



Policing: Modernising Police Powers to Meet Community Needs

Summary of Responses

January 2005

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INTRODUCTION

Hazel Blears, Home Office Minister of State for Crime Reduction, Policing and Community Safety, launched the consultation paper 'Policing: Modernising Police Powers to Meet Community Needs' on 12 August 2004.

The consultation paper focussed on helping make communities safer by ensuring that the police and others are empowered to act effectively and proportionately in tackling crime and disorder. The paper aimed to ensure that police powers are aligned to the needs of policing in a changing environment of crime and criminality and contribute to the police reform programme by:

- improving police efficiency and effectiveness
- reducing police bureaucracy
- free up more time for police officers to take up front-line duties
- remove barriers enabling more effective targeting of criminals

The consultation paper is part of the Government's programme of police reform, highlighted in the Green Paper "Policing: Building safer communities together" published in November 2003.

http://www.policereform.gov.uk/docs/policing_bsct.html

RESPONSES

Copies of the consultation paper were circulated directly to stakeholders and interest groups across the spectrum of criminal justice and community groups. The document was also available on the Home Office website. The consultation period ended on 8 October 2004, although a number of responses received after that date were also included in the Government's consideration of responses.

141 responses were received from individuals, agencies and groups. A full list of respondents can be found at Annex A.

There was broad understanding of why the proposals were being put forward and acknowledgement of the aims of the proposals. Many respondents were particularly supportive of measures tackling criminal activity and anti-social behaviour that impacted upon the lives of communities.

The importance of preserving and in some cases adding to the rights of the individual was made clear in the consultation paper. That was mirrored in many of the responses. However, a number of respondents made clear their concern that the rights of the individual were being insufficiently protected and, in some cases, being eroded. There was a general recognition of the need for improvement but some strong support and some strong criticism on the process of achieving it.

NEXT STEPS

The responses were taken into consideration in preparation of the Serious Organised Crime & Police Bill, which was announced in the Queen's speech on 23 November 2004. The Bill is currently passing through Parliament and completed the Committee Stage in the House of Commons on 24 January 2005. Information on the progress of Bills before Parliament can be found on the UK Parliament website (<http://www.publications.parliament.uk/pa/pabills.htm>).

CONSULTATION PAPER ISSUES

Arrest - Concept of seriousness

Rationalisation of arrest

Police and Criminal Justice System stakeholders showed a clear appreciation of the complexities surrounding current arrest powers. From an operational perspective many police respondents welcomed a clear framework for arrest which would enable them to respond to incidents and investigations proportionately.

Civil liberty groups and a number of members of the public expressed concerns that the proposals could lead to individuals being arrested where it would not be justified. There was a deep concern that the police were being given an arbitrary power to arrest for any offence without a proportionate level of accountability. A number of groups considered that extending the power in this way would lead to challenges at court on what was an effective arrest; and lead to abuse of the power of a constable on applying the so-called "trigger powers" (e.g. entering premises, holding someone incommunicado etc) for relatively minor offences.

Others very much welcomed the rationalisation of the powers of arrest, which had become over-complicated and unwieldy. There was recognition that the test of necessity added to and broadened the current general arrest provisions in PACE and there was very strong support for focussing the arrest power against the needs of the victim, the type of offence, the offender and the requirements of the criminal justice system.

<p>"This step will not only provide a clearly defined and understandable power, but will maximise our ability to bring offender's to justice, by opening up the full portfolio of investigative powers to every type of offence, when appropriate".</p> <p style="text-align: right;"><i>Association of Chief Police Officers</i></p> <p>"We have advocated for many years the approach set out in the consultation paper in which the power of arrest would be focussed on the nature of the offence in relation to the circumstances of the victim and the offender, and the needs of the investigation."</p> <p style="text-align: right;"><i>Police Federation</i></p> <p>Giving the police discretion to arrest for any offence, no matter how minor, based on the subjective application of a very broad test of necessity, widens the power of arrest unnecessarily and will result in disproportionate deprivations of liberty.</p> <p style="text-align: right;"><i>Justice</i></p> <p>We oppose the removal of the seriousness criterion...since it amounts to an important proxy for proportionality... Under the proposals in the paper, the police would have a power of arrest however minor the suspected offence. We do not believe that this represents an appropriate balance between the liberty of the citizen and the needs of the police, and is contrary to the principles embodied in the PACE powers concerning arrestable offences as originally proposed by the Royal Commission on Criminal Procedure.</p> <p style="text-align: right;"><i>Law Society</i></p>

Citizen's Arrest

Police contacts welcomed the clarification on the use of citizen's arrest powers but re-iterated the need for members of the public to use these powers as a last resort.

There was acknowledgement that abolishing the common law power of breach of the peace made sense in view of the range of police powers to deal with situations, particularly under public order legislation. However, a number of examples were raised which suggested that the power could still be applied in unique situations.

Trigger powers

There was general support for the application of powers triggered by arrest to be applied to the lesser threshold of indictable offences. There was recognition that the exercise of these powers should be used when relevant to the needs of the victim, the nature of the offence, the offender and the needs of the criminal justice system. The safeguard of application to indictable offences and existing safeguards under PACE was welcomed as allowing the use of the needs powers to be used proportionately to the needs of the investigation.

There was also some strong concern that these powers were no longer being applied in terms of seriousness of the offence and would mean that some highly intrusive powers were being exercised for much lesser offences.

"We agree with the proposal that the PACE powers presently only applicable to serious arrestable offences should be extended to either way or indictable offences."

Police Federation

"We believe that it is right, given the intrusion into private life and other rights guaranteed under the ECHR that most of these powers entail, that they be subject to a seriousness criterion, and the current definition of serious arrestable offence is both flexible and pitched at about the appropriate level, providing a suitable form of proportionality threshold."

Law Society

"...an officer would need to undertake a detailed rights analysis under the HRA before exercising such powers on a case-by-case basis. It is unclear how this approach will protect the rights of the public to be free from arbitrary and disproportionate interference with their rights; it is also unclear how moving from a structured framework to a case-by-case system will prove more efficient or will free up police resources (in fact, the contrary is surely true)."

Liberty

The Government has included provision in the Serious Organised Crime and Police (SOCAP) Bill to introduce a PACE Code of Practice on Arrest. This Code, which will be subject to individual Parliamentary scrutiny under section 60(1)(a) and section 66(1) of PACE, will set out the new powers on arrest and what, as far as possible, should constitute reasonable grounds to believe that arrest is necessary. The Code will also set out the application of the powers available following arrest. Initial discussions have already taken place with stakeholders with a view to consultation on drafting prior to public consultation this summer (2005) before Parliamentary consideration later this year.

Further work will also be carried out in the breach of the peace provisions in consultation with stakeholders and practitioners.

Search Warrants - Raising Capacity

ACPO, police forces and individual officers gave broad support to the proposals, welcoming the operational benefits that the proposals bring both in terms of the process for applying for warrants and the operational benefits in tackling crime and gathering evidence. Warrants authorising access to any premises occupied or controlled by a named individual would be of great use when executing warrants against individuals who move evidence or illicit goods between premises to avoid detection or complex cases relating to organised crime.

The police also welcomed proposals on extending time limits of warrants and allowing multiple entry applications would be of great practical benefit to investigations and ACPO believe that the present one-month rule is unnecessary and impracticable.

Several respondents raised the issue of police accountability in relation to warrants. The police themselves recognised the need to retain the judicial oversight of warrants both in terms of applying for warrants and returning the endorsed warrant when it expires. Although there was broad support for using technology to improve the efficiency of applying for a warrant some groups were concerned that this could reduce the process of applying to a court to an administrative exercise. Some felt that the appearance in person of the applicant before a magistrate was an important and vital safeguard in order to be able to respond in person to any queries that may arise in considering the application.

The main worries related to the scope of the warrants, in terms of duration and their compatibility with the individual's human rights, particularly in relation to repeated entry and clarification on which properties could be searched under a 'multi-premises' or 'all premises' warrant. A number of respondents also queried the definition of 'accessible' within multi-premises warrants.

The removal of the arbitrary time limit and restriction on one entry only, would greatly increase the flexibility of using search warrants for searching; it would also reflect the flexibility that is sometimes required in operational police and substantial investigations and operations.

Centrex

"We do not object to the proposal. We recognise that many criminals use two or more addresses to store articles kept for the commission of serious criminal offences or the proceeds of such offences."

Bar Council

"Some warrants, for example those under the Town and Country Planning Act, limit warrants to one inspection. This would be worthless when dealing with short-term lets, which may require many visits to ascertain whether offences have been committed."

Westminster City Council

"Each entry to a premises raises fresh issues under Article 8 ECHR, and Liberty does not believe proportionality and necessity can be considered in advance if a multi-premises and multi-use warrant is issued."

Liberty

The SOCAP Bill proposes the need for an officer to seek written approval to an officer of at least the rank of Inspector not involved in the investigation before seeking to gain entry to a named property on the warrant on a second or subsequent occasion; and to seek the same written approval before entering a premise in an 'all premises' warrant. The Bill also proposes retaining the existing definition of any premises "occupied or controlled by a named individual".

Workforce Modernisation

Community Support Officer Powers - directing traffic, begging, byelaws, searches, night-time economy and alcohol related anti-social

There was widespread support for extending the powers of CSOs in general. In particular it was noted that the proposals would enhance the operational capability of CSOs, adding to forces' flexibility and improving their ability to deal with anti-social behaviour. However, in most cases support was conditional on CSOs being appropriately trained and equipped, with appropriate support and supervision.

Despite general support, a number of respondents felt that the shifting role for CSOs from 'community confidence' to 'enforcement' would blur the distinction between CSOs and sworn police officers.

A few respondents were opposed to giving new powers to CSOs. It was argued that CSO powers should not be extended before an evaluation is completed, that CSOs have sufficient powers already and that new powers could compromise the safety of CSOs. Some also argued that more police officers should be recruited instead of CSOs.

With regard to the individual powers, there was overwhelming support for the power to direct traffic for CSOs although there were some reservations about extending the power to accredited persons.

There was general support for the power to deter begging although a substantial number of respondents said that this would be a high-risk activity for CSOs given the health issues often associated with beggars and the potential for confrontation.

There was widespread support for the power to enforce byelaws, although again some respondents were concerned that it could lead to confrontational situations and would require training and equipment to exercise the power. There was overwhelming support for byelaws to be enforced on a local basis rather than establishing a central list.

The proposed power to search for dangerous items received mixed responses. A substantial number of respondents felt that the power, supported by equipment and training, is essential to guard the safety of CSOs, but some were concerned that it could put CSOs into dangerous situations. Other comments raised the importance of ensuring that the power is not used disproportionately, a further suggestion recommended that CSOs should be able to retain any dangerous item that they find beyond the thirty-minute detention period that the suspect can be detained for.

There were also mixed views on the extension of CSO powers to deal with the night-time economy. Some respondents felt that there is a clear need to give CSOs more powers in this area, in particular to deal with the sale of alcohol to juveniles. However, others felt that existing powers are sufficient or that it should be handled by police officers. Some respondents commented that the proposal would require additional training or protective equipment and some suggested that extending CSOs' hours later into the evening could add to salary costs.

"Granting CSOs the ability to enforce bylaws will be a useful extension of their operational powers, which will allow us to further enhance their operational capabilities."

Association of Chief Police Officers

"Provided that these changes are accompanied by appropriate training of the officers, the Mayor strongly supports the extension of the powers of CSOs. The priority for CSOs must be that they provide visible policing presence on the streets."

Mayor of London

"PCSOs popularity stems partly from the fact that they have a very distinct role from that of police officers... The more powers they are given the more potential there is for that distinction to be blurred."

Association of Police Authorities

"an inevitable consequence of giving civilians police-type powers is an increased scope for confusion amongst members of the public as to precisely what powers non-police officers have."

Law Society

Designated Civilian Staff - Custody and Identification Officers, powers of entry/search and wearing of uniform.

Several respondents, including ACPO, welcomed the benefits of the proposals on the staff custody officer role in providing forces with the flexibility to manage their resources effectively and keep experienced officers on the front line, providing that civilian staff were appropriately trained and suitable for the post.

However, there was strong and fundamental opposition to the proposals for staff custody officers from a range of organisations including the Police Federation, the Law Society, Liberty and academics. The key concern was that police staff would lack the authority and experience necessary to carry out the role of Custody Officer.

During the passage of the SOCAP Bill, Ministers have indicated the potential for trialling the role of staff custody officers in a limited number of force areas to establish the selection requirements, the training needs and the practical application at the police station. This would be carried out in consultation with stakeholders.

"From our recent outsourcing experiences we are satisfied that suitable individuals could be recruited to fill this post, however a comprehensive training package, with ongoing support would need to be provided to those selected to take on this unique role."

Association of Chief Police Officers

The proposal to civilianise the Custody Officer role would clearly free up a significant number of experienced officers and therefore has the potential to make improvements in case management in its broadest sense. In addition there are clearly significant savings and opportunities that can be exploited by progressing with this suggestion.

Wiltshire Constabulary and Wiltshire Police Authority

"This calls for all the authority and experience which a custody sergeant brings to the role but which a civilian custody officer could not... This proposal to civilianise the role of custody officer is one which we resist as forcefully as possible. It is essential to maintain the existing structure, including the review of detention functions of inspectors and superintendents. We urge the Government to abandon this proposal."

Police Federation

"We do not believe that civilian officers will be able to carry such authority and respect, and there is clearly a risk that their decision-making would be subject to inappropriate pressure by police officers."

Law Society

A civilian custody officer is unlikely to be given the same respect that is given to the police sergeant carrying out the role. Respect is crucial if the custody officer is to play the part required of him - and if the officers working in the police station are to feel and to act upon his influence in the way they carry out their functions. Civilians would not have, nor could they exert the same authority.

Professor Michael Zander QC

Several respondents welcomed proposals to extending powers of entry, search and seizure for designated investigation officers as a positive step, but indicated that they would need to be given comprehensive training in order to apply for and execute search warrants. On the other hand a number of respondents raised concerns that giving civilians police-type powers is an increased scope for confusion amongst members of the public as to what powers non-police officers have.

"We welcome the opportunity of freeing up police time by allowing properly trained and designated investigative officers to apply for, and execute, search warrants."

Association of Chief Police Officers

There was broad support for the proposal to exempt designated investigation officers from an absolute requirement to wear uniform where it is appropriate i.e. for Investigation Officers operating in a plain-clothes environment subject to the individual carrying identification.

Working with Stakeholders on police charging for services

Police Groups, Police Forces, the London Mayor and a number of CDRPs were strongly in favour of charging with the proviso that there is discretion within the system to ensure that events run by voluntary groups or small organisations are not adversely affected. In addition one force also stressed that the issue of the drinks industry sharing responsibility for alcohol related issues goes beyond simply paying charges to the police. The RoSPA further suggested that the effects of drink driving should also be included as part of discussions with the drinks industry.

Representatives from groups likely to be charged were either opposed to the introduction of charging or welcomed the opportunity to continue in dialogue with the Government.

Prosecution of the office of Chief Officer of the police

Respondents from a broad range of areas gave overwhelming support to the proposal that the office of Chief Officer, rather than the Chief Officer personally, be liable for Health and Safety breaches by forces. This was subject to the Chief Officer still being personally liable if they are found to be personally responsible. A number felt this should only apply in relation to health and safety whereas others suggested this should apply to all prosecutions brought against the force.

Two responses from members of the public opposed the proposals. One feared it would dilute police accountability, the other proposed that all officers should be personally liable for their actions, as is already the case where they are proven to have caused an accident or injury through deliberate neglect or malfeasance.

Increasing Prevention and Detection Powers

Drugs Testing and Treatment

There were mixed views on the proposal to introduce drug testing for persons in police detention after arrest but the majority of respondents, particularly the police, and representatives from CDRPs welcomed the proposal subject to practical and resource issues. Several commented that this would enable detainees' drug misuse to be identified more quickly and increase the numbers effectively routed

into treatment. An additional benefit is its ability to enable custody officers to undertake an effective risk assessment of detainees.

About a third of the respondents to this proposal were either opposed to testing on arrest or had serious concerns about the proposal. A number were concerned that testing people prior to charge would be too intrusive, especially given the level of evidence required to arrest, rather than charge, and the number of people arrested each year who are not charged and are not subject to further action. Some respondents were also concerned that testing on arrest would take place outside the police station where the suspect would not have access to legal advice. The Government is proposing that testing should only take place within a police station and once a suspect has been brought before the Custody Officer.

It was suggested by some respondents that drug testing should be restricted to known persistent users, or to appropriate cases, for example involving serious offences; and that testing prior to charge would only be justified where there are reasonable grounds to suspect the offence was motivated by drug use or that the offender is a drug user.

"The introduction of drug testing upon arrest, backed up by treatment orders is seen as essential if we are to maintain our present reduction in crime."

Association of Chief Police Officers

"In the absence of any evidence that would even sustain a charge, we cannot support this proposal. Nor would we support drug testing on arrest outside the police station where the suspect has not had the opportunity of taking legal advice."

Bar Council

Fewer respondents commented on the proposal to introduce a requirement for those who tested positive to attend an assessment of their drug misuse. Those that did respond were generally supportive of providing an early opportunity for detainees to see a drugs worker, potentially while they are in detention, as a positive first step into treatment which benefits both the drug misuser and the wider communities affected by drug related crime.

Some concerns were raised about the possible impact on the drug worker/client relationship and the effectiveness of coercion into treatment. Opinions varied, with some respondents suggesting that attendance should be made a condition of police bail, and others advocating the encouragement of voluntary assessment and treatment.

The few respondents who commented, were generally in favour of increasing the support given to drug misusing offenders leaving prison custody to undergo appropriate treatment. It was suggested that this could be done by adequate resourcing and an extension of the drug testing programme under the Drug Interventions Programme (formerly the Criminal Justice Interventions Programme) and there was support for the Programme's integrated case management approach of tailoring solutions for individuals who commit drug related crime.

Whilst one respondent suggested that drug treatment should be a requirement for all offenders and not an option for reducing final or completed sentences, others expressed the view that treatment should be voluntary. It was suggested that services should be developed to meet a holistic approach for those leaving custody, including assertive outreach and assistance in attending treatment sessions and

that there should be increased treatment options and improved access to other services such as housing. Responses also made reference to the need for funding for more drug workers and drug treatment centres.

Intimate Searches

Most respondents, primarily Police groups and Forces, were in favour of courts having a power to remand a suspect into suitable detention facilities where they are suspected of having swallowed drugs. Some stressed the clear need to use secure medical facilities rather than police cells to detain suspects, which would require appropriate resources and facilities.

"Whilst we understand the need for these [detention] powers, we would recommend that some form of secure medical facility be established regionally to deal with this requirement."

Association of Chief Police Officers

"We would question the right to detain someone for 12 days on only the suspicion that drugs have been swallowed."

Magistrates Association

Although a number of respondents favoured the creation of a new offence of failing to consent to a search several members of the public, civil rights and defence organisations felt that searches must only be conducted with the consent of the suspect, in order to protect the individual's rights. Some respondents were also strongly opposed to the creation of a new offence of failing to consent to a search as this could lead to coercion and consent forced rather than being given willingly. One respondent also felt that consent was necessary to protect the medical practitioner conducting the search from any personal liability. The Bar Council suggested that the existing offence of obstructing a police officer under the Misuse of Drugs Act 1971 meant that a new offence might not be required.

While a number of respondents supported the proposal to enable a judge to direct a jury to draw adverse inferences some felt that such a power raised issues about self-incrimination and has limited value as it falls short of hard evidence. One group felt that the power to draw adverse inferences should also apply to Magistrates as well as Crown Courts.

It is felt that the most simple answer would be to create an offence of failing to consent to an intimate search. Allowing courts to remand a person to police detention would not work unless sufficient resources, in terms of buildings and people, were made available.

West Yorkshire Police

"The introduction of an offence of failing to agree to an intimate body search would alter the relationship between the doctor and the patient and that the pressure on the patient would be so great as to cast serious doubt on the ability of the patient to give valid consent."

British Medical Association

The CPS would favour this proposal [court to draw inferences], although with statutory provision safeguarding the right of non self-incrimination.

Crown Prosecution Service

"The drawing of adverse inference from a refusal to undertake a search raises issues about self-incrimination. We doubt whether such a move would be compliant with Article 6 HRA."

Liberty

Incorrectly Registered Motor vehicles

Police, wider Criminal Justice System stakeholders and road groups welcomed proposals, recognising the need for legislation in this area, particularly in terms of providing authorities with sufficient powers to tackle illegal behaviour that is linked with more general areas of anti-social behaviour and wider forms of criminality. Safety and road groups also welcomed the proposals as a means of tackling unsafe and/or uninsured vehicles that risk serious injury and damage to the public and industry by careless owners who have little regard for the law. Whilst supporting the proposals in principle some police groups and forces proposed significant penalties for the offence, including the seizure of vehicles and the use of Fixed Penalty Notices.

"The RHA supports the proposal to create a new offence of using an incorrectly registered vehicle. Evidence suggests that such vehicles are often involved in other criminal activity. Targeting these vehicles therefore may help to disrupt more serious crime."

Road Haulage Association

"RoSPA strongly supports creating a new offence of using an incorrectly registered vehicle as such vehicles are often used in criminal activity and are more likely to be involved in road crashes."

Royal Society for the Protection of Accidents

Funding Automatic Number Plate Recognition (ANPR) through fixed penalty generated revenue

Comments on the hypothecation of funds to ANPR technology and enforcement proved popular, particularly among police groups, who welcomed additional funding to develop this highly effective method of using technology to tackle serious criminality while leaving the law-abiding motorist to go about their business uninterrupted.

Roadside Data

There was overwhelming support, mainly from Police Forces and the Road Haulage Association, for the proposal to allow civilian staff to access to PNC/DVLA data. The AA, Liberty and the Information Commissioner also welcomed the proposal subject to adequate safeguards that those accessing the data are accountable and security cleared.

This is an area in need of clarification. Officers should not spend valuable time completing PNC checks when civilian colleagues could be doing it.

Hertfordshire Constabulary

Fireworks

The proposals to tackle the anti-social use of fireworks received overwhelming support from a large number of police groups, police forces, Local Authorities and the wider Criminal Justice stakeholders. A number of forces suggested that the power should also be extended to CSOs, other respondents recommended additional offences or greater restrictions on the sale of fireworks.

Although the vast majority of respondents expressed support for the proposals there were a small number of respondents, principally from groups that represent children and young people, who raised concerns surrounding stop and search powers, particularly in relation to juveniles.

"The widespread and public availability of powerful fireworks (and their components), when in the wrong hands, has the potential to cause death, serious injury, damage and fear and distress within our communities."

Association of Chief Police Officers

"We agree that the use of fireworks for social occasions has got out of hand and measures to control this are desirable."

Magistrates Association

"The nuisance and danger from fireworks is indisputable and partners support these measures to regulate and support the enforcement of legislation leading to a safer environment."

Sunderland CDRP

"The Children's Society is concerned that the proposal to give the police powers to stop and search children and young people in relation to the possession of fireworks will result in the targeting of certain children and young people. Children and young people interviewed by The Children's Society already feel targeted by 'stop and search' and labelled by the police"

Children's Society

Protests Outside Homes

Police stakeholders and a number of companies and organisations who had been targeted by animal rights extremists welcomed the proposals and acknowledged there was a need to restrict intimidatory protests outside homes. Civil liberties groups and some individuals considered that existing legislation was adequate to deal with such protests.

On the proposal to make it an offence for a person subject to a direction under section 42 of the Criminal Justice and Police Act 2001 to return to the vicinity of a home within 3 months, a number of respondents suggested that the proposal did not go far enough and that this should be 12 months.

"The proposed changes are viewed as being positive with regard to improving the police's ability to deal with protests outside people's homes."

Staffordshire Police

"When considering the offence to protest outside homes in such a way that causes harassment there should be a very clear balance that such any "harassment alarm or distress" should be in the opinion of the victim. At home the right to privacy and protection of the individual must take precedence over the right to protest."

Anon

"The consultation document also suggests the need to extend powers dealing with protests outside homes. Liberty is unable to accept that there is a specific need for such extension in light of the range of current powers."

Liberty

"The proposal to allow a police officer effectively to ban an individual from an area for three months is highly questionable in principle and practice. The current harassment powers are sufficient for dealing with individuals who step beyond their right to protest... Of greater concern is the complete lack of independent judicial oversight determining the necessity of any exclusion."

Law Society

Protection from Harassment Act 1997

Police stakeholders and legal groups welcomed the proposals as a way of dealing with a campaign of harassment against a group of individuals. There was concern that the definition of "connected" as a trigger for the offence needs clarification.

Protests outside Parliament

Police stakeholders and the Mayor of London supported the proposal recognising that current police powers to deal with demonstrations in Parliament Square were insufficient. Some legal groups and members of the public considered that the proposal was unnecessary as existing public order legislation applied to Parliament Square and the proposal could be seen as a restriction on protest.

"The Mayor believes strongly in an individual's right to protest; however it must be balanced with the security of protection from harassment and protests outside Parliament are addressed... Current legislation provides a degree of safety for the Houses of Parliament and surrounding area. However recent demonstrations from within the Houses of Parliament suggest that they are not sufficient."

Mayor of London

"We oppose the imposition of any additional power to restrict demonstrations outside Parliament which we think is a proper right in a democracy."

Law Reform Committee of the Bar Council

"The options to prevent protest outside businesses and parliament seem aimed at stifling legitimate expression and criminalising those who wish to protest about something. Britain is admired around the world for its tolerance of freedom of speech - the prime minister recently drew attention to the fact that pro-hunting supporters at least had the right to voice their opinions in this country. We are supposed to be a democracy - do we really want to copy those regimes which deny citizens such rights?"

Member of Public

Identification

Generally police groups recognised the benefits of taking fingerprints or photographs outside a police station as a means to ensure that suspects can be properly identified where they do not need to be taken to a police station. Respondents also welcomed the impact the proposals would have on reducing the number of people arrested and taken into custody under section 25 of the Police and Criminal Evidence Act 1984, enabling officers to remain on front line duties. The Magistrates Association also suggested that photographs of suspects could be used throughout the criminal justice process to ensure the correct identity of the individual standing trial.

Civil liberty groups raised some concerns about the justification and use of these powers, so proposals will need to ensure that appropriate safeguards are in place, particularly in terms of the retention/destruction of images and fingerprints in line with current police powers.

"Powers to undertake roadside identification will prevent the giving of false details to police and enhance our ability to detect crime"

Association of Chief Police Officers

"It would appear that the proposal is to give police the power compulsorily to fingerprint persons suspected of, but not arrested for, an offence. This would represent a major increase of police powers at the expense of liberty of the individual."

Law Society

Proposals for taking of footwear impressions without consent received general support, particularly from police forces and Centrex who welcomed the proposal because of the value they place against the use of footprints in identifying and

prosecuting offenders. However, several representatives of law groups were less convinced, believing that footwear impressions have a limited use as evidence.

"The taking of footwear impressions with or without the suspect's consent would be a valuable intelligence tool for identifying offenders."

National Criminal Intelligence Service

"The proposal... would ensure that the totality of evidence could be presented before a court in criminal proceedings; whilst this might appear to be biased against a suspect, it would in fact be of benefit to show that all available evidence is put before the court irrespective of whether it supports the prosecution case or that of the defence."

Centrex

The issue of taking fingerprints and DNA samples received varied responses. There was a broad acceptance and understanding of the important role that fingerprint and DNA evidence has in police investigations but many respondents stressed the need for safeguards to prevent the abuse of such powers. Police groups broadly welcomed the proposals, one force felt the proposed powers would be especially useful for obtaining driving disqualifications. Two respondents raised practical concerns over the potential for DNA samples to be collected as a result of secondary or third level contact.

While most respondents felt that the data should not be admissible in court the Crown Prosecution Service strongly favoured the admissibility of such evidence providing there were adequate safeguards built in to the process of obtaining such samples.

A number of respondents were concerned about the retention and destruction of covertly taken samples. Most stressed that the information should not be held indefinitely. The Information Commissioner stated that the information would not be able to be placed on the National DNA database.

The Home Office and ACPO have set up a review to look critically at the processes and legislation in place, with a view to recommending changes to operating processes, statutory Codes of Practice and the legislation itself. Any proposed changes relating to police powers to take DNA/fingerprints covertly will await the outcome of this comprehensive review.

"The CPS would oppose any product derived from the use of this new power being usable only for intelligence purposes. If the evidence is relevant and probative, the public interest justifies it being admissible."

Crown Prosecution Service

"as these fingerprints and DNA samples were not obtained on arrest the legislation should make clear that they cannot be retained indefinitely on the National DNA database and should be deleted once they have served their purpose as intelligence data."

The Information Commissioner

There was widespread support for the proposed amendment clarifying a penile swab as an intimate sample. The distinction between an intimate and a non-intimate sample is that all intimate samples may only be taken with consent of the individual.

Proposals surrounding police powers to take DNA samples in relation to missing persons received overwhelming support from a broad range of respondents, including police, human rights and criminal justice system representatives. While

offering general support some respondents raised a number of caveats in relation to having the consent of relatives providing DNA samples and data protection issues surrounding the use and retention of the data. Surrey Police suggested that there is no need for an additional power to take DNA from an unidentified body as the police work closely with HM Coroners who provide the necessary consent.

Not sure we need a power to take DNA from unidentified body or body part. The cadaver belongs to HM Coroner and the only consent we need is theirs.

Surrey Police

"We believe this proposal to be sensible provided that it is not being suggested that, in relation to the missing person's relatives, they are legally required to submit themselves to the taking of a sample."

Law Society

Rather than legislate on the matter of missing persons/DNA the Home Office will instead issue guidance to the police and Coroners about using their existing powers, including details about putting such samples on a Missing Persons Database. PACE would still need to be amended to allow use of the National DNA Database for identification purposes where there is no suspicion of crime involved in the death, but this legislative change would fit best within a Bill to reform the Coroners' system.

Forfeiture of electronic devices used to store or handle indecent photographs of children

Respondents were overwhelmingly in agreement that the identified gap in the forfeiture powers in respect of indecent photographs of children was small, and to many respondents it appears to be entirely theoretical; but it was common ground that it should be filled. Respondents felt that the existing powers for the most part worked satisfactorily in this area, and were agreed that indecent photographs themselves should never be returned.

Respondents also agreed it was important not to put people off reporting such images, several respondents suggested reporting should be more actively encouraged. There was also broad agreement that third parties rights in relation to equipment and innocent data should be considered. There was also broad agreement that we should avoid placing an excessive drain on police resources.

There was less agreement on how best to move forward. A range of views were put forward on returning equipment. One respondent felt that software products were available, which would enable return of hardware, properly cleansed, without excessive cost. Others suggestions included purchase of replacement hard drives at public expense, copying of legitimate data at the expense of the owner, and automatic forfeiture of all equipment irrespective of ownership with costs recoverable from the offender.

"Any issue that would prevent people/companies from reporting crimes of this nature should be minimised. Forces, including Devon and Cornwall, are under tremendous pressure with forensic examination of computerware, and... a balance is needed between detection of serious crime, issues surrounding child protection, third party protection, and resources."

Devon and Cornwall Police

"Irrespective of whether a person is charged/convicted of any offence, society expects that those children who were originally abused will no longer continue to be abused by the continued circulation and use of such images"

Centrex

On the basis of this consultation, we will enter into more detailed discussion with police representatives and others before bringing forward proposals. We take particular note of the broad agreement that current powers seem to be working satisfactorily, and of the need to encourage reporting of this kind of offence.

LIST OF RESPONDENTS

1. John Milburn (public)
2. MSC Security Consultancy
3. Essex Police
4. Sunderland CDRP
5. Kevin Whitehouse (serving police officer)
6. Wandsworth Parks Police
7. David Grant, serving BTP officer
8. CENTREX
9. ACPO
10. Insp. Carwyn Hughes, Designated Identification Officer, Sussex Police
11. Jason Helly (serving CSO)
12. The National Youth Agency
13. Durham Police Force
14. Information Commissioner
15. Safer South Gloucestershire CDRP
16. Mayor of London
17. DS Simon Atkinson (serving officer)
18. B Yousif (public)
19. Wiltshire Constabulary and Wiltshire Police Authority
20. Bernie Hudson (public)
21. Brian Mooney (public)
22. St. Albans Responsible Authorities Group, for and on behalf of St Albans City and District CDRP
23. Westminster CDRP
24. Gloucestershire Police
25. Daniel Winterstein (public)
26. Danny Drake (serving police trainer)
27. David Tomlinson (public)
28. David Hansell (public)
29. Lancashire Magistrates' Courts Committee
30. County Councillor Jean Yates, Lancashire County Council
31. Association of Police Authorities
32. The Chaucer Education Project
33. Roy St Pierre (public)
34. Peter M Le Mare (public)
35. Steve Hill (public)
36. Sarah Coote (public)
37. Serious Fraud Office
38. Theresa Searl (serving officer, South Yorkshire Police)
39. Ray Deans (public)
40. Michael Wearing (servicing officer, the Met)
41. Dr Bruce King (public)
42. Thomas Hinchcliffe (public)
43. Mark Raynor (public)
44. Rob Calvert (serving custody inspector)
45. Stephen Francis (Sergeant, Wandsworth Parks Police)
46. Peter Hartwell (public)
47. Richard Llewellyn Smith (public)
48. Patrick Cray (serving custody officer)
49. Matthew Collinson (public)
50. Avon & Somerset Police
51. Coventry CDRP
52. Norfolk Constabulary
53. JK Gillespie
54. Police Service of Northern Ireland
55. Prof. Michael Zander
56. Northumbria Police Authority
57. Road Haulage Association
58. The Haldane Society of Socialist Lawyers
59. Surrey Police
60. Merseyside Police
61. Knowsley CDRP
62. Environment Agency
63. Monmouthshire and Torfaen Community Safety Partnerships
64. Premier League
65. Magistrates Association CJS Committee
66. The Newspaper Society
67. Clive Walker, School of Law University of Leeds
68. Children's Society
69. British Medical Association
70. Liverpool City Council
71. Release
72. Unison
73. Greater Manchester Police Authority
74. Burnley, Pendle & Rossendale CVS
75. Jim Whitehead (public)
76. St Helens Council
77. Thames Valley Police
78. The Association of Forensic Physicians
79. Justices' Clerks' Society
80. Justice
81. Legal Services Commission
82. Cumbria Police Force
83. Cheshire Police Authority
84. Transport for London
85. The Football Association
86. The AA Motoring Trust
87. North Wales Police
88. Turning Point
89. Trading Standards Institute
90. Lee Redworth (serving CSO)
91. Devon and Cornwall Police
92. Francesca Talker (public)
93. Gavin Burrell (Criminal Defence Lawyer)
94. Ian Feachnie (serving inspector)

95. London Assembly Liberal Democrat Group and the Liberal Democrats on the Metropolitan Police Authority
96. National Autistic Society
97. Community & Open Spaces Policing Association
98. National Criminal Intelligence Service (NCIS)
99. North Somerset Crime and Drugs Partnership
100. Hertfordshire Constabulary
101. Jason Parkinson (public)
102. Fraser Sampson, Solicitor, Walker Morris
103. West Yorkshire Police
104. Philip Hall (public)
105. Welsh Assembly
106. Dr Martin Graham (public)
107. John Parkes (academic)
108. Shogo Suzuki (public)
109. John Bradley (public)
110. Rick Ezekiel (public)
111. Rodger Lea (public)
112. Darryl Codling (serving officer)
113. E Johnson (public)
114. Law Society
115. NSPIS Project
116. North Yorkshire Police
117. Karenza-Monica Case (public)
118. Karl Drinkwater (public)
119. Bar Council (Law Reform Committee)
120. Metropolitan Police Service
121. Wines and Spirits Association
122. Gwent Police
123. The Association of British Pharmaceutical Industry (ABPI)
124. Criminal Law Solicitors' Association
125. Royal Society for the Prevention of Accidents
126. Staffordshire Police
127. Kent Police
128. Parliamentary Advisory Council for Transport Safety
129. Royal Mail
130. Crown Prosecution Service
131. Leonard Jason-Lloyd, Lecturer, University of Leicester
132. Royal Society Animals in Research Committee
133. BioIndustry Association
134. Hampshire Constabulary
135. The Police Federation
136. Police Superintendents Association
137. West Yorkshire Magistrates Court Service
138. Liberty
139. Plus three additional respondents who wished to remain anonymous.