

# The Haldane Society of Socialist Lawyers

25a Red Lion Square, Conway Hall, London WC1R 4RL  
President: Michael Mansfield QC

**Chair: Richard Harvey (Mob: 07866571053); Vice-Chair: Liz Davies**

---

The Haldane Society was founded 75 years ago to promote civil liberties and human rights. It provides a forum for discussion and analysis of law and the legal system, nationally and internationally, from a socialist perspective. It is independent of any political party. Its members are individual lawyers, academics, students and legal workers, as well as trade union and labour affiliates.

The Home Office consultation document ‘Policing: Modernising Police Powers to Meet Community Needs’ raises serious implications for civil liberties and human rights and we are therefore submitting our observations on the sections that cause us the most concern at this stage. In light of any draft legislation along the lines foreshadowed in the consultation document we may wish to submit more detailed observations to the Home Office. The fact that we have not submitted specific comments on certain sections should not be taken as indicating our support for the proposals contained therein.

## **Section 2 – Arrest – Concept of Seriousness**

### *“Redefining the framework of arrest”*

We start from the premise that in a democratic society the power of the state to interfere with the liberty of the subject should be subject to the closest scrutiny and control by the courts. What the consultation paper aptly describes as “this fundamental and potent power” (Paragraph 2.5) was principally codified 20 years ago in PACE which, as the consultation paper reminds us, established “a systematic structure based on clear principles of necessity and seriousness.” (Para 2.1) That systematic structure is now reinforced by the 1998 Human Rights Act and Article 5 of the European Convention.

It is undoubtedly true that “it is not always straightforward or clear to police officers or members of the public when and if the power of arrest exists for offences at the lower level of seriousness.” However, the case for such drastic inroads into liberty as are proposed in Paragraph 2.6 requires the closest study.

Taken as a whole, the twelve heads of ‘necessity’ from (a) to (l) set out in that subparagraph are so broad as to give a police officer unfettered power over the liberty of the subject in cases of the most trivial kind. They invite the police to come up with explanations such as:

- “I had reasonable grounds to believe that she was smoking a cannabis cigarette and I arrested her in order to be able to communicate with her (2.6(a)) and/or to confirm her name and address (2.6(c));” or
- “I had seen him and others breach the peace on a previous anti-war demonstration and I arrested him because he had a megaphone which he might have used to interfere with other persons (2.6(g)) or to alert others who might have intended to breach the peace on this occasion (2.6(h));” or even
- “I had reasonable grounds for believing he was drunk and disorderly and I arrested him to prevent him from hurting himself if he fell down (2.6(f)).”

Sadly, the practical experience of members of our society indicates not only that some police officers will resort to any excuse, however implausible, to justify a stop and search, arrest or seizure; but also that many courts give substantial latitude and credulity to officers in such cases.

The plan to ‘redefine the framework of arrest powers’ by removing ‘the gateway of seriousness’ devalues the basic liberty interest of a free society. That liberty interest requires that society’s members be free from the assault on their human dignity that constitutes an arrest, *unless* that arrest is based on reasonable suspicion of a serious offence.

The Haldane Society shares the concern for the difficulties faced by honest and fair-minded police officers who reasonably believe they have grounds for making an

arrest. However, our concern must also extend to the impact on an entire community when a bigoted or racist police officer, armed with an unfettered powers, decides to harass African Caribbean youths on a street corner or women in hijabs on their way home from the mosque. In a diverse society, the police will obtain the support and consent of all sections of the community if they are seen to be operating under proper legal constraints.

The public interest is finely balanced between, on the one hand preventing and detecting crime and, on the other hand protecting the liberty of the subject. PACE is widely recognised as having managed that balancing act in a workable fashion. The present list of ‘necessities’ threatens to smash down the ‘gateway of seriousness’ and open wide a portal to repression.

*“Trigger powers”*

The unjustifiable nature of the proposed new arrest powers is underscored by the admission, at Para 2.12, that when it comes to the powers of entry and search: “Nonetheless, the reliance of the current framework on seriousness is an important concept which provides focus on proportionality and appropriateness.” Logically, if seriousness, proportionality and appropriateness should apply to a person’s premises, then those same criteria should also apply to their physical person.

However, there is a disturbing undertone in the same paragraph: “a blanket application of the consequential powers deriving from arrest to be applied in future to all offences may be a step too far *from where we are currently.*” (Our emphasis) This suggests that, once the public has got used to the extended police powers of arrest described above, it will be an easier step to proposing that we extend their powers of entry, search and seizure.

As a first bold step in this general direction, it is proposed to extend entry, search and arrest powers to offences triable either way or on indictment. No rationale is offered for this proposed extension and no evidence is adduced that the present limitations are in any way preventing the police from carrying out their duties. Similarly, the consultation paper envisages extending, to all offences triable either way or on indictment, the extraordinary powers currently held by the police only in relation to

serious arrestable offences. These powers to order road blocks, hold suspects incommunicado, detain for up to 36 hours and delay access to legal advice already represent a massive intrusion on cherished concepts of civil liberty. Extending such serious powers to offences which are by definition not 'serious' would be completely unjustified.

### *The Need for Transparency in Legislation*

There have been repeated calls by ACPO for a national DNA register. Proposals contained in the consultation paper would lead to the *de facto* creation of such a potent database, with all its potential for abuse.

By effectively making virtually all non-serious offences arrestable, powers already existing under the Criminal Justice Act 2003 would be extended to permit the police to take and retain DNA samples from all arrested persons, however trivial the offence and regardless of whether the person was charged or released. The Haldane Society believes that all legislation affecting civil liberties must be subject to open and public debate and not infiltrated into our justice system through the back door of proposals like this.

### **Section 3. Search Warrants – “Raising Capacity”**

Every constitutional law student knows the state trial of *Entick v Carrington* (1765) 19 St. Tr. 1029, which definitively curbed Secretary of State's power to issue "general warrants." Definitively until now, it seems. The bold claim advanced for what the consultation paper candidly calls "super warrants" (Para 3.8) is that they will "ease the burden on police officers." (Para 3.6) Any premises, even those merely "accessible to" an individual, may be raided any number of times during any period for which an officer can persuade a justice of the peace to grant such a warrant against that individual. The premises to be raided need not be related to a suspect.

The tests of proportionality and necessity are to be jettisoned out of deference to making it easier for police officers to enter at any time not only the fabled "Englishman's castle" but also his girlfriend's bed-sit, the home of the neighbour who gave him a set of keys in case of emergency, the cottage of the friend who said: "any

time I'm not using it, you're welcome," the office shared with a hundred co-workers, the home of the elderly parents he visits at weekends now they are too infirm to do their own shopping. Indeed the police would have a licence to unlock or break down every door for which he has a key on his key-ring or to which anyone else might be willing to give him "access."

The consultation paper officer further proposes that the police officer would not even have to appear before a magistrate or judge to obtain these powers. A mere telephone call, email or fax would suffice. A Jonathan Swift might at this point make the modest proposal that there should be no need for warrants at all and that the police should have unrestricted access to all premises at all times. This may not be what the consultation paper is asking for or what hard working and honest police officers would want. However, there is frightening scope for abuse in these proposals.

### **Section 5: Increasing Prevention and Detection Powers**

#### *Drug Testing and Treatment*

The Haldane Society welcomes the acceptance in this section that "drug treatment works" and we support the integrated case management approach of tailoring solutions for individuals who commit drug-related crime. However, just because treatment works for those arrested and actually charged with offences, there is no evidence to suggest that it would work irrespective of charge, still less that it would work for those arrested under the wide-ranging powers proposed under Section 2 of the consultation document. Indeed, given the harm caused by drugs, it is conceivable that Para 2.6(f) might be used by an officer to justify arrest for no other purpose than that of forcing a person to undergo a drug test, since this might arguably assist in "preventing harm to the person concerned."

We view with alarm any suggestion that persons suspected of having swallowed drugs should be confined in police stations or otherwise treated in a manner inconsistent with the standards of ethics promulgated by the British Medical Association. These standards are not merely designed for the self-serving purpose of protecting medical staff from the inconvenience of a lawsuit; they guarantee the humane treatment of the

suspect or patient. If a person may have swallowed drugs, the risks to his or her life and health would not be adequately addressed by ordering confinement in a police cell, as proposed. Any extended must be ordered only by a court and should be in a place with all appropriate emergency medical facilities.

The general principle that a person may not be compelled to testify against themselves should not be displaced by permitting an adverse inference to be drawn from a refusal to permit an invasive bodily search. Such an inference would be highly problematic under both Articles 5 and 6 of the Human Rights Act.

#### *The Nuisance of Fireworks*

The Haldane Society is concerned at the increasing use of curfews and stop and search powers against young persons. Given the breadth of scope proposed under Section 2.26 of the consultation document, we warn against the risks of exacerbating a “them-and-us” culture as between young people and the police. We reserve further comment until draft legislation is presented.

#### *Protests Outside Homes and Parliament*

The express targets of such legislation are animal rights activists, to which category the government may now wish to add supporters of hunting. However, in addition to common law offences of obstructing the highway and the already over-zealous use of ASBOs, there already exists a substantial arsenal of police powers to regulate all forms of protest, under the Public Order Act 1986, the Protection from Harassment Act 1998, the Trade Union and Labour Relations (Consolidation) Act 1992, the Criminal Justice Act 1994, and the Justice and Police Act 1991. The need for any further curbs on the right to free assembly, speech and protest is not made out.

### **Section 6. Identification**

The importance of DNA as a means of both identifying the guilty and exonerating the innocent has been widely recognised. However, safeguards against its potential abuse are required and proposals such as that contained in Para 6.20 contain troublesome implications for the possible manipulation of evidence and invasions of privacy.

## **General Conclusion**

The individual extensions of police powers proposed in the discussion document raise individual concerns. However, their cumulative effect raises two overriding questions: Are these powers strictly necessary? Are they desirable in a free and democratic society?

Given the great breadth and scope of powers already available to the police, the Haldane Society believes the answer to both these questions is no and that the greater danger lies in skewing the balance towards giving unchallengeable authority to police officers over the members of society. This consultative paper, however well-intentioned, offers a recipe for increased repression, alienation and division within and among our communities. We believe that the case for yet further legislation has not been made.

Respectfully submitted,

Richard Harvey, Chair  
The Haldane Society of Socialist Lawyers  
Conway Hall  
Red Lion Square  
London WC1R 4RL