

## **SERIOUS ORGANISED CRIME AND POLICE BILL**

### **FINAL REGULATORY IMPACT ASSESSMENT**

#### **POWERS OF STOP, SEARCH AND SEIZURE IN RELATION TO FIREWORKS OFFENCES**

##### **1. Title of Proposal**

Giving the police Powers of Stop, Search and Seizure in relation to fireworks offences.

##### **2. Purpose and Intended effect of Measure**

2.1 The Fireworks Regulations 2004<sup>1</sup> (the “2004 Regulations”) – which were made under the Fireworks Act 2003 - made it an offence:

- for anyone under the age of 18 to possess fireworks in a public place; and
- for anyone other than a fireworks professional to possess category 4 fireworks.

2.2 These new offences are designed to curtail the use of fireworks in ways that are anti-social, inconsiderate or dangerous. The Fireworks Regulations 2003 aim to achieve this through the regulation of supply, possession and use of fireworks. These regulations are additional to section 80 of the Explosives Act 1875 – which make it an offence to set fireworks off in the street.

2.3 The police may currently enforce the 2004 Regulations through powers conferred under section 27 of the Consumer Protection Act 1987 (extended by section 12 of the Fireworks Act 2003). However, these are insufficient for police enforcement of the new regulations because the new offences require more appropriate enforcement powers not currently available to the police. For example, powers of search in section 27 Consumer Protection Act extend only to commercial premises and were originally intended for use by Trading Standards officers. By contrast, it is desirable that the police should be able to stop and search anyone suspected of committing a fireworks offence so long as they have reasonable grounds to believe an offence has been committed.

2.4 The proposals considered by this RIA are designed to:

- enable the police to intervene more effectively to tackle anti-social behaviour and criminal activity involving the use of fireworks;
- enable the police to find and confiscate fireworks from offenders;

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<sup>1</sup> **SI 2004 No.1836**. These Regulations came into force on 7 August 2004 (with the exception of regulation 9 and 11, which will come into force on 1 January 2005). See: [www.legislation.hmso.gov.uk/si/si2004/20041836.htm](http://www.legislation.hmso.gov.uk/si/si2004/20041836.htm)

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- reduce overall numbers of incidents of damage to property and assaults which result from the dangerous use of fireworks; and,
- reduce the harm, including overall numbers of injuries and fatalities, caused to the general public by fireworks as well as harm caused to the users of fireworks and their associates.

2.5 The Association of Chief Police Officers (ACPO) has responded to the public consultation<sup>2</sup> on the possible extension of stop and search powers in respect of fireworks offences and commented that they fully support the legislation that the Government has proposed to enforce the 2004 fireworks regulations.<sup>3</sup>

### 3. Options

#### **Option 1- Do nothing**

3.1 The existing 2004 regulations as enacted would lack teeth, because the police would have no effective powers to enforce them. The Police must be given specific grounds in primary legislation before they can conduct a stop and/or a search of someone they suspect may have committed an offence.

#### **Option 2 - Extending stop and search powers to enable police officers to enforce the new offence**

3.2 This would do much to prevent the nuisance of fireworks and related, damage to people and property caused by their malicious use.

### 4. Benefits

#### **Option 1**

4.1 This option provides no benefits.

#### **Option 2**

##### ***Economic***

4.2 There are likely to be benefits in relation to both public/ municipal property, private property and to business were the number of incidents involving damage caused by fireworks to be reduced. For example, the number of incidents of damage to property in the Merseyside area alone for 2003 was approximately 500, including the destruction of cars, phone boxes and post boxes.

4.3 There are also potential benefits to the National Health Service from a likely reduction in A&E admissions of persons with injuries resulting from

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<sup>2</sup> Modernising Police Powers to meet Community Needs, Home Office 8 August 2004

<sup>3</sup> *ibid*, Response of the Association of the Chief Police Officers, 10<sup>th</sup> September 2004

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fireworks. The number of injuries occurring in the street to the under 18s during the 2003 fireworks season was 787.<sup>4</sup>

4.4 Owing to the restrictive nature of the current powers under the Fireworks Act 2003, the ability to stop, search and seize/ confiscate would enable a more efficient use of police time – instead of the police having to catch offenders in the act by physically seeing the fireworks in the hands of offenders.

4.5 There will be some receipts from Fixed Penalty Notices.

### ***Environmental/ Social***

4.6 In the Regulatory Impact Assessment for the Fireworks Regulations 2004,<sup>5</sup> one of the benefits identified was that criminalising the possession of category 4 fireworks in the street and any possession by children could have a positive impact on local quality of life indicators, including a reduction in noise levels and the protection of animals and wildlife which can be the targets of dangerous fireworks.

4.7 The Fireworks Regulations 2004 were generally welcomed by stakeholders who responded to the consultation. It is widely accepted that fireworks are misused especially by those under the age of 18. Particularly during the months of October and November, fireworks are often used to intimidate, damage and harm members of the community. Such a measure complements the current laws to tackle such anti-social behaviour in general as well as offering a further disincentive for youths not to break the law by carrying fireworks in the streets.

4.8 The proposed new legislative measure of stop search and seizure should be viewed as further contributing to the above benefits – generally improving the quality of life for many in the community.

## **5. Costs**

### **Option 1**

5.1 This option does not have a cost.

### **Option 2**

5.2 The costs to business have already been dealt with in the in the Fireworks Regulations 2004. The extra costs to the public sector are indentified below.

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<sup>4</sup> An indicative figure of savings to the NHS is difficult to estimate as the injuries treated by such departments are all qualitatively different thus requiring individually specific treatment.

<sup>5</sup> This may be viewed at: <http://www.dti.gov.uk/ccp/topics1/pdf1/fireworksreg2004ria1.pdf>

5.3 The costs to the police for this new measure are difficult to quantify. This is partly due to this being a new measure with there being little in the way of a comparison to base an estimation - as well as certain differences in approach that each police force might well take in practice. Indeed, related to this latter point is the extent of action by different local police forces given the nature of local problems and the priorities that they may have as a result.

5.4 It should also be noted that the proposal to which this RIA relates is largely an ancillary measure - that is - making the two already existing possession offences easier to enforce by giving the police adequate powers to detect offences. As such, there are two possibilities vis a vis the costs of stop and search:

- a) in itself this could be a cost neutral measure as it could improve police efficiency with the way that offences are dealt with; or
- b) that costs in manpower to the police may increase on account of more crimes being detected and therefore more prosecutions/ processing of offenders as a result.

5.5 Notwithstanding the above, ACPO has provided an approximation which covers the total costs associated with the two possession offences. They advise, however, that the estimate is a maximum cost and is at best a "questionable" figure.

#### ***Police time – including processing/ administration***

5.6 Based on the experience of Norfolk Constabulary during the 2003 fireworks season – specifically the number of calls received by the force during a week in October/ November (the height of the fireworks season), ACPO have estimated that for one year the costs would be in the region of **£251, 000** per annum – based on the assumption that around 23, 000 people could be stopped and searched.<sup>6</sup>

5.7 The above costs relate mainly to the stop and search procedure itself – both "negative" and "positive" searches and subsequent processing. Processing includes either the issue of a fixed penalty notice or, for more serious offences, arrest and custody processing.

#### ***Storage and Transportation***

5.8 ACPO believe that the cost of storage and disposals would be negligible. This is because the police are under no statutory obligation to store fireworks/ explosives in licensed/ registered stores. Additionally, many police forces also have arrangements with the army - where fireworks are disposed of along

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<sup>6</sup> The base assumption provided by ACPO is that for every report to the police there will be corresponding action in either terms of stopping and searching suspects.

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with ammunition no longer needed as evidence or found or surrendered in amnesties.

5.9 The police, at present, have no special arrangements for carrying/transporting fireworks that have been seized or confiscated. In most cases they are currently placed in the boot of a patrol vehicle. No special transit resources are envisaged to be required as a result of this measure unless a firework is considered to pose an immediate danger of explosion, in which case a case by case assessment will be made on how best to protect the public from any threat posed.

### ***Training***

5.10 Training costs associated with identification of particular types of fireworks is also expected to be negligible. For example, the term “adult” firework, which are those which the under 18s are prohibited from possessing in public places, is in line with what is commonly thought to be fireworks proper i.e. the definition does not include party poppers and Christmas crackers.

5.11 ACPO in their consultation response signalled their concern that police officers may find it difficult to identify category 4 fireworks. However, the Government considers that the identification of such items does not require any special training so much as simple guidance<sup>7</sup> e.g. all category 4 fireworks must be marked with a label stating that they should not be sold or used by members of the public as well as there being differences in the way that they are packaged.

### ***Court Costs***

5.12 Based on the figures provided by ACPO – the possible number of offenders taken to court as opposed to being issued with FPNs– the Department of Constitutional Affairs (DCA) estimate the total court costs at around £394,000.<sup>8</sup>

5.13 Additionally, the DCA estimate that costs to the legal aid budget will be in the region of £413,000.

### ***Prison and National Offender Management Service Costs***

5.14 Sanctions for the two offences considered by this RIA are limited to confiscation of any fireworks which are found to be carried unlawfully although it would be possible for a court to levy a level 5 fine or up to 6 months’ imprisonment for particularly serious offences. However, as now, serious wounding or other physical attacks which involve the use of fireworks may be prosecuted under other legislation. For example, intentional or unintentional

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<sup>7</sup> Guidance for enforcers in relation to the Fireworks Regulations 2004 will shortly be made electronically available electronically on the Department of Trade and Industry website.

<sup>8</sup> This figure is based on the assumption that around 900 -1000 people will be processed by the courts.

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harm to persons under the Offences Against the Person Act 1861 may attract a maximum penalty of life imprisonment or 5 years, respectively.

### ***Breakdown of police costs***

#### 5.15

<b>Result of Stop and Search</b>	<b>Number of persons</b>	<b>Time taken</b>	<b>Cost of PCs at 18.50 per hour</b>	<b>Cost of Action (to the nearest 500)</b>
No further action	20469	20 Minutes	£6.16	£126,000
Issued with FPN	1897	50 minutes	£16.65	£31,500
Further action e.g. arrest / custody	632	8 Hours	£148	£93,500

Total number stopped and searched	23000
Total cost	£251,000

### ***Breakdown of court costs***

<b>Action Taken</b>	<b>Number of Persons</b>	<b>Costs (to the nearest 500)</b>
Police Prosecution	632	£207,000
FPN Non Payment	512	£168,000
FPN appeal	57	£19,000
Legal Aid Costs	1201	£413,000

Total court cases	£394,000
Total legal aid cost	£413,000

## **6. Equity and Fairness**

6.1 Race, equality and fairness issues are particularly important considerations in the context of stop and search powers. The Government

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has undertaken a full REIA screening, which is published as an Annex to this RIA, as a prelude to a wider REIA which will be published in due course.

### **7. Enforcement and Sanctions**

7.1 The powers to exercise the proposed powers will belong to the police. The introduction of the powers is principally to improve the enforceability of the measures made under the Fireworks Regulations 2004.

7.2 The maximum penalty for offences under said regulations is either a fine of up to £5000 or a term of up to 6 months imprisonment. Additionally, as of 11 October 2004 police were given the power issue penalties for disorder for both possession offences - attracting the upper tier level of £80.<sup>9</sup>

### **8. Monitoring and Review**

8.1 Powers of stop and search and PACE powers more generally are subject to ongoing review and update, including annual review of PACE Codes. Monitoring is carried out through research studies, annual statistical reporting and consultation with stakeholders.

### **9. Consultation**

9.1 Much of the background on the substance of the possession offences to which this proposal was done in preliminary consultations and an extensive public consultation during the summer of 2004.<sup>10</sup> In these consultations - ACPO expressed their preference for the powers of stop and search believing this to be the most effective way to improve enforcement - given the likelihood that offenders would conceal the fireworks they possessed. This view was echoed by the majority of respondents in both the formal and informal consultations.

9.2 There was also support given to the proposals to apply the sanction of FPNs to the new possession offences – as already in place for the offence of throwing fireworks in the street under the Explosives Act 1875. The Government subsequently introduced FPNs for these offences on 11 October 2004.

9.3 The Home Office also held prior consultation with key stakeholders and subsequently launched a formal public consultation on 12 August 2004.

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<sup>9</sup> The offence of using fireworks during night hours (11 pm to 7 am) under regulation 7 of the 2004 Fireworks Regulations may also be dealt with by penalties for disorder.

<sup>10</sup> The Department of Trade and Industry conducted two formal and informal consultation exercises in relation to possession offences – one in late 2003 and the other during the summer. The former related to the emergency Fireworks Regulations 2003 and the latter, the Fireworks regulations 2004 (which revoked the 2003 Regulations). Responses to the consultation can be viewed at: <http://www.dti.gov.uk/ccp/topics1/fireworks.htm>

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Government departments have also been consulted on both this specific proposal and other related matters more generally.

### 10. Summary and Recommendation

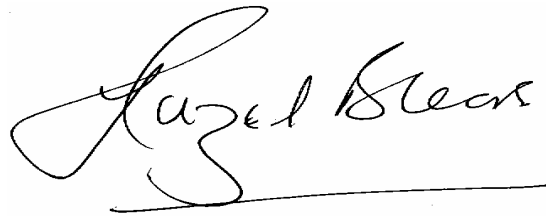
Option	Benefits	Cost
Option 1: Do nothing	Unclear. Likely to be significant harm caused to credibility of existing offences if they cannot be enforced adequately;	Costs would continue to occur to NHS who would deal with injuries caused by malicious use of fireworks and to the police if an investigation into any incident was necessary;  The qualitative costs, in terms of nuisance, intimidation and fear are likely to be significant if the police are not granted more appropriate powers.
Option 2: Extend Stop and Search	Whereas no stop and searches can be made if persons are suspected of possessing fireworks, a potential 20000 could be stopped and searched across the UK - particularly during fireworks season.  Such powers would reduce the risk that fireworks are used to intimidate or harm people or animals. It could also lead to a significant reduction in damage caused to property.	The total estimated costs are likely to be in the region of £1,058,000

12.1 We recommend the adoption of option 2.

**11. Declaration**

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

**Signed**

A handwritten signature in black ink, reading "Hazel Blears". The signature is written in a cursive style with a long horizontal line extending from the bottom of the name.

**November 2004**

**Hazel Blears, Minister of State for Crime Reduction, Policing and  
Community Safety**