RESEARCH PAPER 04/89
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The *Serious Organised Crime and Police Bill* - Police Powers, Public Order and Miscellaneous Provisions

Bill 5 of 2004-05

The Serious Organised Crime and Police Bill was published on 24 November 2004 and is due to be debated on second reading on Tuesday 7 December 2004.

The Bill would: establish the Serious Organised Crime Agency; give investigating authorities new powers to compel individuals to answer questions or produce relevant documents; formalise and add to the existing arrangements relating to "Queen's Evidence"; and introduce a power to impose financial reporting requirements post-sentence.

The Bill would also: make all offences arrestable; make search warrants more flexible; give Community Support Officers new powers; extend harassment laws to deal with animal rights extremists; bring in a new offence of incitement to religious hatred; and allow the police to impose conditions on protestors outside Parliament.

This Research Paper deals with the new police powers, public order offences and miscellaneous provisions which are set out in parts 3-5 of the Bill. The Serious Organised Crime Agency and other measures to deal with organised crime in parts 1 and 2 of the Bill are covered in Library Research Paper 04/88.

Pat Strickland

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Summary of main points

Parts 1 and 2 of the Bill would introduce the new Serious Organised Crime Agency and provide new powers for law enforcement agencies dealing with serious organised crime. These parts are covered in a separate paper, Library Research Paper 04/88.

Part 3 of the Bill will provide for new police powers which were proposed in a Green Paper, *Modernising Police Powers to Meet Community Needs.*

The Bill would make all offences arrestable where particular reasons apply, and make arrest warrants more flexible by allowing access to multiple premises and extending the duration from one month to three. Some of these changes have caused controversy amongst some civil liberties organisations but have been welcomed by organisations representing the police.

Other provisions in part 3 would give Community Support Officers new powers, including directing traffic, searching detained people for dangerous articles and deterring begging. Again, there have been mixed views on this.

Part 4 of the Bill would extend harassment laws to deal with animal rights extremists, and introduce a new offence of incitement to religious hatred.

Part 4 would also criminalise trespass on certain designated sites. This would cover Crown property, and land owned privately by the Monarch or the immediate heir to the Throne. The Secretary of State could also designate further sites for security reasons.

There is also a provision to allow the police to impose conditions on protestors outside Parliament.

Part 5 of the Bill contains miscellaneous provisions including:

- a new offence of using an incorrectly registered vehicle;
- police powers to seize uninsured vehicles;
- abolition of the Royal Parks Constabulary, the staff of which will be transferred to the Metropolitan Police; and
- a change to the evidential test to make it easier to obtain a witness summons before a trial starts.

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I Introduction

The Serious Organised Crime and Police Bill was published on 24 November 2004 and is due to be debated on second reading on Tuesday 7 December 2004.

This Research Paper discusses parts 3, 4 and 5 of the Bill. Part 3 of the Bill provides new police powers. Under the provisions, all offences would become arrestable, rather than just the more serious ones, and search warrants would become more flexible. There are also new powers for Community Support Officers. Part 4 deals with public order offences. It introduces changes to harassment laws to deal with animal rights extremists, introduces a new offence of incitement to religious hatred; and allows the police to impose conditions on protestors outside Parliament. It also criminalises trespass on designated sites, including the Queen's private property. Part 5 contains miscellaneous provisions. It includes:

- a new offence of using an incorrectly registered vehicle,
- police powers to seize uninsured vehicles,
- abolition of the Royal Parks Constabulary, the staff of which will be transferred to the Metropolitan Police
- Changes to ensure that prosecutions of Chief Constables under Health and Safety legislation are brought against the office rather than the individual incumbent
- Some changes to criminal records checks to give effect to recommendations from the Bichard report on the Soham murders
- a change to the evidential test to make it easier to obtain a witness summons before a trial starts

Parts 1 and 2 of the Bill, which are discussed Library Research Paper 04/88, establish the Serious Organised Crime Agency; give new powers to compel individuals to answer questions or produce relevant documents; formalise and add to the existing arrangements relating to "Queen's Evidence"; and introduce a power to impose financial reporting requirements post sentence.

Most of the provisions discussed in this paper extend only to England and Wales. However, the new vehicle registration offence and the criminal records provisions also extend to Scotland and Northern Ireland. Powers to seize uninsured vehicles and the changes to police liability extend for health and safety breaches extend to Scotland as well as England and Wales.

II Policing in England and Wales

There are 43 regional police forces in England and Wales. Legal responsibility for policing is through what is often called a "tripartite structure" which has evolved over time. This is made up of:

- Chief Constables, who are responsible for the direction and control of their force, and for operational decisions and the day to day running

- Police Authorities, usually comprised of 17 members – nine councillors, three magistrates and five independent members. They are responsible for ensuring there is an efficient and effective police force for their area and for holding the chief officer and force to account for the delivery of local services
- The Home Secretary, who sets strategic priorities through the National Policing Plan, and determines the total level of grant and its allocation to police authorities

There are also a number of specialist national police forces. Some, like the National Crime Squad, which tackles serious and organised crime, and is one of the organisations to be merged in the new Serious Organised Crime Agency, can be categorised as Home Office, accountable to their own police authorities and the Home Secretary. Others are non-Home Office forces accountable in different ways to other Government departments, and sometimes their own police authorities. These include the Atomic Energy Authority Constabulary, the British Transport Police, the Ministry of Defence Police and the Royal Parks Police.

A. The Government's police reform agenda

The Government's programme of reform of the police began with the White Paper, *Policing A New Century*[1] which led to the *Police Reform Act 2002*. Amongst other changes, the 2002 Act introduced:

- An annual National Policing Plan, with the Government's priorities
- A new Independent Police Complaints Commission
- Intervention powers for the Home Secretary when a force is judged to be failing
- Community Support Officers and the accreditation of street wardens
- Changes to the powers to remove chief officers in the interests of efficiency and effectiveness

In addition there were non-legislative changes, including a drive to reduce bureaucracy, and a National Centre for Policing Excellence to spread good practice.

In November 2003, the Government began consultation on the second phase of reform with the publication of a consultation document, *Policing: Building Safer Communities Together*.[2] A White Paper followed in November 2004,[3] which also raised a number of questions for consultation, the closing date for which is not until 1 February 2005. Very

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1 Home Office, *Policing: A New Century: A blueprint for reform,* Cm 5236, December 2001, available at http://www.archive.official-documents.co.uk/document/cm53/5326/cm5326.htm

2 Home Office , *Policing: Building Safer Communities, November 2003* http://www.policereform.gov.uk/docs/consultation2003.html

3 Home Office, *Building Communities, Beating Crime A better police service for the 21st Century,* Cm 6360, November 2004, http://www.policereform.gov.uk/docs/prwp2004.html

few of its proposals are contained in this Bill. The main thrust of the second phase of police reform was summarised in the Home Office Stratetic Plan in July 2004:[4]

> The next phase of police reform will involve:
>
> I. ensuring that the police are genuinely responsive to the needs of communities, the public can shape how they are policed and they are jointly engaged in keeping local communities safe. In short, we aim to build a new relationship between the Service and communities;
> II. developing more local policing, and ensuring a better spread of excellence and national approaches in areas such as IT standardisation, intelligence management and responses to national threats;
> III. having a continuing focus on improving performance, to increase further efficiency and effectiveness; and
> IV. ensuring that the police workforce truly represents the communities it serves and is one which inspires trust and confidence with the public.

III Police Powers

Many police powers were codified in the *Police and Criminal Evidence Act 1984* (PACE) and the codes of practice which accompanied it. In May 2002, the Home Secretary David Blunkett announced a fundamental review of PACE in the context of freeing up the police from unnecessary bureaucracy.[5] The report of the review was published in November 2002.[6] It concluded that PACE had standardised and professionalized police work and the investigative process, but that it did require updating. Some of the areas in which this was found to be required were:

- Stop and search
- Entry, search and seizure
- Arrest and detention
- Treatment and questioning
- Identification

In August 2004 the Home Office published a consultation paper, *Modernising Police Powers to Meet Community Needs.*[7] This was the source of most of the proposals which Part 3 of the Bill would enact. No summary of responses had yet been published at the time of writing this Research Paper.

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4 *Confident communities in a secure Britain: The Home Office Strategic Plan 2004-08,* Cm 6287, July 2004

5 Home Office Press Release 129/2002, *Red tape review to help front line officers tackle crime,* 15 May 2002

6 Home Office, *PACE Review:Report of the joint Home Office/Cabinet Office Review of the Police and Criminal Evidence Act 1984,* November 2002, at http://www.homeoffice.gov.uk/docs/pacereview2002.pdf

7 http://www.homeoffice.gov.uk/docs3/modernising_powers.html

A. Powers of police officers

Clauses 101-110 of the Bill deal with police powers.

1. Arrestable offences

At present not all criminal offences are arrestable. Section 24 of *the Police and Criminal Evidence Act 1984* ("PACE") creates three categories of arrestable offences, which are:

- offences for which the sentence is fixed by law, (such as murder and treason)
- offences which carry a maximum custodial penalty for a first conviction of five years or more (such as robbery and burglary) and
- specified statutory offences.

These statutory offences are set out in a Library Standard Note.[8]

Police officers also have general powers of arrest under section 25 of PACE for all offences (not just arrestable ones) where there is doubt about the identity or address of the suspect or concern over safety or further offending.

The Police Powers Green Paper commented that PACE had done much to clarify powers of arrest, but that the basis of arrest remains diverse:[9]

> …it is not always straightforward or clear to police officers or members of the public when and if the power of arrest exists for offences at the lower end of seriousness. As indicated by the Association of Chief Police Officers in responding to the Joint Review of PACE, there is a "myriad of different qualifiers" to affect arrest.

It proposed that all offences should become arrestable without a warrant, but only if particular reasons applied. The reasons which the Green Paper proposed were fairly broad, and included enabling communication with the person, and preventing the alerting of other suspects or interfering with evidence.

There was considerable concern from organisations representing the legal profession and civil liberties groups about the proposals. The Bar Council commented that "under the new proposals a police officer could justify an arrest as being necessary in almost every conceivable circumstance."[10] The Law Society was similarly critical of some of the

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8 *The Classification of Criminal Offences,* SNHA/1720

9 *Modernising Police Powers to Meet Community Needs,* paragraph 2.2

10 *Response from the Law Reform committee f the Bar Council to the Home Office Consultation Paper "Policing: Modernising Police Powers to Meet Community Needs"*, October 2004, paragraph 2.1.4.(vii) http://www.barcouncil.org.uk/document.asp?documentid=2821&languageid=1

reasons suggested, including enabling communication, and "facilitating immediate enquiries/interviewing at a police station" which they thought would cover almost any circumstances.[11] Liberty called the changes "utterly unacceptable and grossly disproportionate to the problem identified."[12] A number of organisations pointed out that the 2002 review of PACE had recommended producing a "definitive list of powers to arrest" together with more information and training[13] rather than removing the distinction between arrestable offences and others. There was also concern about increases in the numbers of arrests which, it was felt, could disproportionately affect ethnic minorities.

However, an analysis in the journal *Justice of the Peace* argued that many of the provisions proposed already existed in Section 25 of PACE.[14] In contrast to civil liberties groups' concerns about moves towards more police discretion in this area, the Police Federation asked that the legislation should be worded so that "a decision by a constable to justify an arrest should not be described as *necessary* to achieve the objective or prevent a happening in one of the arrest criteria, rather that the constable's *discretion* should be the sole determinant of the matter."[15] The Metropolitan Police welcomed the proposals, saying that "the simplification proposed will make the issue of arrest easier to understand for both police and the public."[16]

Clause 101 would substitute a new section 24 of PACE allowing police officers to arrest for any offence, providing that he has reasonable grounds for believing that this is necessary for certain reasons. The reasons for arrest which are set out in the Bill reproduce the existing reasons in section 25 of PACE.[17] These are to do with protecting the vulnerable and preventing injury, damage to property; public decency offences or unlawful obstruction of the highway. [18] However, there are two additional reasons added. These are still broadly worded:

- "to allow the prompt and effective investigation of the offence or of the conduct of the person in question";

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11 *Law Society response to Policing: Modernising police powers to meet Community Needs*, October 2004 paragraph 17

12 *Liberty response to the Home Office consultation document Policing: Modernising Police Powers to Meet Community Needs*, October 2004, http://www.liberty-human-rights.org.uk/resources/policy-papers/2004/police-powers-community-needs.PDF

13 Home Office, *PACE Review:Report of the joint Home Office/Cabinet Office Review of the Police and Criminal Evidence Act 1984*, November 2002, page 21 http://www.homeoffice.gov.uk/docs/pacereview2002.pdf

14 Leonard Jason-Lloyd , "Modernising Police Powers – A Response", *Justice of the Peace*, Volume 168, Number 42, 16 October 2004, p 813

15 *Police Federation Response to the consultation document – modernising police powers to meet community needs*, 15 October 2004.

16 *Metropolitan Police Service Response to the Home Office Consultation Paper Policing: Modernising Police Powers to meet Community Needs*, August 2004 paragraph 3

17 Clause 101

18 New section 24(5) of PACE, which would be inserted by clause 101 of the Bill

- "to prevent any prosecution for the offence from being hindered by the disappearance of the person in question".

2. "Trigger Powers"

Exercising the power of arrest for an arrestable offence triggers a range of other powers such as powers of entry and search for the purposes of arrest, and powers of entry, search and seizure relating to premises controlled by the arrested person. Applying the power of arrest to all offences would mean that these more intrusive powers would also be applied to all offences. The Police Powers Green Paper stated that the Government did not wish to do this. It suggested that one solution might be that these powers should be triggered in offences which are "triable either way" or "triable on indictment". Trial on indictment is a trial in the Crown Court by a judge and jury. This applies to very serious crimes including treason, murder, rape, blackmail, kidnapping, robbery and wounding with intent. The alternative is "summary trial" which is a trial in a magistrates' court either by lay justices or by a District Judge (Magistrates' Courts). Summary offences are comparatively less serious crimes, including most motoring offences. In between are triable either way offences, such as theft, burglary, assault occasioning actual bodily harm and unlawful wounding, the facts of which may range in seriousness from relatively trivial to extremely grave. The triable either way classification is also provided in statute. Further information is given in a Library Standard Note.[19]

The Green Paper's proposals are reflected in the relevant provisions in the Bill, which are contained in Schedule 7. This replaces the relevant references to "arrestable" offences with "indictable" offences. The term "indictable" covers "triable either way" or "triable on indictment".

3. Citizen's Arrest

At present, anyone can carry out a citizen's arrest on a person who is, or whom they reasonably suspect to be committing an arrestable offence, or who has or can reasonably be suspected of having committed one.[20] In addition there is a common law power to deal with or prevent a breach of the peace. However, apart from this common law power, citizens' arrests are limited to the more serious, "arrestable" offences discussed above. As part of the reason for removing the threshold of seriousness was to tackle police officers' confusion about their powers, it is perhaps not surprising that the Green Paper states that the "concept of citizen's arrest is widely known but poorly understood". It went on to emphasise that the power of citizen's arrest should remain more limited than that of a police officer.[21]

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19 SNHA/1730

20 Section 24 *Police and Criminal Evidence act 1984*

21 *Modernising Police Powers to Meet Community Needs*, paragraph 2.8

However, many organisations were alarmed that removing the threshold of seriousness would mean that citizens' arrests would be lawful in relation to any offence, not just those currently defined as arrestable. The Police Federation was not in favour of expanding the power in this way, pointing out that police officers have "accountability, training and experience, all of which are not available to ordinary members of the public".[22] Similar points were made by the Law Society, who felt that the proposed powers "would be no easier for a member of the public to understand, and would therefore continue to place a member of the public who effects an arrest at risk of doing so unlawfully".[23] The Bar Council called the proposals "a significant extension of the power of a private citizen to carry out an arrest".

Clause 101 would extend the power of citizen's arrest to any offence, with a narrower necessity test than for constables. It must appear to the citizen that it is not reasonably practicable for a police officer to make the arrest instead, and he or she must have reasonable grounds for believing that the arrest is necessary to prevent the person they are arresting from:

- Causing physical injury to himself or someone else;
- Suffering physical injury;
- Causing loss of or damage to property; or
- Making off before a constable can assume responsibility for him.

4. Search warrants

At present, PACE allows a magistrate or judge to issue a search warrant if there are reasonable grounds for believing a serious arrestable offence has been committed and there is material on the premises which is likely to be of substantial value to the investigation and admissible evidence.[24] The Police Powers Green Paper set out the Government's desire to make search warrants more flexible by:[25]

- allowing the warrant to authorise access to any premises occupied, controlled or accessible by a particular person, to avoid police having to apply for a separate warrant for each premises;
- Allowing the magistrate or judge discretion over the duration of the warrant, rather than the current one month time limit;
- Allowing repeated entry under a single warrant.

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22 *Police Federation Response to the consultation document – modernising police powers to meet community needs,* 15 October 2004, p3

23 See earlier reference , paragraph 19

24 section 8

25 pages 8-9

The Police Federation welcomed all three of these proposals, although it made some detailed suggestions about the wording of the legislation. The Law Society was concerned that that extending the scope could lead to "innocent members of suspects' families being raided and searched by police".[26] The Bar Council did not object to this change, but felt that the Home Office had not demonstrated the need for extending the life of a warrant. Liberty objected to all three proposals and said that it did not believe that they were compliant with Article 8 of the European Convention of Human Rights (the right to respect for family life).

Clause 104 provides for a new "all premises warrant". Clause 105 would permit repeated entry if necessary. The period of time within which the warrant must be executed is extended from one month to three months. The Explanatory Notes acknowledge that the powers would engage Article 8 of the ECHR, but states that "the interference pursues the legitimate objective of detecting and preventing crime in a proportionate manner."[27]

5. Power to stop and search for prohibited fireworks

The Fireworks Regulations 2004 make it an offence for persons under 18 to possess fireworks in a public place and for anyone other than a fireworks professional to possess a category 4 firework (a professional display firework). Clause 106 gives the police the power to stop and search in respect of these offences.

Library Standard Note SN/HA/1230 provides an overview of the regulation of fireworks.[28]

6. Identification

The Green Paper stated that the police are rolling out the technology for roadside fingerprinting, but currently they do not have the powers to do this for identification purposes. Another perceived problem was the lack of a power to remove footwear for impressions without the suspect's consent, thereby allowing suspects to destroy evidence to prevent identification. [29] Similarly, while photographs can be taken of people detained in a police station, there is no power to do this outside the station except in surveillance situations. [30] Clauses 107 – 109 would provide these powers.

The Law Society was concerned that the Green Paper's proposals seemed to indicate a new power compulsorily to fingerprint people suspected of, but not arrested for, an offence. Currently PACE provides for the compulsory fingerprinting of people detained at a police station who have been arrested for, charged with, or convicted of a recordable

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26 See earlier reference, paragraph 35
27 paragraph 460
28 http://hcl1.hclibrary.parliament.uk/notes/has/snha-01230.pdf
29 paragraph 58
30 pages 21-2

offence. The Law Society said that this "would represent a major increase of police powers at the expense of liberty of the individual" which could have grave implications for the relationship between the police and ethnic minorities.[31]

The Green Paper also drew attention to problems with the definition of intimate and non-intimate body samples in the context of serious sexual assaults. Intimate samples require consent. One definition of an intimate sample is "a swab taken from a person's body orifice other than the mouth". The concern is that this would not cover penile swabs from a rape suspect, and "in order to avoid any possible confusion that could lead to an allegation of assault" the Green Paper proposed that these should be added to the definition. Taking such a swab would require consent, although a court could draw inferences from refusal without good cause. Clause 110 would amend the definitions of intimate samples to include a swab taken from any part of the genitals, including pubic hair, as well as orifices other than the mouth, and the definition on non-intimate samples to cover other swabs.

B. Police Civilians

It has long been the practice for police forces to give routine duties to civilian staff instead of police officers. The *Police Reform Act 2002* brought in a number of measures to widen what is known as the "extended police family", with powers for police civilians such as Community Support Officers, detention officers, escort officers and investigators. It also introduced accreditation schemes for people not employed by the police, such as neighbourhood wardens. In November 2003, the Government's police reform consultation document stated that the Government wished to "explore the scope for convergence between the pay and conditions for all police staff", moving towards a more "unified police service".[32] In June 2004, Her Majesty's Inspectorate of Constabulary further explored this "workforce modernisation" theme. The report questioned "whether the omnicompetent officer remains viable in today's world" and highlighted "the need to adopt a more flexible approach to the delegation of police powers".[33] The Police Powers Green Paper took this theme further by proposing a range of increased powers for civilian staff to expand their use.

1. Community Support Officers

Community Support Officers were introduced in 2002 following implementation of the *Police Reform Act 2002*.[34]

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31 paragraph 58

32 Home Office, *Policing: Building Safer Communities Together*, November 2003, p29, http://www.policereform.gov.uk/docs/consultation2003.html

33 HMIC, *Modernising the Police Service*, June 2004, http://www.homeoffice.gov.uk/hmic/modernising.pdf

34 Further background is in Library Research Paper 02/15 Library Standard Note SNHA/2718.

There are now 4,000 CSOs, although they are unevenly distributed. As of September 2004, several forces had none at all or just a handful, the majority had between 10 and 100, and six forces had over 100. The Metropolitan Police, which is by far the biggest police force, have over 1800. However, every force has now applied for funding.

The Home Office Strategic Plan announced new funding arrangements for CSOs as part of the Home with a Neighbourhood Policing Fund to allow forces to recruit an additional 20,000 CSOs by March 2008.[35] The Liberal Democrats' Shadow Policing Minister, David Heath, has also called for an expansion of Community Support Officers, pledging that the party would provide 20,000 more Community Support Officers and an extra 10,000 police.[36] The Shadow Home Secretary, David Davis, has said that "deploying more CSOs, while a proper evaluation of their effectiveness remains unfinished, suggests that the Government is looking for police on the cheap."[37] The Conservative Party have said that they plan to recruit 40,000 extra police over eight years.[38]

a. Existing powers

Chief Constables have discretion over the employment and deployment of CSOs, and can decide which powers they should have from a "menu". The possible powers are to:

- request a name and address for Fixed Penalty Offences and offences that cause injury alarm and distress to another person or damage or loss of another's property;
- request the name and address of a person acting in an antisocial manner;
- request a person to stop drinking in a designated public area and to surrender open containers of alcohol;
- confiscate alcohol from young persons;
- confiscate cigarettes and tobacco products from young people;
- enter property to save life or limb, or to prevent serious damage to property;
- seize vehicles used to cause alarm and distress;
- require the removal of abandoned vehicles;
- stop vehicles for the purpose of a road check;
- maintain and enforce a cordoned area established under the *Terrorism Act 2000*;
- stop and search vehicles and things carried by driver/passengers under the *Terrorism Act 2000* and things carried by pedestrians;
- regulate traffic for the purpose of escorting abnormal loads;

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35 *Confident Communities in a Secure Britain*, Home Office Strategic Plan 2004-2008, Cm 6287, July 2004 http://www.homeoffice.gov.uk/docs3/strategicplan.pdf

36 "Lib Dems launch plans for a 21st Century police force", 22 September 2004, http://www.libdems.org.uk/index.cfm/page.news/section.conference/article.7512

37 " Conservatives welcome new crime agency", 24 November 2004, http://www.conservatives.com/tile.do?def=news.story.page&obj_id=117565

38 "Action planned on crime and immigration", 6 October 2004, http://www.conservatives.com/tile.do?def=news.story.page&obj_id=116416

- stop a vehicle for testing;
- disperse groups in designated areas;
- issue Fixed Penalty Notices for various offences

In six forces on a trial basis (Devon and Cornwall, Gwent, Lancashire, The Metropolitan Police, Northamptonshire and West Yorkshire) CSOs may also be designated with the following powers:

- To detain a person for up to 30 minutes pending the arrival of a constable (or to accompany that person to a police station with the person's agreement)
- To use reasonable force to detain a person or prevent him from making off

b. Evaluation

The pilot of the detention power by these six forces is scheduled to last until December 2004.[39] An evaluation was undertaken over the period January 2003 to March 2004 and the results published in September 2004.[40] The findings of the evaluation were "very positive with no indication of there being a significant risk to either the CSO or the detainee."[41] However the Police Federation of England and Wales has raised questions about the value of the report, arguing that another pilot scheme involving more forces and within a time limit was needed in order to properly evaluate the success or otherwise of giving CSOs detention powers.[42]

An independent evaluation of the use of CSOs carried out by the University of Leeds Centre for Criminal Justice Studies[43] concluded that they made a difference to public perceptions of safety and levels of crime. By contrast, the Police Federation has done its own research amongst its members which found "widespread confusion and certainty" about the core business of a CSO, particularly over the tension between their role in reassuring the public and a perception that they should be kept out of confrontational situations.[44]

The Home Office is conducting a wider evaluation of CSOs in 27 forces, the results of which are due in December 2004.

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39 Home Office *Criminal Justice and Police Act 2001 Penalty Notices for Disorder Supplementary Operational Guidance,* http://www.homeoffice.gov.uk/docs2/pndappendix.pdf

40 Lawrence Singer, Community Support Officer (Detention Power) Pilot : Evaluation Results, Home Office, September 2004

41 p1

42 Royston Morris, "CSOs due to 'detain suspects by New Year' ", *Police Review,* 8 October 2004, p7

43 *Patrolling with a purpose: an Evaluation of Police Community Support Officers in Leeds and Bradford City Centres,* University of Leeds Centre for Criminal Justice Studies, July 2004.

44 *Police Federation Response to the consultation document – modernising police powers to meet community needs,* 15 October 2004, p6

c. Training

The length of training given to Community Support Officers is a matter for individual chief officers to determine. In most forces training lasts from three to six weeks and combines classroom training with supervised patrol.[45]

d. The Green Paper

Modernising Police Powers proposed the following new powers for CSOs:

- A power to direct traffic
- A power to deter begging, allowing them to detain a person who fails to heed an instruction to leave the immediate vicinity
- A power to enforce bylaws
- A power to search a detained person who may present a danger to himself or others
- Extended powers to deal with the night-time economy and alcohol-related anti-social behaviour

The Police Federation accepted the case for enabling CSOs to direct traffic, and to search detainees, but opposed the other powers because "the exercise of all these powers would involve CSOs in public order situations. We are firmly of the opinion that public order maintenance can only be competently performed by attested police officers."[46] The Bar Council had serious reservations about CSOs dealing with begging and enforcing bylaws because it felt their training was insufficient and these tasks should the preserve of the police force.[47]

ACPO said that it was "supportive of the Government's effort to enhance the powers of the wider police family, particularly Community Support Officers (CSOs) enabling them to assist the police in tackling crime and disorder". However it went on to say "we would sound a note of caution and any major extension of powers for CSOs before the Home Office evaluation is complete."[48]

The Bill contains an order-making power making it easier for the Secretary of state to add or remove a provision from the list offences for which a CSO may issue fixed penalty notices for disorder. Schedule 8 also lists new powers for CSOs, including the power to:

- direct traffic and provide assistance at serious road traffic incidents

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45 HC Deb 11 October 2004 c165W
46 p10
47 pargraphs 4.3.2, and 4,4,2
48 ACPO press release, Governemnt Police Powers consultation Paper

- search individuals and seize and retain items that could cause injury or assist escape
- enter and search licensed premises where they believe certain licensing offences are being committed (such as selling alcohol to children, or to people who are drunk)
- Photograph people who have been arrested, detained or given penalty notices elsewhere than at a police station

As noted above, the 2002 Act also contains powers which so far have been piloted in six areas to require people reasonably believed to be have committed certain offences to give their names and address. If they refuse, the CSO can detain them for up to 30 minutes while a constable arrives. The Bill would extend these powers allow for the temporary detention of:

- People who are begging and refuse to stop
- People committing certain licensing offences (as outlined above)
- People who refuse to comply with traffic directions given by the CSO

Some of these provisions have attracted criticism in the press that the search powers could prove dangerous for CSOs.[49] The Police Federation is reportedly fearful that what it sees as the "creeping increase" of CSO powers is being used to save money on fully fledged officers. In the same article, the Federation's chair is quoted as follows:[50]

> They are meant to be the eyes and ears of police on the ground, but placing them in confrontational situations will be a danger for the public, a danger for them and will ultimately create more work for police officers.

2. Other designated and accredited persons

The Bill makes a new class of designated civilians, known as "custody officers". This is a role traditionally performed by a police sergeant. Several forces have been experimenting with the mix of staff in custody suites, and the Green Paper on Police Powers said that "the benefits of releasing experienced supervisory officers to frontline duties from what is a complex but largely administrative and process driven role would be considerable". Some have questioned that analysis, however. The Bar Council says that a custody officer "is independent of the investigating officer and has prime responsibility for the welfare of the detainee and compliance with the Codes of Practice", going on to cite important decisions they have to take such as when medical attention should be sought and when a suspect should be put on suicide watch.[51]

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49 See "Warning over search powers for part-time police", *Guardian*, 25 November 2004, p2

50 Ibid

51 *Response from the Law Reform committee f the Bar Council to the Home Office Consultation Paper "Policing: Modernising Police Powers to Meet Community Needs"*, October 2004, paragraph 4.2.1 http://www.barcouncil.org.uk/document.asp?documentid=2821&languageid=1

The Bill also gives powers to "accredited" persons (ie people accredited by but not employed by the police, such as neighbourhood wardens).

Accredited persons are given the power to:

- Require the name and address of people who have been begging
- Photograph people to whom they have issued a fixed penalty notice

IV Public Order

A. Animal rights extremists[52]

The police currently have a number of powers that can be used to combat animal rights extremism. These include the *Public Order Act* 1986, the *Protection from Harassment Act* 1997 and the *Criminal Justice and Police Act* 2001. Full details of these Acts and others relating to extremists can be found in Library Standard Note SN/SC/3287.

According to the Home Office, between January to April 2004, these powers have resulted in:

> […] 24 arrests for breaches of Section 14 of the *Public Order Act* 1986 and 11 arrests for the amended offence of aggravated trespass in buildings. In total, in the first 6 months of 2004 there were 140 animal rights activists either arrested or reported compared with only 34 over the same period in 2003. Recent months have seen the conviction of 21 activists for a range of offences including aggravated trespass, harassment, common assault, assault on police and criminal damage. Other cases are awaiting trial.[53]

The Government says it has also established other measures to tackle animal rights extremists including the creation of a specialist police unit to monitor leaders of groups, arrangements for cross-border operations between police forces and the production of a guide, *Extremism: Protecting People and Property*, for security managers.

In its strategy paper *Animal Welfare: Human Rights* the Government said there was a need to give police more powers to tackle protests outside homes and prevent harassment of employees of companies. These additional powers are proposed in Part 4 of the *Serious Organised Crime and Police Bill* and are amendments to existing legislation:

- Changes to the *Protection from Harassment Act* 1997. Section 2 makes it a criminal offence for a person to pursue a course of conduct which

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[52] This section contributed by Oliver Bennett, Science and Environment Section

[53] Animal Welfare – Human Rights: protecting people from animal rights extremists, *Home Office, Attorney General & Department for Trade and Industry*, July 2004

amounts to harassment of another and which that person knows amounts to harassment of the other. To secure a conviction it needs to be proven that there is a course of conduct in which a person harassed another. The courts have applied a strict interpretation of the word "another" which has confined the application of this provision to harassment of specific individuals and thus employees of a company do not presently benefit from this provision when they have not previously themselves been harassed, even though a fellow employee has been.

In order to address this problem, the Government is proposing to extend the Act to cover harassment of two or more people who are connected (e.g. employees of the same company) even if each individual is harassed on only one occasion. It also will allow companies as well as individuals to be able to apply for an injunction.

- Amending section 42 of the *Criminal Justice and Police Act* 2001. To make it an offence for a person who is outside or near a person's home to represent to or persuade the resident that he should not do something he is entitled to do or that he should do something he is not obliged to do and his presence amounts to or is likely to cause the resident harassment, alarm or distress.

  Also:

  Should the police make a direction to a person to leave the vicinity of a home, and specifies that they can not return to the vicinity for a set period (up to three months), should they return within the period they will be committing an offence. The person committing the offence will be liable on conviction for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or both.[54]

An official from the Home Office has said that these changes will not apply to conduct that is lawful under section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the right to picket a workplace peacefully).

The fact that a single Bill has not been proposed to deal specifically with animal rights extremism may have disappointed some in the biotech industry. Aisling Burnand, chief executive of the BioIndustry Association has said 'we've been calling for a single piece of legislation for over 3 years. We've seen tweaks [to existing legislation], and they have been helpful, but it's putting sticking plasters over a problem, rather than facing it directly'.[55]

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[54] Serious Organised Crime and Police Bill; Explanatory Notes, *House of Commons*, 24 November 2004

[55] Animal activists in Oxford, *The Scientist*, 17 May 2004
http://www.biomedcentral.com/news/20040517/04/

The Government explained their reasons for introducing the new measures:

> In a democratic society, every one has the right to voice their opinion and to demonstrate, but human rights of freedom of speech and assembly must be balanced by citizens' responsibilities to others. No one has the right to […] intimidate or harass others going about their lawful business or to disrupt the workings of Parliament. […] those working in the bioscience industry deserve the full protection of the criminal law where their human rights are being threatened.[56]

Barry Hugill, Director of Communications for Liberty, says that he is concerned about the proposed new powers. He says that Liberty in no way condones the drastic action taken by some animal rights extremists but believes that existing harassment laws provide adequate protection for companies and their employees. Liberty is concerned that the legislation could be used to restrict lawful protest, not only against animal testing but in other areas as well. For example, he pointed out that the proposed legislation may have implications for any future protests by the Countryside Alliance in relation to the hunting ban.[57]

B. Racial and religious hatred[58]

In July 2004, the Home Secretary announced his intention to introduce an offence of incitement to religious hatred as soon as possible.[59] A previous attempt had been made by the Government in the *Anti-Terrorism, Crime and Security Bill 2001-02* (ATCS Bill);[60] and Lord Avebury introduced a private Member's bill in the House of Lords;[61] the provisions of clause 2 of his Bill were "identical to the provisions on incitement to religious hatred that were left out of the anti-terrorism Bill". Lord Avebury noted that similar provisions already existed in Northern Ireland. He also traced the debate on whether to have any explicit provisions on religious hatred in legislation and noted that it had been first considered in the *Race Relations Act 1965*.[62]

Lord Avebury's Bill was referred to a select committee, which was appointed "to consider and report on the law relating to religious offences".[63] Among its conclusions it noted:

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[56] Serious Organised Crime and Police Bill, Key benefits, *Office of the Leader of the House of Commons*, 29 November 2004 http://www.commonsleader.gov.uk/output/page793.asp

[57] Personal communication, *Barry Hugill Director of Communications for Liberty*, 25 November 2004

[58] This section contributed by Richard Kelly, Parliament and Constitution Centre

[59] Home Office Press Release 222/2004, *Sideline the extremists – Home Secretary*, 7 July 2004, http://www.homeoffice.gov.uk/n_story.asp?item_id=993; House of Commons Library Standard Note, SN/PC/3189, *Religious hatred*, provides further background

[60] HC Deb 19 November 2001 cc34-35

[61] *Religious Offences Bill [HL] 2001-02*

[62] HL Deb 30 January 2002 c315

[63] HL Deb 15 May 2002 c293

> The question nevertheless arises as to whether the protections afforded by law to religions and their adherents continue to have relevance in the 21st century and, if they do, how they might be adapted to meet the interests of all faiths (and those of no faith), rather than discriminate in favour of some. We believe there should be a degree of protection of faith, but there is no consensus among us on the precise form that it might take. We also agree that in any further legislation the protection should be equally available to all faiths, through both the civil and the criminal law.[64]

The provisions of Schedule 10 of the *Serious Organised Crime and Police Bill* seek to extend the scope of Part III of the *Public Order Act 1986* (c64). It currently relates to stirring up racial hatred; if extended it would also outlaw a number of activities that stirred up religious hatred.[65] At present it is an offence to use words or display material (section 18), to publish or distribute written material (section 19), to perform a play in public (section 20), to distribute, show or play a recording (section 21), and to broadcast or include a programme in a programme service (section 22) if it is intended to or likely to stir up racial hatred. Schedule 10 would amend the 1986 Act to create new offences if the actions described in Part III intended or were likely to stir up racial or religious hatred. It also would amend section 23 so that possessing material with a view to its being used to stir up racial or religious hatred became an offence.

The Schedule defines religious hatred as "hatred against a group of persons defined by reference to religious belief or lack of religious belief". The *Explanatory Notes* outline the rationale for this definition – it covers hatred against a wide range of religions without defining what amounts to a religion or a religious belief. The Government considers that the courts would be able to determine whether a religion or belief fell within the definition. The Government also considers that the reference to "religious belief or lack of religious belief" is in line with the freedom of religion guaranteed by Article 9 of the European Convention on Human Rights.[66]

Two religious groups, Sikhs and Jews, have been held to be racial groups and therefore are already covered by the provisions of Part III of the *Public Order Act 1986*.[67] But it has been ruled that it was not appropriate to grant leave to apply for judicial review and

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64 Select Committee on Religious Offences in England and Wales, *Volume I – Report*, 10 June 2003, Hl 95-I, para 133, http://www.publications.parliament.uk/pa/ld/ldrelof.htm

65 *Serious Organised Crime and Police Bill 2004-05*, clause 119 and Schedule 10

66 *Serious Organised Crime and Police Bill 2004-05*, Explanatory Notes, paras 302-303

67 Richard Jones and Welhengama Gnanapala, *Ethnic minorities in English Law*, 2000, pp42-43 cited the following cases: *Mandla v Dowell Lee* [1982] 3 All ER 1108, CA; *Re Samuel, Jacobs, Ramsden* [1941] 3 All ER 196; *Morgan v British Civil Service Commission and British Library* (Case No. 19177/98, EOR Discrimination Case Law Digest, No 6, Winter 1990, p3)

apply for a declaration that Muslims were a group covered by sections 17 and 19 of the *Public Order Act 1986*: such a declaration would not be binding on the Criminal Court.[68]

"Hatred" is not defined in either the Bill or the *Public Order Act 1986*. The *Explanatory Notes* observe that:

> Hatred is a strong term. The offences will not encompass material that just stirs up ridicule or prejudice or causes offence. Further what must be stirred up is hatred of a group of persons defined by their religious beliefs and not hatred of the religion itself. Of themselves, criticism or expressions of antipathy or dislike of particular religions or their adherents will not be caught by the offence.[69]

The term "incitement", which the Home Secretary used in his announcement in July, does not appear in the Bill or in the *Public Order Act 1986*. However, the provisions of the *Public Order Act 1986* are described by *Halsbury's Laws* as "criminal offences of incitement to racial hatred".[70] They require only that the defendant intends to stir up racial hatred or that racial hatred is likely to be stirred up:

> None of the offences under the POA 1986, Pt III requires an intent to provoke a breach of the peace, or the likelihood of such a breach (let alone that public disorder resulted), nor that is be proved that racial hatred was actually stirred up. Instead, it is 'merely' required that the defendant should intend to stir up racial hatred by his conduct, or that such hatred is likely, having regard to all the circumstance, to be stirred up thereby (whether or not the defendant realised this would be likely).[71]

Reactions to David Blunkett's announcement in July, and to the earlier proposals to create the offence of incitement to religious hatred, revealed that there are different strands of opinion on the necessity of such a law within the same faith traditions. While the Muslim Council of Britain welcomed the announcement,[72] the Islamic Human Rights Commission expressed concern that the legislation could be used against Muslim communities.[73] Similarly, although the Church of England welcomed the prospect of legislation,[74] an Evangelical Alliance spokesman expressed concerns.[75] Whether existing legislation

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68 *R v director of Public Prosecutions, ex parte London Borough Council of Merton* [1999] No CO/3019/98

69 *Serious Organised Crime and Police Bill 2004-05*, Explanatory Notes, para 305

70 *Halsbury's Laws Direct*, "Discrimination", para 460

71 Richard Card, *Card, Cross and Jones: Criminal Law*, 16th edition, 2004, p569

72 The Muslim Council of Britain Press Release, *Law to outlaw incitement to religious hatred welcomed*, 7 July 2004, http://www.mcb.org.uk/presstext.php?ann_id=101

73 Philip Johnston, "Race Tories call on Blair to bar Muslim 'extremist'", *Daily Telegraph*, 8 July 2004

74 "Blunkett renews call for religious hate law", *The Church of England Newspaper*, 8 July 2004, No 5725, http://www.churchnewspaper.com/?go=news&read=on&number_key=5725&title=Blunkett%20renews%20call%20for%20religious%20hate%20law

75 "Mixed reactions to religious hatred legislation", *Methodist Recorder*, 15 July 2004, p2

would afford adequate protection, or whether specific legislation against incitement to religious hatred is necessary, is also an area of genuine debate. Trevor Phillips, the Chairman of the Commission for Racial Equality, said current laws "prove inadequate protection to some religions from bigotry and hatred".[76] However, others, such as Lord Desai, question the need for a new law, arguing that existing provisions should be sufficient.[77]

The previous attempts to introduce the offence of incitement to religious hatred fell under the weight of such arguments. Other obstacles included opposition to introducing such provisions in emergency legislation (the ATCS Bill was introduced in response to the events of 11 September 2001);[78] and the difficulty in defining "religion" and "religious group".[79]

C. Trespass on designated sites

There have been a number of well publicised cases where royal security has been breached in recent years. In September 2004, Jason Hatch, a protester from Fathers for Justice, managed to climb onto a ledge alongside a first floor balcony at Buckingham Palace. Earlier examples included the so-called "comedy terrorist" Aaron Barschak who gate crashed Prince William's 21st birthday party at Windsor Castle on 21 June 2003. Mr Barschak was not prosecuted, reportedly as a result of advice from the Crown Prosecution Service.[80]

Trespass alone is not a criminal offence, and is not arrestable. Going onto a person's land without the owner's permission is a civil wrong, and the landowner would have to take civil proceedings for an injunction and/or damages. A trespasser may commit offences in the course of the trespass such as criminal damage. However, under the current state of the law the police's ability to arrest people who trespass in Royal Palaces or other public buildings, and the scope for prosecuting them subsequently will depend on them having committed such offences.

Past governments have been unwilling to criminalise trespass itself, but have brought in legislation aimed at dealing with mischief seen to be associated with particular kinds of trespass. Thus a few forms of trespass in particular circumstances are criminal – for example, there is a criminal offence of aggravated trespass, under the *Criminal Justice and Public Order Act 1994* which is arrestable.[81] This is applies where the trespasser's

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76 Philip Johnston, "Race Tories call on Blair to bar Muslim 'extremist'", *Daily Telegraph*, 8 July 2004

77 Meghnad Desai, "We don't need new laws on religious hatred", *The Independent*, 8 July 2004

78 Home Affairs Committee, *Terrorism, Crime and Security Bill 2001*, 19 November 2001, HC 351 2001-02, para 61 [emboldened in the Committee's report]

79 HL Deb 10 December 2001 c1168

80 See "Windsor party intruder escapes charges", *Guardian*, 15 July 2003

81 section 68

behaviour may disrupt other people's lawful behaviour, and was introduced as part of a package of measures to deal with travellers, "raves" and hunt saboteurs.

The Aaron Barschak incident led to inquiry by Commander Frank Armstrong of the City of London Police. A summary of his August 2003 report is available on the Metropolitan Police website, and its first recommendation was that a new offence was necessary:[82]

> There have been a number of intrusions into Royal premises in recent years, which have resulted in no formal prosecution. Consideration should be given to creating new legislation with a specific offence of trespassing into secure specified (Royal/Government) premises, as there is currently no deterrent.

Clause 120 of the Bill would create a criminal offence of trespassing on sites designated by order by the Secretary of State. A site could be designated if:

- it is Crown land;
- it is privately owned by the Monarch or the immediate heir to the Throne; or
- it appears to the Secretary of State that it is right to do so for the purposes of national security.

Clause 121 would make the offence arrestable.

D. Protests near Parliament

There has been controversy for some time about long-term demonstrations outside Parliament. Brian Haw, a protestor, has occupied a spot outside the main gates of the Houses of Parliament for three years. Demonstrations and marches outside Parliament are subject to Sessional Orders, which instruct the Metropolitan Police Commissioner to make sure that passageways to and from Parliament are kept free of obstruction. Last year the Procedure Committee conducted an inquiry into whether this Order was appropriate in the light of recent experience of demonstrations. The Committee published its report in November 2003[83] and published the Government's response in May 2004.[84] It recommended that legislation to prohibit long-term demonstrations and to ensure access to the House was introduced.[85]

The report was debated on 3 November 2004.[86]

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82 *Summary of Final Report Suitable for Publication, Investigation into the Breach of Security at Windsor Castle during the 21st Birthday Party for HRH Prince William on Saturday 21st June 2003* 14 August 2003, http://www.met.police.uk/reports/Armstrong_Report.pdf

83 Procedure Committee, *Sessional Orders and Resolutions*, 19 November 2003, HC 855 2002-03

84 Procedure Committee, *Sessional Orders and Resolutions: The Government's Response to the Committee's Third Report of Session 2002-03*, 20 May 2004, HC 613 2003-04

85 *Ibid*, paras 21-22

86 HC Deb 3 November 2004 cc 370-

The August 2004 Police Powers Green Paper made it clear that the Government intended to legislate in this area:

> 5.38 The Police already have a range of powers under existing criminal law and public order legislation to deal with violent and intimidatory action. The Government has taken action to allow the police to deal more effectively with smaller, disruptive demonstrations, wherever they occur. The Anti-social Behaviour Act 2003 amended the definition of the number of persons which constitutes a public assembly in section 16 of the Public Order Act 1986. This allows the police to place conditions on a public assembly of 2 or more people, rather than the previous figure of 20 or more people. Before imposing conditions, the senior officer must reasonably believe that serious disorder, serious damage to property or serious disruption to the life of the community might result or that the purpose of the demonstration is to coerce.
>
> 5.39 The Government believes that the police must have adequate powers in this area. One way in which powers could be made more effective would be to give the police the power to impose conditions on all demonstrations in the vicinity of Parliament Square. We would welcome views on the effectiveness of existing legislation and whether extending the power to impose conditions in this way would be desirable.

Clause 123 would allow senior police officers to give directions if they reasonably believe that in a person in a "designated area" is behaving in a way which:

- Hinders any person from entering or leaving the Palace of Westminster;
- Hindering the proper operation of Parliament; or
- Spoils the visual aspect or otherwise spoils the enjoyment of members of the public, of any part of that designated area.

The designated area must be within one kilometre of Parliament Square.

Clause 124 would make it an offence not to comply with that direction.

E. Anti-social behaviour

Anti-social behaviour orders were introduced by the *Crime and Disorder Act 1998.* The police, local authority or social landlords can apply for an ASBO with respect to people aged 10 or over. Breach of an order is a criminal offence, but the order itself is a civil one. ASBOs can be "stand alone" or made as part of criminal or civil proceedings. For example, they can be made on conviction for criminal offences, or by the county court where the principal proceedings involve anti-social behaviour by those who are party to the proceedings.

1. Reporting restrictions

The issue of identifying juveniles who are the subject of ASBOs has arisen in recent years. Publicity serves an important function in making it more likely that breaches are reported. In a recent case, the High Court ruled that publication of names and photographs of four teenage gang members from Brent did not breach their human rights.[87]

Under the *Crime and Disorder Act 1998* applications for ASBOs against juveniles can be heard in the magistrates' court. Applications for orders are not heard in the Youth Court as a matter of course because of the civil status of the orders, although Youth Courts may make orders where appropriate on conviction.

Section 39 of the *Children and Young Persons Act 1933* gives any court a discretionary power to apply reporting restrictions to prevent disclosure of the identity of children in proceedings. Section 45 of the *Youth Justice and Criminal Evidence Act 1999* provides a discretionary power to restrict reporting of criminal proceedings involving persons under 18. Section 49 of the 1933 Act applies compulsory reporting restrictions in the case of certain types of court proceedings, including proceedings in a Youth Court. Thus, while there are no automatic reporting restrictions in magistrates' courts, which can hear applications for ASBOs, such restrictions would have to apply in the Youth Court, which may make orders on conviction for offences. Furthermore, proceedings following breaches of an ASBO would be heard in a Youth Court.

Clause 127 would remove the compulsory reporting restrictions on proceedings brought against a child for breach of an ASBO, but the court would still have discretion to restrict reporting under section 45 of the 1999 Act.

2. Contracting out local authority functions

Clause 128 amends Section 1 of the *Crime and Disorder Act 1998*. Section 1 gives powers to a 'relevant authority' to apply for an Anti-social Behaviour Order (ASBO) in respect of any person aged over 10. The clause inserts a new section 1F to allow contracting out of local authority ASBO functions.

Section 1F enables the Secretary of State to make an order specifying a person to whom local authorities may contract out all or part of their ASBO functions. The ODPM have supplied the following explanation for the provision:[88]

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87 *R (on the application of (1) Stanley (2) Marshall (3) Kelly (Claimants) v (1) Metropolitan Police Commissioner (2) Brent London Borough (Defendants) & Secretary of State for the Home Department (Third Party) [2004]* EWHC 2229 (Admin). See also "Asbo gang lose human rights fight", BBC News, 7 October 2004, http://news.bbc.co.uk/1/hi/england/london/3723104.stm

88 Personal communication 2 December 2004

> Local authorities must have the flexibility to make appropriate local decisions to ensure that their functions are carried out as effectively as possible, not least tackling anti-social behaviour. The ability to contract out all or some of their ASBO powers to other bodies, organisations, or agencies, may assist authorities in their management of strategic and operational functions.

V Miscellaneous

A. Vehicle registration and road traffic offences[89]

1. Vehicle registration

Clauses 129 and **130** of the Bill pertain to vehicle registration; the first makes it an offence to use an 'incorrectly registered' vehicle by inserting a new section into the *Vehicle Excise and Registration Act 1984* and the second empowers the police to require production of registration documents on demand or within 7 days of receiving such a request. The Bill defines 'incorrectly registered' as the name and address of the keeper of the vehicle not being recorded on the register provided for under the 1994 Act. It is already an offence under the 1994 Act for the keeper of a vehicle to fail to correct these details on the register. However, at present a person found driving such a vehicle escapes penalty if he cannot be proved to be the keeper. Any person found guilty under clause 129 is liable on summary conviction to a fine not exceeding level 3 on the scale (£1,000) and to a fine not exceeding level 2 (currently £500) if found guilty under clause 130.

2. Uninsured vehicles

Clause 131 gives the police the power to seize vehicles driven without insurance by inserting two new sections into the *Road Traffic Act 1988*. An officer would have the power to seize and remove a vehicle, enter premises to effect the seizure if a vehicle did not stop and to "use reasonable force" if necessary for these purposes. The power would be exercisable by a constable in uniform who has reasonable grounds to believe that a vehicle is or had been driven by a person not appropriately insured against third party risk.

In the UK there are an estimated 1.2 million people - about one in twenty motorists - who regularly drive uninsured; insured motorists pay an estimated £30 each to cover the cost of claims made against the uninsured.[90] In October 2004, the DfT launched a consultation on the seizure of vehicles being driven uninsured which sought views on giving the police the powers outlined in the Bill. This followed the Greenway report into uninsured driving which was published in August 2004.[91]

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89 This section contributed by Louise Butcher, Business and Transport Section

90 DfT press notice, "Seizure of uninsured vehicles", 21 October 2004

91 DfT press notice, "Government announces action to crack down on uninsured driving", 11 August 2004

3. Other

Clause 132 allows the Secretary of State to make payments to police authorities in respect of the whole or any part of their expenditure on the prevention and detection of motoring offences specified in subsection (3) (offences under the *RTA 1988* and the *Vehicle Excise and Registration Act 1994*). The intention is that (with Treasury agreement), money from fixed penalties for such offences will be put back into the system.

B. Local policing information

1. Background

The introduction to this Research Paper outlined the two stages of the Government's Police Reform process, the second of which began with the publication of the Green Paper, *Policing: Building Safer Communities Together*. [92] A White Paper followed in November 2004[93] The main thrust of both these documents was strengthening community policing, and increasing community engagement. The White Paper set out "10 commitments to the public" including that they should know who their local police officer is and how they can be contacted – a vision quickly characterised by the press as "Dixon of Dock Green with a Mobile Phone". Amongst these commitments were:

- New powers and duties for police authorities including implementing a strategy for community engagement
- A joint duty for police and local authorities to ensure they have sufficient arrangements in place for responding to local concerns
- A three digit non-emergency telephone number
- An end to the requirement to have spent a specific number of years at a particular rank before being eligible for promotion
- A right for local councillors to trigger action on the part of the police.

The paper was partly consultative, with a closing date for comments of 1 February 2005. However, one of the paper's proposals – on the provision of information – is included in this Bill. The White Paper explained this as follows:

> 3.51 We believe that there is clear value in bringing a broad array of information into one concise and accessible document summarising local policing for the public. And we think that every area of the country should benefit from receiving a consistent level of information. **We therefore plan to introduce a statutory**

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92 Home Office , *Policing: Building Safer Communities, November 2003* http://www.policereform.gov.uk/docs/consultation2003.html

93 Home Office, *Building Communities, Beating Crime A better police service for the 21st Century*, Cm 6360, November 2004, http://www.policereform.gov.uk/docs/prwp2004.html

minimum requirement in terms of what each household can expect to receive in terms of local policing information.

The paper proposed that the minimum standard "will make it clear that each household should expect to receive this information at least once a year." It said that where possible this should be done "in partnership with information being provided to the public by other relevant agencies through, for example, local authority newsletters." Responses to the 2003 Green Paper had earlier indicated broad agreement that information on policing should be made more accessible to the public.[94]

The Bill would place a duty on police authorities to produce a summary of local policing information soon after the end of each financial year. The contents of this could be specified by order of the Secretary of State (clause 134). The Explanatory Notes state that this might include crime statistics, performance indicators, priorities and contact details.

C. Police liability for health and safety breaches

In 2003 the Commissioner of the Metropolitan Police, Sir John Stevens and his predecessor, Sir Paul Condon, had to appear in court in person for five weeks for failing to ensure the safety of their officers following a prosecution by the Health and Safety Executive. One officer had been killed and another was seriously injured when a roof collapsed during a chase. The jury cleared them of some charges and were unable to agree on others, and the judge criticised the HSE for bringing the prosecution. There was no retrial.[95]

Clause 135 amends the *Health and Safety at Work etc. Act 1984* so that any prosecution of a chief officer of police would be ordinarily brought against the office of the chief constable rather than against the individual incumbent.

D. Abolition of the Royal Parks Constabulary

The Royal Parks Constabulary (RPC) is responsible for the policing of 17 Royal Parks, gardens and open spaces in and around London, which comprise an area in excess of 6,000 acres. A September 2000 inspection report by Anthony Speed, former assistant Commissioner of the Metropolitan Police, found that the RPC was under-funded, inappropriately led and that the task of policing this area was beyond its resources.[96] It concluded that it could only remain independent with a radical overhaul to address

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[94] Home Office, *Policing: Building Safer Communities together: Summary of consultation responses*, September 2004, p7

[95] See for example "Safety case against Met police chiefs a 'waste' of public's £3m", *Telegraph*, 28 June 2003

[96] Anthony Speed*A Formal Inspection of the Royal Parks Constabulary*, September 2000 http://www.dcms.gov.uk/PDF/royal_parks_insp.PDF

serious problems of staffing, funding, accountability and policy formulation. The alternative was merger with the Metropolitan Police Service (MPS), although as a ring-fenced division. In July 2003 it was agreed in principle to create a separate Royal Parks Operational Command Unit (OCU) within the MPS.[97] A Home Office Circular gives details of changes to Police Regulations to recognise periods of service in the Royal Parks Constabulary for pay and allowances purposes on transfer to the MPS.[98]

Clause 138 abolishes the RPC, and Schedule 13 provides for transfer of constables, property, rights and liabilities to the Metropolitan Police Authority

E. Criminal record checks[99]

Part V of the *Police Act 1997* was designed to enable the Secretary of State to issue three types of document containing information on a person's criminal record. In December 1998, the Government announced that it had decided to implement Part V of the 1997 Act by establishing the Criminal Records Bureau. When Part V was brought into force, and responsibility was handed over to the CRB in March 2002, the role of the CRB had been widened to make it a "one-stop shop" to provide access not only to criminal records but also the lists held by the Department for Education and Skills (List 99) and the Department of Health of people considered unsuitable to work with children (POCA) and with vulnerable adults (POVA).

Sections 113 and 115 of the 1997 Act (which deal respectively with criminal record certificates and "enhanced" criminal record certificates) have now been amended by the *Criminal Justice Act 2003*, the *Criminal Justice (Scotland) Act 2003*, the *Protection of Children (Scotland) Act 2003*, the *Licensing Act 2003*, the *Adoption and Children Act 2002*, the *Education Act 2002*, the *National Health Service Reform and Health Care Professions Act 2002*, the *Health and Social Care Act 2001*, the *Regulation of Care (Scotland) Act 2001*, the *Private Security Industry Act 2001*, the *Care Standards Act 2000*, and the *Protection of Children Act 1999*. They are to be replaced by new sections 113A-113F which "consolidate the existing provisions" and "make some changes" (clause140).[100]

The new framework will be:

- s113A –criminal records certificates
- s113B – enhanced criminal record certificates

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97 HC Deb 16 September 2003 c 651W

98 Home Office Circular 04/2004, http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/f9949ea70f39b9ec80256ed0004d1c3c?OpenDocument

99 The next two sections were provided by Sally Broadbridge, from the Home Affairs Section

100 Explanatory Notes to the Bill, prepared by the Home Office, Bill 005-EN: para 378 http://www.publications.parliament.uk/pa/cm200405/cmbills/005/en/05005x--.htm

- s113C – provisions relating to searches when the applicant wants to work with children
- s113D- provisions relating to searches when the applicant wants to work with vulnerable adults
- s113E – additional service for urgent cases.

Clause 141 is to create a statutory gateway to enable the CRB to access information held by the UK Passport Agency, the Driver and Vehicle Licensing Agency and DWP's database of national insurance numbers.

These new provisions include additions to give effect to some of the recommendations made by Sir Michael Bichard following his enquiry arising from the Soham murders.[101] Sir Michael had noted the following room for improvement:

> Improving the systems for checking identity
>
> 4.82 Whoever is primarily responsible for checking identity, there is scope for improving the system by checking passports or driving licences presented as proof of identity against the Passport Service and DVLA's databases….
>
> Extension of databases accessed by the CRB
>
> 4.94 I note that the Government plans, 'when Parliamentary time allows', to bring forward proposals to enable the CRB to access the Scotland and Northern Ireland equivalent of the POCA and POVA Lists. A second proposal would enable the CRB, when dealing with Enhanced Disclosure, to access any relevant information from, for example, HM Customs and Excise, NCIS, the National Crime Squad and the British Transport Police. They should do so as a matter of priority.

F. Securing attendance of witnesses

Clauses 145 arises from a separate Home Office consultation exercise launched by publication of the consultation paper 'Securing the attendance of witnesses in court' in October 2003.[102] The paper invited views on whether to "re-introduce witness orders" to help address the high level of witness non-attendance in court.

Before committal proceedings were modified by the *Criminal Procedure and Investigations Act 1996*, magistrates' courts acting as examining justices were required to make a witness order in respect of each witness examined by the court, requiring him to attend and give evidence in the Crown Court. The changes removed the need for that requirement, so that instead of examination of witnesses on committal, there would be

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[101] The Bichard Enquiry Report HC 653, June 2004 http://www.bichardinquiry.org.uk/report/

[102] www.homeoffice.gov.uk/justice/legalprocess/witnesses/index.html#Consultation%20Papers

written statements which would be admissible at trial. The 1996 Act also changed the provisions relating to witness summonses. Previously, the Crown Court could automatically issue a witness summons requiring a person to attend or produce documents etc. The person could challenge the summons on the ground that the summons was insufficiently specific as to what was to be produced, that the person did not have material evidence to give or produce, or by claim of public interest immunity.[103] After 1996 the issue was no longer automatic. The court has to be satisfied that:

> (a) a person is likely to be able to give material , or produce the document or thing likely to be material evidence, for the purposes of any criminal proceedings before the Crown Court; and
> (b) the person will not voluntarily attend as a witness or would not voluntarily produce the document or thing.[104]

The *Magistrates Courts Act 1980* makes similar provision for witness summonses in the magistrates' court. The consultation paper explained:

> The current practice is that the Crown Prosecution Service applies for a witness summons:
> - when there is information that suggests a witness is unwilling to attend;
> - where a witness requires a formal notice to show to an employer to justify an absence from work; or
> - where the witness is required to produce company documents in the proceedings.

It proposed the reintroduction of a new form of witness order which (if made available in magistrates' courts as well as the Crown Court) which would render witness summonses obsolete. The Explanatory Notes summarise the responses and the government's decision:

> The general view of respondents was that the re-introduction of witness orders might undermine existing initiatives to encourage witnesses to come forward and remain engaged in the criminal justice process. There was, however, general acceptance that an element of compulsion could be helpful in targeted cases. On balance, the overall response to the consultation suggested that the way to achieve this was to make more effective use of the existing witness summons as a pre-emptive measure, based on an individual needs/risk assessment before the trial (a summary of the responses will be published shortly on Criminal Justice Service departmental website). At present a witness summons may only be issued where the court is satisfied that a person 'will not voluntarily attend as a witness'. The Government believes that this threshold is too high; in many cases the test may

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[103] *Criminal Procedure (Attendance of Witnesses) Act 1965*, s2
[104] *Criminal Procedure (Attendance of Witnesses) Act 1965*, s2 as amended

> not be met until the witness has failed to turn up at the appointed time leading to further trial delays. Accordingly, clause 145 of the Bill substitutes a new test.[105]

The new test is that –

- it is in the interest of justice to issue a summons… to secure the attendance of that person or [to] produce the document or thing.

On 26 November 2004, the Home Office issued a Press Release setting out the Government's response to the consultation exercise.

> The Government today announced it had taken on board the views of respondents and decided not to go down the compulsion route and focus instead on efforts to enhance support for witnesses.
>
> The majority of respondents were not in favour of the reintroduction of witness orders – previously used to secure attendance of witnesses at Crown Court trials until they were abolished in 1996 - as they felt this could undermine existing initiatives to encourage witnesses to remain engaged in the criminal justice process. In cases where an element of compulsion is required, respondents suggested this could be achieved by making more effective use of witness summonses.
>
> The Government agreed witness summonses should be used to support witness attendance in cases where an assessment of a witness's needs identifies this would be helpful. The Government has included a provision in the Serious Organised Crime and Policing Bill to amend the evidential test to make it easier to obtain a witness summons before a trial starts, pre-empting the risk of non-attendance. Currently substantive evidence is required to show a witness will not voluntarily attend, which in practice often means that a summons is only issued after a witness has failed to attend the trial, leading to delay and risking the collapse of the trial itself.
>
> Home Office Minister Baroness Scotland said:
>
> > "The contribution of witnesses is key to the entire effectiveness of the criminal justice system. In each case where a witness disengages and fails to give evidence, there is a risk that the trial will collapse, that a victim's suffering will be made worse and that public confidence in the system will be undermined.[106]

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[105] Explanatory Notes to the Bill, prepared by the Home Office, Bill 005- EN: http://www.publications.parliament.uk/pa/cm200405/cmbills/005/en/05005x--.htm para 62

[106] "Meeting the needs of reluctant witnesses", 26 November 2004, Home Office Press Release 372/2004

The notes to editors indicate that the government's response and a summary of consultation responses will be available on the Home Office, Crown Prosecution Service and Department for Constitutional Affairs' websites.[107]

G. Private Security Act 2001 – extending to Scotland

The *Private Security Act 2001* established a framework for the licensing of all individuals working in the following industry sectors: door supervisors, vehicle immobilisers (wheel clampers), security guards, key holders, security consultants and private investigators. It set up the Security Industry Authority to issue licences and regulate the industry. Details are given in a Library Standard Note.[108] Clause 147 and Schedule 15 would extend the remit of the SIA to Scotland.

[107] (www.homeoffice.gov.uk, www.cps.gov.uk, www.dca.gov.uk)
[108] SNHA/2881