill 2000-2001*. The Secretary of State for Defence, Geoff Hoon summarised the reasons for these proposals when giving evidence to the Select Committee on the Armed Forces Bill on 7 March 2001:<sup>18</sup>

Firstly, we now have some considerable experience, 13 years I think, of the operation of the 1987 Act which consolidated the powers in relation to the

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<sup>14</sup> *ibid*, para 244

<sup>15</sup> *Ibid*, para 244.

<sup>16</sup> *ibid*, para 257.

<sup>17</sup> *Ibid*, para 258.

<sup>18</sup> Select Committee on the Armed Forces Bill, 13 March 2001, HC 154-I 2000-01, xvi, para 36.

Ministry of Defence Police, which has demonstrated certain weaknesses, not significant weaknesses but areas where we judge it appropriate to bring the law up to date to reflect the current reality, and therefore these modest changes are designed to achieve that in the first place. Secondly, there have been some changes in the way in which the Ministry of Defence Police have operated since 1987, and in particular they have become more mobile, they have a jurisdiction in defence establishments but when they are organised to travel between defence establishments it seems to make sense, to me at any rate, that they should have certain rights between defence establishments. Thirdly, and perhaps most importantly as far as the number of changes are concerned, to facilitate co-operation between the Ministry of Defence Police and other police forces, to ensure that there is mutual support between people wearing police uniforms, and really the existing arrangements do not allow that to happen to the extent we believe should be appropriate.

The Select Committee on the Armed Forces Bill recommended an expansion of the MDP's role, but attached certain caveats:<sup>19</sup>

We believe that there is a case for giving MDP officers greater powers than that of a citizen when they are attempting to deal with emergency situations which they come across in fulfilling their normal duties. However, we would be completely opposed to the MDP actively seeking to increase its involvement in general policing duties which are the proper responsibility of local police forces. We recommend that, if and when these powers are conferred, the number of incidents dealt with by the MDP under their new powers are scrupulously monitored and that the MoD and the Chief Constable ensure that action is taken if there is any evidence emerging that the MDP are beginning to act frequently outside their specified areas of responsibility.

It continued:<sup>20</sup>

Continued effective co-operation and co-ordination of activities between the MDP and local police forces is a matter fundamental to public confidence in policing. We welcome the Secretary of State's assurance that the revised Protocols, once agreed, will be published and made readily available to the general public. We expect the MoD and the Home Office to monitor the operation of the revised Protocols with great care, with a view to further early revision if this proves necessary.

It added:<sup>21</sup>

We recommend that the revised Protocols between the MDP and local forces address the matter of where and when firearms are carried by MDP officers,

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<sup>19</sup> *ibid*, xvii, para 39.

<sup>20</sup> *ibid*, xx para 46.

<sup>21</sup> *ibid*, xxi, para 49.



specifically and in detail. The Chief Constable of the MDP should agree with his counterparts in local forces whether any additional measures are necessary to ensure that the provisions on firearms in the revised Protocols are clearly understood by all MDP and other civilian police officers, and that they are strictly adhered to.

Nevertheless, the MDP proposals caused sufficient controversy that they were withdrawn by the Government during the Bill's passage through the Lords, in order for the legislation to receive Royal Assent before the general election. Lord Burnham outlined some of the Opposition's reservations during the Second Reading debate:<sup>22</sup>

It is inconceivable that Her Majesty's Government should have thought it a good thing to include the highly contentious provisions designed to increase the powers of the Ministry of Defence Police in otherwise generally non-contentious...matters in the Bill. Those matters in part 4 [MDP] deserve a Bill of their own...

He added:<sup>23</sup>

In evidence to the Select Committee, military authorities, civil police, journalists and others expressed concern about what was proposed. I accept that something has to be done as at present there is considerable doubt about the extent of the powers of the Ministry of Defence Police and who controls them.

Some of the key issues raised by opponents, which have relevance to the proposals in the Anti-terrorism, Crime and Security Bill, are briefly summarised below:

## **1. Paramilitary Police?**

Concern was expressed by witnesses to the Select Committee on the Armed Forces Bill, and outside commentators, regarding the expanding role of the MDP. Witnesses to the Committee from the National Union of Journalists (NUJ) suggested that a consequence of the proposals might be to introduce a national police force. Some commentators went as far to suggest that proposals to broaden the MDP's jurisdiction beyond the narrow definition of the vicinity of defence land represented the beginning of the creation of a national force of "paramilitary riot police".<sup>24</sup>

The Police Federation of England and Wales raised concerns regarding the MDP's use of firearms in a letter submitted to the Committee:<sup>25</sup>

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<sup>22</sup> HL Deb 23 April 2001 Col23

<sup>23</sup> *ibid*, c24.

<sup>24</sup> *The Observer*, 4 February 2001

<sup>25</sup> Select Committee on the Armed Forces Bill, 13 March 2001, HC 154-II 2000-01, Appendix 5 p229.

The question is, justifiably, raised in the paper [Police Resources Unit, Home Office report] as to "*can we be sure that members of the public and indeed undercover police officers, will not be put at risk by armed intervention by MDP officers?*" It is suggested that there would be some comfort by the fact that the MDP Chief Constable must notify the local Chief Constable whenever it is intended that MDP officers are to be engaged in armed duty on public roads; the conclusion being (paragraph 29) that local forces would always know when MDP officers were carrying firearms. It would counsel perfection to anticipate that notice to a local Chief Constable would necessarily mean that all members of that force would then be aware that the MDP officers would then be armed. Whereas the paper suggests that the MDP Chief Constable has "*assured the Home Office and the Scottish Executive that MDP officers would use firearms off base only at the request of a local force*" the danger of armed MDP officers using firearms in circumstances where they were to come across an incident off base cannot be ruled out and indeed if there was any question of others being armed, then no doubt MDP officers may not be slow to use their own arms.

## 2. Accountability and independence

The MDP's accountability differs from Home Department police forces. The differences were summarised in the Select Committee on the Armed Forces Bill report of 13 March 2001:<sup>26</sup>

There is a police authority for each Home Department police force, with a statutory responsibility for securing the maintenance of an efficient and effective police force for its area and with a membership of local councillors, magistrates and independent members. Under the Police and Criminal Evidence Act 1984, police authorities have a legal responsibility to consult the general public: police community consultative groups, (in different forms and with different names) exist for all Home Department forces and hold regular public meetings. In contrast, MDP accountability procedures are contained within the Ministry of Defence. It is accountable to the Secretary of State, as an MoD Agency... Day to day responsibility for the MDP is delegated to the Second Permanent Under Secretary who is the owner of the Agency and who chairs the Ministry of Defence Police Committee. The committee's membership includes senior Service and police personnel, MoD officials, and... three independent members, of whom one is a trade union representative, and another represents the Army Families Federation.

Geoff Hoon assured the Committee that the MDP's relationship with the Police Complaints Authority is identical to that of other civilian police forces, whether its officers are operating on or off the MOD estate.<sup>27</sup>

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<sup>26</sup> Select Committee on the Armed Forces Bill, 13 March 2001, HC 154-I 2000-01, xviii para 40.

Witnesses to the Committee from the NUJ, two of whom had had well publicised problems with the MDP, pointed to accountability as a key issue. The Committee agreed that if the MDP is to come into more frequent contact with the general public, then this should be “accompanied by a form of external accountability comparable to the role performed by police authorities and police consultative committees in Home Department police forces”.<sup>28</sup> It recommended that the MOD Police Committee should in future have at least a third of its members from outside the civil service, the police service or the Armed Services.<sup>29</sup>

### **3. Training - Dealing with the general public**

The MDP carries out its training at its own Police Training Centre at Wethersfield in Essex. The Deputy Chief Constable of the MDP told the Committee that recruits were selected from the same pool as Home Department forces, to the same nationally agreed standards, and that training follows the national police training curriculum. Nevertheless, the Police Federation of England and Wales were critical of the suitability of the MDP for duties involving an increased interface with the general public:<sup>30</sup>

MDP officers do not have relevant experience. The Federation does not consider that MDP have an appropriate approach to recruitment nor do their officers have the appropriate training to encourage appropriate interface with the public. Such considerations being borne out within the Home Office submission.

The paper itself acknowledges that "*MDP is a specialist force*". The paper poses the question further:

*"It is necessary also to consider how far MDP officers have the opportunity to put their training regularly into practice in order to develop the necessary expertise to deal with the same range of situations and offences dealt with on a daily basis by home department force officers"*.

If, as this implies MDP officers do not currently have the necessary expertise or experience, then, in our view, it is clearly inappropriate that their jurisdiction be extended in a manner which would expose the public to officers who have not been appropriately trained or officers who do not have the appropriate level of experience.

While the Committee accepted that the training of MDP officers is of a standard comparable to Home Department forces, it expressed concern regarding the range of

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<sup>27</sup> *ibid*, xviii para 42

<sup>28</sup> *ibid*, xix para 42.

<sup>29</sup> *ibid*, xix para 41.

<sup>30</sup> *ibid*, Appendix 6 p234.

experience of MDP officers, particularly in dealing with the general public.<sup>31</sup> The Committee recommended that secondments be used as a way to build on the relationship between the MDP and local forces and to broaden the experience of MDP officers.<sup>32</sup>

### **III The British Transport Police: Clauses 99 and 100**

Clauses 99 and 100 make provision in relation to the British Transport Police.

#### **A. Background**

The British Transport Police (BTP) is the national police force for the railways throughout England, Scotland and Wales. The force is also responsible for policing the London Underground, the Docklands Light Railway, the Croydon Tramlink and the Midland Metro. Its main activities include law and order policing, maintaining the Queen's peace and protecting the staff and public on the railways. The force deals with all crimes, including murder, violence, sexual offences, robberies, thefts and fraud, and other incidents including accidents, fatalities and suicides.

The history of the force can be traced back to 1825, to the start of the railways in Britain and the beginning of modern policing. As the railway network spread across the country in 19th century Britain, and criminals discovered that offences could be committed on the move with rapid means of escape - in the same way that the modern motorway network has created similar opportunities - the need for a dedicated mobile police force, able to cross county boundaries, became evident. The network nature of the railway system also means that incidents affecting its operation in one location can reverberate down the system, creating knock-on effects for thousands of people many miles away. That is why the railway has special policing needs and why a national police force for the railways has always been a cost-effective solution.

There are now 2,101 officers and 83 special constables serving in the BTP and 624 civilian employees working for the force. In terms of size, that puts the force about middle ranking when compared with the 43 Home Office forces in England and Wales. The BTP dealt with almost 70,000 crimes in 2000-01 and 43,000 minor offences. They had an annual budget of £123 million in 2000/01 and a capital budget of £5 million.<sup>33</sup>

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<sup>31</sup> *ibid*, xxii para 52.

<sup>32</sup> *ibid*, xxii para 51.

<sup>33</sup> HL Deb 13 November 2001 c 527

The force is fully integrated into the British police service. It adopts Home Office police standards and procedures and it maintains close contact with local police forces. The selection process for BTP officers mirrors the requirements for all other police forces with some higher standards imposed in terms of eyesight due to the working environment. Chief officers are members of the Association of Chief Police Officers (ACPO). Training at all levels of the force, from recruits through specialist policing and the highest levels of management, is conducted alongside all other police forces. Because of the specialist environment, additional training has to be undertaken. That includes officer protection, track safety and management of major railway incidents.

Under the *Transport Act 1962* the British Railways Board (BRB) were required to prepare a scheme, for approval by the Secretary of State, concerning the organisation, control and administration of the BTP. The *Railways Act 1993* transferred these powers direct to the Secretary of State and they were used to amend the existing scheme in 1994. The scheme required that the BRB appoint a Committee to secure an adequate and efficient police service for the railway network. The Committee appoints the Chief Constable who is responsible for the administration of the force, but it is a duty of the Committee to supervise this administration and to give the Chief Constable such directions as may be necessary for that purpose.

The SRA (Strategic Rail Authority) was formally established under the *Transport Act 2000*, on 1 February 2001. The SRA has inherited the functions of the BRB and the Office of Passenger Rail Franchising. The SRA has also inherited from the BRB all the duties, functions and liabilities regarding the BTP and will operate in a very similar way. This is intended to be a short-term measure. The Government believes that the SRA is not an appropriate long-term home for a modern police force with responsibility for public policing, and that the BTP needs more direct public accountability.

## **B. Proposals for change**

### **1. Jurisdiction**

The BTP's jurisdiction depends on a mixture of Parliamentary Acts and private agreements with railway companies. At present BTP officers only have the powers and privileges of a constable when on railway business. But they are frequently called to assist other police officers and members of the public in emergencies off the railways. It is common for BTP officers to be called upon to intervene, for example, if coming across an incident when travelling by road, or when faced by a disturbance outside a railway station. In these situations they only have the powers of an ordinary citizen, thus placing BTP officers at unnecessary risk and reducing their ability to assist the public. It is estimated that approximately 8,000 incidents of this nature occur each year.

On 31 July 1998, the Government announced its intention to introduce legislation about the BTP with the following objectives:<sup>34</sup>

- to create an independent national police authority for the force;
- to place the jurisdiction of the BTP over the railways on a statutory basis;
- to give the BTP jurisdiction outside the railways in certain circumstances.

It is also proposed to include a fourth objective:

- to bring the BTP within the scope of certain police legislation which currently provides powers to other police forces but excludes the BTP.

On 11 October 2001 the Department of Transport, Local Government and the Regions (DTLR) published a consultation document on the future of the BTP.<sup>35</sup> The consultation document covers the four proposals set out above and consultation is due to end on 4 January 2002. The Home Office took the view that some of the weaknesses associated with the powers and jurisdiction of the BTP could be brought forward and included in the *Anti-terrorism, Crime and Security Bill [Bill 49 of 2001-02]*.

Chapter 5 of the consultation paper deals with the jurisdiction of the BTP and identified the problems and proposed solutions as follows:

### **Emergencies**

5.1 The lack of any jurisdiction for the BTP outside the railways has caused problems for many years. When acting in such circumstances BTP officers only have the powers of an ordinary citizen, not the powers or privileges of a constable. Yet it is common for BTP officers to be called upon to intervene, for example if coming across an incident when travelling by road, or when faced by a disturbance outside a railway station. It is estimated that approximately 8,000 incidents of this nature occur each year. This places officers helping to protect the public at unnecessary risk, has resulted in the discontinuance of criminal charges on several occasions and left members of the public confused and dissatisfied.

5.2 The 1995 and 1998 reports of HMIC recommended three specific circumstances where the BTP's jurisdiction should be extended outside the railways on non-railway matters:

- (i) when a BTP Officer is called on for assistance by a member of a Home Office police force;
- (ii) when a BTP Officer is called on for assistance by a member of the public;
- (iii) in an emergency.

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<sup>34</sup> "British Transport Police to get independent control" DETR press notice 31 July 1998

<sup>35</sup> *Modernising the British Transport Police: A Consultation Paper* DTLR 11 October 2001

5.3 An emergency could be defined as an occasion when a BTP officer judged it necessary to act immediately to:

- (i) prevent the injury of any person (including traffic accident injuries);
- (ii) prevent the commission of an offence involving the use of violence against any person which is being committed or about to be committed; and
- (iii) arrest a person whom he suspects on reasonable grounds of having committed an offence involving the use or threat of violence against any person.

5.4 This definition of an emergency was used in the Armed Forces Bill (now the Armed Forces Act 2001) for proposals to extend the jurisdiction of the Ministry of Defence police. These proposals were eventually dropped before the dissolution of Parliament, but it is the Government's intention to reintroduce them at some stage.

5.5 The Government accordingly proposes to grant the BTP statutory jurisdiction in these circumstances. To benefit from this jurisdiction the BTP officer would be required either to be in uniform or possess documentary evidence that he is a member of the BTP. It should be stressed that the prime function of the BTP would remain serving the railway businesses and the travelling public. This proposed change in jurisdiction would not alter this position. The intention is to regularise a situation that is already occurring as BTP officers assist other police forces and members of the public not extend the range of BTP activity.

5.6 It will be important for there to be legal clarity as to the different responsibilities when a BTP officer is acting outside the railways in these circumstances. We propose that to avoid confusion for the public the BTP officer should have the powers and privileges of a local Home Office police constable, and that when acting in support of the relevant Home Office police force that force's Chief Constable would retain primacy over the incident. However, the individual officer would continue to be deemed to be under the control and direction of the BTP's Chief Constable and insurance and liability would remain with the Authority and Chief Constable.

#### **Formal agreements with other police forces**

5.7 The Police Act 1996 allows Home Office police forces to provide assistance to each other to meet any special demands. Similar arrangements apply in Scotland. The Police Act also allows forces to enter into collaboration agreements with each other. In order to bring the BTP into line with this provision, we propose that the Chief Constable, with the Authority's approval, should be able to enter into similar agreements with any force in Great Britain. This could involve BTP constables operating outside the railways. In these circumstances they would require the same jurisdiction as the other force and they would have the same powers and privileges as the constables of the force they are assisting.

5.8 It is intended that use of these agreements should be extremely limited. The BTP is a force funded directly by the railways industry and the Authority should not subsidise the operations of Home Office police forces. However, there may be instances, such as the anti-capitalism riots in London, where the BTP would set up prior arrangements with the relevant Home Office police forces before the

event. It would be a duty of the Authority to ensure that the interests of the railway companies funding the BTP were protected at all times. The Authority could, for example, require that the arrangement be of direct benefit to the railways or that the other police authority meets any costs that do not benefit the railways.

5.9 British police forces from time to time give assistance to international organisations for operations outside the United Kingdom. We propose to empower the BTP to take part in such activities. Again, it would be important that the railway industry should not be expected to meet costs from which the railways do not benefit.

## **2. Statutory powers of the BTP**

The BTP have most of the powers and privileges of a Home Office police force but are currently excluded from a number of items of police legislation. Her Majesty's Inspectorate of Constabulary (HMIC) had noted that this reduced the effectiveness of the BTP. The DTLR consultation paper lists the statutory powers which the government considers should be extended to the BTP and the reasons why this might be necessary. The *Anti-terrorism, Crime and Security Bill* provides the BTP with a few of these extra powers. Amendments to the *Knives Act 1997*, the *Crime and Disorder Act 1998*, the *Road Traffic Offenders Act 1988*, the *Coroners Rules 1984* and Codes of Practice under the *Police and Criminal Evidence Act 1984* will be included in a future Bill.

### **C. The Bill**

Clause 99 of the Bill is to permit BTP officers to act outside their normal railways jurisdiction. This is intended to rectify all the weakness identified in Chapter 5 of the consultation paper, although it has been drafted in a different way from that originally envisaged. For example BTP assistance at the request of a member of the public has not been specifically provided for because assistance might be requested for purposes not connected with a crime.

Subsection (1) allows a BTP officer to assist a member of a Home Department police force, the Ministry of Defence Police (MDP) or the UK Atomic Energy Authority Constabulary (UKAEAC) when assistance is requested by them. The BTP officer can only assist in relation to a single incident, investigation or operation but will have the same powers and privileges of a constable of the requesting police force. This is to avoid confusion, so that there will be no difference in the powers available to the BTP officer on such an occasion and an officer from the other force whom he is assisting.



Subsection (2) allows a BTP officer to intervene if he reasonably believes that an offence has been, is or is about to be committed or in order to prevent injury or save life. In these circumstances the BTP officer will have the same powers and privileges of a Home Office police officer. A BTP officer can only act under subsection (2), if he satisfies the requirements of subsection (3).

Subsection (3) limits the circumstances when a BTP officer can act under subsection (2). He must be able to show evidence that he is a BTP officer i.e. be in uniform or have documentary proof, e.g. his warrant card. In addition he can only act if he reasonably believes that waiting for a request for assistance from the police force with primary jurisdiction (i.e. the local Home Department force, MDP or UKAEAC) or waiting for one of their officers to act, would frustrate or prejudice the purpose of his intended action.

Clause 100 and Schedule 7 provides the BTP with certain additional police powers currently available to local police force constables but not the BTP. Set out below is the extract from Chapter 6 of the DTLR consultation paper followed by the provision of the Bill, for each Act of Parliament to be amended in Schedule 7.

## 1. **Firearms Act 1968**

### *Section 54*

6.32 This section allows Home Office police officers to carry and use CS incapacitant spray by excluding crown servants from the provisions of the Act. However, unlike Home Office police constables, BTP officers are not crown servants and cannot carry CS spray under this provision.

### *Why the power is required*

6.33 The permanent issue of CS spray to BTP officers will assist them in protecting the public and aid their own personnel protection. BTP officers face the same potential for being subjected to violence as their colleagues in Home Office forces. In 1998/99 there were 184 assaults on BTP officers, in 1999/00 there were 194 and in 2000/01 there were 227, an increase of nearly 25% on the 1998/99 figures. As a temporary measure the Home Secretary has recently authorised the issue of CS Spray to BTP officers under a provision in the Firearms Act. The authority is only valid until July 2004. The BTP will not use CS spray other than in accordance with the guidelines that apply to Home Office police forces regarding the issue, possession and use of CS spray, including its use in confined spaces. While it would be possible to renew the temporary authorisation it would clearly be preferable to regularise the position. We accordingly propose, subject to this consultation, to bring forward a permanent solution that will allow BTP officers to carry CS spray according to the same guidelines as Home Office forces.

Section 54 of the *Firearms Act 1968* is amended to allow BTP officers and associated civilian employees to possess, purchase and acquire CS incapacitant sprays and ammunition used for such sprays, but not any other prohibited firearm.

## 2. **Police and Criminal Evidence Act 1984**

### *Section 35*

6.28 A chief officer can designate which police station can be used to detain arrested persons. The powers are linked to the concept of a 'police area', as defined by the Police Act, which does not apply to the BTP.

### *Why the power is required*

6.29 Any person that the BTP arrest and need to detain at present has to be transferred to a local Home Office police station. But new BTP facilities, particularly in London, are suitable for detaining arrested persons. This will improve efficiency and reduce the load on busy police stations, particularly in inner London.

Sections 35 and 36 of the *Police and Criminal Evidence Act 1994* are amended to allow the BTP's chief constable to designate police stations to be used to detain and arrested persons and to appoint custody officers for these stations.

### 3. *Criminal Justice and Public Order Act 1994*

#### *Section 60*

6.16 This section provides the powers of stop and search when it is reasonably believed that incidents involving serious violence may take place in a locality. Officers of the rank of superintendent or above must specify in writing the locality in which the powers are to be exercised and the period of time for which they are to be in force. The powers are linked to the concept of a 'police area', as defined by the Police Act, which does not apply to the BTP.

#### *Why the power is required*

6.17 BTP officers working on a railway station where potential violence is anticipated currently have to depend on a superintendent from a Home Office police force to authorise stop and search powers, which reduces the effectiveness of the response. The key role that the BTP plays in policing football crowds and major demonstrations in London makes this exclusion particularly anomalous. It also leaves the BTP vulnerable to challenge under the Human Rights Act.

#### *Sections 136-140*

6.20 These sections allow officers from England, Wales or Scotland to arrest in another country of the UK where it would be impractical to serve a summons for the same reasons that would justify an arrest in one of the other UK countries. The powers are linked to the concept of a 'police area', as defined by the Police Act, which does not apply to the BTP.

#### *Why the powers are required*

6.21 Sections 136-140 deal with cross-border powers. A BTP officer investigating an offence in, for example, Berwick-upon-Tweed and requiring to arrest a suspect in Scotland would either have to take out a warrant or call upon the local constabulary. The problem is particularly acute for the BTP as a national police force. A national police force needs the requisite cross-border powers to tackle transient crime on the railways. Currently BTP officers policing trains carrying, for example, football crowds across the border between England and Scotland need to be sworn in as constables in both countries.

Section 60 of the *Criminal Justice and Public Order Act 1994* is amended to allow a BTP officer of the rank of inspector or above to authorise in certain circumstances the use of stop and search powers, on or in the vicinity of premises policed by the BTP. Sections 136, 137 and 140 of the same Act are amended to allow arrest warrants issued in England, Wales or Scotland to be executed in either of the other two countries or a constable from England and Wales or Scotland to arrest someone suspected of committing an offence in their own country, but now present in one of the other countries. They also provide a constable from England, Wales or Scotland with the same reciprocal powers of arrest as a local constable when that officer is in either of the other two countries.

#### **4. *Police Act 1996***

##### *Sections 23, 24 & 25*

6.10 Section 23 allows a police force to enter a collaboration agreement with another police force, section 24 allows a police force to provide aid to other police forces and section 25 allows a police force to provide its services to any person subject to payment. The definitions of a 'chief officer' and 'police force' in section 101(1) of the Police Act exclude the BTP.

##### *Why the powers are required*

6.11 The powers are required to formalise and provide legal authority for informal arrangements that already exist in London for joint police operations. The BTP envisage that access to this legislation would allow them to extend joint operations to the rest of the country. These powers would also allow proper charges to be made if assistance is offered either way. This is increasingly important as budget accountability is tightened in pursuit of Best Value.

##### *Sections 90 and 91*

6.14 Section 90 makes it a criminal offence to impersonate a police officer and section 91 makes it a criminal offence to cause disaffection in a police force (i.e. advocate strikes). Again the definition of a 'police force' in section 101(1) of the Police Act excludes the BTP.

##### *Why the powers are required*

6.15 There is no comparable legislation for the BTP on 'causing disaffection'. This will bring the BTP in line with conditions preventing Home Office police officers from striking.

Section 23 of the *Police Act 1996* will enable, subject to payment, the BTP to enter collaboration agreements with other police forces. The amendment of section 24 will allow, subject to payment, the BTP to provide aid to other police forces to meet special demands on that other force. When providing such aid, the BTP officer will be under the direction and control of the chief officer of that other force. The amendment to section 25 will allow the BTP to provide special police services to any person, subject to payment.

Amendment of sections 90 and 91 of the *Police Act 1996* will make it an offence to impersonate a BTP constable or cause disaffection in the BTP (e.g. advocating strikes).

#### **5. *Terrorism Act 2000***

##### *Sections 33-36 and Sections 44-47*

6.4 These sections provide powers to erect cordons and stop and search persons, vehicles and pedestrians. Currently the BTP are excluded as the powers are linked to the concept of a 'police area', as defined by the Police Act 1996, which does not apply to the BTP.

*Why the powers are required*

6.5 Since 1997, over half the terrorist attacks on the mainland have taken place on the railway. The BTP is second only to the Metropolitan Police in dealing with the number of terrorist threats that are made within its jurisdiction. An HMIC Report in 1998 commended the provision of BTP officers to railway-related bomb threats as 'outstanding and an example to other forces.'

6.6 With the advent of the Human Rights Act and the potential number of challenges to police officers' powers, it is important that the BTP have appropriate safeguards on their own jurisdiction.

Section 34 of the *Terrorism Act 2000* is to allow the BTP as well as the MDP in certain circumstances to designate areas in which cordons may be erected for the purposes of terrorist investigations. This will allow a constable in uniform to order a person or vehicle to leave the cordoned area and any adjacent area, to remove any vehicle and restrict access. Section 44 is amended to allow the BTP (and the MDP) to specify areas or places, in which for up to 28 days, the BTP or MDP can stop and search vehicles, their occupants and pedestrians for the prevention of terrorism. An assistant chief constable or higher, may authorise any uniformed constable to stop and search pedestrians or vehicles. The Secretary of State must confirm such orders within 48 hours.

## **IV Reactions to part X of the Bill**

In considering the Bill, the Joint Committee on Human Rights noted that the extension of police powers entailed by the Bill would raise issues of proportionality and respect for family life and expressed concern that such measures were being rushed through Parliament. The Committee urged that there should be additional safeguards:<sup>36</sup>

### **PART 10 OF THE BILL: POLICE POWERS**

61. Part 10 of the Bill would increase police powers in relation to the identification of certain classes of people. [...] These provisions engage the right to respect for private life under Article 8(1) of the ECHR, and give rise to delicate issues of proportionality in taking account of the seriousness of offences and the extent of the invasion of a person's physical and moral integrity when assessing proportionality. We are concerned about such provisions relating to the powers of the police being hurried through Parliament as part of a Bill which purports to be aimed primarily at taking emergency measures in respect of terrorism. We are particularly concerned that the Bill does not make clear the steps (if any) which would be taken to ensure that the regime covering the taking, storage, cross-matching, retention, disclosure and destruction of such photographs will contain

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<sup>36</sup> *Anti-Terrorism, Crime and Security Bill* Joint Committee On Human Rights - Second Report: HL 37 HC, 372 16 November 2001 - available at <http://pubs1.tso.parliament.uk/pa/jt200102/jtselect/jtrights/037/3704.htm#a11>

safeguards sufficient to ensure that the process as a whole, and each stage in it, would meet the justifying requirements of Article 8(2).

**62. We regard the provisions relating to police powers contained in clauses 88 to 92 of the Bill as being in need of additional safeguards and mature consideration, and accordingly draw them to the attention of each House.**

The Committee also expressed concern that the power to require the removal of face coverings might raise cultural and religious sensitivities and urged both Houses to scrutinise these proposals carefully:<sup>37</sup>

64. The removal of face coverings may be a matter of sensitivity to certain people, for example on religious grounds. These may include Muslims, especially Muslim women, and particularly at the moment. The provisions risk being seen as authorizing an unreasonable and disproportionate interference with their dignity, their right to respect for private life under Article 8 of the ECHR, and their right to manifest their religion under Article 9. Furthermore, the provisions may be considered disproportionate to the problem they seek to remedy since they extend a power to less serious offences while reducing the level of authority needed to exercise it. **We consider that the measures relating to the powers of police to remove face coverings should be subjected to the most careful scrutiny on human rights grounds, and accordingly draw them to the attention of each House.**

The Committee also expressed doubts about the proposals relating to the British Transport Police and MOD Police, suggesting that the measures within the Bill did not offer adequate protection against abuse of human rights:<sup>38</sup>

66. The provisions relating to the MDP were originally contained in the Armed Forces Bill introduced to Parliament in the 2000-01 session. They were examined closely by the Commons Select Committee which considered the Bill but eventually endorsed by it with qualifications. They were dropped from it in the Lords as part of the pre-election dealing.

67. Alongside these provisions, we observe that clause 76(3)-(6), in Part 8 of the Bill, would permit special constables appointed by the Atomic Energy Authority to exercise all the powers and privileges (and be liable to the duties and responsibilities) of a constable at any place within 5 km of a nuclear site. They would have the same powers and responsibilities at any place outside that area if they are protecting nuclear material in transit or pursuing people reasonably believed to have unlawfully removed or interfered with, or attempted to remove or interfere with, nuclear material being guarded by them. The powers extend to United Kingdom waters adjacent to Great Britain.

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<sup>37</sup> *Anti-Terrorism, Crime and Security Bill* Joint Committee On Human Rights - Second Report: HL 37 HC, 372 16 November 2001

<sup>38</sup> *ibid*

68. The powers which would be conferred are capable of engaging rights under Articles 2, 3, 5, 6, 8, 9, 10 and 11 of, and Article 1 of Protocol No. 1 to, the ECHR. The ordinary constabularies are subject to elaborate mechanisms designed to provide safeguards for those rights, including subjection to various Codes of Practice, recording requirements, complaints procedures, and training programmes. These safeguards usually make it possible to say that the exercise of police powers which interfere with Convention rights will normally be justifiable within the terms of the ECHR. It is not clear how those safeguards will be applied to, and operated by, the Ministry of Defence Police, the British Transport Police, and the Atomic Energy Authority special constables. **Until the extent to which the safeguards surrounding the procedures of Home Office police forces will apply to the Ministry of Defence Police, the British Transport Police, and the Atomic Energy Authority special constables in their new functions is clarified, we are unable to be confident that the Bill provides adequate safeguards against abuse of or interference in human rights. We draw these matters to the attention of each House.**

In its briefing for the Bill's second reading, Liberty (the National Council for Civil Liberties) argued that some of the measures within the Bill went beyond what was required to meet the terrorist threat and were superfluous:<sup>39</sup>

**Clause 89** is a further provision which is not specifically related to the terrorist threat and which should form no part of this "emergency measure".

Since the Criminal Justice and Police Act 2000 the fingerprints of those acquitted or not prosecuted for offences are no longer destroyed but instead can be retained indefinitely. The provisions in this Bill substantially extend the circumstances under which fingerprints can be taken and this will lead to substantial numbers of people who have been mistakenly arrested to have their fingerprints kept.

These powers are not needed in practice because if the person is charged with a serious offence one of the factors that will be taken into account before they are released on bail will be whether the police are convinced about their identity. If they are not then bail will not be granted.

The provisions in **clause 91** to take photographs by force if necessary is a new general power not related to the terrorist threat. The power for the police to take pictures for identification purposes is already available in the Terrorism Act 2000 (Schedule 8, paragraph 2).

**Clause 93** provides a power for the police to demand the removal of items of clothing which the officer believes are designed to conceal identity. Failure to do so constitutes a criminal offence and one which can result in imprisonment for up

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<sup>39</sup> *Anti-Terrorism, Crime And Security Bill 2001: Briefing For The Second Reading In The House Of Commons* Liberty (The National Council For Civil Liberties): November 2001

to one month. This provision is not directed at suspected terrorists or even those suspected of crime but will apply automatically to all those in the designated locality. This provision should not be in this Bill.

The provision should be restricted to where the person is a suspect of terrorism. The offence does not provide a defence of "reasonable excuse" for refusal and in the context of the Bill we are concerned that this provision will be targeted at the Islamic community. There are no apparent safeguards to ensure such religious groups are protected and that relations with such communities are not damaged further. Thought should be given to more sensitive arrangements where those who are required to remove such clothing are given the opportunity of doing so in private and in the presence of a police officer of the same sex.

Some of these views were echoed in comments from the Law Society:<sup>40</sup>

It is not clear what emergency need is met by inclusion of these provisions in this Bill.

Police powers are extended in several ways which appear to be entirely unrelated to investigation of terrorist activities. For example, Clause 89 gives the power to search a detained person's body for a distinguishing mark.

Perhaps more controversially, the police are also given powers to insist on the removal of head coverings when a photograph is taken of a suspect and to insist on removal of any garment reasonably thought to be a disguise when in a pre-designated area or time ( e.g. in a demonstration). It is hard to see that these powers can be justified as being included in this Bill unless aimed at those wearing turbans or veils. This is surely in conflict with the principle behind creating a religiously aggravated offence

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<sup>40</sup> *Anti-Terrorism, Crime & Security Bill Second Reading – House of Commons Law Society Parliamentary Brief 19 November 2001*



## V Abbreviations

<b>BTP</b>	British Transport Police
<b>BRB</b>	British Railways Board
<b>SRA</b>	Strategic Rail Authority
<b>MDP</b>	Ministry of Defence Police
<b>UKAEAC</b>	United Kingdom Atomic Energy Constabulary
<b>DTLR</b>	Department of Transport, Local Government and the Regions
<b>HMIC</b>	Her Majesty's Inspectorate of Constabulary
<b>PACE</b>	<i>Police and Criminal Evidence Act 1984</i>