



Home Office

# **POLICING:**

Modernising Police Powers to  
Meet Community Needs

August 2004

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## FOREWORD

### **POLICING: MODERNISING POLICE POWERS TO MEET COMMUNITY NEEDS**

Foreword by Hazel Blears MP

Minister of State for Crime Reduction, Policing and Community Safety



A key part of tackling crime and disorder and improving the quality of life in our neighbourhoods is making sure that the police are empowered to act effectively and proportionately.

Protecting the public is our top priority. Everyone in the community has the right to live in a safe and secure environment and it is essential that we provide the police and other investigative agencies with the right level of powers to prevent, disrupt and investigate crime.

This paper sets out a range of areas that will affect how the police and others carry out their roles. The focus is on the police effectively addressing the issues which are of public concern. A crucial element is in enhancing the link between the police and the community by raising both the ability of the police to tackle crime and by building the confidence and awareness of the community in this key part of the criminal justice system.

Tackling crime and disorder is a matter for a range of agencies and the community itself. As the Home Secretary indicated in his Foreword to the consultation paper "Policing: Building safer communities together", police activity must be integrated into the daily life of every community. That consultation paper sets out fundamental issues aimed at reforming and modernising the police service. Ensuring that the police have the powers to match the needs of the community lies at the heart of achieving that.

It is important that we maintain the crucial balance between the powers of the police and the rights of the individual. But we need to address

any imbalance that prevents the police doing their job effectively and which restricts the ability to prevent and investigate crime or which helps the criminal to avoid detection and conviction. We need also to make sure that the investigative process promotes more efficient and effective use of officers' time.

It is against that background that this consultation paper sets out key areas of police powers which may need extending or which may benefit from clarification, simplification and modernisation.

Comments on this paper are invited but we also very much welcome any constructive suggestions on any other areas of police powers which could lead to tackling crime more effectively and raising the efficiency of the police service. The Government is committed to legislating on many of the provisions in this consultation paper at the earliest possible opportunity. Accordingly, I must ask for comments within 8 weeks, that is by **8 October 2004**. Responses to the consultation will be published unless otherwise indicated by individual respondents. Responses to:

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**HAZEL BLEARS**

## Section 1 INTRODUCTION

This is a consultation exercise on developing police powers. Police powers is a generic term that relates to the powers available to the police and other investigative agencies to tackle and investigate crime.

1.2 These powers are largely contained in individual Acts of Parliament but at the core lies the Police and Criminal Evidence Act 1984 (PACE). PACE and the accompanying codes of practice are vital parts of the framework of legislation providing the police with the powers they need to combat crime and setting out the procedures in their dealings with the public.

1.3 The provisions of PACE reflect the principles of fairness, openness and workability representing a clear statement of the rights of the individual and the powers of the police. The PACE codes of practice interpret the provisions of the Act into operational application.

1.4 In 2002, the Home Secretary announced a fundamental review of PACE and the codes. That was carried out jointly by Home Office and Cabinet Office and involved consultation with stakeholders. The Review reported in November 2002<sup>1</sup>.

1.5 The Review concluded that PACE is viewed positively by police, the courts and the legal profession as having standardised and professionalised police work and the investigative process. However, it does require updating and should more accurately reflect the changes in society over the last 20 years.

1.6 A number of recommendations from the Review have and are being taken forward through the PACE codes and other processes. But there are some fundamental areas of change which require more detailed consultation and development. These are included in this document, notably on powers of arrest and search warrants.

1.7 We have extended consideration beyond PACE into statutes setting out individual police

powers. This is part of the wider programme of Police Reform with the focus aimed directly at improving the effectiveness and efficiency of the police service. The measures proposed in this paper set out to:

- provide the police and other relevant agencies with appropriate powers to tackle crime;
- remove barriers enabling more effective targeting of criminals;
- free-up more time for police officers to take up front-line duties.

1.8 There may be other areas which you consider can help achieve these aims. We welcome your suggestions on how we can maximise effectiveness.

Police Leadership and Powers Unit  
Home Office  
August 2004

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<sup>1</sup> PACE REVIEW: Report of the Joint Home Office/ Cabinet Office Review of the Police and Criminal Evidence Act 1984 (<http://www.homeoffice.gov.uk/docs/pacereview2002.pdf>)

## Section 2 **ARREST – CONCEPT OF SERIOUSNESS**

2.1 Arrest is a powerful weapon in the police armoury for tackling crime. PACE did much to clarify powers of arrest by establishing a systematic structure based on clear principles of necessity and seriousness.

2.2 It has achieved some success but the basis of arrest remains diverse – it is not always straightforward or clear to police officers or members of the public when and if the power of arrest exists for offences at the lower end of seriousness. As indicated by the Association of Chief Police Officers in responding to the Joint Review of PACE, there is a “myriad of different qualifiers” to effect arrest.

2.3 There is a common perception that a constable has the power of arrest provided he has reasonable grounds to suspect an offence has been committed. In fact, there is a complex and often bewildering array of powers and procedures. The current focus is on seriousness – any offence attracting a sentence of five years or more is considered sufficiently serious to attract the power of arrest. But added to this are:

- the general arrest conditions for all offences where there is doubt about the identity or address of the suspect or concern over safety or further offending;
- an extensive list of individual offences deemed by Parliament to require a power of arrest;
- preserved powers of arrest under PACE;
- arrest warrants on application to a court;
- common law powers of arrest for breach of the peace.

2.4 PACE also provides for the category of ‘serious arrestable offence’. This offers a threshold for a range of powers and procedures including extended detention, being held incommunicado and delaying access to legal advice.

2.5 Whilst the existing PACE provisions are generally adequate to cover the large majority of situations, there is a confusing range of approaches to exercising this fundamental and potent power. The present structure is based on the concept of seriousness of the offence and not the complexity of the investigation. We should be building on the accrued benefits of PACE and moving towards a straightforward, universal framework which focusses on the nature of an offence in relation to the circumstances of the victim, the offender and the needs of the investigation.

2.6 Removing the gateway of seriousness would enable all offences to be subject to the power of arrest. A constable would still be required to have reasonable grounds to believe that a person is committing, has committed or is about to commit an offence **AND** importantly, that an arrest is necessary to:

- a) enable communication with the person;
- b) prevent the person evading justice;
- c) confirm the person’s name or address;
- d) facilitate immediate enquiries/interviewing at a police station;
- e) prevent loss of, interference with or harm to evidence;
- f) prevent harm to the person concerned;
- g) prevent interference with or harm to other persons;
- h) prevent the alerting of other suspects;
- i) prevent interference with the recovery of stolen property or other proceeds of crime;
- j) prevent the loss of or harm to property;

- k) prevent an offence against public decency;
- l) prevent an unlawful obstruction of the highway.

2.7 This approach removes confusion as to whether a power of arrest exists. It enables a constable to apply his professional judgement on whether to exercise the arrest power by applying the arrest criteria. Importantly, it means applying the power of arrest to fit the circumstances of the offence, the offender and the victim. It places the emphasis on the need for arrest and provides a constable with the criteria justifying the exercise of this power.

### **Citizen's Arrest**

2.8 The concept of the citizen's power of arrest is widely known but poorly understood. The citizen's use of this power is and should remain more limited than the powers available to a police officer. It should also be restricted to where the need for immediate action is such as to preclude the reasonable possibility of involving a police officer. The citizen's arrest power should be exercised where it appears that arrest is necessary to prevent:

- the person evading justice; or
- interference with or harm to other persons; or
- the loss of or harm to property.

2.9 This would apply when any person reasonably believes anyone is committing, has committed or is about to commit any offence and it is not reasonably practicable for a police officer to make the arrest. There should be a clear legal requirement on anyone making a citizen's arrest to ensure that the arrested person is passed into the custody of a constable as soon as practicable.

### **Breach of the Peace**

2.10 Every citizen has a duty to assist in preventing or suppressing a breach of the peace. The power of arrest is derived from the common law. There is some criticism that the exercise of this power by a constable is applied arbitrarily as a 'catch all' provision to deal with situations where a power of arrest does not exist under statute. It is proposed that the criteria set out in paragraph 2.6

above replaces the breach of the peace provision by setting out in statute both the reason and justification for exercising the power of arrest. This would also mean limiting this power to a constable. A statute is the ultimate source of law. Even if the statute is in conflict with the common law, a statute must prevail.

### **'Trigger Powers'**

#### *Arrestable Offences*

2.11 Exercising the power of arrest for an arrestable offence triggers a range of other powers to assist in the investigative process. It provides a power of entry and search for the purposes of arrest; and powers of entry, search and seizure relating to premises controlled by the arrested person.

2.12 These are intrusive powers and that is why they are already subject to the criteria of need and proportionality. Extending these powers to all offences for which an arrest has been made would retain the same criteria. However – and importantly – a blanket application of the consequential powers deriving from the current powers of arrest to be applied in future to all offences may be a step too far from where we are currently. There would be benefits for tackling offences not currently arrestable in a more effective and positive way if there was clear and justifiable reasons for entering premises to arrest the suspect or gather evidence or both. Nonetheless, the reliance of the current framework on seriousness is an important concept which provides focus on proportionality and appropriateness.

2.13 Therefore, whilst proposing that the power of arrest should be applied to all offences meeting the criteria set out in paragraph 2.6 above, the range of other powers which are triggered by an offence being arrestable should at this stage remain subject to set criterion. Potentially, that could be applied to those offences which carry a term of five or more years imprisonment. This would be in line with section 24(1) of PACE. However, that would maintain – not simplify – powers around arrest. A more effective process may be to enable the exercise of trigger powers to all offences which are triable either way or on indictment.

2.14 This approach would prevent the use of

intrusive powers in dealing with less serious offences. Instead it would allow the trigger powers to be applied to those offences which are triable either way or on indictment. It would also mean that offences taken forward to prosecution would be subject to consideration in the Crown Court.

We need to consider the environment of changing criminal activity and techniques and avoid restricting investigative ability to tackle crime successfully. We also need safeguards minimising the arbitrary exercise of powers and, above all, we need to ensure that the police and other investigators have the right powers to tackle crime and criminals effectively. The proposals here should help achieve those objectives.

### *Serious Arrestable Offences*

2.15 The concept of “serious arrestable offences” falls into two categories:

- offences specified within PACE as always being serious arrestable offences – for example, murder, rape and kidnapping;
- any other particular arrestable offence which has or is intended to lead to certain specified consequences – for example, serious injury, substantial financial gain or serious financial loss.

2.16 Under PACE, such an offence enables road checks; search warrants; detention without charge beyond 24 hours; being held incommunicado; delayed access to legal advice; and access to confidential material.

2.17 However, PACE provides that these powers can only be activated where there is a significant level of authorisation. Detention up to 36 hours, delaying access to legal advice and most road checks must be approved by a superintendent. Holding a detainee incommunicado needs an inspector’s authority. A search warrant involves an application to a magistrate and access to confidential material can only be granted by a judge.

2.18 Those involved in making those decisions are well placed to make judgements about seriousness, proportionality and the implications for basic rights. Whether a rather flexible and ill-defined threshold based on the concept of the serious arrestable offence is either necessary or

helpful is questionable. The exercise of each power is either justified or not in the individual case and clear criteria are set out in the legislation to enable judgement to be applied. But, as set out in paragraph 2.12 above, the concept of seriousness remains an important safeguard. It is proposed that the ‘triable either way or on indictment’ approach similarly be applied to what are presently termed ‘serious arrestable offences’ and that all offences which meet that criterion are able to attract the range of investigative powers triggered by an offence currently deemed arrestable or serious arrestable. That does bring a wider range of offences within the orbit of the trigger powers currently only available at the ‘serious’ end of the offence range. But as indicated, there are significant safeguards and protections in place before these powers can be exercised. They would remain in place to provide an important safeguard against disproportionate use.

2.19 The key considerations are that the powers of arrest are:

- relevant and necessary to tackle crime and disorder;
- that they will contribute to improved efficiency and effectiveness; and
- that they are proportionate to the rights of the individual.

Adopting the proposed approach will help raise delivery in all these areas and, importantly, provide clarity in an area which has grown significantly in complexity.

## Summary

- Redefine the framework of arrest powers so that a police officer can arrest for any offence subject to the necessity test as set out at paragraph 2.6 above.
- Revise the seriousness criterion and the concepts of the “arrestable” and “serious arrestable offence”.
- Introduce a new requirement for an offence to be triable either way or on indictment before the ‘trigger’ powers following arrest can be applied.
- Set clear criteria for the exercise of a citizen’s power of arrest.
- Abolish the capacity to arrest in relation to a breach of the peace.



## Section 3 **SEARCH WARRANTS – RAISING CAPACITY**

3.1 The framework for the entering and searching of premises and the seizure of property or material is set out in PACE. This focuses very much on entry to specific premises. It also requires a constable to apply in person for a search warrant and for the warrant to be used on only one occasion and within one month of the date of issue by the court.

3.2 Crime and technology have both moved on significantly since the introduction of PACE. Evidence and the proceeds of crime can be moved very quickly between locations to thwart investigations.

3.3 Applying repeatedly for warrants for different premises owned by the same individual can cause delay and impede investigations. Complex cases, for example those involving financial and IT crime, can require extended police presence on premises. This can mean officers remaining on premises for long periods to gather evidence rather than breach the conditions of the warrant on single access.

3.4 Broadening the scope of search warrants and the way in which they are applied for and executed has to focus on reducing the bureaucracy and limitations on use whilst maintaining the protections for the individual against intrusive or unnecessary interference.

3.5 Section 8 of PACE sets out the provisions to obtain a search warrant with section 15 and section 16 respectively providing safeguards and modes of execution. There are three main areas in which to consider improving the efficiency and effectiveness of the existing structure:

### **Scope of warrants**

3.6 To ease the burden on police officers in seeking out material which is moved around between locations, PACE (and other relevant legislation) could be amended to enable a search warrant to authorise access to any premises occupied or controlled by or accessible by a

specified person, where there are reasonable grounds to believe that person to be in control of the material identified in the warrant. That person would not necessarily have to be a suspect.

3.7 Such a system would better reflect the reality of finding specific material, where the identifiable link is often to an individual rather than to premises. However, scope for the traditional premises-based warrant would have to be preserved.

3.8 A “super warrant” as suggested here would undoubtedly raise issues about interference with the basic right to privacy. However, officers would still need to have justification for entry onto specific premises. The advantage would be in removing the need for them to obtain a new warrant merely because the key individual who was the effective target of the search had moved location or made use of alternative premises.

### **Duration and validity**

3.9 There is no obvious reason to maintain an arbitrary limit of one month on the validity of search warrants. The magistrate or judge issuing the warrant could be given discretion to fix the duration according to the specific circumstances.

3.10 The rule limiting entry to one occasion only could also be abandoned. That would enable repeated entry under a single warrant, provided the officer could justify each individual entry based on the circumstances at the time.

### **Using modern technology**

3.11 It would be possible to introduce scope for applications for warrants to be dealt with by telephone or using other electronic links such as email. It might also be feasible for warrant documents to be transmitted between the authoriser and the applicant by fax.

3.12 There would be significant issues of security and integrity to address, but we are currently failing to make use of communications that could significantly speed up the whole process.

### **Summary**

- Search warrants covering any premises occupied or controlled or accessible by a named individual.
- Warrant focusing on the person and their whereabouts rather than on a specific single address.
- The officer applying to the court would have to satisfy the court that a ‘multi-premises’ warrant was necessary.
- The lifetime of the warrant would be a matter for the court based on the application setting out the period considered necessary and relevant.
- The court would be required to sanction multiple use of the warrant within the agreed timeframe.
- Accessing telephone and electronic communication in application for and granting of warrants.

## Section 4 **WORKFORCE MODERNISATION**

### **Expanding the use of civilian staff**

4.1 The consultation Paper “Policing: Building Safer Communities Together”<sup>2</sup> highlighted the need to consider moving towards a more unified police service with a better mix of skills at all levels, to help support and improve operational effectiveness and strengthen accountability of policing.

4.2 Part of that process has already begun on pay and conditions, sickness and ill health; diversity and equal opportunity; and civilianisation. In the case of civilianisation, there are some key areas concerning powers and legislative issues. The recommendations of the recent HMIC Thematic Report on Workforce Modernisation are currently under consideration and will inform policy development on these issues.

4.3 This section contains suggestions in relation to the powers of civilian staff and thoughts on extending the existing legislative provision to help improve flexibility and frontline activity. There is a range of areas in which there is scope to extend specific powers which assist Community Support Officers (CSOs) and other designated and accredited staff in their role of freeing up the time of police officers.

#### *(a) A power to direct traffic*

(i) At present this power can only be given to CSOs by appointing them as traffic wardens. Where this takes place CSOs must wear traffic flashes on their uniforms so that the public can readily identify them. We feel this is an appropriate arrangement.

(ii) However, a number of police forces have indicated that they wish CSOs and accredited persons to be able to direct traffic so that they can assist at road traffic accidents, with public events and with spontaneous incidents where traffic diversions are necessary. In order to make this power practically enforceable it would be necessary to make it an offence under section 35

and 37 of the Road Traffic Act 1988 to fail to comply with the directions of a CSO or accredited person.

(iii) There may also be scope for others to be given this power where their job involves contact with traffic in emergency situations. For example, firefighters might wish to become accredited with this power if they meet the criteria set out in the Police Reform Act.

#### *(b) Custody Roles*

(i) A number of forces have already made significant progress in the mix of staff in the custody suite. There is scope to build on this and develop in particular the custody links more effectively with the patrol, investigation and criminal justice processes.

(ii) Powers and procedures in the custody area are well defined through the Police and Criminal Evidence Act 1984 and the accompanying Codes of Practice. It offers scope for police civilian staff to develop worthwhile career pathways or structures. Key roles and activity could include:

- Custody officer role. Experienced police sergeants with frontline supervisory abilities currently invariably undertake this. The custody officer is a crucial role and the need for resourced and co-ordinated transition would be essential. But the benefits of releasing experienced supervisory officers to frontline duties from what is a complex but largely administrative and process driven role would be considerable.
- Identification officer role. Invariably the responsibility of an inspector but the increasing use of video and other identification techniques could lend the function to civilian staff in building their expertise in conducting identification processes for suspects.

<sup>2</sup> Policing: Building Safer Communities Together <http://www.policereform.gov.uk/docs/consultation2003.html>

(c) *A power to deter begging*

(i) 'Together' – the Anti-Social Behaviour Action Plan – has highlighted the need to address the problem of begging through enforcement and by helping those who beg to gain access to mental health, drug or alcohol treatment if they need it.

(ii) At present CSOs have no specific powers to deal with begging. Where the begging is considered to amount to anti-social behaviour, community support officers and accredited persons can require the name and address of the offender. Failure to provide a name and address on demand is an offence and can result in detention by a community support officer (not accredited person). We believe that it would be preferable to have a clearer and more specific power for community support officers and accredited persons to tackle this problem. We suggest that community support officers and accredited persons be given the power to deal with begging under Section 3 of the Vagrancy Act 1824.

(iii) This should be added to those powers where CSOs and accredited persons can require the name and address of the person suspected and CSOs may detain when this is not supplied. CSOs should also be able to detain a person who fails to heed the CSO/accredited person's instruction to leave the immediate vicinity.

(iv) Such a failure would amount to an additional offence that would be reported to the police if an accredited person exercised the power.

(d) *A power to enforce byelaws*

(i) Police officers have powers to enforce byelaws made by local authorities to address problems of concern in their localities. CSOs do not have specific power to enforce byelaws. However, CSOs and accredited persons may require the person suspected of breaching a byelaw to provide his name and address where the breach includes behaviour that amounts to anti-social behaviour or behaviour that has caused alarm or distress to a member of the public. Failure to provide a name and address on demand can result in detention by a CSO.

(ii) We believe that it would be better to give CSOs a specific power to enforce byelaws. In this way CSOs could require a person suspected of

breaching a byelaw to provide his name and address regardless of whether that person's behaviour was anti-social or caused alarm or distress. This power could be limited to a specific list of byelaws determined by central government, or might be more widely framed to allow local agreement to be reached across a greater range of byelaw offences. This provision should be linked to the detention power so that failure to provide a name and address could result in detention.

(e) *A power to search a detained person who may present a danger to himself or others*

(i) Police officers have a power under Section 32(1) of the Police and Criminal Evidence Act 1984 to search an arrested person on the streets when they have reasonable grounds to believe that the arrested person may present a danger to themselves or to other people.

(ii) Section 32 (8) of the same Act provides a power for a constable to seize and retain anything which he has reasonable grounds for believing that the person searched might use to cause physical injury to himself or to another person.

(iii) At present CSOs do not have any powers to search people before or after detention. As the results of concerns expressed by some community support officers and by some of their police colleagues we believe that it would increase the confidence and safety of community support officers if they had a limited power to search a person they had detained.

(iv) We suggest that CSOs should be given the power under Section 32 (1) of the Police and Criminal Evidence Act 1984 to search persons who they have detained under paragraph 2 of schedule 4 to the Police Reform Act 2002.

(v) This power would not provide a general power to search following detention; a community support officer would need reasonable grounds to believe that the detainee may present a danger to himself or others. We believe that CSOs should also have the power to seize and retain items provided by Section 32(8) of the Police and Criminal Evidence Act 1984. This power should be modified so that any items retained by a CSO should be handed to the constable who attends the scene of the detention so that the constable can decide whether continued retention is necessary.

*(f) Extending powers of entry, search and seizure for designated investigation officers*

(i) under the current provisions of section 38 of the Police Reform Act 2002, a designated investigation officer may currently apply for and be issued with a search warrant in accordance with section 8 of PACE.

(ii) A substantial part of tackling volume crime involves the issue and execution of search warrants under the Theft Act 1968 and the Misuse of Drugs Act 1971. In order to reduce the burden on police officers and free-up their time for front-line duties, it is proposed that civilian investigation officers should be empowered to apply for and execute warrants issued under these other pieces of legislation.

*(g) Wearing of uniform by designated investigation officers*

(i) The intention of section 42(2) of the Police Reform Act 2002 is to require uniforms as part of ensuring that civilians exercising police powers are identifiable as such by the public. This is entirely reasonable for CSOs, detention officers, escort officers and accredited persons.

(ii) However, several forces have suggested to us that wearing a uniform will sometimes be a problem for investigating officers who may be operating in a 'plain clothes' environment. We are proposing a provision that will effectively exempt designated investigating officers from an absolute requirement to wear a uniform.

*(h) Extending the powers of CSOs to deal with the night-time economy and alcohol related anti-social behaviour*

(i) CSOs already have some powers to deal with alcohol-related anti-social behaviour under Part 1 of Schedule 4 to the Police Reform Act 2002. These include the power to issue fixed penalty notices for drunk and disorderly behaviour and drinking in a designated public place and the power to confiscate alcohol from young people.

(ii) We would welcome views on whether there is scope to strengthen powers to deal with underage drinkers and the sale of alcohol to under-18s and drunken people. Due to the community-focused nature of their roles, CSOs have the opportunity to gather intelligence about

where young people go to drink and where they purchase alcohol. In addition, many police forces are deploying CSOs in roles where they are tackling alcohol-related anti-social behaviour. This presents CSOs with a number of opportunities for dealing with disorder, particularly related to the sale and consumption of alcohol by children and young people.

**Working with stakeholders on police charging for services**

4.4 Section 25 of the Police Act 1996 gives the police a power to provide, on request, special police services in return for payment at rates determined by the police authority. The power enables organisers of events to draw on the services and expertise of the police in circumstances where it is helpful to have access to them.

4.5 There has been a lack of clarity and consistency in the use of Section 25. The Association of Chief Police Officers (ACPO) has been developing guidance intended to increase the consistency with which charges are applied and the transparency of cost calculations. Until this guidance is in place, we will not be able to consider properly whether there are any grounds for proposing to change the current legislative arrangements.

4.6 We will continue to work with stakeholders, including the police and event organisers, for example through the joint Home Office and Department for Culture Media and Sport football working group, to explore all the issues. These include the scope to further reduce the amount of police services required at events, for example through effective use of stewarding and other measures by event organisers, and any wider contributions which the organisations involved make to improving community safety.

4.7 In relation to the drinks industry, we are seeking a financial contribution from the industry towards the harm caused by excessive drinking as part of the social responsibility schemes that we are working to develop with the industry. These schemes will be voluntary and the success of this approach will be reviewed early in the next Parliament. If the drinks industry actions are not beginning to make an impact in reducing harm, the Government will assess the case for additional steps, including possibly legislation. We will also encourage the alcohol industry to participate fully

in Business Improvement Districts at a local level. BIDs are an important way to generate some extra money to tackle particular local problems around alcohol-related crime.

### **Prosecution of the office of chief officer of police**

4.8 At present, chief officers assume employer's duties under the Health and Safety at Work etc Act 1974. This is because police officers are not employed under a contract of employment by a police force which could be the subject of legal proceedings. This is an unusual situation, as normally an employer would be prosecuted for breaches of health and safety legislation and not the individual directors. Under the current arrangements, a chief officer can be subject to criminal prosecution as an individual rather than in a representational capacity.

4.9 The appearance of a chief officer of police in court for organisational breaches might undermine public confidence in the officer's ability generally to deal with the policing of their area of responsibility. In the light of this and a recent HSE prosecution, the Home Secretary sought to transfer responsibility for health and safety issues from chief officers to police authorities under section 95 of the Police Reform Act 2002, thereby enabling prosecution against an organisation and not an individual.

4.10 Consultation responses indicated some practical difficulties to effect that change and consequently, implementation was suspended. It is now proposed to adopt a more limited legislative change which would designate the chief officer as a "corporation sole" for the purpose of health and safety legislation. This would mean that the chief officer can be represented in legal proceedings rather than having to appear in person.

4.11 This approach is similar to the position in civil proceedings under section 88 of the Police Act 1996 which provides that any proceedings shall be brought against "the chief officer of police for the time being". This means in practice that the chief officer is sued in a representational capacity, acknowledging that in most cases the chief officer will not have anything of evidential value to say about individual cases.

4.12 It is intended to maintain the existing position of fines arising from HSE prosecutions to

be paid from police funds at the discretion of the police authority. It will also maintain that personal liability will continue with the individual who has committed an offence either with consent or through neglect. The proposed new measure will provide that chief officers who retired from the service or moved to another force area will not be subject to prosecution for organisational breaches which occurred during their period in office.

## **Summary**

- Powers to direct traffic – in response to specified situations rather than routinely.
- Custody area – extending key involvement around custody and identification roles.
- Begging – providing CSOs and accredited persons with new powers to issue a warning.
- Enforcing byelaws – subject to central or local determination.
- Searching the person for weapons or dangerous articles – a new power subject to suitable training and procedures.
- Remove the absolute requirement for civilian staff to wear a uniform.
- Raising CSOs' enforcement powers for certain licensing offences.
- Working with stakeholders on police charging for services.
- Designate chief officers as a 'corporation sole' for the purposes of health and safety legislation.



## Section 5 **INCREASING PREVENTION AND DETECTION POWERS**

5.1 Crime and its effects impact on us all whether directly or indirectly. There is specific legislation to deal with particular offences as well as underlying statute such as the Police and Criminal Evidence Act 1984 dealing with the broader range of police powers applicable to achieving the successful outcome of investigations into all offences.

5.2 Part of the process of maintaining the relevance of legislation lies in reviewing how it is implemented at the operational level. The recognition of successful implementation is coupled with the identification of barriers which impede bringing criminals to justice or minimise the preventative aspect of the legislation. This section identifies measures in a range of areas which will enhance the ability to improve the investigative and preventative processes.

### **DRUG-RELATED CRIME**

#### **Drugs Testing and Treatment**

5.3 There is a well-recognised link between the use of drugs (particularly Class A drugs) and certain types of offending behaviour – in particular acquisitive crime such as theft and burglary. We must reduce drug-related crime by getting offenders out of crime and into effective drug treatment.

5.4 It has been proven that drug treatment works, and we already have in place an innovative programme – the Criminal Justice Interventions Programme. This programme is in operation across England and Wales, with certain higher intensity elements available in 66 high crime areas.

5.5 The programme involves criminal justice and treatment agencies working in partnership with other services to provide a tailored solution for individuals who commit crime and who use Class A drugs. Delivery at a local level is through integrated teams, using a case management approach to offer access to treatment and support

from an offender's first point of contact with the criminal justice system through custody, court, sentence and eventual rehabilitation. Special measures for young offenders are also being implemented.

5.6 We believe we could improve the effectiveness of the programme by testing people for Class A drugs at the point where they first encounter the criminal justice process i.e. at the point of arrest. We also want to increase the rate of contact between drug users and drugs workers. Similarly, there might be significant benefits if offenders leaving custody could be further encouraged to continue drug treatment.

5.7 We are therefore considering changing the present arrangements, where people who are charged with certain "trigger" offences are tested when they are charged, to testing them on arrest. We will consider building on this by requiring those who test positive on arrest to see a drugs worker and to undergo an assessment of their drug misuse. We are also considering whether current ways of encouraging drug-misusing offenders leaving custody to undergo appropriate drug treatment, are sufficient, or whether they may need to be enhanced.

#### **Intimate searches**

5.8 Section 55 of PACE provides that an intimate search may only be carried out if authorised by an inspector or above and if it is the only way of removing items which may be of harm to the suspect or others; or if the item sought is a Class A drug intended for supply or export.

5.9 Normally only a registered medical practitioner or registered nurse may carry out an intimate search. A police officer may do so only if it is not practicable for a medical professional and the search is necessary to prevent physical injury.

5.10 PACE does not require the consent of the suspect to the search. However, medical guidelines



indicate that the practitioner or nurse should seek the consent of the suspect before considering undertaking such a search.

5.11 If the suspect does not provide his consent, qualified medical staff invariably refuse to undertake such a search. That is in accordance with guidance issued by their respective professional bodies. Consultation with the British Medical Association suggests that protection of medical staff against prosecution when conducting a search without consent would not resolve the problem because refusal to search a detainee without consent is a matter of medical ethics.

5.12 The lack of effective powers against those who swallow drugs presents another obstacle. It means that the police are unable to retrieve evidence to charge an individual. This is a loophole, which is exploited by dealers and can lead to serious health implications for those involved.

5.13 There are a number of options, some of which are set out in the Home Office/ Cabinet Office Review of PACE<sup>3</sup>:

- HM Customs & Excise can apply to a court to remand a person suspected of having swallowed parcels of cocaine into Customs detention for sufficient time for the drug to pass through (average time is 12 days). Such detainees are kept in specially equipped facilities. It would be possible to introduce legislation which would allow the courts power to remand a person to police detention following charge, in order to address the problem of those who have swallowed drugs.
- There would be significant accommodation and resource implications if this were extended as a matter of routine beyond couriers and detainees referred to Customs and Excise facilities. Accommodating detainees in police stations for such extended periods would also give rise to significant healthcare considerations.
- Power to x-ray the suspect with or without consent in order to address the issue of both individuals who have swallowed drugs and those who have

concealed them in body cavities. There is some uncertainty as to the quality of evidence the x-ray would provide and, again, the willingness of medical staff to engage in the procedure in the absence of a suspect's consent.

5.14 In order to address the issue of those who have concealed drugs in body cavities:

- Negotiate intimate search guidelines with the BMA and consider reviewing the definition of intimate search.
- Create an offence of failing to consent to an intimate search where there are sufficient grounds to believe that a suspect may have swallowed a drug.
- Enable a judge to direct a jury to draw adverse inferences from a refusal to be x-rayed or submit to an intimate search.

5.15 There is a clear need to ensure that the police have sufficient powers when dealing with those who swallow or hide drugs. We are also conscious of the rights and protection of the suspect. Article 5 of the European Convention on Human Rights allows the State to continue to detain after charge when it is considered reasonably necessary to prevent the detained person from committing further offences which could include, among other things, the person interfering with the course of justice. If the person is considered to be interfering with evidence, further detention would be in compliance with the ECHR.

5.16 These are areas which have already been subject to thought and initial discussion. There is a clear need to develop an agreed approach which satisfies the needs of the criminal justice system and respects the position of medical and healthcare professionals. Subject to the views of consultees the Government favours:

- allowing the courts power to remand a person to police detention following charge, in order to address the problem of those who have swallowed drugs, and
- enabling a judge to direct a jury to draw adverse inferences from a refusal to submit to an intimate search.

<sup>3</sup> <http://www.homeoffice.gov.uk/docs/pacereview2002.pdf>

## Summary

- Testing people on arrest (rather than charge) for certain ‘trigger’ offences.
- Enhancing the ability to encourage drug-misusing offenders leaving custody to undergo appropriate drug treatment.
- Court to draw inferences from refusal to submit to a search.
- Power to apply to the courts for extended detention after charge.

## ROAD/DRIVER OFFENCES

### Incorrectly registered motor vehicle

5.17 Research carried out by the Motor Vehicle Registration Implementation Board highlighted that many of these vehicles fell into this category commonly described as ‘underclass’ – keeper unknown, untaxed, unsafe and uninsured which are often used in the commission of crime.

5.18 They are also involved in anti-social behaviour both on the roads and around urban conurbations and are at the heart of a growing abandoned vehicle problem. The users and keepers of these vehicles are often persistent offenders who blight the lives of law-abiding citizens. A significant number of these vehicles are used as ‘pool cars’ by individuals who have scant regard to the law. These vehicles ultimately end up abandoned with efforts to trace the keeper proving futile.

5.19 Whilst the planned introduction of continuous registration will be a major step forward for the future, it will not deal effectively with the 1.2 million vehicles believed to be already outside the current system. To address this the new offence of using an incorrectly registered vehicle is viewed as highly desirable. ACPO are strongly supportive of its creation and has stressed the potential for its enforcement by the increased use of ANPR technology.

### Funding ANPR through fixed penalty generated revenue

5.20 Changes are proposed to current legislation to allow for the continuation and expansion of

cost recovery under ANPR. There are 23 forces currently participating in the second phase of the pilot – Project Laser – that commenced on 1 June 2003. It is aimed at proving the concept of Hypothecation and is currently available under the Appropriation Act 1994 that allows a pilot to run for a maximum of two years until suitable legislation is enacted.

5.21 Whilst operating under the Act, no further police forces can join the pilot. The ACPO vision, supported by the Home Office, is to have an ANPR intercept capability in every Police Basic Command Unit in England and Wales.

### Roadside data

5.22 Section 71 of the Criminal Justice and Court Services Act 2000 and associated regulations provides for the disclosure of drivers’ data from DVLA to PNC. Police officers can access information about drivers at the roadside, instead of requesting that drivers produce the driving licence at a police station later. In practice, the officer at roadside receives the information by radio from civilian staff who access the data on his behalf.

5.23 Although not the aim of the legislation, it may be interpreted that the information must be accessed and used only by police officers. We aim to put the issue beyond doubt by making an amendment to the 2000 Act clarifying civilian staff access. The effect would be to ensure that this effective tool does not necessitate the transfer of police resources away from the frontline duties in the fight against crime into administrative work currently carried out by civilians.

## Summary

- Create a new offence of using or keeping an incorrectly registered vehicle.
- Confer on the Secretary of State a power to fund ANPR through fixed penalty generated revenue.
- Provide civilian staff access to PNC data for supporting roadside enquiries.

## The nuisance of fireworks

5.24 While most people enjoy fireworks responsibly, in the wrong hands they can cause real misery. A dangerous minority deliberately uses them to harass, intimidate and sometimes seriously harm those around them. It is already an offence to throw fireworks under the Explosives Act 1875. It is also possible to take action in relation to any behaviour that has caused criminal damage, injury, harassment, alarm or distress.

5.25 The Fireworks Act 2003 provides powers to make regulations governing the supply and prohibition on the possession and use of fireworks in certain circumstances. Last year, two new offences were created:

- the possession of fireworks by under-18s in public places was made illegal;
- the possession of the largest, most powerful, 'category 4' fireworks outlawed for all members of the public.

5.26 These new offences have ensured that the police do not have to establish that criminal damage or injury, alarm or distress etc. has actually been committed before taking action. It is important that these new restrictions on the anti-social use of fireworks can be enforced effectively by the police. (For example, it is possible that the individuals involved in anti-social activity or illegal possession of fireworks will conceal any fireworks.) In particular the police need to be able to take a proactive role where they believe that an individual has committed either of the above offences.

5.27 There are existing powers of search under the Consumer Protection Act 1987, which relate mainly to commercial property and do not grant

stop, search and seizure powers to officers when dealing with offences committed in public places. There are also new powers under the Criminal Justice Act 2003 which allows the police to stop and search for items which they suspect may be intended for use in causing criminal damage. This may have some application where there is a history of problems of criminal damage caused by fireworks in an area but is unlikely to enable effective enforcement in all cases.

5.28 The Government therefore proposes that the police are able to stop, search, seize, and confiscate fireworks in all cases where they have reasonable suspicion that the offences of illegal possession created through the Fireworks Act 2003 are being committed.

## Protests outside homes

5.29 Section 42 of the Criminal Justice and Police Act 2001 was introduced to respond to a growing problem of intimidatory and violent protests by animal rights extremists against companies and their employees engaged in the bioscience industry. The Act provides that a police officer can give directions to any person who is "outside or in the vicinity of" a home if he reasonably believes that the protestor's presence is to persuade someone to do something which they are not under any obligation to do; and that the person's presence amounts to or is likely to result in harassment or to cause alarm or distress to the resident.

5.30 The presence of groups of protestors outside the homes of employees of targeted companies is viewed as being particularly distressing as it affects not just the employee but also their families. Where the police are in attendance, they are generally able to contain such protests and often the issuing of a direction to leave is complied

with. However, the police may not and cannot always be in attendance. One of the concerns raised by police and victims is that the same protestors will return to protest at targeted premises on a regular basis.

5.31 The creation of a new offence of protesting outside homes would complement the existing powers under section 42 of the Act. It is proposed that an offence will be committed where a person protests outside someone's home in such a way as to cause harassment, alarm or distress to residents. The proposed offence would not affect the right to picket peacefully at a work place.

5.32 In addition, it is proposed to amend 42(7) of the 2001 Act to make it an offence for a person subject to a direction to leave the vicinity to return to premises within 3 months for the purposes of persuading the resident or another that he should do something he is not obliged to do.

### **Protection from Harassment Act 1997**

5.33 Although a number of companies have been granted injunctions which restrain animal rights protestors from pursuing a course of conduct which amounts to harassment of employees and their families, it is not clear how far the Protection from Harassment Act 1997 can be used to protect employees of a company or a company itself.

5.34 Section 2 makes it a criminal offence for a person to pursue a course of conduct which amounts to harassment of another and which that person knows amounts to harassment of the other. To secure a conviction it needs to be proven that there is a course of conduct in which a person harassed another. The courts have applied a strict interpretation of the word "another" which has confined the application of this provision to harassment of specific individuals and thus employees of a company do not presently benefit from this provision when they have not previously themselves been harassed, even though a fellow employee has been.

5.35 In order to address this problem, we are proposing to extend the Act to cover harassment of two or more people who are connected (e.g. employees of the same company) even if each individual is harassed on only one occasion.

**These proposals were outlined in the Government's paper Animal Welfare – Human Rights: protecting people from animal rights extremism which was published on 30 July 2004.**

*<http://www.homeoffice.gov.uk/docs3/humanrights.pdf>*

### **Dealing with protests outside Parliament**

5.36 It is a long-standing tradition in this country that people are free to gather together and to demonstrate their views provided that they do so within the law. However access to Parliament must be maintained, the working environment of Parliament safeguarded and the rights of people working in and around Parliament protected and not to be subject to harassment. In its report on Sessional Orders and Resolutions, the Procedure Committee of the House of Commons recommended that the Government should introduce appropriate legislation to prohibit long-term demonstrations and to ensure that the laws relating to access are adequate and enforceable.

5.37 Demonstrations and marches passing the Houses of Parliament whilst both Houses are sitting are subject to a Sessional Order. This Order instructs the Commissioner to make sure that passageways to and from Parliament are kept free of obstruction, that no obstruction is allowed to hinder passage of Members of Parliament to and from the House. In turn, the Commissioner gives directions to all constables under Section 52 of the Metropolitan Police Act 1839 to disperse all assemblies and demonstrations if these are likely to cause an obstruction or disorder.

5.38 The Police already have a range of powers under existing criminal law and public order legislation to deal with violent and intimidatory action. The Government has taken action to allow the police to deal more effectively with smaller, disruptive demonstrations, wherever they occur. The Anti-social Behaviour Act 2003 amended the definition of the number of persons which constitutes a public assembly in section 16 of the Public Order Act 1986. This allows the police to place conditions on a public assembly of 2 or more people, rather than the previous figure of 20 or more people. Before imposing conditions, the senior officer must reasonably believe that serious disorder, serious damage to property or serious disruption to the life of the community might

result or that the purpose of the demonstration is to coerce.

5.39 The Government believes that the police must have adequate powers in this area. One way in which powers could be made more effective

would be to give the police the power to impose conditions on all demonstrations in the vicinity of Parliament Square. We would welcome views on the effectiveness of existing legislation and whether extending the power to impose conditions in this way would be desirable.

### **Summary**

- Create a power of stop, search, seizure and confiscation in relation to:
  - Possession of fireworks by a person under 18 in a public place.
  - Category IV fireworks unless authorised.
- Create a new offence of harassment, causing alarm or distress to complement existing powers under the Criminal Justice and Police Act 2001.
- Extend the period to 3 months for a person subject to a direction on returning to premises.
- Extend the Protection from Harassment Act 1997 to cover harassment of two or more people who are connected, such as employees of the same company, even if each individual is harassed on only one occasion.
- Ensure that legislation to deal with demonstrations outside Parliament is effective and introduce new legislation if necessary.

## Section 6 IDENTIFICATION

6.1 The Criminal Justice Act 2003 emphasises the importance of identification data. The Act extends the powers of the police to enable them to take fingerprints and a DNA sample from a person whilst he is in police detention following his arrest for a recordable offence.

6.2 Fingerprints can now be taken electronically and the police will be able to confirm in a few minutes the identity of a suspect where that person's fingerprints are already held on the National Fingerprint Database. It will prevent persons who may be wanted for other matters avoiding detection by giving the police a false name and address. Fingerprints taken under this provision will be subject to a speculative search across the crime scene database to see if they are linked to any unsolved crime.

6.3 The DNA profile of an arrested person will be loaded onto the National DNA Database and will be subject to a speculative search to see whether it matches a crime scene stain already held on the Database. This will assist the police in the detection and prevention of crime.

6.4 Project Lantern seeks to develop and roll out mobile fingerprint technology to allow the immediate identification of drivers at the roadside when stopped by ANPR Intercept Teams and other officers. At present, approximately 60% of disqualified drivers are providing false identities when stopped by ANPR teams.

6.5 This reinforces the need for roadside identification. The police do not currently have powers that allow fingerprints to be taken at the roadside for the purposes of identification. If this facility were available at the roadside, it would significantly free up both officers' time and the time spent on administration. This would lead to a reduction in bureaucracy involved in the arrest and processing of offenders.

6.6 The power would reduce the need to use arrest powers under Section 25 of PACE in relation to those whose identity was not known or

whose details were believed to be false. This impacts greatly upon ANPR (and general policing operations), as officers have to arrest and take the offender to a police station to carry out appropriate identity checks. The new power would apply in respect of drivers subject to a roadside interception and their identity is in doubt.

6.7 There is no general power to request fingerprints from suspected offenders in a public place if identity is not known or believed to be true. But there is significant advantage in extending the power to all areas where a police officer is unable to establish the identity of a suspect in a place other than the police station.

6.8 The same principles for roadside fingerprinting of drivers equally applies to the identification of suspects elsewhere other than a police station. It is proposed that the power is available for all areas outside the police station where it is necessary to confirm or otherwise the identity of a suspect. The advantages are:

- a quick and direct route to establish identity;
- a more efficient use of officer's time;
- increased opportunity to detect crime;
- early warning access for police for suspected or wanted criminals.

The provisions of section 64 of PACE would apply in relation to the destruction of fingerprints.

6.9 A further important area in relation to identification evidence lies in the use of footwear impressions. PACE allows for footwear to be removed from suspects where it may be relevant evidence. The police can then take impressions from that footwear and compare them to impressions from a crime scene to seek to prove or disprove involvement in a specific offence. This may be done openly and with the suspect's full



knowledge and consent. Consent is not needed if footwear seized under section 54 of PACE.

6.10 Whilst PACE provides for this open approach, it can enable the suspect to avoid this identification process by deciding not to wear that footwear again or to destroy it. The taking of footwear impressions overtly without the suspect's consent can overcome this and provide a potential aide to solving future crimes where the culprit might wear the same footwear again. The methods by which impressions are taken are operational issues but it is important that when they are taken, that they can be used in evidence.

6.11 The use of fingerprints, DNA and footwear all contribute significantly to identifying a suspect. The other major aspect lies in the use of photographs which provide the key area of visual identification.

6.12 At present, section 64A of PACE allows for photographing of persons detained at a police station. There is no statutory power to take a photograph of a suspect – excluding surveillance situations – outside the police station. With the increasing use of interventions outside the police station, such as street bail and fixed penalty notices, it is important that powers to take a visual image are clear.

6.13 Additionally in terms of images, there is a current anomaly in section 64A(4) of PACE. This allows for the retention of still images but makes no reference to retention of moving images. With the increasing use of improved visual imaging, it is essential that the advances are used to best effect in identification processes.

6.14 The advances in DNA also provide scope to help in the identification of missing persons or in the identification of unidentified bodies or body parts. At present under PACE, existing police powers relate to the sampling of suspected offenders and volunteers (in relation to speculative searching of volunteer sample profiles). It is proposed that the police should be provided with the power to take a DNA sample in the following circumstances where no offence is suspected and that the use of the sample is for identification purposes only:

- an unidentified body (e.g. unidentified persons who have died from natural causes, suspicious deaths, unlawful killing

and in mass disasters such as terrorism and major air, rail or road accidents);

- missing person's possessions e.g. hairbrush, toothbrush or item of clothing;
- missing person's genetic relatives.

6.15 The numerical DNA profiles resulting from the DNA samples taken from unidentified bodies, missing persons' possessions and generic relatives would be loaded onto a new Missing Persons DNA Database. The police would need separate authority to speculatively search these DNA profiles against the National DNA Database subject sample records and other profiles held by, or on behalf of, the police for identification purposes. This provision would apply both nationally and internationally.

6.16 Samples obtained for the purposes of the Missing Persons DNA Database and the outcome of searches against the National DNA Database would be subject to destruction once the body or missing person has been identified. Their removal after identification would ensure that DNA profiles could not be used for purposes other than identification.

6.17 In cases of serious sexual assault, existing powers under PACE require clarification in the ability to take a penile swab from a rape suspect. Section 65 provides the definition of both an intimate and non-intimate sample. The distinction is important in that an intimate sample may only be taken with consent whereas in the case on a non-intimate sample, consent is not required. An intimate sample is defined as:

- (i) a sample of blood, semen, or any other tissue, fluid, urine or pubic hair
- (ii) a dental impression;
- (iii) a swab taken from a person's body orifice other than the mouth.

6.18 The police may wish to take a penile swab from a rape suspect. In order to avoid any possible confusion that could lead to an allegation of assault, section 65 should be amended so as to define a penile swab as an intimate sample with the result that a swab can only be taken with consent.

6.19 More widely, there are situations in which fingerprints and DNA samples of suspects **taken covertly** could provide valuable intelligence to enable police to confirm or disprove a person's involvement in a particular offence. At present, a person must be informed of the reasons for taking fingerprints/ DNA and that they will be subject to a speculative search against the respective databases.

6.20 There will be occasions when it would not be safe to reveal how or when the fingerprints/ DNA were obtained, for instance if they were obtained by a police officer working under cover. Fingerprints/ DNA obtained in this way could only be used for intelligence purposes and not as evidence. However, once obtained, the police should have the power to make a speculative search against the databases.

### Summary

- Power to take fingerprints of a suspect elsewhere other than a police station for the purpose of confirming the identity of a suspect.
- Taking of footwear impressions with or without the suspect's consent.
- Power to take a visual image of an arrested person elsewhere other than a police station.
- Power of retention of moving images.
- Clarify the ability to take a penile swab with consent.
- Establish a Missing Persons Database for the purposes of identification only.
- Power to take a DNA sample from an unidentified body or body parts where no offence is suspected for the purposes of identification only.
- Power to take a DNA sample from a missing person's genetic relative or possessions for the purposes of identification only.
- Authority to speculatively search DNA profiles taken from unidentified bodies, missing person's possessions etc against the National DNA Database subject sample records for identification purposes only.
- Power to use fingerprints/DNA taken covertly for speculative searches to confirm or disprove a person's involvement in an offence.



## Section 7 **Forfeiture of Electronic Devices used to store or handle indecent photographs of children**

7.1 We understand that on rare occasions difficulties have arisen for the police in obtaining forfeiture of computers which appear to contain indecent photographs of children in electronic form. We are not aware of any deficiency in the powers relating to search and seizure and do not see any need for change of practice in respect of seizure.

7.2 But, given the difficulty of ensuring complete erasure of indecent images once they are present electronically, the return of computers to offenders in these circumstances is undesirable, and we wish to close any gap, however small, in the provisions relating to forfeiture of equipment which has held indecent photographs of children.

7.3 There are currently two powers which can be used to ensure that indecent photographs of children, including those in electronic form, are not returned to offenders, or in some cases unconvicted persons, following seizure. These are contained in section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 and section 5 of the Protection of Children Act 1978. The 1978 Act powers follow from the issue of a search warrant under section 4 of the Act.

7.4 They ensure that there is a regime set out which governs the disposal of indecent photographs, and articles which include indecent photographs, whether anyone is charged and convicted in respect of offences involving them or not. The 2000 Act powers are general, and allow the courts to order forfeiture of any item used in the commission of an offence.

7.5 The intention of the 1978 Act powers seems clearly to be that the courts should remove indecent photographs of children from circulation, whatever the disposal of the particular case, while protecting the rights of third parties, and of offenders, to seek return of other property where they have good cause. It is a matter of importance that indecent photographs of a child are removed from circulation as they are a record

of abuse of that child, and in a sense, their existence constitutes a continuation of that abuse. It is therefore right to seek to ensure that such images, once seized, are not returned in any form to someone who will continue to view them for sexual gratification.

7.6 The apparent difficulty is that, if a data storage device has been seized, for example, under a PACE warrant, then none of the 1978 Act powers apply. In these circumstances, it may be that if no conviction follows and the investigation is no longer active, or where there is no conviction for an offence committed using the data storage device (which would allow use of powers in the 2000 Act), there would be no way for the police to obtain legal forfeiture.

7.7 This might possibly mean the return of equipment from which indecent photographs of children, the possession of which is forbidden under section 160 of the Criminal Justice Act 1988, might be retrievable. We do not believe this is a common occurrence, but we should welcome views on this issue.

7.8 Whilst considering how to close this apparent gap in the powers of forfeiture, other issues arise. Currently, there is no specific mention in the Act of how legal data, held alongside illegal data, should be dealt with if the device in which they are stored is to be forfeited. This question could arise where an offender has the sole interest in the device or the data stored on it, but it could also arise where the device is the property of a third party, or where a third party has stored valuable data on the offender's device. There is a further question about the wisdom of returning even to an innocent third party a storage device which has been used to commit an offence of this sort. The Courts have the powers to consider third party interest when making a forfeiture order, and it appears that the police and courts have been resolving such issues satisfactorily in practice. This is an area on which we should welcome views.

7.9 It will be important in resolving these issues that we do not create such a fear of seizure and forfeiture that reporting of indecent photographs is reduced. For example, small companies or individuals may be less likely to report a photograph which someone else (e.g. an employee or friend) has stored on their device if that would result in the computer being seized and not being returned. Nor would we wish to put people off reporting unwanted images that had been e-mailed to them, or sent through mobile telephones. It will also be important that we do not create an additional administrative burden on the police or courts in respect of disposal of data storage devices or data.

7.10 We believe that it should be possible for the police to seek and obtain forfeiture of indecent photographs of children, subject to legitimate third party claims, whatever the power used to obtain them and whatever the case disposal. The object should be to obtain a clear and easily understood regime by which all indecent photographs of children and articles containing them, including data storage devices, can be considered for forfeiture, reducing uncertainty and ensuring that the police and courts have the powers they need to remove these images from circulation.

7.11 We would be grateful for any comments you may have, but on the following issues in particular:

- Do the current powers work for the most part satisfactorily?
- Is there a need to fill the gap in those powers described above?
- What are your views on returning equipment that has contained indecent photographs of children to an innocent third party?
- What are your views on returning legal data that is stored by an innocent third party on a device owned by an offender?
- Would it ever be right to return such a device to an offender?
- Do you agree that there is a need not to put people or organisations off co-operating with the authorities for fear

of seizure and forfeiture, and if so how should we avoid that?

- What are your views on the possibility that change could create a significant administrative burden on the police or courts?

## Section 8 Summary of Proposals

### Section 2 **ARREST – CONCEPT OF SERIOUSNESS**

- Redefine the framework of arrest powers so that a police officer can arrest for any offence subject to the necessity test as set out at paragraph 2.6 above.
- Revise the seriousness criterion and the concepts of the “arrestable” and “serious arrestable offence”.
- Introduce a new requirement for an offence to be triable either way or on indictment before the ‘trigger’ powers following arrest can be applied.
- Set clear criteria for the exercise of a citizen’s power of arrest.
- Abolish the capacity to arrest in relation to a breach of the peace.

### Section 3 **SEARCH WARRANTS – RAISING CAPACITY**

- Search warrants authorising any premises occupied or controlled or accessible by a named individual.
- Warrant focusing on the person and their whereabouts rather than on a specific single address.
- The officer applying to the court would have to satisfy the court that a ‘multi-premises’ warrant was necessary.
- The lifetime of the warrant would be a matter for the court based on the application setting out the period considered necessary and relevant.
- The court would be required to sanction multiple use of the warrant within the agreed timeframe.

- Accessing telephone and electronic communication in application for and granting of warrants.

### Section 4 **WORKFORCE MODERNISATION**

- Powers to direct traffic – in response to specified situations rather than routinely.
- Custody area – extending key involvement around custody and identification roles.
- Begging – providing CSOs and accredited persons with new powers to issue a warning.
- Enforcing byelaws – subject to central or local determination.
- Searching the person for weapons or dangerous articles – a new power subject to suitable training and procedures.
- Remove the absolute requirement for civilian staff to wear a uniform.
- Raising CSOs’ enforcement powers for certain licensing offences.
- Working with stakeholders on police charging for services.
- Designate chief officers as a ‘corporation sole’ for the purposes of health and safety legislation.

### Section 5 **INCREASING PREVENTION AND DETECTION POWERS**

#### DRUG-RELATED CRIME

- Testing people on arrest (rather than charge) for certain ‘trigger’ offences.
- Enhancing the ability to encourage drug-misusing offenders leaving custody to undergo appropriate drug treatment.

- Court to draw inferences from refusal to submit to a search.
- Power to apply to the courts for extended detention after charge.

### ROAD/DRIVER OFFENCES

- Create a new offence of using or keeping an incorrectly registered vehicle.
- Confer on the Secretary of State a power to fund ANPR through fixed penalty generated revenue.
- Provide civilian staff access to PNC data for supporting roadside enquiries.

### THE NUISANCE OF FIREWORKS

- Create a power of stop, search, seizure and confiscation in relation to:
  - Possession of fireworks by a person under 18 in a public place.
  - Category IV fireworks unless authorised.

### PROTESTS OUTSIDE HOMES

- Create a new offence of harassment, causing alarm or distress to complement existing powers under the Criminal Justice and Police Act 2001.
- Extend the period to 3 months for a person subject to a direction on returning to premises.
- Extend the Protection from Harassment Act 1997 to cover harassment of two or more people who are connected, such as employees of the same company, even if each individual is harassed on only one occasion.

### DEALING WITH PROTESTS OUTSIDE PARLIAMENT

- Ensure that legislation to deal with demonstrations outside Parliament is effective and introduce new legislation if necessary.

## Section 6 IDENTIFICATION

- Power to take fingerprints of a suspect elsewhere other than a police station for the purpose of confirming the identity of a suspect.
- Taking of footwear impressions with or without the suspect's consent.
- Power to take a visual image of an arrested person elsewhere other than a police station.
- Power of retention of moving images
- Clarify the ability to take a penile swab with consent.
- Establish a Missing Persons Database for the purposes of identification only.
- Power to take a DNA sample from an unidentified body or body parts where no offence is suspected for the purposes of identification only.
- Power to take a DNA sample from a missing person's genetic relative or possessions for the purposes of identification only.
- Authority to speculatively search DNA profiles taken from unidentified bodies, missing person's possessions etc against the National DNA Database subject sample records for identification purposes only.
- Power to use fingerprints/DNA taken covertly for speculative searches to confirm or disprove a person's involvement in an offence.

## Section 7 FORFEITURE OF ELECTRONIC DEVICES USED TO STORE OR HANDLE INDECENT PHOTOGRAPHS OF CHILDREN

- Removing indecent photographs of children from circulation.
- Need for increased powers on forfeiture.
- Maintaining co-operation from people and organisations.



