



# Home Office

Criminal Justice Bill Team

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7 August 2003

Dear Sir or Madam,

**Re: Criminal Justice Bill: Initial/Partial Race Equality Impact Assessments**

The purpose of this letter is to invite comments on the partial/initial race equality impact assessments of proposals contained in the Criminal Justice Bill, which the Government is pursuing as part of its criminal justice reforms.

The assessments have been produced in keeping with obligations when developing new policy under the:

- *general duty*<sup>1</sup>, which is set out in section 71(1) of the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 (the Act);
- *specific duties*<sup>2</sup>, which are set out in secondary legislation under the amended Race Relations Act;
- the Home Office Race Equality Scheme (in which the Home Office has set out how it intends to comply with the general and specific duties);
- Commission for Racial Equality (CRE) statutory code of practice, and non-statutory CRE guidance.

The CRE has helped the Home Office in identifying the list of provisions in the Criminal Justice Bill for which the assessments have been produced. They are:

- Clause 5, Limits on period of detention without charge (Annex 1);
- Part 7, Trials on indictment without a jury (Annex 2);
- Part 10, Retrial for serious offences (Annex 3);
- Part 11, Chapter 1, Evidence of bad character (Annex 4);
- Clause 146, Increase in general limit on magistrates' court's powers to impose imprisonment (Annex 5);
- Clause 271, Minimum sentences for certain firearms offences (Annex 6);
- Clause 284, Limits on period of detention without charge of suspected terrorists (Annex 7).

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<sup>1</sup> To eliminate unlawful discrimination; and promote equality of opportunity, and good relations between persons of different racial groups.

<sup>2</sup> In particular to assess and consult on the likely impact of its proposed policies on the promotion of race equality; to publish the results of such assessments and consultation; and to monitor policies for any adverse impact on the promotion of race equality.

The assessments attached briefly set out for each proposal: the wider context in which the proposal has developed; an explanation as to what the provisions would do; the relevance that the proposal is considered to have to racial equality; and the safeguards in the context of which the provisions would operate.

Whilst some of these proposals are relatively controversial in nature, **your comments are being sought upon the proposals at this time from a race equality perspective.** In giving your views it would assist us if you would clearly identify your organisation in your response; the particular provision with which you are concerned; your reasons; and wherever appropriate details of any supporting information.

Copies of the full text of the Criminal Justice Bill and the accompanying Explanatory Notes are available on the Parliament website <http://www.parliament.uk>

Should you think that it would be advantageous to send a copy of this to any other organisation, a copy is available under '*Subject List, C, Consultation Documents*' on the Home Office website, <http://www.homeoffice.gov.uk> and you should feel free to refer them to it.

Please send any comments on the assessments to: [CJBill@homeoffice.gsi.gov.uk](mailto:CJBill@homeoffice.gsi.gov.uk) or addressed in writing to:

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Please note that your comments may be published.

Responses should be received by 12 September 2003.

**Home Office  
Criminal Justice Bill Team  
11 August 2003**

## **INITIAL RACE EQUALITY IMPACT ASSESSMENT OF THE PROVISIONS RELATING TO LIMITS ON PERIOD OF DETENTION WITHOUT CHARGE IN THE CRIMINAL JUSTICE BILL**

### **The Wider Context**

Any offence which can attract at least 5 years imprisonment qualifies as a basic arrestable offence and opening up extended detention to these broader set of offences will enable the police to complete a thorough and effective investigation in more cases.

2. The key problem is that there is a whole set of reasons why the basic 24 hours detention period can be insufficient. For example, pressure on the detention clock can arise from issues linked to fitness for interview, multiple defendants to deal with or delays in connection with the provision of legal advice. Large amounts of time can also be lost in obtaining translation services or the attendance of an appropriate adult required to support a juvenile or someone who is mentally ill.

3. As the available detention time ebbs away, the police can be forced to rush through their investigation work or to content themselves with a lower quality of evidence than might have been obtainable if more time had been available.

4. It should not only assist the police in ensuring that offenders are charged where appropriate with the right offence but, most importantly, sufficient time, consideration and effort has been put in to ensure that offences have been fully and properly investigated. The police support the proposal, recognising that it will enable them to deal with those cases where the increased period of detention is required to reach an effective investigative outcome.

5. Consideration has been given to halting the detention clock for periods in which the investigation process may be delayed or prevented from proceeding whilst retaining an overall 'active' period of detention of 24 hours. For example, whilst awaiting the attendance of legal representation, appropriate adult, medical examination at the police station etc. The impact of such a measure may be against the interests of the suspect. First and foremost, it may result in the suspect remaining in custody for significantly longer than 24 hours; second, it may result in the investigation process not being progressed as expeditiously as it may be; and, third, the requirement to meet a dedicated time limit should help ensure that police efforts are focussed on undertaking timely and relevant investigation processes.

### **The Provisions**

6. Clause 5 of the Criminal Justice Bill extends from 24 hours the scope of an officer of at least the rank of superintendent to authorise detention without charge up to a maximum of 36 hours where the relevant offence is an arrestable offence. Section 24 of the Police and Criminal Evidence Act 1984 defines an arrestable offence as (a) any offence for which the sentence is fixed by law; (b) any offence for which a sentence of imprisonment of 5 years or more may be imposed; or (c) any offence specifically listed in Schedule 1A to the 1984 Act.

## **Relevance**

7. The Commission for Racial Equality (CRE)<sup>3</sup> considers that changes in the period of detention will have serious impact in public confidence by exacerbating the differential in arrest patterns unless justification is achieved through improved outcomes. The Government's intention is to ensure that suspects are efficiently, effectively and justly progressed through the charge and pre-trial process; help reduce the number of miscarriages and wrongly charging of offenders; and promote the correct balance between the need to fully investigate offences and protection of the individual.

8. Around 1.3 million people<sup>4</sup> suspected - i.e. arrested not charged - of committing a notifiable offence are arrested each year. Of these 97,800 (8%) were recorded as being black people, 55,600 (4%) of Asian and 11,800 (1%) of 'other' non-white groups. The number of black people arrested for notifiable offences relative to the general population was on average five times higher than the proportion of white people arrested. Arrest rates for Asians were generally greater than for white people but below that for black people.

9. There is a wide variation of age and offence breakdown of arrestees. Compared with information for all age groups, white people showed higher representation among adults arrested and those aged under 14, black people in the 14-17 age group and Asians in the 18-20 age group. The main differences between ethnic groups was the higher tendency of white people to be arrested for burglary and criminal damage, black people for robbery and both black and Asians for fraud and forgery and drugs.

10. The number of persons detained under PACE for more than 24 hours<sup>5</sup> (up to a maximum of 96 hours) and subsequently released without charge was 697 during 2001-02. Nine out of ten of those detained for more than 24 hours during 2001-02 were released within 36 hours.

## **Safeguards**

11. Any extension of detention without charge beyond 24 hours, regardless of the offence, will continue to require the authority of a senior police officer of at least superintendent rank. That officer will need to be satisfied that the investigation is being conducted diligently and expeditiously before granting an extension.

12. Senior officers would be able to exercise discretion to a broader range of cases although conscious that detention beyond 24 hours is the exception. However, it would not provide for any increase in basic periods of detention and existing safeguards within PACE - which are strict and substantial - would continue.

13. The exercise of the new power will continue to be monitored under requirements for reporting under section 95 of the Criminal Justice Act 1991 and annual reporting on Arrests for Notifiable Offences and the Operation of Certain Powers under PACE, England and Wales produced by Home Office Research, Development and Statistics.

Home Office, Police Leadership and Powers Unit, July 2003

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<sup>3</sup> Letter of 11 June 2003: Trevor Phillips Chair CRE to Lord Falconer, Home Office

<sup>4</sup> Statistics on Race and the Criminal Justice System A Home Office publication under section 95 of the Criminal Justice Act 1991: Report 2002 (20.3.03) <http://www.homeoffice.gov.uk/rds/section951.html>

<sup>5</sup> Arrests for Notifiable Offences and the Operation of Certain Powers under PACE, England and Wales 2001-02 HOSB 12/02 <http://www.homeoffice.gov.uk/rds/pace1.html>

## INITIAL RACE EQUALITY IMPACT ASSESSMENT OF THE PROVISIONS RELATING TO PART 7: TRIALS ON INDICTMENT WITHOUT A JURY, IN THE CRIMINAL JUSTICE BILL

### The Wider Context

1. Trial by magistrates is the norm for the vast majority of cases (93.5% of defendants are tried in magistrates' courts<sup>6</sup>), jury trial is reserved for more serious cases. These proposals deal with the very real difficulties of managing trials in a small number of fraud and other long and/or complex financial cases and in cases involving jury tampering. The Bill also provides for defendants to opt for trial by judge-alone with the consent of the court. These provisions will extend to England, Wales and Northern Ireland.

2. Each year, a small number of trials are stopped because an attempt has been made to intimidate or otherwise interfere with the jury, or with jurors' family and friends. In some cases there have been repeated attempts to pervert the course of justice. The courts currently order police protection in cases where there is a serious risk that jury tampering will take place. However, this protection, which may have to continue over a period of many months, can be extremely disruptive for jurors and cannot protect juries against the most sophisticated and covert approaches. In cases where the nature and extent of jury tampering threatens the fairness of the trial, the courts currently have no option other than to discharge the jury and terminate the trial. It is clearly completely unacceptable that trials should be wrecked, and due process subverted, in this way. The difficulties in managing cases involving jury tampering were highlighted in a letter from Ian Blair Deputy Commissioner Metropolitan police, to the Times on 15 July in which he highlighted the extent of the problem and the police's support for these provisions:

*"The effectiveness of an officer's presence cannot be realistically measured. If a juror, or a member of their family, were prepared to accept payment for prejudicing a trial our current protection arrangements would be unlikely to identify or prevent this. Jurors' mail, telephone calls and bank accounts are not intercepted or vetted so if covert approaches were made in this way police would not know.*

*The police believe the only viable alternative to protecting juries where there is a real risk of intimidation is to remove the jury and allow the judge to hear the evidence sitting alone. The Diplock Courts in Northern Ireland are a working example of this and an acknowledgement that jury intimidation can be an effective tool in the hands of those willing to use it. If the system is not improved here, there is a fear we may face violent and sophisticated criminals who become untouchable.*

*Chief constables have therefore today written a letter to members of both Houses of Parliament stating their support for those provisions of the Criminal Justice Bill which will allow a judge to hear a case without a jury in the face of a realistic threat of intimidation."*

3. In some serious fraud cases even after the charges have been pared down or severed to make them manageable by a jury, there can be problems with empanelling a jury because of the estimated length of the trial. The Serious Fraud Office have offered the following example, amongst others, to illustrate this problem:

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<sup>6</sup> CPS Annual Report 2002-2003

*"The case of R v Clark, Inett, Saull and Mudbar was estimated to last until June. The First attempt to empanel the Jury was made on 5 February 2003. Of the 30 panel members, only 6 were able to do the trial. A second attempt was made on 10 February 2003 from which only two more jurors were able to participate. A third attempt was needed on 17 February 2003 before the full jury could be empanelled. The factors cited were in the main the length of the trial and the effect on jobs and holidays."*

4. The complexity and unfamiliarity of sophisticated business techniques often means that the prosecution must pare down serious fraud cases in order to make them manageable by a jury, or sever the charges. This can mean that the full criminality of such frauds is not exposed. This risks a double standard of easy to prosecute 'blue-collar' crime and impossible to prosecute 'white collar' crime.

5. Far from attacking jury trial, we are enhancing jury service by amending the Juries Act 1974 to ensure that juries better reflect all sections of society (Schedule 27) and increasing our trust in juries by giving them more information such as relevant previous convictions (Part 11). Jury trial will continue to be the norm for the vast majority of serious cases where the defendant requests it. We expect the proposals for non-jury trial in long and/or complex fraud cases to affect no more than 15-20 cases each year and those for jury tampering cases around 20. The Criminal Justice Bill respects and safeguards this central principle of our justice system

### **The Provisions**

#### *Clause 41: Applications by the defendant for the trial to be conducted without a jury*

6. The Criminal Justice Bill gives effect to Sir Robin Auld's recommendation that a defendant being tried in the Crown Court should, with the consent of the court, be able to opt for trial by judge alone, instead of by a judge and jury.

7. We anticipate that in the majority of cases, an application by a defendant to have their trial heard without a jury will be granted by the court. However, Clause 41 sets out certain exceptional circumstances in which the defendant's application must be refused, and the trial heard by a judge and jury. There will be rare occasions where the public interest demands a jury trial: for example, cases involving the administration of justice. These are cases which might be characterised as having particular significance for the administration of justice itself: for example, serious offences of perverting the course of justice. Subsection (6) of the Bill makes similar provision for cases where the defendant making an application to be tried without a jury is, or was, in employment connected with the administration of civil or criminal justice: for example, a judge, prosecutor or police officer. The offences with which he is charged may or may not relate to his job, but they must raise serious doubts about his fitness for his employment. These sorts of cases are more appropriately heard with a jury, not because they will be fairer, as both sorts of trial will deliver equal justice, but because jury trial in these circumstances will bring a measure of external ventilation into what might otherwise seem a closed system: the criminal justice system trying itself.

8. In addition, on a trial where there is more than one defendant, and one or more of them wants a jury trial, the judge must refuse an application by any of the other defendants for a judge-alone trial.

9. Allowing defendants to opt for trial by judge alone provides them with a choice. The provision has the potential to provide a simpler and more efficient form of trial without adversely affecting the defendant's interests.

### *Clause 42: Judge-alone trials in long and complex financial cases*

10. Clause 42 makes provision for the prosecution to apply for certain long or complex trials to be conducted without a jury. The length or complexity must be caused by the need to address arrangements, transactions or records of a financial or commercial nature or which relate to property. The case must also be either so difficult to manage with a jury that it would be sufficient in the interests of justice to conduct it without one, and/or likely to be excessively burdensome to a jury.

11. These provisions address long-standing concerns about the particular problems posed for trial by jury in a handful of serious fraud and fraud-related cases. In serious fraud cases, the jury is expected to consider difficult and highly technical material in the course of a trial that can last for many months, and some cases have lasted for over a year. This places an unacceptable burden on jurors' working and personal lives, and, as explained above, can make it difficult to find a jury.

### *Clauses 43 and 45: Jury tampering*

12. Clause 43 makes provision for a prosecution application for trial by judge alone where there is a risk of jury intimidation. For this to occur, there must be a real and present danger that jury tampering would take place; where police protection is necessary, its level and duration must be such as to place an excessive burden on a juror; and/or the risk of jury tampering must remain sufficiently high, despite any action (including police protection) that could reasonably be taken to prevent it, that it would be necessary in the interests of justice for the trial to be conducted without a jury.

13. Clause 45 provides that where the jury has been discharged because of tampering in a trial already under way, the judge will continue the trial sitting alone unless he considers it necessary in the interests of justice to terminate the trial. In this event, he will have the option of ordering that any new trial take place without a jury, subject to satisfying himself that the conditions described above are likely to be met.

### **Relevance**

14. In the Black Londoners Forum's response to the CJ Bill it was stated that they believed that:

*"Proposals to take away the right to jury trial will further discriminate against ethnic minorities and serve only to entrench rather than dismantle racism in the criminal justice system. The proposals would favour middle-class, white-collar people, clog up our courts with appeals and penalise ethnic minorities who opt for a jury trial more often, because they have less confidence in magistrates and the police."*

15. The Government rejects this claim for the following reasons:

- Jury trial will continue to be the norm for the vast majority of serious cases. The Criminal Justice Bill respects and safeguards this central principle of our justice system.
- The Bill only seeks to deal with a small number of cases where there are clear difficulties in conducting a trial by jury. It addresses, the significant problems of managing trials in certain fraud and other complex financial cases and in cases involving jury tampering and the risk of intimidation.

- Far from taking away the right to trial by jury or discriminating against particular groups in society, these measures will help to ensure fair trials and secure justice in the few cases where jury trial would not.

16. In addition, findings of a recent report on ethnic minorities' perceptions of fairness and equality of treatment in the criminal courts<sup>7</sup>, has revealed that the perceptions of racial bias appear to be less widely held than in the past. The proportion of defendants who said their treatment had been unfair was approximately:

- 31% in the Crown Court; and
  - 26% in the magistrates' courts;
- with little difference between ethnic minority and white defendants.

When asked whether this treatment had anything to do with ethnicity, a lower proportion said yes:

- 20% of black defendants in the Crown Court and 10% in the magistrates' courts; and
- 12.5% of Asian defendants in both types of court.

These figures actually show that the proportion of defendants who feel they are treated fairly, is higher in the magistrates' court than it is in the Crown Court.

17. During the passage of the Criminal Justice Bill through the House of Commons some speakers raised concerns about fairness to ethnic minority complainants in the clause 41 provisions, these concerns were echoed in the Lords<sup>8</sup>. Essentially there are fears over the possibility of a perceived injustice to a BME victim in a race-related case where the white defendant has opted for trial by a single white judge rather than by a jury. There is no objective data on whether white judges are likely to be more lenient towards white defendants in race cases. In a broader context the findings of the report (Hood, Shute and Seemungal) found that:

*"Many lawyers reported that racial bias or inappropriate language in court was becoming a 'thing of the past.'"*

18. It is also worth pointing out the concerted efforts made by the Lord Chancellor to increase diversity among the ranks of the judiciary. These include the creation of the Commission for Judicial Appointments in March 2001; improvements to judicial selection procedures; and a series of educational initiatives designed to encourage applications for judicial appointments by ethnic minority lawyers.

19. These concerns were also extended to rape cases where the perception may be that minority ethnic women suffer from double disadvantage. In this respect it is worth noting that Judges who try rape cases must be authorised for that purpose by the Senior Presiding Judge, with the concurrence of the Lord Chief Justice. Those judges selected for authorisation must attend a seminar on serious sexual offences, and are expected to attend further such seminars when requested to do so. Great care is taken to ensure that those Circuit Judges so authorised have sufficient experience and sensitivity to preside over rape trials.

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<sup>7</sup> Hood, Shute and Seemungal, *Ethnic Minorities in the Criminal Courts, Perceptions of Fairness and Equality of Treatment* March 2003

<sup>8</sup> Vera Baird, Commons, 19 May 2003, col 762; Baroness Anelay of St. Johns, Lords, 16 June 2003, col. 567.

## Safeguards

20. The CRE have suggested that there may be a perception that prosecution applications under Part 7 are more likely to be generated in cases concerning BME defendants. Again there is no evidence to support this. There is a high threshold for a judge to accept an application by the prosecution under these provisions. He will have to be satisfied that the case meets the test outlined in these clauses. There is also a right of appeal against an order for trial without a jury, allowing appeals from both the defence and the prosecution<sup>9</sup>. In addition to this the Bill provides that where a trial is conducted without a jury and the court convicts a defendant the court must give a reasoned judgement identifying the principles of law that he has applied, and his findings on the evidence. Although juries are not required to give a reasoned verdict, the requirement for a reasoned judgement in cases heard without a jury provides an important safeguard for the defendant, this provision therefore gives an additional safeguard to juries.

21. The Judicial Studies Board issues guidance to all judges on equal treatment issues including race in the Equal Treatment Bench Book. The Board provides compulsory induction training for part-time judges before taking up their first appointment and continuation training for all judges at 3 year intervals. Judges almost invariably attend these course and if they wish to be excused they must get agreement from the Committee Chairmen of the Judicial Studies Board. Equal treatment issues, including race are embedded into these training programmes which are devised following advice and contributions from the Judicial Studies Board's Equal Treatment Advisory Committee. Although an evaluation of this training has yet to be conducted at the Equal Treatment Advisory Committee, it has made a commitment to take this forward and will be considering how the training might best be evaluated at its next meeting in September.

22. Along with these safeguards it is also worth noting that decisions particularly under the jury tampering provisions will be left to a great extent to judicial discretion. The Government has the utmost confidence in the judiciary to balance the arguments correctly and to make the right decision and that leaving such a decisions to judicial discretion is no cause for concern.

23. The Home Office is currently considering how these provisions in the Criminal Justice Bill will be monitored and evaluated.

Home Office  
Criminal Procedure and Evidence Unit  
July 2003

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<sup>9</sup> See Clauses 44 (5) & (9) and Clause 46 of the Criminal Justice Bill

## **PARTIAL RACE EQUILITY IMPACT ASSESSMENT OF THE PROVISIONS RELATING TO PART 10: RETRIAL FOR SERIOUS OFFENCES, IN THE CRIMINAL JUSTICE BILL**

### **The Wider Context**

At present, the law does not permit the retrial for the same offence, of a person who has been acquitted of that offence, even if new evidence comes to light. The Government is proposing to reform the law to allow retrials in the case of serious offences, where new and compelling evidence has come to light which is relevant to the guilt of the acquitted person. The proposed reform of the double jeopardy rule<sup>10</sup> arose out of the Macpherson Inquiry into the handling of the Stephen Lawrence case<sup>11</sup>. Although the Government acted upon that report this is not intended to be an attempt to remedy unpopular acquittals, such as that of the Lawrence case. The Attorney General stated in the House of Lords that the provisions contained in Part 10 of the Criminal Justice Bill were not “*the making of law for a single case*”<sup>12</sup>. Reform in this area has since been backed by the Law Commission<sup>13</sup>, Lord Justice Auld’s Review of the Criminal Courts<sup>14</sup>, and the Home Affairs Committee<sup>15</sup>.

2. The Government signalled its intention to bring forward legislation in line with Lord Justice Auld’s recommendation in the White Paper, *Justice for All*.

3. The alternative would be not to pursue these provisions, which would leave open cases where serious offences have been committed, new and compelling evidence is available, yet the law does not allow anyone to be brought to justice. This would have an adverse effect on the victims of serious crime and on public confidence in the criminal justice system as a whole.

### **The Provisions**

4. The Government believes that there should be a limited exception to the Double Jeopardy rule that allows for a retrial following a defendant’s acquittal for a range of serious offences, where new and compelling evidence relating to the guilt of a defendant has come to light. The relevant provisions are set out in Part 10 of the Criminal Justice Bill 2003, which is currently before Parliament. The main elements of the provisions are in the following clauses:

Clause 69 sets out the cases that may be retried. The list of ‘qualifying offences’ is contained in Schedule 4. These are all serious offences that, in the main, carry a life sentence.

Clause 70 outlines the procedure for a prosecutor to apply to the Court of Appeal to quash a suspect’s acquittal and order a retrial for a qualifying offence. Applications to the Court of Appeal require the personal written consent of the Director of Public Prosecutions (DPP). He will have to consider whether it is in the interests of the public to proceed.

Clause 71 sets out the decisions the Court of Appeal may make in response to an application for an acquittal to be quashed.

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<sup>10</sup> The ‘Double Jeopardy rule’ means that a person who has been previously acquitted or convicted of an offence may not be prosecuted for the same offence again.

<sup>11</sup> Recommendation 38 of the Macpherson Inquiry.

<sup>12</sup> Hansard (HL) 17 July 2003, column 1074

<sup>13</sup> Law Commission No.267

<sup>14</sup> Lord Justice Auld’s Review of the Criminal Courts, October 2001, The Stationery Office

<sup>15</sup> Home Affairs Committee, Third report, 17 May 2000

Clause 72 specifies that there must be ‘new and compelling’ evidence against the acquitted person. It goes on to define what is meant by ‘new’ and ‘compelling’. Clause 73 sets out that the Court of Appeal must consider whether it is in the interests of justice to quash an acquittal and order a retrial. The Court may take into account any factors which it considers relevant in determining this.

Clause 76 allows the Court to impose reporting restrictions in respect of matters beginning from the application to the Court of Appeal until the end of the retrial or at the stage at which it becomes clear that a person cannot be retried. This is intended to prevent prejudicial publicity which might affect a potential jury. Only the DPP may apply for reporting restrictions, and the Court will decide the whether the restrictions are necessary in the interests of justice.

Clause 78 relates to the authorisation and conduct of the police investigation. The DPP must give his consent before major steps in an investigation may begin which impinge directly on the acquitted person. The DPP may only give his permission upon a written request from a very senior police officer and only if he is satisfied that the evidence presented to him is sufficient to justify the reinvestigation. Clause 79 allows action to be authorised by a senior police officer in certain limited and urgent circumstances.

## **Relevance**

5. We consider that these measures are likely to have a low relevance to issues of race equality, as there are no grounds to consider that the provisions can, or will in practice, impinge adversely or differentially on any particular ethnic group. Whilst the proposals clearly change the current position of acquitted persons in cases where new evidence is available, we see no reason to believe that this will impact adversely on black or ethnic minority groups.

6. Lord Justice Auld, in his Review of the Criminal Courts, recommended an exception to the Double Jeopardy rule. The Government signalled its intention to bring forward legislation in line with this recommendation in the White Paper, *Justice for All*. From a race equality perspective very few responses to the Auld Report and the Government’s White Paper were received concerning this issue. Kirklees Race Equality Council supported Auld’s recommendation on the reform of the double jeopardy rule.

7. However, concern was expressed by the Commission for Racial Equality. The Commission considered that the relaxation of the Double Jeopardy rule could lead police officers to develop a ‘get them next time’ mentality in relation to ethnic minorities<sup>16</sup>. We consider this to be unjustified for the following reasons:

- The Government has provided safeguards against this. The Court of Appeal would consider both the strength of any new evidence, and will take into account whether there had been any lack of due diligence or expedition by the police or prosecutors either in the original investigation or in handling new evidence before it would order a retrial. This will ensure that there can be no ‘second bite of the cherry’ simply because the police disagreed with an acquittal.
- Moreover, genuinely new and compelling evidence would have to be found and only with the agreement of the Director of Public Prosecutions and the Court of Appeal could the police attempt to bring a retrial.

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<sup>16</sup> Commission for Racial Equality letter to Lord Falconer 11 June 2003 point 1

8. Concern was also expressed by the Black Londoner's Forum. They considered that a relaxation of the double jeopardy rule could lead to repeated prosecutions of 'unpopular defendants' and that ethnic minority defendants would suffer the most<sup>17</sup>. The Home Office considers the Black Londoner's Forum assertion to be incorrect for these reasons:

- The Bill allows for only one retrial and, as explained above, this will only occur in cases where new and compelling evidence comes to light. There is no suggestion that there could be repeat prosecutions of 'unpopular defendants'.
- The Bill has ample safeguards against potentially over zealous policing.

9. Given that the Government expects there to be no more than a handful of cases per year that would qualify for retrial under the exception there is no reason to expect there to be an adverse racial impact.

### Safeguards

10. These provisions are subject to a range of safeguards, in particular:

- The offences subject to retrial are limited to the most serious offences;
- The Director of Public Prosecutions or, in urgent cases, a senior police officer, must authorise actions to re-investigate a qualifying offence where these impinge directly on the acquitted person;
- The Director of Public Prosecutions will personally review all cases which are to be referred to the Court of Appeal;
- Reporting restrictions may be imposed to guard against adverse publicity;
- In addition to considering whether there is new and compelling evidence in the case, the Court of Appeal will also consider whether a retrial would be in the interests of justice, taking account of such factors as:
  - Whether a fair trial would still be possible (given, for example, any previous adverse publicity in notorious cases)
  - Whether there has been any lack of due diligence or expedition by the police or prosecutors either in the original investigation or in handling new evidence.
- Only one retrial will be permitted in any case: there is no question of repeated attempts at retrials.

11. Given the small number of cases involved, the Government has not yet decided whether ethnic monitoring of these provisions should be undertaken. The Home Office is however consulting with the CPS upon possible monitoring mechanisms.

Home Office,  
Criminal Procedure and Evidence Unit,  
July 2003

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<sup>17</sup> Information available on [www.blacklondon.org.uk](http://www.blacklondon.org.uk)

## INITIAL RACE EQUALITY IMPACT ASSESSMENT OF EVIDENCE OF BAD CHARACTER PROVISIONS IN THE CRIMINAL JUSTICE BILL

### The Wider Context

The Bill abolishes the current common law and statutory rules governing the admissibility of evidence of bad character, replacing them with a new codified scheme that sets out the circumstances in which this evidence can be used in a criminal trial. The new rules enable relevant evidence of misconduct, including previous convictions, to be admitted unless there is a good reason for it to be excluded. This is part of a wider policy of reforming the rules of evidence to allow the court access to a greater range of relevant evidence.

2. The Government's proposals were set out in the White Paper *Justice for All* (Cm 5563) in July 2002. Previously, the Law Commission had conducted and published a comprehensive review of this area of the law: *Evidence of Bad Character in Criminal Proceedings* (Law Com Report No 273, October 2001). Lord Justice Auld had also considered the rules of evidence, including those relating to a defendant's previous misconduct, in this Review of the Criminal Courts (October 2001). The proposals set out in the White Paper, and taken forward in the Bill, have been informed by both reports.

3. In their report, the Law Commission concluded that: *"The present law suffers from a number of defects ... they constitute a haphazard mixture of statute and common law rules which produce inconsistent and unpredictable results, in crucial respects distort the trial process, make tactical considerations paramount and inhibit the defence in presenting its true case to the factfinders whilst often exposing witnesses to gratuitous and humiliating exposure of long forgotten misconduct"*. Lord Justice Auld also found that *"It has long been acknowledged that the law in this area is highly unsatisfactory in its complexity and uncertainty"*. He considered that the rules of evidence generally should move away from technical rules of admissibility to trusting magistrates and juries to give relevant evidence the weight it deserves. In light of this criticism of the current position, the Government has concluded that not reforming this area of the law would be unsatisfactory.

4. In a consultation paper<sup>18</sup> that preceded its final report, the Law Commission considered a number of models for reform. After its preferred option, which formed the basis of its subsequent recommendations, the Law Commission found that most support was given to reading out a defendant's full criminal record at the start of every trial. This option was also canvassed by Lord Justice Auld in his Review. The Government considered this option and rejected it in *Justice for All*: some previous convictions may be irrelevant to the instant charge and there is a risk of prejudice in revealing others that needs to be taken into account.

### The Provisions

5. Clause 90 of the Bill (as introduced in the House of Lords) defines what is meant by 'evidence of bad character' and therefore what evidence must meet the requirements of the legislation before it can be admitted. The definition has two strands. The first strand covers evidence that shows or tends to show that the person has committed an offence – for example, a previous conviction for an offence. The second strand is that the person has behaved, or is disposed to behave in a way that in the opinion of the court may be viewed with disapproval by a reasonable

<sup>18</sup> Evidence in Criminal Proceedings: Previous Misconduct of a Defendant (1996, Law Com No 141).

person - an objective test for evidence that might provoke feelings of antipathy and which should therefore be subject to particular rules before it is admitted. Together, the two strands are intended to cover a wide range of evidence that might require particular consideration before it is put before a court.

6. Clause 92 deals with the circumstances in which evidence of the bad character of witnesses and other non-defendants (such as victims and third parties) can be given. Clause 93 sets out the circumstances in which this sort of evidence can be admitted in respect of defendants. This is aimed at making evidence of a defendant's bad character admissible where it has a clear bearing on the case and it is appropriate for it to be heard.

7. The provisions do not extend to Northern Ireland but an Order in Council may be made for that jurisdiction that deals with this area of the law. The Bill (clause 303) enables such an Order to be made under the negative resolution procedure.

### **Relevance**

8. Two important research studies have been conducted by Professor Sally Lloyd-Bostock into the effect on the jury and magistrates of hearing of a defendant's previous convictions: The effect on Juries of Hearing About the Defendant's Previous Criminal Record: A simulation Study [2000] Crim LR 734, and The Effects on Magistrates of Learning that the Defendant has a Previous Conviction (LCD Research Series No. 2/00). The admission of previous convictions also formed part of research conducted by Professor Michael Zander and Paul Henderson for the Royal Commission on Criminal Justice that reported in 1993: see Research Study No. 19, Crown Court Study. However, these studies did not consider the question of admission or impact from a racial angle.

9. The CRE have expressed concern that any test of character, subject to interpretation, may give rise to indirect discrimination. There is, however, some difficulty in assessing the extent to which there might be such an effect in practice and if so its impact: a major gap in the current information available on the way that ethnic minorities are dealt with by the criminal justice system is the lack of data concerning the prosecution process. In her qualitative study of the social construction of drug offence trials, involving 24 black and 20 white defendants, Kalunta-Crumpton (1999) argued that the prosecutors and judges present comparable cases differently according to the ethnic origin of the defendant. Increasing the extent to which character evidence can be admitted might have an impact on this. However, even so, it is difficult to know what overall effect this might have: evidence that is available on the likelihood of conviction at trial suggests that BME groups are less likely to be convicted. Research by Barclay & Mhlanga (Ethnic Differences in Decisions on Young Defendants dealt with by the Crown Prosecution, Section 95 Findings No. 1, 2000) showed 78% of white defendants were convicted as against 68% Asian and 69% black defendants, although this does not address the question of likelihood for comparable defendants and raises questions about, for example, the sufficiency of evidence for prosecution in cases involving BME defendants.

10. On that, there might be a further concern of disproportionate impact if this sort of evidence is used to bolster weak cases<sup>19</sup>. Safeguards to seek to counter such an effect, in terms of the tests for admitting this sort of evidence and CPS practice are discussed further below.

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<sup>19</sup> See, for example, the report of the Home Affairs Committee on the Criminal Justice Bill (HAC 2<sup>nd</sup> Report of 2003-03, 4 December 2002).

11. Also potentially significant is the over-representation of black and minority ethnic groups in the CJS: if, a BME defendant is more likely to have a previous conviction then the policy might be thought to have a disproportionate effect on these groups. Over-representation in the criminal justice system has been well documented: statistics published under section 95 of the Criminal Justice Act 1991 on Race and the Criminal Justice System 2002 show that whilst only 5.6% of the population aged over 10 are from a minority ethnic group, these groups account for 14.5% of arrests and 18% of the prison population. However, it is difficult to extrapolate from this that a BME defendant is more likely to have a previous conviction that could be revealed in evidence than a white defendant. Coid *et al* 2002a: 475<sup>20</sup> found that black male and female prisoners reported fewer previous convictions at the time of their conviction. And, data published in Prison Statistics show that 60% of whites were reconvicted within two years of release, compared with 57% for black prisoners, and 46% for Asian prisoners. However, firm conclusions cannot be drawn from these statistics on the likelihood of defendants having a previous conviction.

12. We are not, however, complacent on either account and care has been taken to ensure that the legislation contains safeguards to ensure that evidence is only admitted where it has a clear bearing on a case and can be excluded if it would be more prejudicial than of assistance to a court in deciding a case. These are discussed further below, with wider safeguards that operate or are being developed across the criminal justice system.

### **Safeguards**

13. The Bill's provisions are drafted to ensure that evidence of bad character will only be admitted where it has a clear bearing on a case. Broad assertions of character that are designed simply to portray the defendant (or a witness or other person) in a poor light and add nothing to the courts consideration of the issues will therefore not be admissible. The scheme also includes, in respect of defendants, an exclusionary test that operates to prevent evidence being admitted where it would create unfairness. This is intended to cover circumstances where the risk of prejudice being caused by the evidence exceeds the relevance it has to the issues in the case. Therefore evidence of previous convictions will only be admitted when they can properly and fairly assist the court.

14. Of equal importance in this context is the wide range of relevant evidence that is covered by the definition in clause 90. It is important to recognise that it is not enough for evidence to come within the definition for it to be given in court: it must also satisfy the requirements in clause 92 (for witnesses and others) or clause 93 (for defendants). However, the scope of the definition ensures that a wide range of relevant evidence can be heard. For example, this may include evidence of previous racist behaviour on a racially aggravated charge.

15. There is also an important wider context in which these provisions will be applied. For example, the prosecution has a key role to play in reviewing the charges in a case (a role that will be enhanced under the Bill so that they decide what charges are to be brought in more serious and non-routine cases) and in deciding which evidence should be presented in court. This is an important function to ensure that evidentially weak cases do not reach the courts. The CPS has implemented compulsory diversity awareness training for all staff, which is now part of induction training. And the CPS diversity monitoring project is looking at CPS decision making and whether there is any evidence of bias on race grounds. Its findings and any follow up action will clearly have an important bearing on the CPS's quality assurance role for the prosecution process. More immediately, the HM CPS Inspectorate thematic on casework, with its race dimension, and the resulting Action Plan (and the follow up review) provides some quality assurance of the prosecution

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<sup>20</sup> Coid, J., Petruckevitch, A., Bebbington, P., Brugha, T., Bhugra, D., Jenkins, R., Farrell, M., Lewis, G. and Singleton, N. (2002a) 'Ethnic Differences in Prisoners 1: Criminality and Psychiatric Morbidity', *British Journal of Psychiatry* 181 473-480.

process and decision making in that it dealt with both crimes based on the race of the victim and CPS practice relating to ethnic minority defendants.

16. Judicial training on diversity issues will also mean that judges and magistrates applying these rules will have an understanding of any diversity issues that may arise. The Judicial Studies Board issues guidance to all judges on equal treatment issues including race in the Equal Treatment Bench Book. The Board provides compulsory induction training for part-time judges before taking up their first appointment and continuation training for all judges at 3 year intervals. Equal treatment issues, including race are embedded into these training programmes which are devised following advice and contributions from the Judicial Studies Board's Equal Treatment Advisory Committee. Compulsory Diversity and Equality Treatment training for magistrates is also delivered by the Judicial Studies Board as part of the Magistrates' National Training Initiative.

17. More widely, the Criminal Justice System Race Unit has been set up to work with stakeholders, Criminal Justice Agencies and Local Criminal Justice Boards to develop a better understanding of the scale and causes of the under and over-representation of people from ethnic minorities in the criminal justice system. It has also been tasked with proposing a programme of action that will make faster progress in eliminating discrimination in the CJS, and championing the implementation of agreed measures. There is, for example, a fundamental review of the statistics to improve the information we have on race and the criminal justice system, including court processes. This will contribute to a better understanding of that process and to the further development of our policy.

18. The Home Office is currently considering how these provisions in the Criminal Justice Bill will be monitored and evaluated.

Home Office  
Criminal Procedure and Evidence Unit  
July 2003

## **INITIAL RACE EQUALITY IMPACT ASSESSMENT OF GENERAL LIMIT ON MAGISTRATES' COURTS' POWER TO IMPOSE IMPRISONMENT PROVISION IN THE CRIMINAL JUSTICE BILL**

### **The Wider Context**

The Criminal Justice Bill introduces a new sentencing framework that will replace all sentences currently available with a new range of sentences. This increase in magistrates' sentencing powers was included in the Government White Paper 'Justice for All' published July 2002. In accordance with the new sentencing provisions and a desire for the magistrates' courts to retain more cases, clause 146 makes changes to magistrates' sentencing powers.

### **The Provisions**

2. Clauses 146 and 147 of the Criminal Justice Bill extend magistrates' sentencing powers from the current 6 months to 12 months, and from 12 months to 15 months in respect of two or more offences to be served consecutively. This extension has been introduced for two reasons: to accompany the changes to allocation procedure in the Part 6 of the Bill and encourage magistrates' courts to retain more cases; and to allow magistrates to pass the new short custodial sentences in full<sup>21</sup>.
3. Clause 148 provides an order-making power, subject to affirmative resolution, to extend the limits further to 18 months for a single offence and 24 months for consecutive sentences. This reserve power will be deployed only once the increase to 12 months is seen to be working well and the magistrates can demonstrate that they are making effective use of their new powers.
4. Explanation of the provisions is contained in paragraphs 419 to 421 of the explanatory notes. These provisions do not extend to Scotland or Northern Ireland.

### **Relevance**

5. The Commission for Racial Equality expressed concerns in their letter of 11 June 2003 that the extent of magistrates' sentencing powers may exacerbate racial differentials in sentencing.
6. The Commission for Racial Equality's response of 7 October 2002 to the Justice for All consultation identified the increase in magistrates sentencing powers proposal as one that 'substantially diminishes suspects'/defendants' rights and safeguards'.
7. In order to establish what impact the increase in magistrates sentencing powers will have upon minority ethnic groups, it is firstly necessary to establish what, if any, evidence there is to support the view that minority ethnic groups have a different experience of sentencing in magistrates courts than their white counterparts.
8. There has only been limited research into the effect of race upon sentencing in the magistrates' courts and many of the studies that do exist are based upon small samples that have not

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<sup>21</sup> Clause 174- 'Prison sentences of less than 12 months' sets out the structure of the new short custodial sentences

isolated race from other factors that influence sentencing, thus undermining the validity of the results.

9. A Home Office Research Study into sentencing practice<sup>22</sup> based on a survey of 3,000 magistrates' courts cases and 1,800 Crown Court cases, found that in Crown Courts there was 'no evidence that black or Asian offenders were more or less likely than whites to receive a custodial sentence when other factors were taken into account'. However, analysis of the data from magistrates' courts did reveal that Asian men were significantly more likely to be sentenced to custody than would have been expected on the basis of their offence and other factors and that slightly more white and black offenders received a community sentence whilst a higher proportion of Asian men were fined. In contrast, Section 95 statistics from six areas demonstrated that use of custody in magistrates' courts was slightly higher for white offenders (14%), to that of black offenders (12%) and Asian offenders (11%).

10. Roger Hood's study<sup>23</sup> into the effect of race upon sentencing in Crown Courts that did 'isolate' the 'independent effect' of ethnic origin on sentencing outcomes found that there was a 5% greater probability of black people being sentenced to custody compared with their white counterparts. The study also found that Asians, on average, were sentenced to nine months longer and black defendants, three months longer than whites. However, this study did not examine the effect of race upon sentencing in the magistrates' courts. Hood, Shute and Seemungal's<sup>24</sup> more recent study acknowledges that "*substantial efforts have been made during the past decade to raise the level of ethnic awareness and sensitivity among the judiciary and others involved in court proceedings*". The report also states that "*given the changing circumstances since an objective study of sentencing practices in the West Midlands in 1989 was carried out (Roger Hood, Race and Sentencing 1992), it is not possible to say whether that perception of differential racially biased sentencing has any basis in objective evidence.*"

11. Whilst these studies do demonstrate that there is evidence to support the view that race may impact upon sentencing decisions, the differential findings from these studies make it clear that more research is required in this area.

12. Research on committals supports the fact that there is a difference in the experience of minority ethnic groups compared to white defendants. NACRO<sup>25</sup> study's findings were consistent with others (including the s.95 statistics for six areas), in finding much higher committal rates for ethnic minority defendants. The implications of these different rates of committal upon sentences received is however inconclusive. There has been research conducted (Hedderman & Moxon 1992) demonstrating that in cases which are tried in the Crown Court, a convicted defendant is likely to face a harsher sentence than they would have done had they been sentenced in the magistrates' court. In that study, for triable-either-way offences immediate custody comprised 43% of Crown Court sentences but only 6% of magistrates' court sentences. However, the same study also found that Crown Courts regularly sentence within magistrates' sentencing powers where cases have been committed to them for sentence<sup>26</sup>. Ultimately, more research needs to be done in this area, in the meantime there is not enough research to prove that a differential in committal rates leads to a corresponding differential in sentences passed.

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<sup>22</sup> Flood-Page & Mackie (1998) Sentencing Practice: an examination of decisions in magistrates' courts and the Crown Court in the mid-1990's HORS 180

<sup>23</sup> Roger Hood, Race and Sentencing (Oxford University Press 1992)

<sup>24</sup> Roger Hood, Stephen Shute and Florence Seemungal, Ethnic Minorities in the Criminal Courts, Perceptions of Fairness and Equality of Treatment (Lord Chancellor's Department Research Series No. 2/03 March 2003)

<sup>25</sup> NACRO (unpublished literature review)

<sup>26</sup> Some have argued that this demonstrates that magistrates sentence more harshly than Crown Courts this must be contested on the grounds that when committing for sentence, magistrates do not have all of the information before them that the Crown Court may have (including information on mitigating factors)

13. This brief summary of research findings illustrates the complexity of research into race and sentencing. The lack of any conclusive findings makes it impossible to establish whether the increase in magistrates sentencing powers will have an adverse effect upon minority ethnic groups.

14. As regards committals, the research evidence demonstrates that a greater proportion of ethnic minority offenders are committed to the Crown Court for sentence, though the impact of this upon sentences is unclear.

### **Safeguards**

15. In order to ensure that any differentials in sentencing outcomes for minority ethnic groups are minimised following the increase in magistrates' sentencing powers, the implementation of the sentencing reforms will be underpinned by training for magistrates delivered by the Judicial Studies Board. This training will supplement the compulsory Diversity and Equality Treatment training (part of the Magistrates' National Training Initiative) which covers issues concerning race and sentencing.

16. The research into ethnic minorities' perceptions of fairness and equality of treatment in the criminal courts (Hood, Shute & Seemungal 2003) suggested that in order to improve defendants perceptions of equal treatment they should be clearly informed at the point of sentence as to why a particular disposal has been given. In accordance with this recommendation, Clause 167 of the Criminal Justice Bill places a duty upon the court to give reasons for, and explain the effect of the sentence.

17. The Criminal Justice Race Unit in the Home Office are planning to undertake a more detailed analysis of sentencing trends in relation to race in the near future.

Home Office  
Criminal Justice Bill Team  
July 2003

## INITIAL RACE EQUALITY IMPACT ASSESSMENT OF THE FIREARMS PROVISIONS IN THE CRIMINAL JUSTICE BILL

### The Wider Context

The level of gun crime in this country remains low at 0.4% of all recorded crime, but there has been an unacceptable rise in recent years. In 2001-2 there were 9,974 recorded crimes in England and Wales in which firearms other than air weapons were used, compared with 7,362 in 2000-1. This represents an increase of over 35%. In the same period, 899 people were convicted of unlawful possession or distribution of prohibited weapons.<sup>27</sup>

2. The experience of the Metropolitan Police Service is that unlawful possession of prohibited weapons is predominantly associated with young people who carry guns for self-protection or as a means of gaining respect or revenge, often related to gangs and drugs. Research supports the link between guns and gangs<sup>28</sup>.
3. Despite a maximum penalty of 10 years imprisonment, the average custodial sentence in 2001 for unlawful possession of prohibited weapons was only 18 months.<sup>29</sup>
4. The Government is committed to addressing this situation. As part of its strategy on tackling gun crime, it has introduced into the Criminal Justice Bill provisions designed to deter criminals from using firearms and to ensure they receive appropriate sentences on conviction.

### The Provisions

5. The provisions appear in Part 12 of the Bill (clauses 271 to 276) and are explained in paragraphs 578 to 585 of the Bill's Explanatory Notes. They would apply to England, Wales and Scotland. It is the Government's intention that the provisions should also extend to Northern Ireland.
6. Clause 271 introduces a mandatory minimum sentence of 5 years imprisonment for unlawful possession of prohibited firearms (3 years detention for juveniles<sup>30</sup>). The minimum sentence applies to anyone aged 16 or over when the offence was committed.
7. Prohibited weapons are those guns and ammunition prohibited under section 5 of the Firearms Act 1968. They are the most dangerous types of firearm, such as handguns and automatic weapons, which are used by criminals and pose the greatest risk to the public.
8. It is important that the minimum sentence is imposed as widely as possible in order to send a strong message that carrying illegal firearms is unacceptable. However, the provisions are not directed at persons guilty of minor regulatory offences, such as where someone inadvertently forgets to renew his firearms authorities. With this in mind, clause 271 allows courts the discretion *not* to

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<sup>27</sup> Crime in England and Wales 2001/2002: Supplementary Volume (Home Office).

<sup>28</sup> Bullock and Tilley (2002) Shootings, Gangs and Violent Incidents in Manchester, developing a crime reduction strategy. Fitzgerald *et al* (2003) Young People and Street Crime: research into young people's involvement in street crime.

<sup>29</sup> Further analysis of sentencing statistics, published in Criminal Statistics, England and Wales, 2001 (Cm 5696), carried out by the Home Office Research, Development and Statistics Directorate.

<sup>30</sup> The age thresholds differ between England and Wales and Scotland, reflecting the different arrangements for juveniles. For England and Wales, the juvenile provisions apply to 16 and 17 year-olds. In Scotland, they apply to 16-20 year-olds.

impose the minimum sentence where there are exceptional circumstances relating to the offence or to the offender which justify doing so.

9. Clause 272 makes all offences to which the minimum sentence applies triable on indictment only. All cases will therefore be heard in the Crown Court.
10. Clauses 273 and 274 amend existing legislation on juveniles to allow the minimum sentence to be applied in those cases. Clause 275 provides an order-making power for the Secretary of State to disapply the minimum sentence for juveniles if in the future this is no longer necessary to tackle gun crime.
11. Clause 276 increases from 7 years to 10 years the maximum custodial sentence for smuggling prohibited weapons covered by the minimum sentence provisions.

### **Relevance**

12. The Government's intention to introduce a minimum sentence was announced in January 2003 and was subsequently included in the White Paper 'Respect and Responsibility'. No race equality concerns were expressed at the time. In his letter of 11 June to Lord Falconer, the Chair of the Commission for Racial Equality expressed concern that the minimum sentence "*may exacerbate racial differentials in sentencing*".

13. The Home Office has collected data from police forces in England and Wales on the ethnicity of persons cautioned for offences which would be covered by the minimum sentence (section 5(1) of the Firearms Act 1968). In 2000, cautions were given to 158 offenders. Of these, 17% were of black, Asian or 'other' appearance. The equivalent figure in 2001 was 13% (out of a total of 142).<sup>31</sup>

14. Less extensive data exists on the ethnicity of persons prosecuted and convicted of these offences. The Home Office has collected data from five police forces (Lancashire, Leicestershire, Northamptonshire, Northumbria and Nottinghamshire) and part of one other force (Bradford, Keighley and Wakefield in West Yorkshire). This data shows that of the 138 persons prosecuted in these areas in 2000, 21 (15%) were of black, Asian or 'other' appearance. Of those 21 persons, 17 were convicted (18% of all those convicted). In 2001, there were 133 prosecutions, of which 15 (11%) were of black, Asian or 'other' appearance. Of those 15 persons, 12 were convicted (13% of those convicted).<sup>32</sup>

15. The data indicates that members of BME communities are disproportionately represented in the number of cautions given for unlawful possession of prohibited firearms. The very limited data available also suggests that they are disproportionately represented in the number of prosecutions launched and the number of convictions. This over-representation may be attributed to the involvement of BME communities in gang and gun culture. As mentioned above, there is a trend among young people of carrying guns for self-protection or to gain 'respect', particularly in connection with the activities of gangs and the misuse of drugs. The experience of the Metropolitan Police Service is that BME communities are disproportionately involved in these activities.

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<sup>31</sup> Minority ethnic groups comprise 8% of the UK population (Census, April 2001, ONS).

<sup>32</sup> BME population within each police force area: Lancashire 5%, Leicestershire 11%, Northamptonshire 3%, Northumbria 2% and Nottinghamshire 4% (The Home Secretary's Employment Targets, January 2003). BME population in Bradford (including Keighley) 21.7%, Wakefield 2.3% (Census, April 2001, ONS).

16. Data collected by the Metropolitan Police Service indicates that BME communities stand to gain a disproportionate *benefit* from the minimum sentence. In 2001, there were 43 firearm homicides in the MPS area and 29 (67%) of the victims were of African-Caribbean, Indian/Pakistani or 'dark European' ethnicity<sup>33</sup>. In 2002, this figure had risen to 83% (30 out of a total of 36 firearm homicides). Home Office statistics show that there were 161 firearm homicides nationally during 1997-2000 and 81 (50%) of the victims were from BME communities<sup>34</sup>. This shows that members of the BME community are considerably more likely to be the victim of a firearm homicide. The minimum sentence will address this problem by deterring criminals from using firearms and by ensuring they receive appropriate sentences on conviction. Minimum sentence provisions are an important part of the Government's strategy for dealing with offenders who pose a significant risk to the public. The Government believes this kind of provision is effective as a deterrent to offending.

17. Although the minimum sentence is likely to be imposed to a greater extent on members of BME communities – which will, in turn, have a small impact on the BME proportion of the prison population - this may be attributed to the trend among young members of BME communities to become involved in gangs, and the use of guns by those gangs, rather than to discrimination. The minimum sentence is also likely to provide disproportionate *benefit* for BME communities, who are considerably more likely to be victims of shootings. Taking account of all these factors, the Government believes the disproportionate impact is justified.

### **Safeguards**

18. The police, CPS and courts will implement the provisions in line with their training and procedures for race equality issues. To date, over 130,000 police personnel have received training in racism awareness and cultural diversity, as recommended by the Stephen Lawrence Inquiry. The CPS has compulsory diversity training for all staff and has a diversity-monitoring project that looks at decision-making for evidence of bias on race grounds. Race equality issues are embedded into compulsory induction training for part-time judges and continuation training for all judges at 3-year intervals. The Judicial Studies Board issues guidance on race equality to all judges in the Equal Treatment Bench Book.

19. The Home Office will continue to collect statistics from the police on the ethnicity of firearms offenders and will use them to monitor the impact of the minimum sentence on BME communities.

Home Office  
Public Order and Crime Issues Unit  
July 2003

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<sup>33</sup> Minority ethnic groups comprise 29% of the Metropolitan Police Authority area (Census, April 2001, ONS).

<sup>34</sup> Statistics on Race and the Criminal Justice System 2000 (Home Office).

## **INITIAL RACE EQUALITY IMPACT ASSESMENT OF CLAUSE 284 – LIMIT ON PERIOD OF DETENTION WITHOUT CHARGE PROVISION IN THE CRIMINAL JUSTICE BILL**

### **The Wider Context**

The United Kingdom has had over three decades' experience of dealing with terrorism and the threat of terrorism. The threat to the United Kingdom from international terrorism remains real and at the level it was post September 11<sup>th</sup>. Similarly, the threat from Irish republican terrorism remains real, specifically from dissident groups.

2. Therefore legislative measures to prevent, counter and deal with terrorism and terrorists need to be robust whilst maintaining the United Kingdom's international Human Rights commitments.
3. Seven-day detention without charge for investigative purposes for terrorist suspects has been the long established standard in the United Kingdom. In the Prevention of Terrorism (Temporary Provisions) Act 1989 Part IV section 14 stipulated that the initial 48 hour period allowed under PACE could be extended by a further period or periods up to five days not to exceed the stipulated maximum on the approval of the Secretary of State. The Terrorism Act 2000 maintained the seven-day maximum but changed the review mechanism and authorising procedure from the Secretary of State to a court.
4. Consideration was given to maintaining the current period of detention with no change and also to the possibility of a more extended period than that proposed in the Criminal Justice Bill. Both possibilities were discounted.
5. A longer period than that proposed in the Criminal Justice Bill would be disproportionate and inappropriate. Maintenance of the current seven-day period unchanged would not enable the police to further investigate the complex cases of suspected terrorists who may represent a threat to national security. This would be equally unacceptable.
6. In relation to the provision proposed in the Criminal Justice Bill, Chief Constable Michael Hedges on behalf of ACPO (Terrorism and Allied Matters) said:
 

*"Terrorism in all its forms is now increasingly complex. In the majority of cases our investigations now have an international dimension and involve detailed investigative processes. These steps are often necessary before a decision on charging or releasing an individual can be reached."*

*"Additional time to complete a thorough investigation will add significantly to our ability to protect the public from the enduring threat from terrorism, whilst respecting the rights of individuals."*
7. Concerns over proportionate application of the power in racial impact terms applies equally to the current seven-day detention period as it could to the proposed extended period. There is no evidence to suggest that the availability of a longer period would lead to disproportionate application to minority groups as an arrest has to be the result of the suspicion of terrorism or terrorist activity.

8. It is essential to note that there are safeguards built into the extension and review procedure to ensure that the powers are applied in order to further an investigation. They cannot be used to target groups because of their race/religion.

### **The Provisions**

9. The aim of clause 284 of the Criminal Justice Bill is to extend the period for detention without charge for investigative purposes from the current maximum of seven days to a possible maximum of 14 days. This would be achieved by amending Schedule 8 to the Terrorism Act 2000.

10. The possibility of 14 days is designed to give the Police enhanced investigative powers in the small number of complex cases which require it. In an ever changing world the methodology and equipment available to terrorists has evolved greatly in sophistication and impact. The purpose of this amendment, therefore, is to allow the Police in some limited and very specific circumstances, under which the current 7 days may be insufficient time, the possibility of requesting further time to fully investigate the suspected terrorist offences in respect of which individuals have been detained. It is possible that on occasions where:

- computer equipment needs to be examined, and extracted data or hard drives analysed; or
- suspicious substances need to be tested and verified; or
- identities need to be established from false or multiple identities; or
- international investigation or verification needs to take place,

that an investigation may incur delays related to the police's capacity to question a terrorist suspect in relation to evidence pertinent to the case.

11. Although not impossible, it is anticipated that it would be unusual for any one of these factors to necessitate the police to make a request for a terrorist suspect to remain in detention beyond the 7 day maximum. However, it would be when there were a combination of these factors, often interdependent, that the police would have to work through in order to further their investigation that they would consider asking a court to grant them further time.

12. Terrorism is a reserved matter and this provision will be applicable to the whole of the United Kingdom.

### **Relevance**

13. The threat to the United Kingdom from international terrorism remains real and at the level it was post September 11<sup>th</sup>. As a consequence the powers are likely to impact on the corresponding ethnic groups which are likely to be minorities in the context of terrorism. The same principle would apply to terrorism related to the affairs of Northern Ireland.

14. An analysis of the documented records of the nationalities of the persons detained under the Terrorism Act 2000 between 12 September 2001 and 31 December 2002 indicate that of the 245 recorded arrests:

- 105 concerned persons European, Indian, Israeli and of Eastern European origin.
- 114 concerned persons of known Islamic countries: and

- 26 were listed as of unknown origin.

In the period from 1 January 2002 to 31 March 2003, 16 out of the total 212 arrests went into the six to seven day maximum of which there were:

- 2 Irish nationals
- 3 Russian nationals
- 11 Algerian nationals

And of those:

- 2 individuals were released without charge from the Terrorism Act and charged under the Firearms Act & Explosive Substances Act;
- 3 individuals were released without charge from Terrorism Act and charged under Criminal Justice Act & for money laundering;
- 2 individuals were charged under s57 Terrorism Act and s1 Criminal Law Act;
- 3 individuals were charged under s57 Terrorism Act and s2 Chemical Weapons Act;
- 1 individual were charged under s57 & 58 Terrorism Act;
- 1 individual was released without charge from Terrorism Act and charged under s1 Criminal Law Act;
- 1 individual was released without charge from Terrorism Act and into immigration custody;
- 3 Individuals were released without charge.

15. These statistics are reflective of the current threat level to the United Kingdom from international terrorism and will impact on the ethnic groups that comprise that threat. This is clearly and significantly different to the inference that the power targets one particular nationality or minority group.

16. In accordance with the Home Office Race Equality Scheme<sup>35</sup> the Home Office considers that the disproportionate impact upon these minorities is unavoidable, and that it is justified in relation to the aims and importance of the policy.

17. The policy behind the amendment, and terrorism legislation in general, is driven by the interests of maintaining national security, which is relevant to the protection of all sectors of UK society and its citizens.

18. Home Secretary David Blunkett has said:

*“It takes time to investigate members of loose-knit networks across international boundaries. To close in on terrorists, the police increasingly need to analyse complex material. In the course of an enquiry, they may need*

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<sup>35</sup> Promoting Race Equality, The Core (Non-IND) Home Office, April 2002. Paragraph 2.12 (ii)

*to examine computer hard disks, make multiple enquiries across different countries, or retrieve dangerous substances for forensic analysis. While the seven-day window for the investigation of terrorist suspects is often enough, in exceptional or complex cases the police may need more time.*

*“I recognise that this important power needs appropriate scrutiny, and only a court may grant an extension to the period of detention without charge.”*

19. The Northern Ireland Office supports the amendment and concurs that the power should have United Kingdom wide application.

20. There has been no previous specific consultation on this proposal with minority groups to assess whether or not an adverse impact in terms of racial discrimination or harassment happens or is likely to happen. Statistics on the ethnicity of those arrested under the section 41 power are maintained centrally by the National Joint Unit of the Metropolitan Police. Moreover, it is not possible to anticipate the ethnicity of those arrested under that power as an arrest is made based on the fact that an individual could be a terrorist or involved in terrorism and is not related to their ethnicity.

### **Safeguards**

21. There are a number of safeguards already built into the Terrorism Act 2000 and these will apply equally to the amended power. These are:

- an extension to detention within the current 7 day maximum may be made provided the specified conditions are met (paragraph 32);
- these conditions stipulate that there must be reasonable grounds for believing that the further detention of the person concerned is necessary to obtain relevant evidence, and the investigation in connection with which the person is detained is being conducted diligently and expeditiously;
- the detained individual must be released immediately if the reasons why he is being detained no longer apply (paragraph 37).

22. There are also further safeguards built into the amendment itself. These are:

- the procedural requirements for making an application for extension to detention apply to 14 days just as they apply to 7 days (paragraphs 30(3) and 31 to 34, and 36);
- a Court is only able to extend the period in the warrant for more than 7 days if the warrant already authorises detention for the maximum 7 days currently permitted. For example, the clause does not allow the police to ask for eleven more days' detention if the existing warrant only authorises detention for four days. At that stage the Court would only be able extend the warrant for three more days.
- it is not possible for the fourteen days to be granted in one block no matter how compelling the reason.

23. As a result of the recommendations of the Stephen Lawrence enquiry, Community Race Relations training has been mandatory UK wide for police officers of all ranks and each force will have a dedicated individual with responsibility for diversity management. Any officer behaving in a racially offensive way, either directly or indirectly, would be committing a criminal offence and be subject to the police discipline code.

24. The operation of the Terrorism Act 2000 is reviewed independently by Lord Carlile of Berriew QC whose report is published on an annual basis. Accordingly, he will also review the power to detain for up to 14 days. Lord Carlile has the discretion to consult with whatever groups and individuals he deems appropriate in the conduct of his review.

25. The National Joint Unit of the Metropolitan Police Service records statistics of all arrests made under section 41 of the Terrorism Act 2000 including nationality as given.

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Terrorism and Protection Unit  
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