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The *Violent Crime Reduction Bill*

Bill 10 of 2005-06

The *Violent Crime Reduction Bill* was introduced into the House of Commons on 8 June 2005 and is due to receive its Second Reading on 20 June.

The Bill contains a variety of measures designed to combat alcohol-related violence and disorder, including new "drinking banning orders" and "alcohol disorder zones". It amends licensing law to promote the objectives of crime prevention and child welfare. It also tightens the law on airguns, imitation firearms and the purchase of knives and introduces a new power for school staff to search pupils for weapons.

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Summary of main points

Measures to tackle violent crime were promised in the Labour election manifesto of May 2005. After the return of a Labour Government, the *Violent Crime Reduction Bill* was introduced early in the new Parliament and given its First Reading in the Commons on 8 June 2005.

The Bill includes measures designed to:

- Exclude individuals responsible for alcohol-related disorder from certain areas and licensed premises by imposing "drinking banning orders" which could run for up to two years;
- Introduce Alcohol Disorder Zones (ADZs), which will require licensed premises to contribute to the cost dealing with alcohol-related disorder in specific areas where it has been identified as a problem;
- Allow the police to prompt an accelerated review of a licence when the premises are associated with serious crime or disorder;
- Create a new offence of persistently selling alcohol to children;
- Create powers for the police to ban the sale of alcohol at licensed premises for up to 48 hours where there is evidence of sales to under-18s;
- Provide the police with the power to exclude individuals whom they consider "likely" to carry out alcohol-related disorder from a specific area for up to 48 hours;
- Make it an offence to use other people to hide or carry guns or knives;
- Increase the age limit for buying or firing an air weapon without supervision from 17 to 18;
- Make it illegal to manufacture or sell imitation firearms that could be mistaken for real firearms;
- Tighten manufacturing standards to ensure that imitation firearms cannot be converted to fire real ammunition;
- Introduce higher sentences for carrying imitation firearms;
- Increase the age limit for purchasing a knife from 16 to 18;
- Introduce powers for head teachers and other members of staff to search pupils for weapons;
- Amend the law on football banning orders;
- Create new offences to further outlaw the re-programming of mobile telephones

The Bill falls into two main parts, the first covering alcohol-related violence and disorder (drinking banning orders and alcohol disorder zones), the second weapons (firearms and knives). A third section contains miscellaneous provisions relating to such matters as football banning orders and the re-programming of mobile telephones. Not every part of the Bill applies to every part of the United Kingdom. Certain measures have already attracted controversy, in particular plans for Alcohol Disorder Zones and the proposals to allow head teachers to search pupils.

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I Introduction

The Labour election manifesto in May 2005 promised:

> We will introduce a Violent Crime Reduction Bill to restrict the sale of replica guns, raise the age limit for buying knives to 18 and tighten the law on air guns. Head teachers will have legal rights to search pupils for knives or guns. At-risk pubs and clubs will be required to search for them and we will introduce tougher sentences for carrying replica guns, for those involved in serious knife crimes and for those convicted of assaulting workers serving the public.[1]

The *Violent Crime Reduction Bill* was published and received its First Reading in the Commons on 8 June 2005. Explanatory Notes were published several days later[2] and a Regulatory Impact Assessment is available on the Home Office website.[3] Hazel Blears, Home Office minister, said at the time of publication:

> "There is increasing public concern around relatively low level crime and anti-social behaviour escalating to more serious offences because people are under the influence of alcohol or carrying weapons. Outlawing the manufacture and sale of imitation firearms, clamping down on binge and underage drinking and ensuring knives are less accessible will help to tackle this."[4]

A press notice set out the Bill's main provisions, namely to:

- Make it illegal to manufacture or sell imitation firearms that could be mistaken for real firearms;
- Bring in higher sentences for carrying imitation firearms;
- Create tougher manufacturing standards to ensure that imitation firearms can't be converted to fire real ammunition;
- Increase the age limit for buying or firing an air weapon without supervision from 17 to 18;
- Make it an offence to use other people to hide or carry guns or knives;
- Increase the age limit for purchasing a knife from 16 to 18;
- Introduce powers for head-teachers and other members of staff to search pupils for knives;
- Introduce Alcohol Disorder Zones (ADZs) which will require licensed premises to contribute to the cost of alcohol-related disorder in specific areas where it has been identified as a problem.

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1 Labour Party, *Britain forward not back: the Labour Party manifesto 2005*, p47
2 http://www.publications.parliament.uk/pa/cm200506/cmbills/010/en/06010x--.htm
3 http://www.homeoffice.gov.uk/inside/legis/rias/rias.html
4 Home Office press notice 088/2205, *Protecting our communities: Violent Crime Reduction Bill published*, 8 June 2005

- Exclude individuals responsible for alcohol-related disorder from certain areas and licensed premises by imposing 'Drinking Banning Orders' which could run for up to 2 years;
- Create powers for police to ban the sale of alcohol at licensed premises for up to 48 hours for selling alcohol to under 18s; and
- Provide police with the power to exclude individuals at risk of carrying out alcohol-related disorder from a specific area for up to 48 hours.[5]

The Bill falls into two main parts, the first covering alcohol-related violence and disorder (drinking banning orders and alcohol disorder zones), the second weapons (firearms and knives). A third section contains miscellaneous provisions relating to such matters as football banning orders and the re-programming of mobile telephones. Not every part of the Bill applies to every part of the United Kingdom. Clause 42 on mobile telephones extends to whole of the United Kingdom. The provisions on firearms extend to Great Britain only. Most other provisions of the Bill extend to England and Wales only. Clause 35 (power to search school pupils for weapons) will be commenced in relation to schools in Wales by the National Assembly for Wales rather than the Secretary of State. On the face of the Bill the Home Secretary confirms that, in his view, the Bill's provisions are compatible with the European Convention on Human Rights.

II Alcohol related disorder

There has been rising concern in recent years about the problem of alcohol-related disorder. It is widely seen as a negative result of the expanding night-time economy over the last decade. This expansion has often been encouraged as part of the regeneration of city centres and as a means of providing employment. However, a high concentration of licensed premises, particularly those catering for young people, can put a considerable strain on the police and other emergency services. Increases in the number of pubs and clubs have occurred mainly in city centres. Between 1998 and 2004 the number of on-licensed premises in England and Wales rose by only 1.6%, from 111,600 to 113,400, but in many metropolitan areas the increase has been much greater. For example, the City of London and Liverpool have seen each an 18% rise over the same period, and Newcastle a 16% rise.[6]

A large proportion of violent offences are associated with drink. According to the British Crime Survey, 40% of violent incident offenders were under the influence of drink in 1996. The proportion rose to 47% in 2001/02 and was 44% in 2002/03.[7]

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5 Ibid

6 Source: Liquor Licensing, England and Wales, July 2004 - June 2004 DCMS. The number per head of population has remained broadly stable. On 30 June 2004 there were 21.5 on-licensed premises for every 10,000 people in England and Wales, similar to the 1998 figure of 21.4.

7 Crime in England and Wales 2002/03, Supplementary Tables

Commentators tend to associate the problems of disorder with binge drinking, particularly by young people. The Youth Lifestyle Survey (YLS) suggested that 39% of 18 to 24 year olds were classified as 'binge drinkers'. Men were more likely to binge drink (48%) than women (31%).[8] The Survey also showed that:

- Binge drinkers were more likely to offend than other young adults. 39% reported committing an offence in the 12 months prior to interview, compared with 14% of regular drinkers. Young male binge drinkers were particularly likely to offend (49%).[9]

- 60% of binge drinkers admitted involvement in criminal and/or disorderly behaviour during or after drinking, compared with 25% of regular drinkers. Again young males were most likely to report such behaviour.[10]

In 2003/04, 19 per cent of respondents to the British Crime Survey (BCS) said that drunk or rowdy behaviour was a 'very' or 'fairly' big problem in their area. This compares to 23 per cent in 2002/03 and 22 in 2002/01, when the question was first asked.[11]

In 2003, the Prime Minister's Strategy Unit estimated the economic costs of alcohol-related crime as being "up to **£7.3bn**".[12] Other quantifiable alcohol-related harm included:[13]

- between £1.4bn and £1.7bn to the NHS;
- human/emotional costs arising from crime of £4.7bn;
- approximately £6.4bn in lost productivity'

The provisions in part I of the Bill are intended to tackle alcohol-related violence and disorder. These have to be seen in the wider context of the Government's drive to control anti-social behaviour. This has already resulted in the introduction of many measures, some of which are similar to the provisions in the Bill. However, this manifestation of disorder raises additional issues to do with the control of the supply of alcohol.

This section of the Research Paper looks briefly at the development of the law to deal with anti-social behaviour before going on to the specific issues which arise in relation to alcohol.

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8 Drinking, crime and disorder, HO Findings 185, 2003.
9 ibid
10 ibid
11 Table 2e, Crime in England and Wales 2003/04, HOSB 10/04
12 Strategy Unit, *Alcohol Harm Reduction Project Interim Analytical Report*, 2003, p89
13 ibid

A. Anti-social behaviour

Anti-social behaviour is a term which covers both low-level criminal activity and also behaviour which is not criminal but which is nevertheless upsetting or threatening to people. Concern about such behaviour grew during the 1990s. In April 1995 the Department of the Environment issued a consultation paper called *Anti-social Behaviour on Council Estates*, which noted housing officers were spending a substantial amount of their time dealing with neighbour nuisance issues.[14] Proposals set out in the consultation paper to deal with the problem were enacted by the Conservative Government in the *Housing Act 1996*.[15]

When in opposition, the Labour Party set out its ideas for dealing with anti-social neighbours in a consultation paper which proposed a new Community Safety Order.[16] After the election the Labour Government published its consultation paper on the proposed Community Safety Orders.[17] The name of the proposed new orders was changed to Anti-Social Behaviour Orders (ASBOs) in the Bill that became the *Crime and Disorder Act 1998*.

ASBOs are civil orders, the breach of which is a criminal offence. Anti-social behaviour is defined very broadly in the legislation as behaviour which causes, or is likely to cause, "harassment, alarm or distress to one or more persons" not of the same household as the perpetrator. People aged 10 or over can receive ASBOs. They are discussed in more detail in section 1D of this Research Paper below.

The 1998 Act introduced a requirement for local authorities and the police to formulate crime and disorder reduction strategies in consultation with other bodies. Under section 17 of the Act, each local authority now has a duty to exercise its various functions with due regard to the need to prevent crime and disorder in the area.

The 1998 Act also introduced parenting orders which can impose compulsory parenting classes and conditions for parental supervision, such as ensuring a child attends school. These orders can be triggered by a number of matters, such as the child receiving an ASBO or a criminal conviction. The Act brought in a range of other measures too, such as child curfew schemes and child safety orders.

The Criminal Justice and Police Act 2001 introduced fixed penalty notices, so that certain designated offences are liable to an "on-the-spot" penalty as an alternative to prosecution. The number of offences for which fixed penalty notices can be given has grown, and they

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[14] *Anti-social Behaviour on Council Estates*, Department of the Environment April 1995 paras. 1.2-1.3

[15] See Library research Paper 96/12 on *The social rented sector, conduct of tenants and Housing Benefit in the Housing Bill* for the background to the provisions in what became the 1996 Act.

[16] *A quiet life: tough action on criminal neighbours*, Labour Party, 1995

[17] *Community Safety Order: A Consultation Paper*, Home Office September 1997

can now be issued to children of 10 or over. Their use in relation to alcohol disorder is discussed below.

The *Criminal Justice Act 2003* introduced Individual Support Orders for 10-17 year olds, which magistrates can issue to accompany an ASBO. In same year, the *Anti-social Behaviour Act 2003* introduced a wide range of measures, including to enforce the closure of crack houses, housing injunctions for anti-social behaviour and demoted tenancies, and provisions to disperse groups and return unaccompanied children to their homes in designated areas.

The Government has supported its legislative measures with the "TOGETHER" campaign (designed to spread awareness of the available powers and encourage their use through seminars throughout the country) and its own website.[18] The Anti-social Behaviour Unit at the Home Office was established in 2003 to drive forward new policies and action.

In addition, non statutory Acceptable Behaviour Contracts – pioneered by practitioners in Islington but endorsed by the Government - have been developed to complement ASBOs.

In a March 2005 report, the Home Affairs Select Committee examined policy on anti-social behaviour and concluded as follows:[19]

> Overall, the balance of the Government's strategy is about right. We welcome the resources put in by the Government into diversion and support, are satisfied that there are now enough powers in place to deal with ASB, and commend the Home Office Anti-social Behaviour Unit on its work to improve the response at local level. We welcome the suggestion from the British Crime Survey that there has been a fall in the number of people perceiving ASB to be a problem in their area, although we would need to see a consistent trend over time to draw any firmer conclusions.
>
> However, we conclude that the Government's strategy is being undermined by different philosophies, methods and tactics amongst key players. In particular, we were disappointed to hear that some social services departments, local educational authorities, Children and Adolescent Mental Health Services, Youth Services and children's non-governmental organisations (NGOs) are often not fully committed to local ASB strategies. The failure to attend meetings of Crime and Disorder Reduction Partnerships is just one symptom of this. Yet many perpetrators of ASB, both young and adult, are also the very people with complex support needs and therefore with whom these organisations are already, or should be, working.

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18 http://www.together.gov.uk

19 Home Affairs Committee, *Anti-social Behaviour*, HC 80-1, 2004-05, 22 March 2005, p3

However, the Committee expressed a number of concerns about the Government's strategy on alcohol related disorder. These concerns are discussed below.

B. Government policy on alcohol related disorder

Concern about the public order effects of alcohol is nothing new. There have long been public order provisions to deal with alcohol-related bad behaviour in public and licensing laws to regulate the sale and consumption on licensed premises.

1. Existing legislation

Individuals can be prosecuted under existing laws for a wide range of offences to do with alcohol. In addition, since implementation of the *Criminal Justice and Police Act 2001*[20] fixed penalty notices have been available for most of these. These were extended to 16 and 17 year olds from January 2004 and to 10-15 year olds in September 2004. There are two rates of penalty for those aged 16 or over (£80 and £50) with corresponding lower rates for children aged 10-15. If the penalty is paid, this discharges the liability for conviction. Otherwise the person can elect to go to court.

Alcohol-related offences with an £80 penalty (£40 for 10-15 year olds) are:[21]

- Being drunk and disorderly in a public place[22]
- Selling alcohol to a person under 18[23]
- Purchase of alcohol in a licensed premise for a person under 18[24]
- Purchase of alcohol for a person under 18 for consumption in a bar in licensed premises[25]
- Delivery of alcohol for a person under 18 or allowing such delivery[26]
- Selling alcohol to a drunken person.[27]

Alcohol-related offences with a £50 penalty (£30 for 10-15 year olds) are:

- Being drunk on a highway or other public place[28].
- Consumption of alcohol on licensed premises by a person under the age of 18[29]

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20 section 1, which has been amended by a series of Statutory Instruments, including SI 2004/2540 and SI 2005/1090 to extend the number of offences for which Fixed Penalty Notices can be given

21 The provisions are conveniently summarised at http://www.homeoffice.gov.uk/crimpol/police/penalty/faq.html

22 section 91, *Criminal Justice Act 1967*

23 section 169A of the *Licensing Act 1964*

24 section 169C(2) of the *Licensing Act 1964*

25 section 169C(3) of the *Licensing Act 1964*

26 section 169F of the *Licensing Act 1964*

27 section 172(3)) of the *Licensing Act 1964*

28 section 12, *Licensing Act 1872*

29 section 169E, *Licensing Act 1964*.

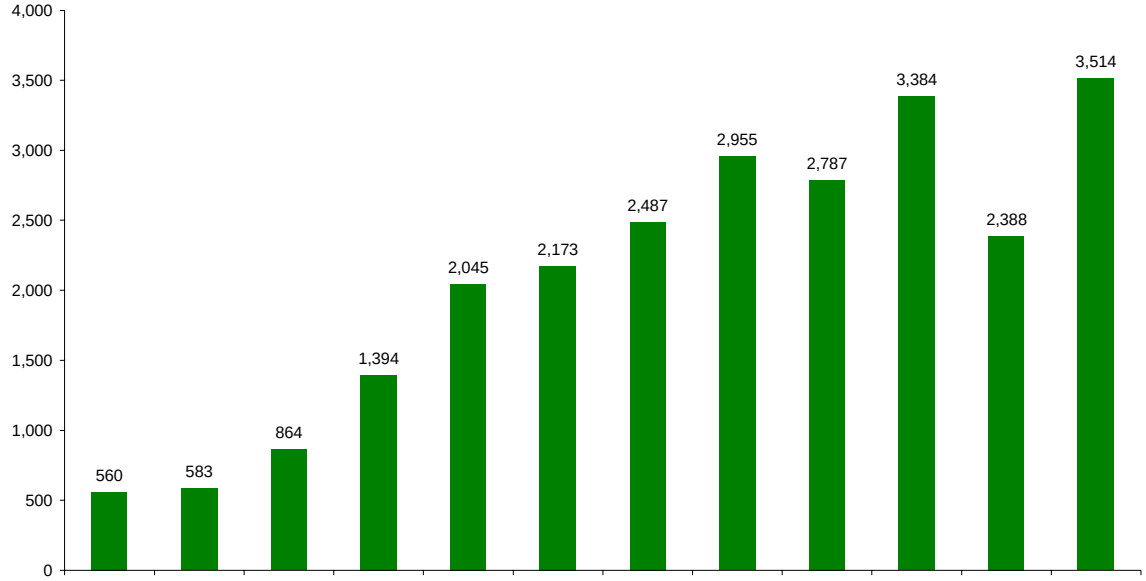
- Allowing consumption of alcohol by a person under 18 in a bar in licensed premises[30]
- Buying or attempting to buy alcohol by a person under 18[31]
- Consumption of alcohol in a public place designated by the local authority as being one where there is nuisance or disorder associated with alcohol[32]

The last of these offences is discussed in more detail in section 1C of this Research Paper below.

Increasing use has been made of these fixed penalty notices over the last two years. Provisional data from the Home Office shows that since the introduction of Penalty Notices for Disorder the number of prosecutions for drunk and disorderly behaviour has fallen by almost a third.

PNDs issued to offenders aged 18+ for drunk and disorderly behaviour

England and Wales - Provisional data



Source: Home Office official

2. The *Licensing Act 2003*

The *Licensing Act 2003*, which is due to come fully into effect on 24 November 2005,[33] transfers responsibility for alcohol licensing from magistrates to local authorities. It includes a number of measures for the prevention of crime and disorder. Indeed, crime

30 section 169E(2) of the *Licensing Act 1964*

31 section 169C of the *Licensing Act 1964*

32 Section 12, *Criminal Justice and Police Act 2001*

33 Dept for Culture, Media and Sport press notice 077/05, *Government confirms Licensing Act timetable*, 8 June 2005

prevention appears among the four "licensing objectives" set out at the beginning of the Act:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm.[34]

The Act retains or updates the existing offences of:

- allowing disorderly conduct on licensed premises which, on conviction, could result in a fine of up to £1,000 and, if the offender is a personal licence holder, possible suspension or forfeiture of that licence;
- selling, or attempting to sell, or allowing alcohol to be sold to a person who is drunk with a fine on conviction of up to £1,000 and, if the offender is a personal licence holder, possible suspension or forfeiture of that licence.

The Act increases fines, as well as introducing the potential suspension for up to six months or forfeiture of personal licences held by people working at particular licensed premises, following conviction for offences of allowing disorderly conduct there or allowing sales of alcohol to people who are drunk.

It will also be open to the courts to suspend or declare forfeit personal licences following convictions for a range of other relevant criminal offences set out in Schedule 4 to the 2003 Act, including theft, firearms offences, trafficking in stolen goods, sexual and drugs offences, violent offences and any offence under the 2003 Act itself.

The Act also maintains the existing offence of selling alcohol to a person who is drunk and increases (to £1,000) the fine for anyone, including a member of the public, who obtains or attempts to obtain alcohol for consumption on the premises by a person who is drunk.

There are increased powers for the police to close particular premises or all licensed premises in a specified geographical area for up to 24 hours where disorder is occurring or anticipated; and a new mechanism for reviewing licences when problems relating to the licensing objectives arise, rather than the current practice of having to await renewals before any action can be taken. These powers, and the offences of selling alcohol to children, are discussed in more detail below in the context of chapter 3 of the Bill.

The Act's most controversial feature has proved to be the abolition of automatic fixed closing times for pubs and clubs. In defence of its licensing reforms, the Government has

[34] section 4

always maintained that fixed licensing hours "encourage binge drinking and result in large numbers of young people hitting the streets simultaneously causing the police significant difficulties".[35] The Association of Chief Police Officers (ACPO) is reported to have doubts about the logic of this argument. Chris Allison, who coordinates ACPO's response on licensing issues, has been quoted as saying:

> "Extending the licensing hours does not mean people are going to stop drinking 14 pints of lager, choose French wine, become fluent in French and sit in a pavement café; what they are going to do is to have 16 pints instead".[36]

ACPO argues that, despite moves over recent years towards staggered closing times, there has been an inexorable rise in alcohol-fuelled violence and anti-social behaviour:

> "We are never going to solve this problem through enforcement alone, as enforcement only deals with the symptom and not the cause. ACPO continues to stress the importance of a far more holistic approach that includes dealing with the culture of excessive drinking and the need for all of the drinks industry to adopt a responsible attitude. Our fear is that we will never solve the problem if we do not address its underlying causes and in the meantime, the police service will have to divert more and more resources to deal with the ever increasing levels of drunken thuggery that blight our cities, towns and villages every week."[37]

Stephen Green, Chief Constable of Nottinghamshire, has been a vocal opponent of the reform of licensing laws and has personally opposed several licensing applications in the magistrates' courts.[38] He argues that the increased concentration of bars in Nottingham city centre is already forcing him to divert police resources from other areas at weekends. Asked about extended licensing hours, he told the BBC's *Panorama* programme last year

> "The risk period that we have to police will get longer. And therefore, the resource consequences will get greater. I don't see any great benefit to me as the police chief in that change."[39]

Despite public alarm at the prospect of "round-the-clock drinking", the licensed trade believes that very few, if any, premises will apply for 24-hour opening, even if it is a theoretical possibility under the new Act.[40] The British Beer and Pub Association conducted a survey of 27,500 pubs, nearly half the UK total, and did not find any that

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35 Drinking responsibly, para 1.16

36 "Pub-hours fix fails to woo police", *Observer*, 20 March 2005, p3

37 ACPO press release, *Licensing reform takes effect*, 7 February 2005

38 This would have been under the old system. The 2003 Act requires that objections be made to the local authority in its role as licensing authority.

39 "Licence law reforms could be 'hell'", *BBC News online*, 4 June 2004, http://news.bbc.co.uk/1/hi/programmes/panorama/3766637.stm

40 The legislative basis for the liberalisation of licensing hours is summarised in a Library Standard Note, *24-hour drinking* (SN/HA/3355).

were planning to open all night.[41] Industry sources expect bars to apply for a few extra hours a week, mostly at weekends, and point out that 24-hour opening would be prohibitively expensive in staff costs.[42]

The Act also requires that licensing authorities prepare and publish a statement of their licensing policy every three years.[43] In guidance issued to local authorities, the Department for Culture, Media and Sport (DCMS) advises:

> Licensing policy statements should indicate that conditions attached to premises licences and club premises certificates will, so far as possible, reflect local crime prevention strategies. For example, the provision of closed circuit television cameras in certain premises. Where appropriate it should reflect the input of the local Crime and Disorder Reduction Partnership.[44]

There is scope for an authority to adopt a "saturation policy". Although not mentioned in the Act itself, the Guidance issued by DCMS allows the authority to take account of the "cumulative impact" of a concentration of licensed premises in one area which might impact on any of the licensing objectives, such as the prevention of crime and disorder or public nuisance. An authority may indicate in its licensing policy statement that it is adopting a "special policy" of refusing new licences whenever it receives relevant representations from police, local residents and others about the cumulative impact of additional premises which it concludes, after hearing those representations, should lead to refusal.[45]

3. Enforcement campaigns

In July and August 2004, and again in December 2004, the Home Office's Police Standards Unit and the Association of Chief Police Officers (ACPO), together with Trading Standards and other partners, conducted campaigns to check how licensed premises were complying with the law. The results were conveniently summarised by the Home Affairs Committee in their 2005 report:[46]

> 306. Both campaigns uncovered examples of irresponsible trading. In the summer campaign, 45% of on licence and 31% of off licence premises visited were found to be selling to under-18s. In the December campaign, the figure for both types was 32%. In both cases, the figures need to be treated with a little caution:

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41 "Drink trade anger over levy plan for policing", *Financial Times*, 15 January 2005, p2

42 "Bars opening 24 hours 'a myth'", *Financial Times*, 13 January 2005

43 *Licensing Act 2003* section 5

44 DCMS, *Guidance issued under section 182 of the Licensing Act 2003 and guidance issued to police officers on the operation of closure powers in Part 8 of the Licensing Act 2003*, July 2004, para 3.46, http://www.culture.gov.uk/global/publications/archive_2004/guidance_issued_under_section_182_of_the_licensing_act_2003.htm

45 ibid, paras 3.13 to 3.16

46 Home Affairs Committee, *Anti-social Behaviour*, HC 80-1, 2004-05, 22 March 2005, p99

premises were specifically targeted on the basis of intelligence. The more significant figure might therefore be that out of 30,500 premises visited in the summer, 4% were found to have committed an offence; whilst out of 31,000 premises visited in the December campaign, just over 1% were found to have committed an offence.

307. The effects of the Summer 2004 Alcohol Misuse Enforcement Campaign in terms of its impact on alcohol-related disorder and violence appear to have been mixed. The following table, published by the Home Office, indicates the percentage change in recorded crime from July/August 2003 to July/August 2004:

	Common Assault	**Harassment**	**Violence against the person**	**Other wounding**	**Wounding / endangering life**
91 Basic Command Units which participated in the campaign	-8.4%	28.1%	1.5%	8.3%	-9.2%
All other BCUs	-12.8%	20.2%	5.5%	13.3%	1.3%

4. The Alcohol Harm Reduction Strategy

In 15 March 2004, the Prime Minister's Strategy Unit published its *Alcohol Harm Reduction Strategy for England*.[47] Chapter 6 of this strategy looked at alcohol-related crime and disorder, and made the following proposals:[48]

- Government will reduce the problems caused by drinking in town and city centres by clearly defining the shared responsibilities of individuals, the alcoholic drinks industry and the Government. This will require:
  - making greater use of existing legislation and penalties to combat anti-social behaviour – for example, greater use of Fixed Penalty Notices;
  - working with the alcohol industry to manage and deal with the consequence of town and city centre drinking, by agreeing a new code of good practice and the joint funding of local initiatives; and
  - encouraging local authorities more actively to tackle problems where they occur.

47 http://www.strategy.gov.uk/downloads/su/alcohol/index.htm
48 page 51

- Government will tackle under-age drinking by:
  - greater enforcement of existing laws not to sell alcohol to under-18s;
  - improving the information about the dangers of alcohol misuse available to young people; and
  - encouraging provision of more alternative activities for young people.
- Government will tackle alcohol-related repeat offending by further piloting of arrest-referral schemes and exploring the effectiveness of diversion schemes
- Government will seek better identification of alcohol problems and referral to alcohol services as part of existing measures on domestic violence.
- Drink-driving measures appear to have worked well but there is some evidence that drink-driving may be increasing amongst some groups (e.g. young men). Government will, therefore, closely monitor the trends to assess whether additional action is needed.

5. A voluntary code of practice for the alcohol industry

Organisations representing the drinks industry have been involved in a number of initiatives to reduce alcohol-related disorder in recent years. For example, the Portman Group, an alcohol producers' organisation set up to encourage responsible drinking, published *Keeping the Peace – a guide to the prevention of alcohol related disorder* in 1998.[49] The British Beer and Pub Association (BBPA) has developed a code banning irresponsible promotions with a commitment not to sell drinks at unsustainably low prices or to encourage high levels of irresponsible consumption (for example, "all you can drink for £10").[50] The Bar Entertainment and Dance Association (BEDA) has developed a dispersal policy offering guidance to the operators of licensed premises on how best to manage the end of trading each day.

The *Alcohol Harm Reduction Strategy for England* stated that the Government would work with the alcohol industry to manage and deal with the consequence of town and city centre drinking, by agreeing a new code of good practice and the joint funding of local initiatives:[51]

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49 http://www.portman-group.org.uk/uploaded_files/documents/35_49_KeepingthePeace.pdf

50 See for example BEDA Press Release CSR04/2005, *Binge drink happy hour promotions banned by beer and pub industry*, 25 May 2005

51 http://www.strategy.gov.uk/downloads/su/alcohol/index.htm

> The code would be drawn up jointly by Government and industry. Both its use and content could be tailored to local circumstances: we envisage the local authority taking the lead in this process consulting with partners through the Crime and Disorder Reduction Partnership, the industry and the local community. Adherence to the code could be taken into account when there is an official complaint against a premises and license removal is being considered. Take-up of the code would be assessed as part of the proposed review of the scheme early in the next parliament.

A report on 2 June 2005 in a trade journal suggested that a national standards document for the drinks industry would be released "within a couple of months" following meetings between the Government and industry representatives.[52]

6. The Government's consultation paper

In January 2005, the Government published a consultation document on responsible drinking with a closing date of 28 February 2005.[53] The three main proposals in this were:

- The creation of Alcohol Disorder Zones;
- The introduction of Drinking Banning Orders;
- New measures to deal with persistent under-age sales.

These measures form the basis of Part 1 of the Bill, and each is discussed below.

C. Alcohol Disorder Zones

Currently, under section 13 of the *Criminal Justice and Police Act 2001*, local authorities can designate areas that have experienced alcohol-related disorder or nuisance so that there can be restrictions on public drinking. The orders are called Designated Public Place Orders (DPPOs). While it is not an offence to consume alcohol within a 'designated' area, the police have powers to control the consumption of alcohol within that place. If they believe someone is consuming alcohol or intends to consume alcohol they can:

- require them to stop; and
- confiscate the alcohol from people

If someone, without a reasonable excuse, fails to comply with the officer's request they are committing an offence which can result in a penalty notice or a fine. By 17 May 2005 267 DPPOs had been published in England and Wales.[54]

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52 "Code of practice 'in July' for entire drinks trade", *Morning Advertiser*, 2 June 2005, p2

53 DCMS/Home Office/ODPM, *Drinking responsibly: The Government's Proposals*, January 2005 http://www.homeoffice.gov.uk/docs4/consult_alcohol.html

1. The proposals

The Government's January 2005 consultation document, *Drinking Responsibly*, set out the Government's plans to build on these powers through Alcohol Disorder Zones, so that licensed premises would have to contribute towards the costs of dealing with alcohol-related disorder if sufficient steps were not taken to reduce this: [55]

> **2.1** Where a particular geographical area has been identified as giving rise to a problem of antisocial drinking, the Police and Local Authorities can already designate it through a Designated Public Place Order, which gives the Police the powers to confiscate alcohol containers within it. To date, this power has been used by around 130 Local Authorities. Under the Anti-Social Behaviour Act 2003, the Police and Local Authorities can also agree that, in problem localities, groups of people intimidating, harassing, alarming or distressing the public may be dispersed, and those under 16 who are unsupervised can be sent home after 9 pm. Around 400 anti-social behaviour areas were designated between January and September 2004. However, while some of these areas are found within city centres, the majority are more narrowly focussed and are often estate based. Moreover, they are aimed at irresponsible individuals and have no direct impact on those who may be encouraging irresponsible behaviour.
>
> **2.2** The Government is therefore proposing building on these powers through the introduction of a new concept – Alcohol Disorder Zones. Such zones would cover licensed premises in an area agreed between the Police and the Local Authority. Before such a zone was designated the licensed premises which are contributing to alcohol related disorder within the area concerned would have the opportunity to implement a set of actions to reduce alcohol disorder. Where they fail to do so, they would be required to contribute towards the Policing and other local costs of dealing with the disorder being created by alcohol in the area concerned.

The document proposed that:

- Zones would be designated when the police and local authority had strong evidence of alcohol related disorder having reached unacceptable levels;
- Licensed premises would be warned and given at least eight weeks to implement an action plan of improvements. Only if the necessary steps were not taken would the zone be imposed;
- The costs recovered through the scheme should be confined to the additional costs directly associated with crime and disorder;

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54 http://www.crimereduction.gov.uk/alcoholorders09.htm

55 DCMS/Home Office/ODPM, *Drinking responsibly: The Government's Proposals*, January 2005 http://www.homeoffice.gov.uk/docs4/consult_alcohol.html, p6

- There would be a clear means of triggering the withdrawal of a zone.

One issue raised by the document was who should pay the costs:

> **2.8** The next issue is who within the zone should pay the costs, and on what basis. The Government believes that these costs should be targeted at those premises responsible for alcohol related disorder and would welcome views on how this might best be fairly, practically and effectively achieved.
> (…)
> **2.10** A further issue is whether the proposed zones should cover off-licences, including both corner shops and those that sell little other than alcohol, and supermarkets. The Alcohol Misuse Enforcement Campaigns have shown a considerable problem with sales by off-licences to under-18s and it is important that the off-licensed trade accepts responsibility for its own contribution to the problems of violence and disorder in the night-time economy. However, the link between sale and consumption, and a particular premise and disorder, may be more tenuous. Nonetheless, the Government is clear that off-licences, big and small, do need to contribute effectively to tackling alcohol fuelled disorder.

2. Comments on the proposals

Unsurprisingly, the proposal provoked a hostile reaction from the drinks industry. The Bar, Entertainment and Dance Association (BEDA) which represents nightclubs has been quoted as saying "ADZs are impractical and could be hugely bureaucratic and a thoroughly bad idea"[56] Its Chief Executive was quoted in a trade journal article as saying:[57]

> "The police will apparently decide where a zone needs to be declared and will then claim the funding to set one up. An executor of a will cannot also be the beneficiary and there is clearly a conflict of interest in this sort of arrangement."

The same article reported concerns that all licensed premises in the area would be targeted:[58]

> Other groups such as the Federation of Licensed Victuallers Associations and the Association of Licensed Multiple Retailers say it is wrong for ADZs to lump good and bad pubs together. They say the police already have sufficient powers to tackle rogue pubs and deliver order within town centres.
>
> FLVA chief executive Tony Payne said: "Individual pubs and individual troublemakers should be targeted. If a licensee is at fault, action should be taken and troublemakers should receive fixed penalties followed by an anti-social behaviour order (ASBO) for a second offence."

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56 "Disorder zones get top-priority rating", *Morning Advertiser*, 19 May 2005, p1
57 "Alcohol disorder zones 'won't halt binge drinking'", *Morning Advertiser*, 17 February 2005 p 1
58 ibid

The British Beer and Pub Association stated in a press release:[59]

> We will participate fully in the consultation process but at first glance we are not convinced these proposals will tackle the real problem. The introduction of Alcohol Disorder Zones and charges for policing mean that all pubs in an area will have to foot the bill for the irresponsible activities of a few. Instead of encouraging effective policing we see pubs being punished regardless of the positive actions they are taking and the responsible way in which they operate," said Mr. Hastings. "We have continuously encouraged the police to use the powers at their disposal and prosecute offending pubs and individuals and the evidence from the Alcohol Misuse Enforcement campaigns shows that targeted action by the police does work. These new proposals send the wrong message to offenders and will not tackle the real problem.

The Association of Chief Police Officers' response was reportedly leaked to the Observer. ACPO apparently has concerns about how the zones may be challenged:[60]

> In a deeply sceptical nine-page document submitted to the government and obtained by The Observer, the Association of Chief Police Officers (Acpo) lists a series of concerns over the government's plans to extend drinking hours.
>
> The document highlights the police's fear that the creation of Alcohol Disorder Zones (ADZs), the government's latest response to concerns about the links between longer drinking hours and yob behaviour, would cost the taxpayer and see officers spending more time in court rather than crime-fighting.
>
> The zones allow the police and local authorities to take action against pubs and clubs whose customers cause problems after closing time. But the Acpo document makes it clear that the police have serious doubts about whether the proposals will prove effective.
>
> Acpo is concerned that the proposed zones will be routinely challenged through the courts at considerable cost to the public sector, in terms of time and money. Defending our position in the courts diverts our resources away from where they should be and does little in the meantime to reduce crime, disorder and anti-social behaviour,' the Acpo document warns.

The Local Government Association and LACORS[61] agreed with the principle that premises should contribute to the resolution of alcohol-related disorder, but had some concerns about the implementation of the scheme:[62]

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59 BBPA Press Release 02/2005, *Drinking responsibly*, 21 January 2005

60 "Pub-hours fix fails to woo police", *Observer*, 20 March 2005

61 Local Authorities Coordinators of Regulatory Services

10. The LGA welcomes the opportunity to consider alcohol disorder zones (ADZs) as one method that could potentially be used by local authorities and the Police can use to tackle alcohol-related disorder in geographically specific areas.

11. The LGA and LACORS agree that premises should contribute to the resolution of alcohol-related disorder. However, we some concerns relating to the implementation of this scheme.

12. The designation of the zone will be a sensitive matter. However, we suggest that all premises within the designated area are required to contribute as, during the course of an evening or night out, individuals are likely to drink in more than one premises and thus it will not possible to pin-point one premises in particular.

13. ADZs are designed as a short-term measure. We hope that the action-planning process that would precede the designation of a zone would address many of the prevalent problems in the area. However, if it is agreed that extra funds are required to achieve a reduction in alcohol-related disorder, it needs to be considered how this can be maintained after the life span of the zone.

14. It would be useful to consider options for a longer term measure to be available alongside the proposed short-term ADZ. A model based on Business Improvement Districts, but formed exclusively for licensed premises and others contributing to the night-time economy and with compulsory membership could be considered. This might be known as a night-time management zone or similar.

15. A further concern is that the designation of an alcohol disorder zone may have a negative impact on an area's reputation. The re-naming of a zone may help to mitigate the risk. For example, they could be known as 'alcohol management zones.'

3. The Bill

Under the Bill, a local authority would be able to designate an area as an alcohol disorder zone, and make monthly charges. The details of those charges will be in regulations, as will the uses to which the money will be put. The Explanatory Notes state that they are "likely to cover the costs of initiatives to tackle the problem over and above the normal level of public services" and might include extra policing costs, bus or taxi marshals, publicity or extra enforcement activity. [63] The local authority could designate the ADZ with the consent of the police, or the police could require them to consider establishing an ADZ. If the local authority decided not to propose an ADZ after the police had asked them to, they would have to give their reasons to the local chief officer of police, copied to the Secretary of State.

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62 *Local Government Association and LACORS response to Drinking responsibly: the government's proposals*, February 2005, http://www.lga.gov.uk/Documents/Briefing/Drinking%20ResponseFeb2005.pdf

63 paragraph 89

The area could be designated if the local authority was satisfied that there was a nuisance or disorder associated with alcohol. The authority would have to publish a notice setting out proposals and inviting comments within 28 days. Then the authority and the police would have to publish an action plan setting out what steps could be taken to avoid the ADZ being set up, and what action they would take if the plan is implemented. The ADZ could be imposed only if:

- 8 weeks had expired since the action plan was published without the necessary steps having been taken; OR
- the local authority was satisfied that the plan wouldn't be implemented or that steps were no longer being taken. This could be before or after the end of the 8 week period.

Under clause 16, the Secretary of State will have to issue guidance about the exercise of powers in relation to ADZs.

The people who could be charged would be those within the zone holding premises licences for the sale of alcohol and clubs supplying alcohol to members or guests. This would include on-licence and off-licence premises. One key question posed by the *Drinking Responsibly* consultation document was how the costs could be "targeted at those premises responsible for alcohol related disorder".[64] , As noted above, there has been concern in the industry that responsible premises may be charged alongside irresponsible ones. However, there is no specific exemption for premises who may have taken the necessary steps. Indeed, under the Bill the only exemptions permitted would be for premises whose principal use is not the sale or supply of alcohol. The Explanatory Notes explain that this is to ensure that places like restaurants, cinemas or gyms, which do not significantly contribute to alcohol related disorder are not charged.[65] However, regulations will be able to authorise or require local authorities to grant discounts from the charges and the Explanatory Notes give examples of who might qualify:[66]

> These discounts may, for example, be offered to premises which close before midnight. They may also be offered to premises which are accredited under a scheme such as the Best Bar None scheme, which rewards good operating practice.

If the problem in an area was with only one or two irresponsible premises, then action could be taken against those through licensing legislation rather than through ADZs. On the day the Bill was published the Prime Minister made it clear that ADZs are a last resort:[67]

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64 DCMS/Home Office/ODPM, *Drinking responsibly: The Government's Proposals*, January 2005, paragraph 8.6
65 paragraph 94
66 paragraph 93
67 HC Deb 8 June 2005 cc1241-2

> It is important to consider that in addition to all the other powers that we want to introduce, we have already given the police the power to shut a pub or club for 24 hours and to trigger a review of the licence if fights and disorder constantly take place there. The purpose of the alcohol disorder zone is to give an additional power, in circumstances in which nothing else makes a difference, to ensure that in that area the people who run licensed premises come together and do something about the problem.
>
> The range of new powers that have been given to the police will be valuable, but they require the full co-operation of licensed premises. On those premises where there are continual fights—Thursday, Friday, Saturday nights and at other times, too—and it is difficult for people to go into town centres without being in fear for their own safety, such behaviour is completely unacceptable. During the course of the legislation, we are determined to take whatever measures are necessary to give the police the power to stamp out the problem.

The Home Affairs Committee in its report on Anti-Social Behaviour pointed out that alcohol related disorder is not just the result of irresponsible premises:[68]

> 316. Better enforcement is a necessary part of the response to alcohol-related disorder; however, we conclude that on its own it is insufficient. Even if enforcement was to improve dramatically, we believe that this would have a limited impact. This is because the problem is not primarily about a handful of irresponsible individuals: it is what happens when tens of thousands of individuals under the influence of alcohol are milling about in public areas. The central solution lies elsewhere.

The Committee went on to argue that the size of a contribution to policing should be unrelated to fault:[69]

> 347. We welcome the acceptance of the principle that clubs and pubs ought to contribute more to the cost of disorder in some circumstances, as contained in the proposals for alcohol disorder zones. However, we are concerned that these proposals may be difficult to operate in practice. They seem to rest on the premise that individual licensed premises must be at fault for surrounding disorder; however, it is clear to us that problems of disorder can occur even if all the surrounding licensed premises are operating perfectly responsibly.
>
> 348. The extension of licensing hours works in the industry's favour and is likely to increase its profits. In return, we believe that pubs and clubs in areas designated by local authorities, in conjunction with the police, should pay a mandatory contribution to help solve local problems of alcohol-related disorder. Local authorities should have the discretion to decide whether this should be used

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68 Home Affairs Committee, *Anti-social Behaviour*, HC 80-1, 2004-05, 22 March 2005, p101

69 Ibid p110

> to contribute towards the cost of local policing, the cost of late-night transport or other necessary facilities linked to the effects of night-time drinking. We believe that the size of the contribution should vary according to the size of the premise. It should be completely unrelated to issues of fault: the principle should be that licensing mechanisms will be used to maximum effect to require every pub and club in the area to act responsibly, and a mandatory contribution will be taken to help pay for the aggregate effect of large-scale drunkenness in public space.

4. Responses to the Bill

The Local Government Association has given a broad welcome to this part of the Bill:[70]

- We welcome this additional power for councils. ADZs are an additional mechanism that can be used to tackle the consequences of binge drinking and alcohol related disorder, and we support the "polluter pays" principle.
- The Bill grants this power to all councils. In areas of two tier local government, this may cause confusion. It would be simplest for local authorities if the power was reserved for District and Unitary councils.
- There is a lack of clarity created by the exemption of those premises at which the availability of alcohol is not the main purpose. Local discretion should instead be granted for exemptions.
- Councils will currently not be able to recoup costs incurred during the eight week consultation process. Where a zone is declared, this cost should be met through the levies collected. Where a zone is not declared, this will currently pose an additional burden on local authorities.

However, there has been reported "outrage" from drinks industry representatives:[71]

> The move has prompted outrage from trade leaders who, along with the Local Government Association and Association of Chief Police Officers, voiced serious concerns during the consultation period.
>
> "I am bitterly disappointed the Government has not listened to us" said Bar Entertainment & Dance Association chief executive Jon Collins.
>
> "It is ridiculous, we couldn't have been more clear in our opposition. It is far too complicated and I have massive doubts whether this will ever see the light of day. It is a massive mistake for the Government to devote so much time and energy to this"
>
> There remains a deep-rooted feat that zones will actually have the opposite effect to the desired one. "If you declare an ADZ it will drive away those you want to attract, like families, and the zone may well become a tourist attraction for

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70 LGA briefing, *Violent Crime Reduction Bill*, 9 June 2005

71 "Trade outcry as Crime Bill opens door to ADZs", *Morning Advertiser*, 9 June 2005, p1

> troublemakers," said BII (British Innkeepers Institute) chief executive John McNamara.

D. Drinking Banning Orders

Drinking Responsibly proposed the introduction of a new order to deal with individuals who engage in alcohol-related disorder:[72]

> **4.6** The Government is particularly determined to target those individuals, including those who are serial offenders, whose abuse of alcohol results in the repeated causing of disorder in towns and city centres. We propose, therefore, to create a new civil order – a 'Drinking Banning Order'- which will allow for the exclusion from the area concerned of individuals aged 16 years or older who are responsible for alcohol related disorder. The order could be triggered in respect of an individual via a number of possible routes. These could include mandatory consideration by a court following a third or subsequent alcohol and disorder related criminal conviction, or through application to the court by either the Police or a Local Authority following the issuing of third or subsequent alcohol related fixed penalty notice.
>
> **4.7** It would be open to the Police, Local Authority or individual to return to the court within the terms of the order to request a variance or discharge of it.

Clauses 1-11 of the Bill would introduce these new orders. In many respects, they are similar to ASBOs, which were touched on in section IIA of this Research Paper above. Police and local authorities (and some other authorities) can apply to magistrates for an ASBO where:

- a person over 10 has acted "in a manner which caused or was likely to cause harassment, alarm or distress"; and
- an ASBO is necessary to protect people from further anti-social acts by that person.

The legislation does not provide a specific list of behaviours which are "anti-social", so the definition is flexible, and has been used to cover a wide range of behaviour. The fact that the anti-social behaviour has taken place has to be established beyond reasonable doubt. An ASBO can last for a minimum of two years or until a further court order. It prohibits the individual from certain actions, rather like an injunction. Breach of an ASBO is a criminal offence with a maximum penalty of five years' imprisonment. Further details are given in a Library Standard Note.[73]

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[72] DCMS/Home Office/ODPM, *Drinking responsibly: The Government's Proposals*, January 2005
[73] SN/HA/1656

There have been mixed reactions to ASBOs, with many practitioners finding them a useful tool, particularly of last resort, but a number of organisations objecting to them either in principle or in practice. The Home Affairs Committee looked into ASBOs in their March 2005 report particularly in relation to their use in response to youth nuisance and concluded:[74]

> 218. We welcome the introduction by the Government of ASBOs. The ASBO appears to be an effective tool which gives relief to communities and is more honoured in the observance than the breach, although we recognise that they are only just beginning to be used widely. We agree with witnesses who argue that ASBOs are little different from injunctions, which primarily seek to prevent rather than to punish: in essence, they require people to amend their behaviour to an acceptable and normal standard. We conclude that ASBOs are most likely to succeed in changing behaviour when used in conjunction with necessary support

However, the Committee also reported that it had heard "extensive criticisms" of ASBOs:[75]

> The following criticisms came up repeatedly:
>
> - ASBOs blur the boundaries between civil and criminal law, with implications both for human rights, and for the possibility of a twin-track approach under which someone can be given an ASBO in response to criminal behaviour that— in a different part of the country—might lead to criminal prosecution;
> - The use of ASBOs against young people runs the risk of net-widening: bringing more young people into contact with the criminal justice system, and especially increasing the number of young people in custody;
> - ASBOs have been used inappropriately and several have included unrealistic conditions that have invited breach,
> - ASBOs are ineffective in reducing ASB, because they are negative and do not address young people's support needs;
> - The practice of enforcement by publicity, or 'naming and shaming' is inappropriate and puts child safety at risk.

The Committee rejected most of these criticisms as unfounded. Nevertheless, they are frequently raised – for example on the website of "ASBO Concern" - a campaigning alliance of organisations and individuals.[76]

Like ASBOs, Drinking Banning Orders would be civil orders, the breach of which is a criminal offence. Just as with ASBOs, police, local authorities and some other "relevant

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74 Home Affairs Committee, *Anti-social Behaviour*, HC 80-1, 2004-05, 22 March 2005, pp72-3
75 ibid p65
76 http://www.asboconcern.org.uk/

authorities" will be able to apply to the magistrates' court for the new Drinking Banning Orders. There is a very similar two-stage test which must be satisfied, namely that:

- The individual has engaged in criminal or disorderly conduct while under the influence of alcohol; and
- Such an order is necessary to protect people from further conduct by him of that kind while he is under the influence of alcohol.

The order would be able to impose "any prohibition on the subject which is necessary for the purpose of protecting other persons from criminal or disorderly conduct by the subject while he is under the influence of alcohol."[77] However, they would not be able to prevent him from having access to his home, his place of work, any place he is expected to attend for education, training or medical purposes or because of a court order. In their inquiry, the Home Affairs Committee was given what they decided were fairly isolated examples of inappropriate ASBOs, one of which had prevented a young person entering his home, despite a bail condition to reside there, and another had precluded entering any vehicle,which stopped him getting to his community service.[78]

As with ASBOs, the court will be able to make an interim order without notice to the defendant, and the new orders will be able to be taken out as part of county court proceedings and on conviction in criminal proceedings. Appeal against a Drinking Banning Order will be to the Crown Court, and breach will result in a maximum prison term of 51 weeks or a fine not exceeding level 4 or both.

It had previously been suggested that the Drinking Banning Orders would only be imposed on people who had already been cautioned three times. The 2005 Labour manifesto document on crime stated:[79]

> For more persistent offenders there will be 'three strike' Drink Banning Orders excluding those dealt with three times or more for alcohol-related disorder from pubs and bars within a specified area.

In a press article on the 8 June 2005, the Home Office Minister Hazel Blears explained why the Bill did not, in fact, stipulate this:[80]

> "We haven't specified on the face of the bill three strikes and you're out because there may well be some circumstances, very limited, where you would want to make a drinking banning order on the first occasion," Ms Blears said.

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77 Clause 1(2)
78 Home Affairs Committee, *Anti-social Behaviour*, HC 80-1, 2004-05, 22 March 2005, p68
79 Labour Party, *Tackling crime forward not back*, March 2005, p6
80 "Bill clamps down on alcohol and gun crime", *Guardian*, 8 June 2005

> "I think it's right that the courts should have some flexibility and discretion around that but we will be looking at guidance and making sure people don't use these orders in a disproportionate fashion."

Alcohol Concern, a national voluntary agency on alcohol misuse, has welcomed the new orders, although the organisation argues that they should be used alongside measures to encourage responsible behaviour:[81]

> 47. Alcohol Concern welcomes the firmer stance being taken towards unacceptable behaviour, however, we believe that this represents only half the solution. This approach needs to sit side by side with one which encourages responsible behaviour. This is only possible through raising awareness of the negative impact of excessive alcohol consumption, informing people about safe drinking and encouraging people to question their own drinking patterns through the use of tools such as Alcohol Concern's How's Your Drink website howsyourdrink.org.uk. Taking a punitive approach alone will have a limited impact in changing people's behaviour, which is ultimately what is needed.
>
> 48. In particular the introduction of Drink Banning Orders must ensure that any treatment needs of an individual would be identified as part of this process and that appropriate support packages would be given as part of this process. This has happened with Anti Social Behaviour Orders for example, which have been used by a number of Local Authorities to help lever individuals into treatment.

E. Directions to individuals to leave a locality

Clause 22 of the Bill would give the police a power to issue a direction to someone aged 16 or over to leave a place. The direction will be able to prohibit their return to this place for up to 48 hours. The test which must be satisfied before a direction is given is that "the presence of the individual in that locality is likely, in all the circumstances, to cause or to contribute to the occurrence or continuance in the locality of alcohol related crime". This clearly gives the police wide discretion, in that the individual concerned does not actually have to have done anything wrong to receive a direction.

Failing to comply with a direction under this clause would be an offence punishable by a fine not exceeding level 4 (currently £2,500). There is no appeal mechanism against the giving of a direction in the Bill, and given the short time for which a direction would apply, this would probably be impractical. However, if an individual were to be prosecuted for failing to comply, then it would be open to them to argue that the direction was not properly given. The direction must be in writing and clearly identify the locality concerned.

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[81] *Alcohol Concern's Response to the Home Office Consultation Drinking Responsibly* February 2005 http://www.alcoholconcern.org.uk/files/20050301_124911_Drinking%20Responsibly_Jan2005.pdf

There are a number of safeguards in the clause which probably reflect problems which have arisen in relation to some ASBOs. As with Drinking Banning Orders, clause 22(4) sets out that a direction could not be given if it prevents the person

- From having access to his home
- From getting to his place of work
- From attending any place for medical, training or education purposes
- From attending any place which is required to by law or by a court or tribunal order.

Orders could be varied or withdrawn by any constable.

This provision was not announced in the Government's *Drinking Responsibly* consultation document. However, it was set out in the Labour manifesto, albeit as a 24 hour ban:[82]

> Police will also have the power to issue 24 hour bans from designated areas to those to whom they issue a Fixed Penalty Notice for disorder.

The *Guardian*, on 8 June 2005 reported Home Office minister Hazel Blears's explanation for why this has now been extended to 48 hours:

> Initially the plan was for individuals at risk of carrying out alcohol-related disorder to be able to be banned from an area for 24 hours, but Ms Blears said that period had been extended to 48 hours so that someone could not be banned early on a Friday night and be back on the streets by Saturday evening.

There are a number of circumstances under current legislation where a police officer can issue directions to an individual. For example, the police can impose conditions on organisers and participants in public processions such as demonstrations, and it is a criminal offence to fail to comply. [83] The police can also issue directions to trespassers to leave land, and again it is a criminal offence to disobey these.[84] The police also have common law powers, where there is a threat to breach of the peace to arrest and move groups of people on where their behaviour amounts to a criminal offence or serious disorder is threatened. However, the main comparisons will probably be made with section 30 of the *Anti-social Behaviour Act 2003*.

Under section 30 of the 2003 Act, a senior police officer, with the agreement of the Local Authority, can designate an area in which there is persistent anti-social behaviour. Within such an area, the police and Community Support Officers have the power to:

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82 Labour Party, *Tackling crime; forward not back*, March 2005, p6
83 section 12 *Public Order Act 1986*
84 section 61 *Criminal Justice and Public Order Act 1994*

- disperse groups where the relevant officer has reasonable grounds for believing that their presence or behaviour has resulted, or is likely to result, in a member of the public from being harassed, intimidated, alarmed or distressed. Individuals can be directed to leave the locality and may be excluded from the area for up to 24 hours.

- return home young people under 16, who are out on the streets and not under the control of an adult, after 9pm.

The Home Affairs Committee noted a number of criticisms of the power in section 30:

> 228. Several organisations have criticised these powers. The Howard League for Penal Reform argued that the powers penalised children for simply using public space, and suggested that many children are there "as no organised or structured activities like youth clubs exist", with others choosing to spend time away from home due to the quality of their housing or domestic situation.[287] Barnado's argued that the use of these measures has varied greatly: in some cases, they are tied to engagement projects; in others, they have simply been imposed on children.[288] Liberty considered the powers to be neither proportionate nor necessary.[289]
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> 229. Other organisations have criticised the principle lying behind the powers, but said that it is too early to assess their real impact.[290] JUSTICE noted that there were already public order offences contained in other legislation, arguing that these should be better enforced in preference to dispersing groups which have not committed an offence. It also argued that there was a wide potential for discrimination, although its Director—Roger Smith—conceded that there was no evidence of this as yet.[291] The Children's Society argued that not only was it too early to assess the impact of the measures on the ground, but that the guidance from Government meant to accompany section 30 had not come out yet. It emphasised the importance of this: there had been Government assurances that the guidance would require police and local authorities to consult with the local community, including children and young people, prior to issuing an authorisation.[292] However, we have been told that the guidance has now been produced (by ACPO) and will be available shortly.[293]
>
> **230. We heard little evidence as to whether the section 30 dispersal powers are effective at local level, although they have now been in operation for over a year. We are concerned that this reflects a wider ignorance about the use of these powers, and recommend that the Home Office commissions research to examine issues of effectiveness and proportionality.**

In their response to the Committee's report, the Government said: [85]

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[85] Home Office, *The Government reply to the fifth report from the Home Affairs Committee session 2004-05 HC 80 Anti-social Behaviour* Cm 6588, June 2005, p15

> It is disappointing that the Committee was not able to hear evidence first hand of the impact of dispersal powers in bringing peace to communities. We are in close touch with practitioners from both police and local authorities who consider them to be a key tool for tackling anti-social behaviour, often used alongside ABCs, ASBOs and other measures. We will keep the need for research under review.

The human rights organisation Liberty is backing a court challenge to section 30 in which a 15 year old boy is arguing that the curfews infringe his human rights.[86]

As yet there has been little comment on clause 22 of the Bill. However, Liberty does have concerns about the clause:[87]

> The Violent Crime Reduction Bill should be judged and scrutinised within its historic context – that is, a disturbing continuum of an increasing blurring of the boundaries between criminal and civil law. This has led to an increased criminalisation of civil offences and we have now reached a point where there is no need to have committed any 'anti-social', civil or criminal act.
>
> This trend started with the definition of anti-social behaviour as a legal concept in 1997 and led to the Anti-Social Behaviour Act of 2003 which further muddied the waters with the introduction of curfews for under 16 year olds and dispersal orders, even though they may not have committed any offence.
>
> The Violent Crime Reduction Bill takes this a step further. In particular, clause 22 provides a police officer with a new power to issue a direction to an individual aged at least 16 years requiring him to leave a public area and prohibiting his/her return within 48 hours. This direction may be given if the police officer believes that the individual "is likely, in all the circumstances, to cause or to contribute to the occurrence or continuance in the locality of alcohol-related crime and disorder". If the individual fails to comply with this direction and returns to the same locality within 48 hours, he/she will be guilty of a criminal offence. Therefore, an individual may be criminalised merely if his/her presence is believed by police to give rise to future disturbance, without having committed anything that might ordinarily be conceived as a criminal offence.
>
> Liberty believes that these new powers give the police with arbitrary discretion and the power to set the boundaries for criminal law without the involvement or consent of Parliament. As a result, the police may effectively remove someone from an area for an entire weekend without them having done anything wrong. This is a disturbing decentralisation of the power to define criminal law away from Parliament. Although the police may use these powers sensibly, their potential range of misuse is considerable.

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86 http://www.liberty-human-rights.org.uk/press/2005/curfew-challenge.shtml

87 Liberty Briefing, 16 June 2005

> Moreover, this might have significant resource implications as the police will be in a position to prosecute someone who may simply have returned to the specific location without having caused any obvious offence.
>
> The police already have an extremely wide range of criminal and civil powers as well as arrest powers for anyone likely to cause a breach of the peace. Liberty remains deeply concerned by the increasing authoritarian measures promoted by the Government, increasing powers being given to subjective judgements by the local police and, most importantly, the increasing criminalisation of individuals whose only offence is to be in a particular place at a particular time.

F. Licensing provisions

1. Present powers on closure and licence review

The *Licensing Act 2003* already grants a range of powers for the closure of pubs and clubs at short notice. In particular, it expands existing court powers, on application by the police, to close all licensed premises within a specified geographical area for up to 24 hours where disorder is occurring or anticipated. Additionally, a senior police officer can make a closure order in relation to any licensed premises if he reasonably believes that there is, or is imminently likely to be, disorder in or around the premises and their closure is necessary in the interests of public safety. He can also make a closure order if he believes that a public nuisance is being caused by noise coming from the premises and closure is necessary in order to prevent that nuisance.[88] A closure order is for an initial maximum of 24 hours (with a possible extension for a further 24 hours if certain conditions are met) and, as soon as the order comes into force, the senior police officer must apply to a magistrates' court for it to consider the order. A textbook comments of this provision: "It is interesting that this initial application is made to the magistrates' court and not to the licensing authority. No doubt this is because the court is better equipped to deal with an emergency application."[89] As soon as it receives the application the magistrates' court must hold a hearing to determine whether is appropriate for the court to exercise its powers.[90] At this point the licensee can make representations on his own behalf. On considering the police's application, the court may decide to revoke the closure order; alternatively, it can order that the premises remain closed until the licensing authority has completed its review of the premises licence. Under section 167 of the 2003 Act the licensing authority has a general duty to review a premises licence when a closure order has come into force and the authority has been notified by the magistrates' court of the court's decision to exercise its powers. The licensing authority must complete its review within 28 days of receiving the notice from the court.

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88 section 161(1)

89 Kenneth W Pain and Kevin M Pain, *Licensing practice and procedure*, 8th edn, 2004, p119

90 section 165(1)

The other existing power is that of review. Under the 2003 Act a premises licence, once granted, remains in power until it is surrendered or revoked. However, at any time an "interested party" or "responsible authority" can apply to the licensing authority for a review of that licence.[91] The Act defines "interested parties" to include anybody living in the vicinity of the premises in question and "responsible authorities" to include the local police.[92] Licensing authorities may not initiate their own reviews of premises licences. The application for a review must be grounded in concerns arising from the four "licensing objectives" set out at the beginning of the Act. Likewise, in reaching its decision following a hearing, the authority must have regard to these four objectives. A number of options are available to the authority if they find that the licence conditions have been breached. These range from modifying the licence conditions to suspending the licence for up to 3 months or revoking it altogether.[93] An aggrieved licensee has a right of appeal to the magistrates' court, as does the applicant for review if the authority decides to take no action. The key guidance document, issued by the Department for Culture, Media and Sport to licensing authorities, devotes several paragraphs to the role of reviews in promoting the crime prevention objective, beginning as follows:

> A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises or money laundering by criminal gangs or the sale of contraband or stolen goods there or the sale of firearms. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. The role of the licensing authority when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure that the crime prevention objective is promoted. Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them.[94]

The guidance document includes a separate section, chapter 11, on "police powers to close premises". The guidance states that it has no "binding effect" on police officers, since they are "operationally independent", but it is produced in order to "support and assist" them in "interpreting and implementing" their closure powers under that Act.[95]

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91 section 51(1)

92 section 13

93 section 52

94 DCMS, *Guidance issued under section 182 of the Licensing Act 2003 and guidance issued to police officers on the operation of closure powers in Part 8 of the Licensing Act 2003*, July 2004, para 5.112, http://www.culture.gov.uk/global/publications/archive_2004/guidance_issued_under_section_182_of_the_licensing_act_2003.htm

95 Ibid., para 11.2

2. The new power of summary review

The Bill (clause 18) provides for a new "fast-track" procedure for summary reviews, the target being licensed premises associated with the sort of serious crime targeted elsewhere in the bill, such as gun and knife crime. New sections are inserted after section 53 of the 2003 Act. A chief police officer may apply to the licensing authority for a review of a particular licence, providing that a senior police officer gives a certificate that, in his opinion, the premises are associated with "serious crime or serious disorder or both". The application triggers a timetable for action on the part of the licensing authority. Within 48 hours of receipt the authority must consider whether to take "interim steps", and within 28 days they must review the licence and reach a decision. The "interim steps" (new section 53B) take immediate effect, if the authority so decides, and range from modification of the licence conditions to suspension of the licence. The interim steps could be quite drastic modifications to the existing licence, for example the right for pub or club staff to search customers for offensive weapons or requiring pubs and clubs to use toughened glass where it is apparent that this will reduce the risk of injury from "glassing" (attacks with broken glass).[96] There is no requirement before considering interim steps to give the licensee an opportunity to make representations. However, once the steps have been taken, the authority must notify the licensee of their action and, if the licensee then makes representations, the authority must hold a hearing within 48 hours to consider the licensee's representations. At the review proper, which occurs within 28 days of the police's original application, there is a hearing to consider the application for review and any relevant representations.[97] Whatever is decided supersedes the interim steps taken within the first 48 hours. The outcome will be one a list of sanctions ranging in severity from modification of the existing licence conditions to revocation of the licence, and there is a right (clause 19) for a chief police officer, a licensee or anyone who made relevant representations to appeal against the decision to the magistrates' court.

In its response to the Bill the Local Government Association has welcomed summary reviews as a "last-resort" measure to be used against problematic premises but is concerned that the licensee has no opportunity to make representations before interim steps are taken.[98]

3. Selling alcohol to children

The Home Office quotes research arising from the police's Alcohol Misuse Enforcement Campaign last year which reveals that:

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96 These two examples of licence modifications are given in the *Explanatory notes* (para 26). In the Labour election manifesto 2005 there was a promise that "at-risk pubs and clubs" will be required to search for guns and knives (*Britain forward not back: the Labour Party manifesto 2005*, p47)

97 That is, "relevant" to the licensing objectives, against which all determinations are made

98 Local Government Association "initial reaction" briefing on the Bill, 9 June 2005

- in the summer campaign 45% of the on-licences and 31% of the off-licences targeted by the Police were selling unlawfully to young people under the age of 18; in the winter campaign 32% of on and off-licence premises sold unlawfully to underage persons;
- over a third of more than 12,000 alcohol confiscations during the two campaigns came from youths;
- 57% of those asked about problem drinking in their area identified drinking by under 18s as the key issue;
- 15% of 12 to 17 year olds reported committing a disorderly or criminal act during or after drinking.[99]

Under the *Licensing Act 1964*[100] it was already an offence to sell alcohol to children under 18 in licensed premises. The *Licensing Act 2003*[101] extends the scope of this: a person now commits an offence if he sells alcohol to an individual aged under 18 anywhere. Section 147 covers the more specific offence of knowingly allowing the sale of alcohol to an under-18 in licensed premises.[102] The Act provides a defence if the retailer believed that the purchaser was 18 or over and either he took all reasonable steps to establish the purchaser's age or nobody could reasonably have suspected from the purchaser's appearance that he was under 18. The Bill (at clause 20) adds new sections to the Act following section 147. There is a new offence of persistently selling alcohol to children. The components of the offence are that a person is guilty if on three or more different occasions within a period of three consecutive months alcohol is sold to someone under 18 and the person has responsibility for the premises on each occasion. The purchaser may be, but need not be, the same person in each case (new section 147A). The available defences are the same as those already in the Act, ie. the purchaser convinced the licensee of his age by producing evidence or he appeared to be over 18. Where a licensee is convicted of this new offence, a court may order that the retail sale of alcohol on those premises should be suspended for up to three months (new section 147B).

Clause 21 creates a new power for a senior police officer or an inspector of weights and measures to prohibit sale of alcohol on premises for a period of up to 48 hours if there are reasonable grounds for believing that an offence of persistently selling alcohol to children has been committed on those premises. The Prime Minister was quoted in the consultative document, *Drinking Responsibly*, as saying:

> "We have already given the police the power to close for 24 hours, swiftly, without any unnecessary court procedure, premises where there is disorderly behaviour, or where there are regular fights going on inside or outside the licensed premises. What we want to do now is to extend that power to close

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[99] *Drinking Responsibly*, para 3.1
[100] section 169A
[101] section 146
[102] Technically, premises licensed under the Act, such as pubs, clubs or sites of temporary events

> licensed premises to a situation where there is persistent under-age drinking that is continuing with the knowledge of the licensed premises".[103]

The police's existing powers of closure relate, as we have seen, to three out of the four licensing objectives – disorder, public safety and nuisance. This new measure enables the authorities to close premises where it is necessary for the protection of children from harm, in accordance with the fourth licensing objective. A closure notice of this type offers an opportunity for the licensee to discharge his criminal liability in respect of the alleged offence by accepting the temporary closure (new section 169A(2) inserted into the 2003 Act). The premises licence holder will have seven days to decide whether to accept the proposed prohibition or to elect to be tried for the offence.

The relationship between clauses 20 and 21 is important. The clause 21 closure notice functions like a fixed penalty notice. The licensee admits his liability and accepts the punishment, but is left without a criminal record. The alternative available to him is to opt for trial under clause 20. A licensee would take the clause 20 option if he believed himself innocent of the offence or if he claimed that the authorities had acted improperly. For example, he might wish to plead the defence of due diligence, arguing that on one or more of the three occasions he reasonably believed the purchaser to be over 18. Alternatively, his defence might be that the authorities acted improperly, for example in the way they conducted their "sting" operations. The *Licensing Act 2003* authorises the police and weights and measures inspectors to deploy under-18s to make test purchases.[104] If the licence-holder opts for trial and is found guilty, he faces a fine not exceeding £10,000.

Another key distinction between clauses 20 and 21 is that in 20 the penalty falls on the individual licensee, whereas in 21 it falls on the premises. This point is developed in the Explanatory Notes to the Bill:

> Although the *Licensing Act 2003* will increase the maximum fines for offences related to sales of alcohol to children from £1,000 to £5,000, the impact of convictions for such offences falls on the individual offender and therefore not necessarily on the business carrying on the licensable activity at the premises. Similarly, conviction may lead to the suspension of a personal licence if one is held by the offender, but not the premises licence which authorises sales of alcohol at the premises concerned. Whether any action is taken in respect of the premises licence will depend on the police or trading standards officers applying to the licensing authority for a review of the premises licence. Whether any action is taken to suspend or revoke the premises licence would then depend on the view taken by the licensing authority following a hearing.

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[103] *Drinking responsibly*, para 3.2

[104] section 152(4). I am grateful to a DCMS official for clarifying the distinction drawn here between the two clauses.

> In the "Drinking Responsibly" consultation paper, the Government argued that the existing and future offence provisions and the increased penalties associated with the implementation of the *Licensing Act 2003* may be insufficient in themselves to curb the current level of unlawful sales. A key proposal was to legislate to create a power for the police and trading standards officers (inspectors of weights and measures) to close premises for a period of up to 48 hours where there was evidence of persistent unlawful selling to children.[105]

In its response to the *Drinking Responsibly* consultation, the Local Government Association welcomed these moves but suggested several enhancements, for example:

> - Where closures are made, only the part of the premises selling alcohol should be closed.
> - The ability of trading standards departments to tackle the problem of underage sales, outside of the new proposals, could be enhanced by giving officers powers to request and retain documented evidence from licensees of the steps they are taking to prevent underage sales.[106]

Clause 23 inserts an additional section into the *Licensed Premises (Exclusion of Certain Persons) Act 1980*. The effect is that where a person is convicted by or before a court of an offence committed on licensed premises then the court must consider making an exclusion order prohibiting the person from entering those premises or any other specified premises as described under the 1980 Act. If it is decided not to make an order the court must state that fact in open court and give reasons.

III Offences involving firearms and other weapons

A general summary of the law relating to controls on firearms in England and Wales can be found in Library Standard Note SN/HA/3639 *Statutory Controls on Firearms*. A summary of the law relating to other weapons is set out in Library standard note SN/HA/330 *Knives and Offensive Weapons*.

In May 2004 the Home Office published a consultation paper entitled *Controls on Firearms*, which sought views on a number of possible further changes in the law on firearms.[107] The Home Office website makes the following comments about the consultation exercise:

> Controls on Firearms: A Consultation paper, issued on 12 May, is the first step in a comprehensive review of firearms controls in Great Britain. We want an open and wide-ranging debate, in advance of deciding what action might need to be taken.

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[105] *Explanatory notes*, paras 36-7. Cf. *Drinking responsibly*, para 3.4

[106] Local Government Association/LACORS, *Response to "Drinking Responsibly: the Government's proposals"*, February 2005, paras 30-31, http://www.lga.gov.uk/Documents/Briefing/Drinking%20ResponseFeb2005.pdf

[107] see http://www.homeoffice.gov.uk/docs3/consult_firearms.html

> The aim of the review is to produce a modern and readily enforceable regulatory framework focused on public safety, balancing the needs of the wider community with those that both enforce the law and possess and use guns legally. We already have some of the toughest firearms controls in the world and the review is also an opportunity to ensure that our regulatory system does not allow guns to get into the wrong hands.[108]

The summary chapter of the consultation paper described the issues in respect of which views were being sought as follows:

> *Part 1: "Firearms"* describes the three categories on which gun licensing is currently based. It asks whether types of gun are subject to the right levels of control and if licensing should continue to be based on these categories. The section also asks whether the certification process can be improved, if any changes are needed to the regulation of component parts and whether responsibilities for administering controls on firearms should continue as at present;
>
> *Part 2: "Unlicensed Guns"* discusses those types of guns, principally imitations, low-powered air guns and deactivated firearms, which are not subject to licensing. We do not believe that licensing of low-powered air guns and imitations, or restrictions on their sale, is proportionate or enforceable. Part 2 invites consultees to say whether they agree with this. It also invites views on whether further controls on deactivated firearms are needed;
>
> *Part 3: "Young People and Guns"* refers to growing concern about the attractiveness of guns to some young people. It asks how the complex age limit provisions might be simplified and invites comments on the principle of young people and legal shooting;
>
> *Part 4: "Trade"* discusses the means by which guns, their parts and ammunition are bought and sold. It asks whether the regulation of Registered Firearms Dealers can be improved, and whether action is needed in connection with internet, newspaper and telephone sales and mail order deliveries;
>
> *Part 5: "Ammunition"* seeks views on whether shot gun cartridges and component parts of ammunition should be licensed and whether the existing controls on expanding ammunition should be maintained;
>
> *Part 6: "Other Issues"* asks for views on topics not covered elsewhere in the paper. For example, if exemptions from the need to have a firearms certificate should continue in their present form and whether changes are needed to the existing procedures for appeals against licensing decisions.

The deadline for responses to the consultation paper was 31st August 2004. The Government is still collating the responses it received and has not yet published its response to the consultation exercise.[109]

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[108] *ibid*.
[109] HC Deb 7 April 2005 vol 432 c1810-1W

In the Queen's Speech the Government announced that it would be introducing a Violent Crime Bill, which would include measures to reduce the availability of imitation firearms and the misuse of air guns.[110]

A. Current controls on air weapons

Air guns discharge a projectile by means of compressed air or carbon dioxide. The legal status of an air gun is determined by the muzzle energy of the pellets it discharges.[111] Some high-powered air guns are prohibited weapons which cannot be possessed, purchased, acquired, manufactured, sold or transferred without the authority of the Secretary of State The *Anti-social Behaviour Act 2003* added air guns designed or adapted for use with self-contained gas cartridge systems to the list of prohibited weapons, which is set out in section 5 of the *Firearms Act 1968*.[112] Some other high-powered air weapons require firearm certificates. These are often used as an alternative to conventional firearms for similar purposes and for hunting small game. Low-powered air guns are commonly possessed for target shooting and for vermin control. Air guns discharging pellets with a muzzle energy of less than 6 foot pounds are not subject to licensing. Some low-powered air weapons are not "firearms" at all because they are not regarded as "lethal" barrelled weapons. They do not require a firearms or shotgun certificate, although there are some controls on their possession and use. These include many "airsofts" and most "BB guns".

Present controls on the possession and use of air guns include:

- ***Offences.*** Trespassing with an air gun and firing one within 50 feet of a public road are both offences. The maximum penalty for having an air gun with the intention of endangering life is life imprisonment. The *Anti-Social Behaviour Act 2003* also makes it an offence to possess an air gun, or imitation firearm, in a public place without legal authority or reasonable excuse;

- ***Age limits.*** Following the *Anti-Social Behaviour Act 2003,* a person under 17 can only possess an air gun:

  – under the supervision of an adult who is 21 or over;
  or
  – at an approved shooting club or miniature rifle range; or
  – on private premises if they are 14 or over and have the consent of the occupier.
  It is also an offence:

[110] "Violent Crime Bill" – Home Office Background Note 17.5.2005
[111] More information on this can be found in Library standard note SN/HA/3641 on *Air Guns*

> – to lend an air gun to somebody under 17, other than in the above circumstances;
> – to make a gift of an air gun to somebody under 17;
> – for someone under 17 to buy an air gun, or for somebody to sell one to somebody under that age.

Under section 22(1) of the *Firearms Act 1968* it is an offence punishable by up to 6 months' imprisonment and a £5,000 fine for a person under the age of 17 to purchase or hire any firearm or ammunition, including an air weapon or ammunition for an air weapon. Section 24(1) of the *Firearms Act 1968* makes it an offence, punishable by up to 6 months' imprisonment and a £5,000 fine, for a person to sell or let on hire any firearm or ammunition, including an airgun or ammunition for an airgun, to a person under the age of 17. Where a person is charged with one of these offences it is a defence to prove that he or she believed the other person to be of, or over, the specified age and had reasonable grounds for that belief.

The Home Affairs Committee looked at air guns as part of its inquiry into firearms controls in 2000.[113] In its response, the Government agreed to consider the Committee's recommendation that the sale of air guns should be permitted only through registered firearms dealers but rejected a licensing system for airguns on the grounds that it would be cumbersome, costly and difficult to administer.[114] In the recent consultation document on firearms control the Government said: "We do not […] believe that there should be a system of licensing or further restrictions on the sale of air guns".[115]

B. Current controls on imitation and replica firearms

Section 57(1) of the *Firearms Act 1968* defines a firearm as "a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged…" *Archbold's Criminal Pleading, Evidence and Practice* notes that whether a weapon is a firearm is a question of fact and that accordingly, the reported cases do not establish as a matter of law that a particular type of weapon is a firearm.[116]

> Section 57(4) of the 1968 Act defines an "imitation firearm" as "any thing which has the appearance of being a firearm […] whether or not it is capable of discharging any shot, bullet or other missile".

Imitation, or replica, firearms generally fall into two categories: (a) those that can be readily converted into a firearm to which section 1 of the *Firearms Act 1968*, (firearms requiring a firearm certificate) applies, and (b) those that cannot. The latter are not

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[112] *Anti-social Behaviour Act 2003* s. 39
[113] *Controls over Firearms*, HC 95 1999-2000, 2 vols
[114] *Government reply to the Second Report from the Home Affairs Committee session 1999-2000*, Cm 4864, October 2000, p10
[115] Home Office, *Controls on firearms: a consultation paper*, May 2004, p11
[116] Archbold, *Criminal Pleading, Evidence and Practice 2005* paragraph 24-86

required to be licensed and therefore, are not subject to most of the regulations regarding firearms. To all intents and purposes they are treated as toys or collectibles:

> Replicas which fire small plastic pellets or, in some cases, steel ball bearings with insufficient energy to penetrate the skin are not regarded as lethal barrelled weapons. Nor are blank firing replicas which cannot readily be converted to fire a live round, and realistic non-firing replicas. Such guns do not fall under the controls of the *Firearms Act 1968* as amended and may freely be bought by anyone.
>
> Under the *Toys (Safety) Regulations 1989* any toy gun which discharges a hard projectile must not have an energy level in excess of 0.08 joule.[117]

The *Anti-social Behaviour Act 2003* (section 37)[118] amended section 19 of the *Firearms Act 1968*, which deals with possessing certain firearms in a public place, by adding a number of weapons, including imitation firearms, to the list of weapons which people may not have in their possession in a public place. It is now an arrestable offence, punishable by up to 6 months' imprisonment, for a person to have such a weapon with him in a public place without lawful authority or reasonable excuse. It is for the person concerned to prove that he had lawful authority or a reasonable excuse.

A number of offences involving the possession or use of firearms in the commission of criminal offences also extend to imitation firearms. For example, it is an offence for a person:

- to have in his possession any firearm or imitation firearm with intent to cause fear of violence;[119]
- to make or attempt to make use of a firearm or imitation firearm with intent to resist or prevent arrest;[120] or
- to be in possession of a firearm or imitation firearm, without lawful excuse, at the time of committing or being arrested for a whole range of offences set out in Schedule 1 of the *Firearms Act 1968*, including theft, robbery, burglary, rape and some offences involving criminal violence.[121]

Concern has been expressed by senior police officers and others about the apparently increasing use of imitation firearms in crime and their possession by young people.[122] The

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[117] HC Deb 27 March 2001 cc591-2W
[118] effective from 20 January 2004
[119] *Firearms Act 1968* section 16A
[120] *ibid*. c.17(1)
[121] *ibid*. s.17(2)
[122] "Trigger-happy teenagers boost crime figures with toy guns" *Times* 16 May 2005; "Tough gun laws help to drive boom in fakes", *Guardian* 22 April 2005

All Parliamentary Group on gun crime's 2003 report *Combating the threat of gun violence* quoted the Association of Chief Police Officers (ACPO) as saying that the identification of weapons caused a "constant dilemma" for police officers attending firearms scenes. The report gave as an example the fatal shooting by police in Brixton in July 2001 of Derek Bennett, who threatened police with a silver handgun that he had pointed at another man's neck. The gun was subsequently found to be a silver gun-shaped cigarette lighter.[123]

The report of the All Parliamentary Group added that ACPO would like to see a ban on the sale, ownership and import of imitation guns.[124] The Group itself commented that:

> We recognise that there is a strong case for a ban on the manufacture, sale, transfer and importation of all imitation weapons, notwithstanding perceived difficulties in relation to definition and enforcement. We further believe that the ease with which imitation weapons can be obtained through a variety of methods of sale should be immediately addressed.[125]

The Home Office consultation paper *Controls on Firearms*, published in May 2004, set out the current legal position concerning imitation firearms as follows:

> Imitations are freely available without licence and have proved attractive to criminals who may not have the resources, or may not want to possess real guns. They are as frightening to confront as real guns, and their criminal and irresponsible use presents particular problems for the police. For this reason, there are already a number of controls relating to imitation guns and the Government has recently introduced a new offence under the Anti-social Behaviour Act 2003 which allows the police to arrest somebody who is in possession of an imitation (or an air gun) in a public place without lawful authority or reasonable excuse. In addition to this new offence the law makes the following provisions:
>
> *Readily convertible.* Imitations that have the appearance of being firearms and are constructed or adapted so as to be "readily convertible" to guns that can fire live ammunition, are treated as "firearms". An imitation is regarded as "readily convertible" if it can be turned into a firearm by somebody without any special skill in constructing or adapting firearms and can be done with tools that would be commonly used by somebody constructing or maintaining their own home.
> Does this definition need updating?
>
> *Offences.* Many of the offences involving the misuse of firearms, for example trespassing with a firearm or using a firearm to resist arrest, also apply to imitations. It is also an offence to possess an imitation firearm "with intent to cause fear of unlawful violence".

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[123] *Combating the threat of gun violence: A report of Parliamentary Hearings November 2003* All Parliamentary Group on gun crime p.15 Fig 2.2
[124] *ibid* paragraph 31
[125] ibid. paragraph 33

> Previous suggestions for dealing with this problem have included licensing all imitations (there will be significant numbers owned for wholly legitimate reasons) or placing restrictions on their sale. These options have been rejected in the past because of impracticalities of enforcement. It has proved difficult to find a workable legal definition of an "imitation firearm" and we do not believe that the level of effort required by agencies to administer additional restrictions is offset by public safety gains. This is why we introduced the new offence of possession in a public place without legal authority or reasonable excuse. We do not therefore propose that imitations are licensed or their sales restricted. Do you agree?
>
> Enquiries of other countries show that many do not regard imitation guns as firearms and they are not subject to licensing. The main exception to this is the Netherlands where imitations, including toy guns ruled by a committee as resembling firearms, are subject to licensing. As in Great Britain, many of those countries treat offences carried out with imitation guns as if they were committed with a real gun. Like us, the Belgians have also made it an offence to possess an imitation gun in a public place without legitimate reason.[126]

A report published by the National Criminal Intelligence Service (NCIS) in 2003 made the following comments about reactivated, converted and replica weapons and their use in crime:

> **Reactivated firearms**
> The standards of deactivation set down in 1988 as a basis for showing that a weapon was no longer a firearm were minimal. In 1995, a stringent deactivation standard was imposed, but not retrospectively. One estimate places the number of firearms in the UK deactivated to the 1988 standard and capable of being reactivated with a minimum of skill and equipment at 120,000. Over recent years, the number of arrests involving illegally reactivated handguns and machine pistols had suggested a possible increase in possession of such weapons by criminals. However, recent data from the Metropolitan Police Service points to a reduction in the number reactivated firearms being seized, which may suggest that the pool of available firearms deactivated to the pre-1995 standard is diminishing. This is difficult to prove, however, not least because the source of recovered reactivated weapons is often not traced. What is clear is that the reactivation of firearms deactivated to the 1988 standard is within the capabilities of many criminals, including some who sell this service to associates, and that the necessary component parts can be readily acquired, including via the internet.
>
> **Converted firearms**
> The possession of blank-firing or air weapons is not controlled by a system of certification and these firearms can be purchased from trade fairs, specialist retailers, and over the internet without proof of identity. Many can be converted

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[126] Home Office, *Controls on firearms: a consultation paper*, May 2004, pp10-11, http://www.homeoffice.gov.uk/docs3/controls_on_firearms.pdf

into working firearms using simple engineering techniques. There have been substantial police recoveries of converted firearms. The most frequently recovered have been the blank firing Remington Derringer, altered to fire live rounds, and the Brocock air cartridge revolver which, when converted, becomes a revolver with a five or six shot powder cartridge. The apparent ease with which such firearms are acquired and converted has led to them being described as an entry-level firearm for criminals who are insufficiently networked to acquire a genuine firearm. However, the relative cost of a converted weapon may encourage some criminals to choose one in preference to a genuine weapon.

Replica firearms

There are various types of replica firearms, from toys to non-functioning imitations. Since 1999, the replica firearms market has doubled in value and is now estimated to be worth almost £10 million. It is not possible to say what proportion of this rise is due to the use of replica firearms by criminals. However, replica firearms were involved in 1,201 recorded offences in England and Wales in 2001-2002, and seizures of replica firearms by the Metropolitan Police Service in 2002 increased by almost 50 per cent on the previous year. Replica firearms are in most cases indistinguishable from genuine firearms by both victims and law enforcement officers responding to incidents, many of which require the deployment of armed officers. Since the threat to use a firearm is often sufficient in the case of street robberies, some robbers may choose to use a replica gun rather than a real one, calculating that the sentence if caught would be lighter. Lower level criminals may use replicas because they cannot acquire or afford genuine firearms, while replica firearms are readily available as they can be purchased legally.[127]

Home Office crime statistics provide the following information about recent trends in gun crime:

- In England and Wales, the number of crimes recorded by the police in 2004 in which non-air weapon firearms were reported to have been used was 10% higher than it had been in 2003 - 11,082 compared to 10,080. This increase is mainly due to the 66% rise in offences involving imitation weapons.[128]

- Between 2003 and 2004 recorded crimes involving shotguns fell by 11%, handgun crime fell by 13% and crimes in which a rifle was reported to have been used fell by 9%.[129]

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[127] National Criminal Intelligence Service, *United Kingdom Threat Assessment of Serious and Organised Crime 2003* http://www.ncis.co.uk/ukta/2003/threat07.asp paragraphs 7.4- 7.6

[128] *Crime in England and Wales: Quarterly Update to December 2004*, Home Office Statistical Bulletin 07/05

[129] *ibid*.

- Between 1998/99 and 2003/04 the number of crimes recorded by the police in England and Wales in which non-air weapon firearms were reported to have been used doubled from 5,209 to 10,338. Some of this increase may have been due to the implementation of the National Crime Recording Standard, rolled out nationally in April 2002.[130]

- Over this period the number of crimes in which a shotgun or rifle was reported to have been used increased by 12%. Hand gun crime increased by 90%, while reported use of an imitation firearm increased by 280%.[131]

- Between 1998/99 and 2003/04 the number of crimes recorded in which an air weapon was reported to have been used increased by almost 60% from 8,665 to 13,756.[132]

- It is not always possible to categorise the type of weapon used in an offence. Unless a weapon is either fired or recovered after a crime, there is no way of knowing if it was real or an imitation. The categorisation of firearms will often depend on descriptions by victims or witnesses.

C. Firearms provisions in the Bill

Part 2 of the *Violent Crime Reduction Bill* is designed to create a new offence of using someone to mind a weapon. It also seeks to amend the law to help deal with the misuse of imitation firearms and air guns and the assembly of ammunition for criminal purposes. Part 2 of the Bill also contains measures relating to the sale of knives and other weapons and the power to search school pupils for weapons.

1. Using another person to mind a weapon

Clauses 24 and 25 of the Bill are intended to create a new offence of using someone to mind a dangerous weapon which is intended for unlawful use. The offence will be committed by a person if:

a) he uses another to look after, hide or transport a dangerous weapon for him; and
b) does so under arrangements or in circumstances that facilitate, or are intended to facilitate, the weapon's being available to him for an unlawful purpose

[130] *Crime in England and Wales 2003/04: Supplementary Volume 1: Homicide and Gun Crime*, Home Office Statistical Bulletin 02/05
[131] *ibid.*
[132] *ibid.*

Clause 24(2) seeks to give some guidance, which is not intended to be exhaustive, on the circumstances in which a dangerous weapon should be regarded as being "available to a person for an unlawful purpose". It states that these should include any case where

a) The weapon is available for him to take possession it at a time and place; and
b) His possession of the weapon at that time and place would constitute, or be likely to involve or to lead to, the commission by him of an offence.

The Bill's *Explanatory Notes* say:

> The offence could catch a situation where the first person would be committing an offence if he took possession of the weapon from the person minding it, and would also cover a case where the first person was intending to commit an offence with the weapon in the future.

"Dangerous weapon" is defined in Clause 24(3) as

- a firearm other than an air weapon or component part or accessory to an air weapon, or

- (in England and Wales only) a weapon to which section 141A of the *Criminal Justice Act 1988* applies.[133]

Section 141A of the *Criminal Justice Act 1988*, which was inserted by the *Offensive Weapons Act 1996*, prohibits the sale to persons under 16[134] of a knife, knife blade, razor blade, axe, or other article with a blade or sharp point made or adapted for use for causing injury to the person, except for a folding pocket knife if the cutting edge of its blade does not exceed 3 inches; or certain types of razor blades permanently enclosed in a cartridge or housing.

Clause 25 sets out the penalties for offences under Clause 24. These can be summarised as follows:

In England and Wales:

- Where the dangerous weapon is a knife or bladed weapon, the maximum penalty will be 4 years' imprisonment and a fine.[135]

- Where the offender is aged 16 or over at the time of the offence and the dangerous weapon is a type of firearm categorised as a prohibited weapon under the *Firearms Act*

[133] Controls on knives and offensive weapons other than firearms are a devolved matter.
[134] Clause 34(2) of this Bill will extend this age limit to 18
[135] The provisions in this Clause relating to knives and bladed weapons do not extend to Scotland.

1968, the maximum penalty will be 10 years' imprisonment and a fine. There will be a minimum penalty of 5 years' imprisonment if the offender is aged 18 or over at the time of conviction; or 3 years' detention if the offender is aged under 18 at the time of conviction.

- In any other case the maximum penalty will be 5 years' imprisonment and a fine.

In Scotland:

- Where the offender is aged 16 or over at the time of the offence and the dangerous weapon is a type of firearm categorised as a prohibited weapon under the *Firearms Act 1968*, the maximum penalty will be 10 years' imprisonment and a fine. There will be a minimum penalty of 5 years' imprisonment if the offender is aged 21 or over at the time of conviction; 3 years' detention if the offender is aged under 21 at the time of conviction; and 3 years detention if the offender is both aged under 18 and subject to a supervision requirement at the time of conviction..

- In any other case the maximum penalty will be 5 years' imprisonment and a fine.

Where a person convicted of an offence under Clause 24 was aged 18 or over at the time of the offence and the person used to look after, hide or transport the weapon was not, the court will be required to treat the fact that the person used in this way was under 18 as an aggravating factor, that is, a factor increasing the seriousness of the offence for sentencing purposes. The court will be required to state in open court that the offence was aggravated in this way.

Sub-paragraphs (12) and (13) of Clause 25 are designed to ensure that where an offender attains the age of 16 during the period when the weapon was being held by someone else, he will be liable to be given the stiffer penalties which are available in respect of a person of that age who is convicted of the offence. These provisions are also designed to ensure that if either person reaches the age of 18 during the period that the weapon in held, the offence will still be liable to be treated as aggravated if at some point in that period the offender was 18 or over and the other person was under 18.

The Government's Regulatory Impact Assessment suggests that the new offence of getting someone to mind a weapon is likely to act as a deterrent, although possible costs associated with it might include a small number of additional prison places for those

convicted, where they were not also convicted of another, existing offence at the same time.[136]

2. Air weapons

Clause 26 of the *Violent Crime Reduction Bill* is designed to amend section 22 of the *Firearms Act 1968* by increasing the minimum age at which a person may purchase or hire air weapons or ammunition for air weapons from 17 to 18. The minimum age at which a person may have with him an air weapon or ammunition for an air weapon will also rise from 17 to 18. The age limit for a person to purchase or hire a firearm or ammunition of any other description will remain unchanged at 17. Section 24 of the 1968 Act, which sets out a number of offences involving supplying firearms to minors, will also be amended by Clause 26 to reflect the increase in the age limits for air weapons.

The Bill's *Explanatory Notes* say of this Clause:

> This will have the effect that the age limit for the purchase of air weapons will be higher than for other firearms; however, purchasers of the latter will have to satisfy the police as to their suitability under the certification process in section 1 of the Firearms Act 1968.

It is currently an offence for a person under the age of 17 to have with him an air weapon or ammunition for an air weapon[137] unless he is under the supervision of a person aged 21 or over;[138] or is aged 14 or over and has the air weapon or ammunition with him on private premises with the consent of the occupier.[139] In both of these cases an offence is committed by the young person if he or she uses the air weapon to fire any missile beyond the premises concerned.[140] Where a person under the age of 17 is on premises with an air weapon or ammunition while under the supervision of a person aged 21 or over, the person supervising him or her also commits an offence if the young person uses the air weapon to fire any missile beyond the premises.[141] These offences are all punishable by a fine of up to £1,000. No offence is currently committed under these provisions where it is an adult who fires an air weapon beyond premises. Clause 27 of the Bill is designed to amend these provisions by making it an offence, punishable by a fine of up to £1,000, for any person, whatever their age, to fire an air weapon beyond the boundary of any premises.

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[136] *Violent Crime Reduction Bill: Overarching Regulatory Impact Assessment* Home Office June 2005 Table 1 http://www.homeoffice.gov.uk/docs4/ria_hb_sig.pdf

[137] *Firearms Act 1968* s22(4), as amended by the *Anti-social Behaviour Act 2003* s38

[138] *Firearms Act 1968* s23(1)

[139] *ibid* s23(3)

[140] *ibid*. ss23(1)(a), 23(4)

[141] *ibid*. s23(1)(b)

The Government's Regulatory Impact Assessment for the Bill suggests that the measures concerning air weapons will affect air gun sales to some extent and will involve some cost to the criminal justice system in prosecuting and punishing offenders.[142]

3. Primers and ammunition loading presses

A primer is a component of ammunition which contains a chemical compound that detonates on impact. Clause 28 of the Bill is intended to make it an offence for a person to sell, buy, or attempt to buy a primer which is capable of being comprised in ammunition for a firearm, unless the purchaser or seller has a valid firearm certificate or otherwise has lawful authority. The circumstances in which a person would be considered to have lawful authority are set out in subparagraphs (3) and (5) of the Clause. Clause 29 creates a similar offence in respect of ammunition loading presses, which are pieces of equipment used to carry out a range of mechanical tasks necessary for the reloading of cartridges. Both of these offences will be punishable by up to 6 months' imprisonment and a £5,000 fine. In England and Wales the maximum period of imprisonment will increase to 51 weeks' imprisonment when section 281(5) of the *Criminal Justice Act 2003* is brought into force.

The Government's Regulatory Impact Assessment for the Bill says that these provisions will give statutory force to current good practice and ensure that police can take action where primers are sold inappropriately. It suggests that there will be minimal cost to business as the restrictions reflect what most dealers already do in practice.[143]

4. Imitation and replica firearms

Clauses 30 to 33 of the *Violent Crime Reduction Bill* are designed to make amendments to the current law concerning the misuse of imitation firearms and to create a number of new offences.

Clause 30 will make it an offence for a person to manufacture, sell or import a realistic imitation firearm or to modify a firearm or imitation firearm so that it becomes a realistic imitation firearm. Clause 30(8) defines "realistic imitation firearm" as:

> an imitation firearm whose appearance is so realistic as to make it indistinguishable, for all practical purposes, from—
>
> (a) a firearm of an existing make or model; or
> (b) a firearm falling within a description that applies to an existing category of firearms which, even though they include firearms of different makes or models or both, all have the same or a similar appearance.

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[142] http://www.homeoffice.gov.uk/docs4/ria_hb_sig.pdf Table 1
[143] *ibid.*

The *Explanatory Notes* say:

> An imitation firearm will therefore be caught by the new offence if it is sufficiently similar to a generic type of firearm, even if nobody could point to a particular make and model from which it is indistinguishable. Many children's toys, however, will not be caught as they are distinguishable from real weapons.

Clause 30(9) provides that for the purposes of the definition in Clause 30(8):

> an imitation firearm is not to be regarded as distinguishable from a firearm for any practical purposes if it could be so distinguished only
>
> a) by an expert;
> b) on a close examination; or
> c) as a result of an attempt to load or fire it.

The Secretary of State will have powers under paragraphs (2) to (5) of Clause 30 to make regulations providing exceptions, exemptions and defences in respect of the offence of manufacturing, importing or selling realistic imitation firearms. These regulations will be subject to annulment under the negative resolution procedure. The Bill's *Explanatory Notes* say that the power to make regulations will allow for the continuing availability of realistic imitation firearms for legitimate uses such as theatre, films and television. The text of the Bill itself makes no mention of what the exceptions, exemptions or defences in relation to the offence set out in Clause 30 might be. Some commentators might be concerned about details that would determine a person's criminal liability being left to be determined in secondary legislation that would only be subject to the negative resolution procedure.

Clause 31 of the Bill is designed to apply where imitation firearms are still permitted to be manufactured, imported or sold and is intended to require them to be constructed according to specifications laid down in regulations made by the Secretary of State. The *Explanatory Notes* say:

> For example this will enable the imposition of a requirement that all blank-firing imitations be constructed in such a way that it is impossible to attempt to convert them into firearms firing live ammunition.

The regulations may either set out the specifications or provide for specifications to be approved. It will be an offence for a person to manufacture or import imitation firearms which do not conform to the required specifications, to modify an imitation firearm so that it ceases to conform to these specifications, or to modify a firearm to create an imitation firearm that does not conform to the specifications. The regulations will be subject to annulment under the negative resolution procedure.

Clause 32 of the Bill seeks to make it an offence for a person under the age of 18 to purchase a firearm and for a person to sell an imitation firearm to a person under the age

of 18. In proceedings for the offence of selling an imitation firearm it will be a defence to show that the person charged with the offence believed the other person to be aged 18 or over and had reasonable grounds for that belief.

The offences created by Clauses 30-32 of the Bill will be punishable by a maximum of 6 months' imprisonment and a fine of up to £5,000. The maximum term of imprisonment for these offences will increase to 51 weeks in England and Wales after the commencement of the sentencing provisions in section 281(5) of the *Criminal Justice Act 2003.*

Under section 19 of the *Firearms Act 1968* it is an offence for a person to carry a firearm in a public place without lawful authority or reasonable excuse. Section 37 of the *Anti-social Behaviour Act 2003* amended this provision so that the offence now includes carrying an imitation firearm in a public place. The offence under section 19 of the 1968 Act is an arrestable offence. Where imitation firearms are concerned the 2003 Act provided that, as was already the case with air weapons, the offence should be triable summarily in a magistrates' court with a maximum penalty of 6 months' imprisonment and a £5,000 fine. Where other firearms are concerned the offence is triable "either way", that is triable in a magistrates' court or on indictment at the Crown Court. The maximum penalty in the latter case is 7 years' imprisonment and a fine. Clause 33 of the *Violent Crime Reduction Bill* seeks to make the offence of possessing an imitation firearm in a public place triable either way and punishable by up to 12 months' imprisonment and a fine following conviction on indictment. Clause 33(2) is intended to make clear that when section 282(3) of the *Criminal Justice Act 2003* comes into force in England and Wales, the maximum custodial sentence for this offence following summary conviction will increase from 6 months to 12 months.

The Government's Regulatory Assessment on the Bill suggests that the tougher manufacturing standards introduced as a result of the new specifications for imitation firearms, which will be designed to prevent conversion of imitation firearms, will tackle the problem of convertibility at source. The Assessment adds that there will be some cost to business in terms of the additional cost of ensuring that the standards are met. The Assessment also states that the prohibitions on the supply of imitation firearms to minors and on the sale and manufacture of realistic imitations will significantly reduce the availability of imitation firearms and restrict their availability to young people, who are most likely to misuse them. The Assessment includes the following estimates of the cost to business:

- Sale to under 18's - cost to business – lost profit est. £1.5m-2m (£15m – £20m sales - Assumes a profit rate of 10% on sales of £30- 40m total. Assume that 50% of sales are lost).

- Ban on realistic imitations – cost to business – est. lost profit of £3m-4m (again assuming a 10% profit rate on lost sales of £30-40m).[144]

D. Comment on the firearms provisions in Part 2 of the Bill

A Home Office press release of 8th June 2005 announcing the publication of the *Violent Crime Reduction Bill* quoted the Home Office minister, Hazel Blears as saying:

> There is increasing public concern around relatively low level crime and anti-social behaviour escalating to more serious offences because people are under the influence of alcohol or carrying weapons. Outlawing the manufacture and sale of imitation firearms, clamping down on binge and underage drinking and ensuring knives are less accessible will help to tackle this.[145]

The Association of Chief Police Officers (ACPO) has welcomed the provisions in the Bill relating to knives and firearms. A press notice of 8th June 2005 said:

> There has been a clear increase in the use of replica firearms in crime, making the further measures to control imitation firearms welcome. We also applaud the focus on the lower end of firearms activity as there is clear evidence of a 'career path' in their use and tackling this at the beginning is a welcome step.

In its response to the provisions in the Bill concerning firearms the British Association for Shooting and Conservation (BASC) said:

> BASC believes this Bill contains a number of proposals which are sensible, measured and could help to address the problem. However there are other measures which BASC believes will have a negligible effect on gun crime but will harm lawful shooting sports and other legal activities.
>
> In particular BASC notes with disappointment that the Home Office did not consult shooting or related trade organisations on the impact of these measures, nor does this Bill appear to have been "proofed" for its impact on rural areas and activities.[146]

The BASC said that it would be pressing the Home Office for assurances that an exemption under the powers in the Bill would be included in any secondary legislation to allow for the use of blank firing guns for the training of working dogs. It added that other activities which should be exempted included historical re-enactments, sporting events (starter pistols) and theatrical, TV and film productions.

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[144] *Violent Crime Reduction Bill Overarching Regulatory Impact Assessment* Home Office June 2005: Table 1 http://www.homeoffice.gov.uk/docs4/ria_hb_sig.pdf

[145] Home Office press notice, *Protecting our communities: Violent Crime Reduction Bill published*, 8 June 2005, http://www.homeoffice.gov.uk/n_story.asp?item_id=1311

[146] "Violent Crime Reduction Bill: airguns and imitation firearms" – www.basc.org.uk

The BASC was opposed to the increase in the age limit for the purchase or hire of air weapons or ammunition from 17 to 18, set out in Clause 26. It said:

> BASC believes the Home Office should produce evidence to show why excluding 17 year olds from owning an airgun will significantly reduce criminal misuse and improve public safety. The vast majority of young people who use air guns do so safely, legally and responsibly. The number of convictions of young people for being in possession of an airgun illegally has declined significantly over the last five years. (1998: 334 convictions and caution; 2003: 76). Hundreds of thousands of 17 to 18 year olds use airguns legally, safely and responsibly for target shooting, some to international competition standards. Airguns are also used for pest control and to learn the safe use of firearms. To restrict their use given the low and declining figures for misuse in this age group is wholly disproportionate and will have little or no effect on airgun misuse.[147]

The BASC also said it was opposed to Clause 29 because it believed it to be redundant. It commented:

> Restricting the sale of primers, without which viable ammunition cannot be manufactured, is sufficient. An ammunition press is useless for the production of ammunition without primers.[148]

An article in the *Guardian* on June 6th 2005 reported that Government ministers had heard representations from television and film companies which feared that the ban on imitation firearms could affect the production of police and crime dramas.[149] The article said:

> Ministers appeared to rule out a ban on imitation weapons a year ago because of the difficulty of coming up with a precise legal definition of a replica. But senior civil servants have managed to circumvent the problem to ensure that the crackdown does not include toy guns and water pistols in a wholesale blanket ban.[150]

The Association of Chief Police Officers (ACPO) has welcomed the Bill's provisions concerning firearms and knives.[151] In its response to the Bill the Police Federation said:

> We are pleased the Government have listened to our concerns regarding imitation firearms. The Federation supports a ban on all imitation firearms. Imitation and replica guns are responsible for a substantial proportion of UK gun crimes, and many are readily converted at a low

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[147] *ibid.*
[148] *ibid.*
[149] "Replica guns to be banned" – *Guardian* 6.6.2005
[150] *ibid.*
[151] "ACPO response to Violent Crime Bill" http://www.acpo.police.uk

> cost into lethal weapons. Stemming the flow of imitation and replica firearms could therefore have a positive impact on reducing the number of firearms-related deaths.[152]

An article on the *Scotsman* on June 10th 2005 reported that Jack McConnell, the First Minister, was proposing to introduce a major new licensing system for airguns in Scotland following the Home Office's refusal to take action on the issue.[153] The article said that Mr McConnell hoped to introduce at least the first phase of his proposals through the existing licensing powers of the Scottish Parliament but was aware that the second phase would almost certainly mean interfering with UK firearms law which is a reserved matter for Westminster under the current arrangements for Scottish devolution. The *Scotsman* said:

> The groundbreaking move to crack down on airguns will represent the first time that the Scottish Executive has legislated in such high-profile matters which fall outside its remit.[154]

The article went on to say:

> The Home Secretary has even suggested that he will pass a technical measure in the House of Commons giving Mr McConnell the ability to legislate on gun law.
>
> There have been many occasions when Westminster has legislated on behalf of the Scottish Parliament on devolved matters through the use of a Sewel motion.
>
> But this would be the first time a "reverse Sewel" would be used to allow the parliament to legislate on a major UK issue.[155]

Information about Sewel motions can be found in the Library Standard Note on The Sewel Convention.[156]

E. Knives and other weapons

There are already numerous restrictions on the sale, and the possession in public places, of some knives and weapons other than firearms.

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[152] http://www.polfed.org/violentcrimebill.pdf
[153] "Scotland to get tougher airgun laws", *Scotsman*, 10 June 2005
[154] *ibid*.
[155] *ibid.*
[156] SN/PC/2084 *The "Sewel Convention"*

1. Offensive weapons

It is an offence under section 1 of the *Prevention of Crime Act 1953* for a person to have with him in any public place any "offensive weapon" without lawful authority or reasonable excuse (the proof of which lies on him). Three types of weapon are covered by this provision, namely articles made for causing injury to the person (which could include daggers, swordsticks and suchlike but not ordinary knives), articles adapted for use for causing injury (such as sharpened screwdrivers), and articles which are not specifically made or adapted for the purpose of causing injury but which a person nevertheless intended to use for that purpose.

The maximum penalty for the offence of having an offensive weapon in a public place is four years' imprisonment and a fine.

2. Blades

Section 139 of the *Criminal Justice Act 1988* made it an offence, punishable by up to two years' imprisonment and a fine, for a person to have with him in a public place any article which has a blade or is sharply pointed, except a folding pocket knife with a cutting edge of three inches or less. It is a defence for the person to prove that he had good reason or lawful authority for having the article, such as that he had it with him for use at work, for religious reasons or as part of a national costume.

3. Sale etc of specified weapons

Section 141 of the 1988 Act prohibits the sale, manufacture, hire, loan, importation or donation of particular weapons to be listed in subordinate legislation. The offence is triable in the Magistrates' Court and is punishable by up to six months' imprisonment and a level 5 fine (£5,000). There are specific defences relating to making such weapons available to museums or galleries and to loans and hirings by museums where there are reasonable grounds for believing that the person to whom the weapon is lent or hired would use it only for cultural, artistic or educational purposes. There are also defences for armed forces.

A statutory instruments (SI) listing weapons subject to this provision was brought into force in 1988, and subsequent SIs were introduced in 2002 and 2004. The list excludes antiques, defined as those manufactured more than one hundred years before the alleged offence. But there is no equivalent to the "theatrical exemption" in s12 of the *Firearms Act 1968*. That provides:

> (1) A person taking part in a theatrical performance or a rehearsal thereof, or in the production of a cinematograph film, may, without holding a certificate, have a firearm in his possession during and for the purpose of the performance, rehearsal or production.
>
> (2) Where [the Secretary of State] are satisfied, on the application of a person in charge of a theatrical performance, a rehearsal of such a performance or the

> production of a cinematograph film, that [a prohibited weapon] is required for the purpose of the performance, rehearsal or production, they may under section 5 of this Act, if they think fit, not only authorise that person to have possession of [the weapon] but also authorise such other persons as he may select to have possession of it while taking part in the performance, rehearsal or production.

The list in the 1988 SI included such weapons as knuckledusters, swordsticks and a number of weapons used in martial arts.[157] In 2002 "disguised" knives were added to the list. A disguised knife means –

> …any knife which has a concealed blade or concealed sharp point and is designed to appear to be an everyday object of a kind commonly carried on the person or in a handbag, briefcase, or other hand luggage (such as a comb, brush, writing instrument, cigarette lighter, key, lipstick or telephone). [158]

Two more weapons were added to the list in 2004. These were:

- a stealth knife, that is a knife or spike, which has a blade, or sharp point, made from a material that is not readily detectable by apparatus used for detecting metal and which is not designed for domestic use or for use in the processing, preparation or consumption of food or as a toy;

- a straight, side-handled or friction-lock truncheon (sometimes known as a baton).[159]

During the debates on the 2004 SI, by the Second Standing Committee on Delegated Legislation on 20 April,[160] and in the House of Lords on 22 April,[161] three of the matters raised were the imprecision of the definitions, the short period of time before coming into force, and the absence of compensation for existing stocks. No speaker appears to have raised the subject of using weapons in theatrical or other productions, or suggested that there might be a legitimate use for them in addition to the uses for which the legislation provides a defence.

Four members of the Delegated Legislation Committee voted against the motion, suggesting that the Minister should come back with a better drafted instrument. There was concern about the definition of "truncheon" despite the Minister's reply that it would be for the courts to decide whether an item fell within the definition. James Paice also commented that the Minister had not referred to any consultation with the trade in terms of who supplied such weapons at the moment. In the Lords' debate, Baroness Walmsley

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157 The *Criminal Justice Act 1988 (Offensive Weapons) Order 1988* SI 1988/2019
158 The *Criminal Justice Act 1988 (Offensive Weapons) Order 2002* SI 2002/1668
159 The *Criminal Justice Act 1988 (Offensive Weapons)(Amendment) Order 2004* SI 2004/1271
160 UP7 2003/04, http://www.publications.parliament.uk/pa/cm200304/cmstand/deleg2/st040420/40420s02.htm
161 HL Deb 22 April 2004 c433-9

wondered whether toy truncheons would fall foul of the order and asked whether there would be an amnesty and/or compensation for shops which had stocks of the weapons. Lord Bassam replying said the Government did not believe that compensation was payable in these circumstances. He said that they had not faced great swathes of pressure on the point but conceded that –

> …consultation has been somewhat limited because of the importance of bringing the order forward.

He also commented that the "toys definition applies to a stealth knife but not to a truncheon", thereby seemingly confirming that a toy truncheon would be within the prohibition.

4. Searches

A constable may enter school premises and search the premises and any person on those premises for any bladed or pointed article or offensive weapon. Before the power may be exercised the constable must have reasonable grounds to believe that an offence is being committed under the above provisions.

The conduct of searches is governed by Code of Practice A under the *Police and Criminal Evidence Act 1984*.[162]

5. Sales to under-16s

As has already been mentioned in the section oft his paper dealing with the new offence of using another person to mind a weapon, the *Offensive Weapons Act 1996* also added a prohibition on selling certain knives and bladed articles to persons under sixteen. It is a defence for a person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence. The maximum penalty is six months' imprisonment and a level 5 fine.

6. Calls for review

In March 1998 the Government's view of the adequacy of current controls on knives was explained in a written answer:[163]

> **Mr. Michael**: The need for legislation to control the availability and promotion of knives as weapons was considered in detail by hon. Members during 1996 and 1997 during the passage of the Offensive Weapons Act 1996 and the Knives Act 1997 … which was fully supported by my right hon. Friend and myself, then in Opposition. We had concluded that simply banning knives with sharp points

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[162] http://www.homeoffice.gov.uk/docs3/pacecode_a.pdf
[163] HC Deb 13 March 1998 c367-8WA

> except when such knives are designated for a specific and legitimate purpose would not achieve the desired end. Knives with legitimate purposes can be as lethal as ones which would not be so designated and such an approach would require a complex and costly designation system.
>
> While the Government have no plans at present for a further review, we remain open to any suggestions for a further tightening of legislation on knives, and would consider banning the sale of any specific bladed or pointed article which could be defined in a way which distinguished it from articles which do have legitimate purposes.

In January 2000, Nigel Jones MP was injured in a Samurai sword attack at his constituency office in Cheltenham. His constituency worker Andrew Pennington was killed. In February Gordon Prentice asked a written question about what further restrictions might be placed on the sale and possession of swords and bayonets. In his reply, the Home Office minister Charles Clarke said the Government was considering the appropriateness and feasibility of amending the current legislation on offensive weapons.[164]

Recently published statistics about the level of crime including knives have given rise to concerns. The *News of the World* newspaper ran a campaign "No to knives".[165]

In written answers given in November 2004, Home Office Ministers said that they were conducting an analysis of the nature of knife related crime, and actions which could and should be taken to tackle it. There were no plans to introduce a licensing system nor to ban the carrying of all kinds of knife. The range of legislation and police powers aimed at preventing the possession or use of knives and offensive weapons was kept under constant review to ensure it was comprehensive and effective.[166]

7. Proposal for new legislation

On 15 December 2004, the then Home Secretary, David Blunkett, confirmed that he was considering a proposal to ban the sale of knives to under-18s. A Home Office press notice announced:

> The fight against violent crime received a boost today as the Home Secretary announced that he is considering a proposal to ban the sale of knives to under-18s.
>
> The move is part of a package of measures being considered by Ministers to tackle knife crime, bringing together the Home Office, the Department for Education and Skills and the Association of Chief Police Officers. It will focus on

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[164] HC Deb 10 February 2000 vol 344 c250W
[165] *News of the World*, 17 October 2004
[166] HC Deb, 3 November 2004 c300-1W

strengthening legislation, tackling the knife culture, especially among young people, and engaging communities. The measures under consideration include:

- Raising the minimum age for purchasing a knife to 18. This would bring the sale of knives into line with the sale of fireworks and alcohol.
- Adding new categories of knife now being used in crime to the list of banned offensive weapons.
- Providing a power to require specified licensed premises to search for an offensive weapon on entry.
- Giving head teachers a new power to search pupils for knives.
- Pulling together best practice from initiatives and schemes focusing on knife crime.
- Developing local crime reduction and enforcement strategies on dealing with the carrying of knives.

Mr Blunkett said:

"While the number of incidents involving knives remains low, I share the concern of the public about this issue. I am determined to tackle knife-related violence to help ensure the safety of our communities.

"The Government is seriously considering strengthening the law to help get knives off our streets. Bringing in a ban on under-18s buying knives – as at present with alcohol and fireworks – will play a key part in this, as will action by Education Secretary Charles Clarke on tackling knives in schools. The proposals would boost the powers police already have, and are already using, to search people for weapons.

"Working together with the police and community groups, the Government is committed to action, particularly through our strategy on violent crime to help build safe and secure communities."

Education Minister Stephen Twigg said:

"Most pupils never carry knives, either in or out of school. But there are a few who ignore the fact that it is against the law to have a knife in school. This is unacceptable, and no school should tolerate it. Head teachers face many tough challenges and we want to ensure that every head has the means to tackle bad behaviour and raise standards in our schools."

Commander Simon Foy, in overall charge of Operation Blunt, the Metropolitan Police Service’s clampdown on knife crime, said:

> "The Met is saying enough is enough. There is an unacceptable level of knife related violence taking place on our streets. In London, we are rolling out a range of tactics that are designed not just to arrest and

> convict offenders but to deter young people from, and to educate them about the potentially lethal dangers of carrying knives… [167]

8. The Bill

Clause 34 would, as anticipated, increase the age limit for buying knives from 16 to 18. It would also modify the museums and galleries defence, and provide a wholly new defence relating to the use of offensive weapons in theatrical performances and film and television production.

The Liberal Democrat home affairs spokesman, Mark Oaten, welcomed the measures on alcohol and gun crime, but warned:

> It is difficult to see how the proposed age limit for knives can work. The bill will land us in the ridiculous situation where a 16- and a 17-year-old can get married and set up home on their own, but can't buy a kitchen knife.[168]

Shortly before the publication of the *Violent Crime Reduction Bill*, it was reported in the *Guardian* that accident and emergency doctors had called for the banning of long, sharp kitchen knives, arguing that they accounted for at least half of all stabbings.[169]

> They say such knives slice through clothing and penetrate vital organs.
>
> > 'Many assaults are impulsive, often triggered by alcohol or misuse of other drugs, and the long, pointed kitchen knife is an easily accessible, potentially lethal weapon, particularly in the domestic setting', say the doctors from West Middlesex university hospital, London, in the British Medical Journal.
>
> Knives of less than 5 cm [2 ins] in length or with blunt, round ends would meet culinary needs and be far less likely to result in fatalities.

F. Power to search school pupils for weapons

1. Background

After the fatal stabbing of headmaster Philip Lawrence in London in December 1995, the then Education Secretary, Gillian Shephard, set up the Working Group for School Security,[170] which recommended, amongst other things, that it should be an offence to

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[167] Home Office press release 389/2004, *Off the streets and out of schools: Home Secretary's fight against knives*, 15 December 2004

[168] Liberal Democrats press notice, "Measures to tackle alcohol abuse and gun crime welcome – Oaten", 8 June 2005, http://www.libdems.org.uk/news/story.html?id=8729&navPage=news.html

[169] "Kitchen knife ban sought", *Guardian*, *27* May 2005

[170] Its members include representatives of teacher associations, schools, governing bodies, parents, the police, local education authorities, the churches, UNISON and government departments and agencies.

carry a knife or other offensive weapon on school premises. Subsequently, the *Offensive Weapons Act 1996* was amended to make it an offence to carry a knife or offensive weapon in or around a school. However, there has been growing concern about pupils carrying knives, and the press has highlighted a number of stabbing incidents in schools.[171] There were renewed calls for tougher action to tackle violent behaviour in schools following the fatal stabbing of a pupil, Luke Walmsley, at a Lincolnshire school in November 2003.[172]

The Youth Justice Board has published a survey which suggested that in 2003, 1% of pupils carried a knife in school for offensive reasons at some time, and 2% defensively. The survey suggested that knife use was much rarer than knife carrying.[173] The Health and Safety Executive records incidents of injuries to school staff from violence involving knives in schools in England and Wales; in the five years 1999-2000 to 2003-2004, the HSE received reports of 17 injuries to staff; 7 in 1999-2000, 10 in 2000-2001, and none in each of the remaining three years. The HSE does not ask employers to report incidents of violence affecting non-employees, including pupils.[174]

On 15 December 2004, as part of a wide-ranging package of measures to tackle knife crime, the Home Secretary, Charles Clarke, announced that head teachers would be given a new power to search pupils for knives. Commenting on the proposals, Stephen Twigg, the then Schools Minister, noted that most pupils never carry knives but that there are a few who do, and that no school should tolerate it.[175] At the National Association of Schoolmasters and Union of Women Teacher (NASUWT) conference earlier this year, Mr Twigg repeated the commitment that action would be taken to keep knives out of schools.[176] The Labour Party Election Manifesto pledged that the Government would introduce the *Violent Crime Reduction Bill*, and give head teachers the legal right to search pupils for knives or guns.[177]

a. Current arrangements where school staff suspect a pupil has a weapon

As noted above, the *Offensive Weapons Act 1996*, as amended, makes it an offence to possess a knife or other offensive weapon on school premises, and empowers the police to enter and search for such weapons on school premises (see the sections on school premises and police searches above). DfES guidance on the use of these powers was

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171 e.g. "Knives are out in Britain's schools", *Times Educational Supplement* (TES), 7 November 2003, p3

172 e.g. "Stabbed, punched and shot at with air pistols", *TES*, 1 April 2005, p6; "Schools to get scanners to stop children with knives" *Sunday Telegraph*, 1 August 2004, p1; "Union call for action on school violence", *Guardian*, 16 April 2004, p6; "Teachers back airport-style weapons checks on pupils", *Times*, 16 April 2004, p2;"Police may move in to violent schools", *Observer*, 9 November 2003, p11

173 HC Deb 26 October 2004 c1160W

174 HL Deb 24 January 2005 WA138

175 Home Office press notice 389/2004, *Off the streets and out of schools: Home Secretary's fight against knives*, 15 December 2004

176 "Minister promises new laws to banish knives from school", *Times*, 31 March 2005, p26

177 Labour Party, *Britain forward not back*, 2005, p47

provided in *School Security – Dealing with Troublemakers*, section 6 of which covers offensive weapons.[178] The guidance suggests that only in exceptional circumstances should school staff take action before the police arrive:

> **6.2 Staff involvement where a weapon is suspected**
> 6.2.1 As a general rule, the police should be called to deal with any incident believed to involve a weapon. There may, however, be isolated exceptions where, in the judgement of the staff the circumstances are wholly innocent, and there is no suggestion of the use of the article as a weapon, the matter can be dealt with on a disciplinary basis. But, if there is any doubt, they should call the police. Schools should give their assessment of the seriousness of the incident to help the police to make their own judgement on the nature and immediacy of the response required.
>
> 6.2.2 There may also be some exceptional circumstances where staff made aware that a weapon may be on school premises decide that they need to take action before the police arrive. Where possible, staff should not confront a pupil or person suspected of possessing a weapon in the presence of other pupils. Preferably two or more members of staff should divert the pupil or person to a place where no other pupils are present.

The guidance also makes it clear that staff are under no obligation to carry out searches, and that where a pupil declines to co-operate a search should always be undertaken by the police:

> 6.2.3 Staff are not under obligation to search a pupil themselves, but whether in practice that is the most prudent course of action is likely to be a matter for the members of staff involved, and the circumstances concerned. Immediate preventive action could sometimes nip in the bud a potentially dangerous situation; or it could precipitate it.
>
> 6.2.4 Where there was a reasonable belief that a pupil might be carrying an offensive weapon or blade, it might be appropriate for a member of staff to search a pupil who agreed to co-operate. Such an action would come within a teacher's authority to discipline a child. However, where the pupil declined to co-operate, a search should always be undertaken by the police. Police officers are trained how to conduct a search of a person, which can be problematic, especially if the person being searched does not wish to co-operate or has concealed the item near intimate parts of the body.
>
> 6.2.5 Where the person suspected of carrying a weapon is not a registered pupil at the school, or where an incident involving a pupil takes place outside the school premises, any search should always be undertaken by the police.

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[178] DfES, *School security – dealing with troublemakers*, 1997
http://www.dfes.gov.uk/schoolsecurity/dwt6offensive_weapons.shtml

The powers of the police to carry out personal searches of pupils are outlined in the guidance:

6.3 Police involvement where a weapon is suspected
6.3.1. Section 4 of the Offensive Weapons Act 1996 inserts section 139B into the Criminal Justice Act 1988. The effect is to:

- provide police officers with the power to enter school premises and to search both the premises and any person there for an offensive weapon if they have reasonable grounds for suspecting such a weapon to be on the premises;

- allows them to seize and retain any of the prohibited articles described above if found during the course of such a search at a school.

6.3.2. Acting under those powers, the police do not require the permission of the head or any other person before exercising it. They may also use reasonable force to enter, if necessary. It will generally be desirable, however, for police officers intending to use their powers of entry and search to speak to the headteacher or some other representative of the school to warn them of any action which the police think necessary, and to seek their help. Their knowledge of the site and of the school's routine, and of any staff or pupils involved in the incident, is likely to assist the police in handling a potentially dangerous situation.

6.3.3. There will, however, be urgent cases where police officers will need to enter school premises without waiting to obtain permission, for example:

- when pursuing suspects believed to be armed with a knife or other weapon who enter school premises; or

- when dealing with other reports of a knife or other offensive weapon on school premises in circumstances which suggest that immediate action is required.

Searching of people

6.3.4. While the police have statutory powers, under the Offensive Weapons Act, to search on belief that an offence has been committed, they will normally apply the test of 'reasonableness' to any decision on when to search a person. It would be good practice for the police to follow Code A of the Police and Criminal Evidence Act in its entirely (see also paragraph 6.3.6). This specifies such things as that:

- where any search involves the removal of more than the outer coat, jacket, gloves and headgear, the police officer conducting the search must be of the same sex as the person being searched; and
- the garments mentioned above may be removed in public, although a search must be conducted out of public view.[179]

There have been calls for schools to be given metal detectors to screen pupils for weapons.[180] A comprehensive school near Grimsby was reported to be the first school to use hand-held scanners where teachers suspect that a pupil has a knife.[181]

b. Restraint of pupils

Under section 550A of the *Education Act 1996* schools have a power to use reasonable force to restrain pupils to prevent them, for example, from committing a crime, causing injury to themselves or others, causing damage to property, or causing serious disruption. DfEE (now the DfES) Circular 10/98, *The Use of Force to Control or Restrain Pupils*, which is still current, provides guidance on section 550A. The guidance sets out the three broad categories in which reasonable force may be appropriate, or necessary, to control or restrain a pupil:

- where action is necessary in self defence because there is an imminent risk of injury;
- where there is a developing risk of injury, or significant damage to property; and,
- where a pupil is behaving in a way that is compromising good order and discipline.[182]

Examples of situations that fall within these categories are set out in paragraph 15 of the circular. Paragraph 17 points out that there is no legal definition of reasonable force. This will always depend on the circumstance of the case:

> **Reasonable Force**
>
> There is no legal definition of 'reasonable force'. So it is not possible to set out comprehensively when it is reasonable to use force, or the degree of force that may reasonably be used. It will always depend on all the circumstances of the case.
>
> There are two relevant considerations:

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179 http://www.dfes.gov.uk/schoolsecurity/dwt6offensive_weapons.shtml

180 "Teachers back airport-style weapons checks on pupils", *Times*, 16 April 2004, p2

181 "School's knife scan", *Daily Mail*, 12 January 2005, p33

182 http://www.dfes.gov.uk/publications/guidanceonthelaw/10_98/contents.htm see paragraph 14

- the use of force can be regarded as reasonable only if the circumstances of the particular incident warrant it. The use of any degree of force is unlawful if the particular circumstances do not warrant the use of physical force. Therefore physical force could not be justified to prevent a pupil from committing a trivial misdemeanour, or in a situation that clearly could be resolved without force.

- the degree of force employed must be in proportion to the circumstances of the incident and the seriousness of the behaviour or the consequences it is intended to prevent. Any force used should always be the minimum needed to achieve the desired result.

Whether it is reasonable to use force, and the degree of force that could reasonably be employed, might also depend on the age, understanding, and sex of the pupil.[183]

The guidance notes the types of restraint that may be appropriate, and emphasises that staff should always avoid touching or holding a pupil in a way that might be considered indecent:

19. Application of Force
20. Physical intervention can take several forms. It might involve staff:

- physically interposing between pupils;
- blocking a pupil's path;
- holding;
- pushing;
- pulling;
- leading a pupil by the hand or arm;
- shepherding a pupil away by placing a hand in the centre of the back; or,
- (in extreme circumstances) using more restrictive holds.

21. In exceptional circumstances, where there is an immediate risk of injury, a member of staff may need to take any necessary action that is consistent with the concept of 'reasonable force': for example to prevent a young pupil running off a pavement onto a busy road, or to prevent a pupil hitting someone, or throwing something.

22. In other circumstances staff should not act in a way that might reasonably be expected to cause injury, for example by:

- holding a pupil around the neck, or by the collar, or in any other way that might restrict the pupil's ability to breathe;

[183] http://www.dfes.gov.uk/publications/guidanceonthelaw/10_98/part2.htm#Reasonable%20Force

- slapping, punching or kicking a pupil;
- twisting or forcing limbs against a joint;
- tripping up a pupil;
- holding or pulling a pupil by the hair or ear;
- holding a pupil face down on the ground.

> 23. Staff should always avoid touching or holding a pupil in a way that might be considered indecent.
>
> 24. Where the risk is not so urgent the teacher should consider carefully whether, and if so when, physical intervention is right. Teachers should always try to deal with a situation through other strategies before using force. All teachers need developed strategies and techniques for dealing with difficult pupils and situations which they should use to defuse and calm a situation. Advice about this will be included in the draft guidance on pupil behaviour and discipline policies referred to in paragraph 3. In a non-urgent situation force should only be used when other methods have failed.
>
> 25. That consideration is particularly appropriate in situations where the aim is to maintain good order and discipline, and there is no direct risk to people or property. As the key issue is establishing good order, any action which could exacerbate the situation needs to be avoided. The possible consequences of intervening physically, including the risk of increasing the disruption or actually provoking an attack, need to be carefully evaluated.
>
> 26. The age and level of understanding of the pupil is also very relevant in those circumstances. Physical intervention to enforce compliance with staff instructions is likely to be increasingly inappropriate with older pupils. It should never be used as a substitute for good behavioural management.[184]

Additional guidance for staff working in special schools catering for pupils with severe behavioural difficulties is provided in a joint DfES/Department of Health Circular.[185]

c. Exclusion from school for carrying an offensive weapon

DfES guidance on school exclusions makes it clear that head teachers can permanently exclude pupils for a range of first or one-off offences including actual or threatened violence and the criminal offence of carrying an offensive weapon on school premises:

> 11. A decision to exclude a child permanently is a serious one. It will usually be the final step in a process for dealing with disciplinary offences following a wide range of other strategies, which have been tried without success. It is an

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184 http://www.dfes.gov.uk/publications/guidanceonthelaw/10_98/part3.htm

185 DfES Circular 0242/2002, *Guidance on the use of restrictive physical interventions for staff working with children and adults who display extreme behaviour in association with learning disability and/or autistic spectrum disorders*, http://www.teachernet.gov.uk/docbank/index.cfm?id=6059

> acknowledgement by the school that it has exhausted all available strategies for dealing with the child and should normally be used as a last resort.
>
> 12. There will, however, be exceptional circumstances where, in the head teacher's judgement, it is appropriate to permanently exclude a child for a first or 'one off' offence. These might include:
>
> a) Serious actual or threatened violence against another pupil or a member of staff
> b) Sexual abuse or assault
> c) Supplying an illegal drug
> d) Carrying an offensive weapon[186]

There is also separate DfES guidance on dealing with drugs in schools.[187] Section 4.10 covers the procedures and circumstances where searches for drugs may be carried out in schools.

d. Summary of Government policy on tackling school violence

A written answer to a PQ on 2 March 2005 summarised Government policy on tackling school violence:

> **Mr. Rosindell:** To ask the Secretary of State for Education and Skills what her Department's policy is on dealing with violence taking place in primary and secondary schools. [219363]
>
> **Derek Twigg:** Although violence in schools is rare the Government takes the issue very seriously. We have made it clear that head teachers may permanently exclude pupils for violence even when this is a first offence. But it is even more important to help schools create an environment that reduces the risk of violence to an absolute minimum. To achieve that we have:
>
> given every secondary school access to high-quality behaviour management training materials and expert advice from behaviour management consultants;
>
> funded extra support for schools facing the greatest challenges through our Behaviour Improvement Programme;
>
> provided £120 million for school security improvements since 1997; and
>
> based over 300 police officers in schools.

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[186] DfES, *Improving behaviour and attendance: guidance on exclusion from schools and pupil referral units*, 2004, paragraphs 11 and 12, http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/guidance/

[187] DfES, *Drugs: guidance for schools*, 2004: http://publications.teachernet.gov.uk/eOrderingDownload/DFES-0092-2004.doc

> In addition we are:
>
> giving every primary school access to high-quality behaviour management training materials and curriculum materials for developing pupils' social, emotional and behavioural skills;
>
> developing staff training and curriculum materials to help secondary schools develop the social, emotional and behavioural skills of their pupils;
>
> developing specific violence prevention materials through our Violence Reduction in Schools project; and
>
> consulting on new proposals on keeping knives out of schools, including searching suspect pupils.[188]

The DfES consulted on its proposals for keeping knives out of schools by seeking the views of school staff unions, employers, governors, parents, the police and others through their representatives on the Working Group on School Security (WGSS), asking them to seek their members' views and ideas about keeping weapons out of schools. The DfES chaired three formal WGSS meetings on this issue, and circulated to WGSS a written outline of its proposals in November 2004, and provided further details in February and May 2005. The DfES has not issued a formal consultation document for the general public. However, the proposals were publicised in a press notice when the proposals were announced by the Secretary of State in December 2004. The DfES is planning a formal consultation on draft guidance, subject to the Bill's passage through Parliament. The draft guidance is likely to include: information and advice on the training and safety of staff; the involvement of parents, pupils and governors in policy and practice; the extent of the power to search; the circumstances in which a school can itself deal with a risk and when it should involve the police; a head teacher's power to delegate the power to search; dealing with any offensive weapon found and with any related issues, such as finding drugs; and building better school/ police relations.[189]

In February 2005, Ruth Kelly, the Education and Skills Secretary, underlined her support for schools to take a "zero tolerance approach" in tackling classroom indiscipline.[190] On 20 May 2005 Jacqui Smith, the Schools Minister, announced a new Leadership Group on Behaviour and Discipline to advise the Government on effective school discipline practice, how to improve parental responsibility for their children's behaviour and on how to promote a culture of respect in schools:

> Teaching unions and other professional associations have been invited to nominate Heads and teachers who have a proven track record in managing

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[188] HC Deb 2 March 2005, c1179W

[189] source: DfES official

[190] DfES Press Notice, *Zero tolerance to indiscipline in schools: redrawing the line*, 1 February 2005

behaviour to sit on the Group, chaired by Sir Alan Steer of the Seven Kings High School, Ilford. Among the issues it will examine are:

• effective practice: serious incidents are rare, and the majority of schools already have good discipline, but what needs to happen to ensure this is the norm in all schools?

• new powers: schools have powers and a wide range of support to deal with unruly behaviour, but what more or different support would help? Ministers are not ruling out an extension of Heads' powers if Heads believe these are required and they would make a practical difference.

• teacher training: can teachers be further supported through initial teacher training or professional development to ensure they are fully equipped to manage poor behaviour?

• parents' responsibility: schools have every right to expect parents' full support, not challenge, when it comes to discipline - at home and in school. Penalty fines and parenting contracts and orders are making an impact, but what more could be done to ensure that all parents take responsibility for their children's behaviour in school?

• collaboration: schools can tackle many discipline issues by working together - for example in Education Improvement Partnerships, using resources from local education authorities to fund out of class provision such as Learning Support Units to 'cool off' disruptive pupils or places in Pupil Referral Units to remove the most unruly pupils from schools. How can we build up effective collaboration and spread best practice?

• national discipline code: is there merit in creating a national code on behaviour which sets out the roles and responsibilities of schools, pupils and parents, in promoting good behaviour?

• exclusion appeals panels: while exclusion appeals panels are vital to keep disputes from lengthy and expensive court cases, could the process be made more effective to ensure that Heads' authority and the interests of the school are paramount when excluding pupils?

• protecting teachers: although assaults on teachers are rare, they should not happen at all. How can we press home to parents that new sentencing guidelines now make it a more serious offence to assault those working in the public sector, such as school staff?

The Leadership Group on Behaviour and Discipline will work intensively over the next few months to produce a detailed report by the end of October to be considered by a high level stakeholder group chaired by Jacqui Smith which will include all the teacher unions, Ofsted, local authority and Parent Governor representatives. This high level Ministerial Stakeholders' Group builds on the

Department's existing Behaviour and Attendance Reference Group, with membership drawn from the leadership of the key stakeholders.[191]

2. The Bill

a. Clause 35

Clause 35 inserts a new section - section 550AA - into the *Education Act 1996* to enable head teachers and other authorised members of school staff to search a pupil where there are reasonable grounds for believing that the pupil is carrying a knife or other offensive weapon. A search can be carried out only by a head teacher or a person who has been authorised by the head teacher to carry out the search. An authorisation may be given for a particular search or generally in relation to searches under the provision or to a particular description of such searches.

A person who carries out a search of a pupil may not require the pupil to remove any clothing other than outer clothing; must be of the same sex as the pupil; and may carry out the search only in the presence of another person who is aged 18 or over and is also of the same sex as the pupil. A pupil's possessions may not be searched under these powers except in his or her presence and in the presence of a person (in addition to the person carrying out the search) who is aged 18 or over. If in the course of a search a weapon is found it may be seized and retained. A person who exercises a power under the provision may use such force as is reasonable in the circumstances for exercising that power. It is possible that guidance on the use of force in this context may draw upon the current guidance on the use of reasonable force in relation to section 550A (power of members of staff to restrain pupils) of the 1996 Act (see pages 66-8 above).

The *Education Act 1996*, section 4, defines a 'school' as 'an educational institution which is outside the further education sector and the higher education sector and is an institution for providing primary education, secondary education, or both primary and secondary education, whether or not the institution also provides further education.'

Clause 35, which extends to England and Wales, will be commenced in relation to schools in Wales by the National Assembly for Wales rather than the Secretary of State.

The Home Secretary has stated that the provisions of the Bill are compatible with the European Convention on Human Rights. The summary of the Regulatory Impact Assessment (contained in the Explanatory Notes on the Bill) states that there will be guidance on how to ensure that searches carried out under clause 35 are compatible with Convention rights:

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[191] DfES Press Notice, *Respect in schools: leadership group on pupil behaviour and discipline*, 20 May 2005

> 267. Clause 35 gives head teachers or staff authorised by them a power to search pupils and their belongings for knives or offensive weapons. This clearly engages Article 8 (right to respect for private and family life) but an interference with that right can be justified under Article 8(2) if it is in accordance with the law, in pursuit of one or more legitimate aims and necessary in a democratic society.
>
> 268. The interference is self-evidently in accordance with the law since it will be permitted under this legislation, and the power pursues the legitimate aims of being in the interest of public safety and for the prevention of crime.
>
> 269. The power is necessary in a democratic society as it pursues the legitimate aim of reducing young people's use of weapons in violent crime. The power is proportionate since 2 per cent of school pupils have carried a knife in school for illegitimate purposes. Members of staff may search a pupil or his belongings only if they have reasonable grounds for suspicion that a pupil is carrying a knife or offensive weapon. They must have been authorised to carry out the search by the head teacher and may not require the pupil to remove any more than outer clothing. The member of staff conducting the search must be of the same sex as the pupil and a second adult, also of the same sex, must be present. Reasonable force can be used only where necessary. For searches of belongings, both the pupil and a second adult must be present.
>
> 270. Furthermore, in the case of maintained schools (which carry out a public function), there is an obligation to act compatibly with Convention rights and schools will be given guidance on how to ensure that searches are carried out compatibly with Convention rights.[192]

b. Reaction

The proposals have been broadly welcomed by teachers' unions although concern has been expressed about what might happen if a pupil objects to a search.

David Hart, general secretary of the National Association of Head Teachers (NAHT), commented:

> It is a useful power but many head teachers will be asking serious questions about what will happen if a pupil objects to the search. If they are indeed carrying a weapon, a teacher could be on the receiving end of a potentially very dangerous assault or attack.[193]

Dr John Dunford, general secretary of the Secondary Heads Association (SHA) questioned whether the powers would be effective if there is the possibility of legal action taken against teachers:

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[192] *Explanatory notes*, http://www.publications.parliament.uk/pa/cm200506/cmbills/010/en/06010x-d.htm

[193] NAHT website - news: *New powers to combat knife culture*, http://www.naht.org.uk/news/web_news_view.asp?ID=1944&sectionid=1

> These new measures show the pendulum is swinging in the right direction. The government has said it wants to give school leaders more autonomy and authority, and it is encouraging now to have the words backed up with action.
>
> However, I do not believe the new powers offer enough security in today's litigious society. School leaders will not be willing to use these new powers unless they are completely confident that they are also protected from litigation under civil law or the Human Rights Act for violating students' rights.
>
> The vast majority of schools do not have problems with pupils carrying weapons, but in the rare occasion that it does happen, school leaders need to know that they have the authority to deal with it quickly and decisively.[194]

Chris Keates, general secretary of NASUWT, noted that the union has campaigned for changes to give more support to teachers in maintaining good order and discipline; however, it does not want heads or teachers themselves to carry out searches of pupils but for heads to commission the searches from the police:

> NASUWT welcomes the increased powers in the Bill for heads to search pupils. However, the Union has maintained consistently that this should not be on the basis of heads or teachers carrying out the searches themselves.
>
> Such an expectation would be counterproductive. Not only are there risk factors involved but it could have an adverse effect on the nature of a teacher's relationship with pupils.
>
> Random searches should be one of a menu of options from which headteachers can choose to improve security and behaviour in schools.
>
> They should be able to commission the searches from the police not conduct them themselves.[195]

The comments of Steve Sinnott, general secretary of the National Union of Teachers (NUT), were reported as follows in the *Guardian*:

> The bringing of weapons into school is a growing menace, though it is impossible to quantify at present. Giving the power of forcible search to head teachers will help protect other pupils and staff from the dangers weapons pose.[196]

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194 SHA website - news: *SHA questions whether new search powers will be effective*, http://www.sha.org.uk/cm/newsStory.asp?cmnID=3750&cmnRef=631&cmnTopic=1

195 NASUWT website, *Violent Crime Reduction Bill 'A powerful warning to would-be assailants' says NASUWT*, http://www.teachersunion.org.uk/Templates/Internal.asp?NodeID=71768

196 "Attack begins on school knife culture". *Guardian*, 8 June 2005: http://www.guardian.co.uk/uk_news/story/0,,1501327,00.html#article_continue

IV Miscellaneous measures

A. Football-related disorder

There are several miscellaneous provisions in the Bill relating to football. Clause 37(3) states that the football national membership scheme "shall cease to have effect". The legislative basis for this scheme – a response to the problems of football hooliganism in the 1980s - was established under the *Football Spectators Act 1989* and provided that only authorised spectators, carrying identity cards, would be permitted to attend designated football matches. The whole scheme, which was to be overseen by a Football Membership Authority, was deemed unworkable and has never been implemented. Attractive as the idea may have seemed in 1989, such a scheme is now deemed "inconsistent with the strategic aim of encouraging football fans from all sections of society to attend matches".[197]

Clause 37(1) removes the time limit set by the *Football (Disorder) Act 2000* for applications for football banning orders. It will therefore be possible for the police to continue making applications for such orders beyond 2007. The Home Office website explains how these banning orders work:

> The orders are civil and preventative rather than a penalty for past misbehaviour. Their purpose is to prevent known football hooligans from causing further trouble at home and abroad. Bans last between 2 and 10 years, and the precise conditions can be tailored on a case-by-case basis.
>
> If necessary, the courts can ban recipients from using public transport on match days, and from visiting other potential 'hotspots', such as town centres, pubs and bars during risk periods.
>
> There are three routes for asking the courts to impose a football banning order:
>
> - When the police have evidence that an individual has previously caused or been involved in violence or disorder and continues to pose a threat they can ask a magistrate's court to impose a football banning order on the basis of an array of evidence (e.g. video recordings gathered at home or abroad, overseas convictions for violence or disorder, police intelligence reports, etc).
>
> - When someone has been convicted of a football related offence (that can be almost any criminal offence connected with football, committed in any location, 24 hours either side of a match), the law requires that the court

[197] *Explanatory notes*, para 43

imposes a banning order if it is satisfied that an order will help to prevent further football-related violence or disorder.

- During a control period – which starts five days before an overseas match or tournament and lasts until the event has finished – the police can intercept and prevent from travelling an individual (not already subject to a banning order) when they have evidence that the person has previously been involved in violence or disorder and grounds for suspecting that the individual continues to pose a risk. Any individual so intercepted must face banning order court proceedings within 24 hours.[198]

Statistics suggest a correlation between the use of banning orders and the number of arrests at matches. The number of arrests at League matches has fallen steadily over the last ten years (from a total of 3,850 in the 1994-05 season to 3,010 in 2003-04). Meanwhile, the number of banning orders in place at domestic clubs has more than doubled, from 1,149 in August 2002 to 2,596 in October 2004.[199]

Football banning orders were created by the *Football Spectators Act 1989*. Schedule 1 to the Bill makes a number of technical amendments to the 1989 Act and updates it to take account of the present Bill. A full description of these changes is given in the Explanatory Notes.

B. Re-programming mobile telephones

1. Tackling mobile phone theft

Clause 42 would add new ways in which offences could be committed under the *Mobile Telephones (Re-programming) Act 2002*. That legislation was one of the steps taken to tackle the escalating problem of mobile phone theft, which accounts for a large proportion of street crime, often involving violence, and often involving young people, both as victims and as offenders. The simple logic is that if a phone reported stolen cannot be used, it has no value, and there is no incentive to steal it. Developing technology can make it more difficult (though probably not, in the long term, impossible) for criminals to make stolen phones usable again, while stiff criminal sanctions for doing so may act as a deterrent.

Thieves had soon learned that they could cheaply make stolen phones usable again, just by replacing the Sim card which would have been disabled by the network when the theft was reported. But each handset has a unique device identifier (the "IMEI") which is sent to the network each time a phone connects to it. Technology allowing the networks to

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198 http://www.homeoffice.gov.uk/crime/footballdisorder/banningorders.html

199 Home Office, *Statistics on football-related arrests and banning orders, season 2003-04*, 23 October 2004. For more detail see Library Standard Note SN/SG/2670, *Football-related arrests and banning orders.*

block the use of stolen handsets was then developed and, in 2002, the UK mobile phone operators set up a database of lost and stolen phones, making it possible for them to be blocked across all UK networks by reference to their IMEIs.[200]

But theft of mobile phones remains a lucrative criminal activity because it is still possible for criminals to make phones usable again, by changing their IMEIs. That was not (on its own) a criminal offence until 2002. The 2002 Act targeted those involved in re-programming, by introducing specific new offences. It became an offence to change the IMEI, or to interfere with its operation. There were also ancillary offences, relating to the possession or supply of equipment to be used for those unlawful purposes. The offences carry maximum penalties of five years' imprisonment or unlimited fines or both.

The Act had cross-party support and was passed without amendment, although there was some debate as to how it might be strengthened, to make it easier to obtain convictions.[201] Further background to the Bill which became the Act is described in a Library Research Paper.[202]

The Act came into force in October 2002.[203] In December 2003 the National Mobile Phone Crime Unit (NMPCU) was launched by the Metropolitan Police.[204] Its main aim is to reduce street crime and the number of mobile phones stolen during these offences by tackling those involved in mobile phone criminality; principally the handlers, re-programmers and exporters of stolen mobile phones.

Working in partnership with the Government, the telecommunications industry, other law enforcement agencies and the media, the NMPCU intends to disrupt and reduce the opportunity for theft of mobile phones and address the false reporting of mobile phone crime. It has also launched an online register of mobile phones, www.immobilise.com, where users can register details of their phones.

According to *the Guardian*, the unit:

> has carried out 200 raids on market stalls, shops and homes where unblocking is being done, and has arrested 200 people in two years. They found the same shops offering unblocking services regularly offering to unblock stolen phones as well.
>
> But each arrest has involved a lengthy police sting, and Superintendent Eddie Thomson, head of the unit, said this has hampered operations.[205]

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200 "New database makes stolen phones useless to thieves", November 2002, CJS Online, http://www.cjsonline.org.uk/news/2002/november/mobile_phone_database.html

201 HC Deb 22 July 2002 c706-729, HL Deb 20 June 2002 cc906-913

202 The *Mobile Telephones (Re-programming) Bill*, Research Paper 02/47, 18 July 2002, http://hcl1.hclibrary.parliament.uk/rp2002/rp02-047.pdf

203 *Mobile Telephones (Re-programming) Act 2002 (Commencement) Order 2002* SI 2002/2294

204 http://www.met.police.uk/mobilephone/

205 "Curb on mobile unblockers to cut crime wave", *Guardian*, 31 May 2005

According to Home Office figures:

- In 2003, there were 15 defendants proceeded against under the Act.
- Of those 15 defendants, 4 were convicted of offences under the Act.
- Of the 4 convictions, 3 were made in the magistrates' court and one in the crown court.[206]

2. The Bill

Clause 42 of the *Violent Crime Reduction Bill* would make it an offence for a person to offer or agree to re-programme a phone himself, or to have it done. The clause is the same as the operative clause in the *Mobile Telephones (Re-programming) Bill 2004-05*.[207] That was a Private Member's Bill introduced by Kevan Jones, with Explanatory Notes provided by the Home Office. A provisional second reading date was set for April 2005, but it did not progress.

The new offences carry the same maximum penalties of five years' imprisonment or unlimited fines or both.

It is suggested that the new offences will make it easier to secure convictions of those involved in re-programming, because it will not be necessary to find doctored phones or the equipment being used for reprogramming them in order to launch a successful prosecution. Similar ancillary offences, of offering to do something which would be an offence, have been used in the context of the supply of controlled drugs, and illegal ticket touting.[208]

3. Other crime involving mobile phones

There are other problems in mobile phone related crime. One is that even if legislation and technology combined did eliminate reprogramming in the UK, there could still be markets overseas. *The Guardian* reported:

> Police say that they are also facing a new phenomenon of mobile phones being stolen for bulk orders to ship to other countries where they cannot be blocked.
>
> Supt Thomson said: "Initially we focused on low-level street crime, the selling of phones in the pub. We feel confident that we've combated those crimes for now.
>
> "But there is now strong evidence that (stolen phones) are being exported around the world. We know that every single continent has received a stolen phone from

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206 Source: Home Office official, 10 June 2005. Similar statistics for 2004 will be published in autumn 2005.

207 Bill 25 2004-05

208 *Misuse of Drugs Act 1971* s4, *Criminal Justice and Public Order Act 1994* s166

> the UK. Foreign networks tell us that phones stolen from the UK are being picked up on their networks, where there is no power to block them."
>
> The unit has identified 40 countries where mobile phones stolen in Britain are being traded for shipments of drugs including ecstasy and heroin. It estimates that the illegal export trade was worth up to £140m last year.[209]

Professor Mark Griffiths, writing in the *Justice of the Peace*, commented that when most people think about mobile phone crime, the first thought is about someone having their phone stolen. His article focuses on the potential for mobile phone crime from the perspective of how the technology could be used to exploit and/or harm others, such as mobile phone "scams", where people are led to use premium rate lines without realising it, and bullying text messages which cannot be traced.[210]

Another common crime associated with mobile phones is insurance fraud, where phones are falsely reported as having been stolen.[211]

4. Technological advances

The IMEI (International Mobile Equipment Identity) is a unique 15-digit code used to identify an individual GSM mobile phone to a GSM network. This number is held internally within the phone independent of the Sim card, it can usually be found printed on the phone underneath the battery or will appear on most phones by dialling *# 06 #. The original purpose of the IMEI was to identify the type of phone used on a network and ensure its compatibility.

One2One and Orange were the first networks to use the IMEI number as a means of identifying stolen phones and blocking them from their own networks. In February 2002 BT Cellnet and Vodaphone also implemented IMEI blocking under pressure from consumer organisations the media and Government. At this time the four network operators merged their databases of the IMEI numbers from stolen phones and created a central shared database, the CEIR (Central Equipment Identity Register). This made it possible to bar mobile phone handsets from all UK networks once reported stolen. [212]

IMEI numbers are not hard-wired into most mobile devices. The simplest way for a manufacturer to set the IMEI for a mobile phone is to electronically input the number onto a chip in the handset during the production process. It is usual for these chips to be rewritable. This means that when a phone has been reported stolen and its IMEI has been

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[209] "Curb on mobile unblockers to cut crime wave", *Guardian*, 31 May 2005

[210] "Mobile phone crime: a New Area of Concern for the Criminal Justice System", June 2003, vol 167, p484

[211] "100,000 mobile phone thefts a year are frauds", *Times*, 26 June 2002

[212] "New database makes stolen phones useless to thieves", November 2002, CJS Online, http://www.cjsonline.org.uk/news/2002/november/mobile_phone_database.html

barred from the UK networks a new IMEI number that has not been barred can be electronically input into the phone, once again enabling it with network access. The procedure by which phones are reprogrammed is becoming more and more difficult and involves more specialist equipment as manufactures adopt safeguards in the design of new handsets. To re-programme modern handsets is beyond the means of most petty criminals. However it will always be possible to re-programme a phone as long as the IMEI number is stored on a rewritable component.

If a phone is deemed too difficult to re-programme an alternative and less technologically sophisticated option is to resell the phone abroad. The CEIR is used only in the UK by network operators. A telephone that has had its IMEI blocked in the UK can still function on foreign networks.

One solution to this problem would be the creation an international register of stolen IMEI numbers. In June 2003 the European Commission, brought together mobile phone manufactures and network providers at the European Mobile Phone Anti-Theft Workshop. The effect of such an international database of stolen phones was explored at the workshop as was the option of amending EU legislation concerned with the design and manufacture of mobile phones to make reprogramming more difficult. At the time operators in countries other than the UK and France (where IMEI databases are used to block stolen phones) were unwilling to adopt any form of IMEI blocking because of the technological difficulties posed by applying such a system to their network.[213]

[213] European Commission Enterprise and Industry, Anti-Theft Workshop, June 2003. http://europa.eu.int/comm/enterprise/rtte/workshopantitheft/report/