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Crime and Security Bill

Bill No 3 2009/10

RESEARCH PAPER 09/97 22 December 2009

This briefing on the *Crime and Security Bill* has been prepared for the second reading debate on the Bill in the House of Commons.

The Bill would amend the law governing the taking, retention and destruction of fingerprints and DNA data from persons arrested for, charged with or convicted of criminal offences, in response to a decision by the European Court of Human Rights. It would also reduce the requirements on the police to record information following a stop and search under the *Police and Criminal Evidence Act 1984*. It would introduce new "go" orders for suspected perpetrators of domestic violence, which could mean excluding them from their homes in order to protect the victim.

The Bill would also, in effect, extend new injunctions for gang-related violence to 14-18 year olds, and require courts to issue a Parenting Order where a child under 16 had breached an Anti-Social Behaviour Order. It would require wheel clamping companies to be licensed, and create a new offence of possessing an authorised mobile phone in a prison. It also creates a new offence of preventing a person under 18 from gaining unauthorised access to air weapons.

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Summary

The *Crime and Security Bill* is fairly wide-ranging and covers a number of different criminal justice and security issues.

Clause 1 of the Bill would reduce the amount of information the police have to record when they exercise their power of stop and search under the *Police and Criminal Evidence Act 1984*. This is part of a wider drive to reduce police bureaucracy, and follows a Government review of the *Police and Criminal Evidence Act 1984*. The Government recently dropped the national requirement for the police to record those stops which do not involve search (the "stop and account" provisions) in January 2009.

Clauses 2-20 of the Bill would amend the law governing the taking, retention and destruction of fingerprints and DNA data from persons arrested for, charged with or convicted of criminal offences. The proposed changes were prompted by a decision by the European Court of Human Rights that the indefinite retention of such material, as is the case under the current law, is incompatible with the right to respect for private life. The Bill would therefore replace the current "blanket" policy of indefinite retention with a range of retention periods based on factors such as offence seriousness and the age of the individual concerned. The proposed retention periods range from an indefinite period in respect of data from convicted adults, to three years in respect of data from juveniles arrested for a minor offence but not subsequently convicted.

Clauses 21-30 provide for a new remedy for victims of domestic violence, which the Government and others have dubbed "go" orders. There are two parts to the process. A senior police officer would be able to issue a "Domestic Violence Protection Notice" to suspected perpetrators which (amongst other possibilities) could exclude the perpetrator from the premises, even if they were the property owner. The police would then have to apply to a court for a Domestic Violence Protection Order lasting between 14 and 28 days, the contents of which could cover the same kind of provisions as the notice. These new tools will be piloted in two police force areas.

Clauses 31-36 deal with injunctions for gang-related violence, which were introduced by the *Policing and Crime Act 2009* (although the provisions are not yet in force) and have been dubbed "gangbos" in the press. As things stand, the legislation does not restrict the age at which an injunction can be given. However, the Government has pointed to practical difficulties in enforcement, as most young people will not have the money for a fine and they cannot be sentenced to detention for a breach of a civil order. The Bill introduces a lower age limit of 14 for these injunctions, and at the same time provides powers for the court to make a supervision order or detention order where an injunction has been breached. In effect, therefore, these changes extend the orders to those aged 14-18.

Clause 37 would make it a requirement that when the police, local authority or other authority make an application for an Anti-social Behaviour Order (ASBO) in relation to a child under 16, they would have to prepare a report on the young person's family circumstances, and the court would have to take account of this when considering whether to make a Parenting Order. It would also mean that a court would have to make a Parenting Order when a young person breached an ASBO, unless there were exceptional circumstances. There are already requirements for courts to make Parenting Orders where a child under 16 is convicted of an offence and the court is satisfied that this is desirable, so this is strengthening the presumption in relation to the offence of breaching an ASBO.

Clauses 39 and 40 and the schedule to the Bill provide for the licensing of companies that undertake vehicle immobilisation (wheel clamping) activities on private land in England, Wales and Northern Ireland. The intention is to permit maximum charges, signage

requirements and an appeals process to be implemented after a full licensing scheme has been introduced.

It has long been an offence to smuggle or convey tobacco and alcohol into a prison - and the *Offender Management Act 2007* added mobile phones (and various other things) to the list of items which must not be brought in - but no offence attaches to the possession of the item once it is within the prison. **Clause 41** would now create an imprisonable offence of possessing a mobile phone inside a prison without authorisation.

Clause 42 deals with air weapons. Currently air guns may be held without the need for a firearms certificate. Owners are therefore not subject to the secure storage requirements imposed on owners of licensable firearms. Following recent fatal incidents in which air weapons have fallen into the hands of children, the Bill creates a new offence of failing to take reasonable precautions to prevent a person under 18 from gaining unauthorised access to air weapons.

Introduction

The *Crime and Security Bill* was introduced in the House of Commons on 19 November 2009 and was published the same day. Information on the Bill and its progress is available on the *Crime and Security Bill 2009-10* page of the Parliament website.

The Government describes the Bill as having four themes:

- **"Safer streets"**: the changes to reporting requirements for stops and searches, the extension of gang injunctions to under 18s, and the provisions on Parenting Orders where 10-15 year olds have breached Anti-social Behaviour Orders (ASBOs)

- **"Preventing crimes against the vulnerable"**: the new "go" orders for suspected domestic violence perpetrators and the new controls on airguns

- **"Shutting down criminal and exploitative markets"**: the new offence of unauthorised mobile phone possession in prisons, and licensing wheel clamping companies)

- **"Justice for victims and their families"**: the new DNA retention periods [1]

Territorial extent is set out in c**lause 44** and helpfully summarised in paragraph 12 of the Explanatory Notes.[2] The following provisions extend only to England and Wales:

- The reduced recording requirements for police stops and searches

- The new "go" orders for suspected domestic violence perpetrators

- Injunctions against gang-related violence for the under-18s

- "Automatic" Parenting Orders when children breach ASBOs

- The new offence of using mobile phones in prison

The new offence of failing to prevent under 18s gaining access to air weapons extends to England, Wales and Scotland.

The fingerprints, DNA and other samples provisions extend to England and Wales, but the Bill also contains parallel provisions for Northern Ireland.

The new requirement for vehicle immobilisation businesses to register with the Security Industry Authority extends to the whole of the UK.

The UK Government is seeking a Legislative Consent Motion from the Scottish Parliament with regard to the wheel-clamping provisions. The offence relating to air guns is a reserved matter, and so is not the subject of the motion.[3] Further information on this is on the *Crime and Security Bill* page of the Scottish Parliament's website

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1 Home Office Press Release *Crime and Security Bill - protecting communities*, 19 November 2009
2 *Crime and Security Bill Explanatory Notes*, 19 November 2009
3 Scottish Government, *Legislative Consent Memorandum – Crime and Security Bill*, December 2009

1 Stop and search

Clause 1 of the Bill would reduce the amount of information the police have to record when they exercise their power of stop and search under the *Police and Criminal Evidence Act 1984*.

1.1 Background

Police powers of stop and search have long been controversial. On the one hand, they are seen by many as an essential tool in the fight against crime, particularly gun and knife crime, and concerns about excessive bureaucracy have led to calls for the burden of record-keeping to be reduced. On the other hand, their over-use has often been seen as damaging to community relations, particularly in view of the disproportionate impact on ethnic minorities (see below), and these concerns have led at a various times to more rigorous requirements for the police to record them fully for the purpose of accountability.

19 statutory police powers of stop and search are listed in *PACE Code A*, one of several statutory codes of practice under the 1984 Act.[4] Of these powers, the most commonly used one, which is also the subject of the changes in the Bill, is contained in section 1 of the *Police and Criminal Evidence Act 1984*. This Act was introduced partly in response to the Scarman report on the riots which took place in Brixton and several other cities in 1980 and 1981.[5] Stop and search powers had been contained in a variety of local and national legislation, and concern about "disproportionality" with regard to ethnic minorities and about the confused state of the law had led to calls for police powers to be overhauled and codified.[6] The current power allows the police to stop persons and vehicles in public places and to search for stolen and prohibited items.[7] Unlike some stop and search powers,[8] this one requires the police to have "reasonable suspicion" that they will find such articles.

In 2007/08, police stopped and searched 1,035,438 persons under section 1 of the PACE and other legislation[9], of whom 119,567 (around 11 per cent) were arrested as a result. After a period of decline, use of stop and search powers approached the record levels seen in 1997/98 and 1998/99. Chart 1, overleaf, shows trends in use since 1986:

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4 Home Office, *Codes of practice – Code A Exercise by police officers of statutory powers of stop and search*

5 Home Office, *The Brixton Disorders 10-12 April 1981, Report of an Inquiry by the Rt Hon The Lord Scarman O.B.E.*, Cmnd 8427, November 1981. More detailed background is given in Library Standard Note SN/HA/3878, *Stop and Search*, pp3-4

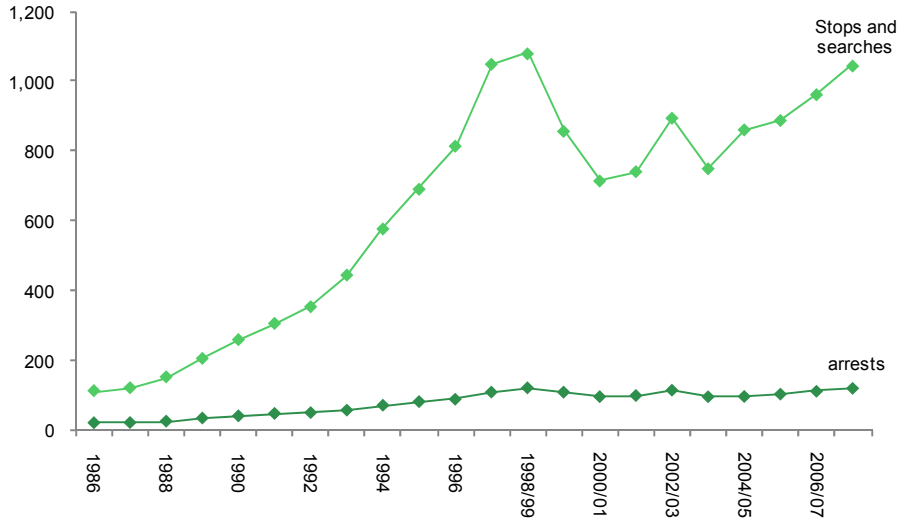
6 See for example The *Royal Commission on Criminal Procedure, chairman Sir Cyril Philips*, Cmnd 8092, January 1981

7 section 1 *Police and Criminal Evidence Act 1984* (as amended)

8 For example, powers under section 44 of the *Terrorism Act 2000*

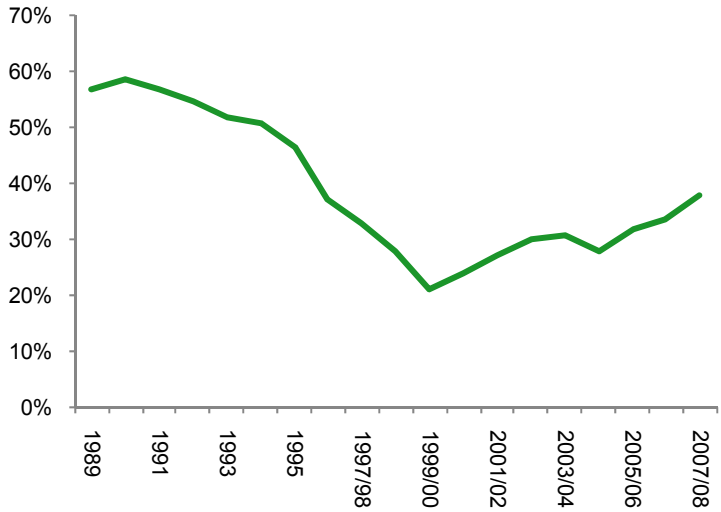
9 Other legislation' includes section 47 of the Firearms Act 1968 and section 21 of the Misuse of Drugs Act 1971 (it is not possible to separate out the three), but does *not* include section 60 of the Criminal Justice and Public Order Act 1994 or section 44 of the Terrorism Act 2000.

Chart 1: Numbers of stops and searches (thousands) and resultant arrests 1986-2007/08



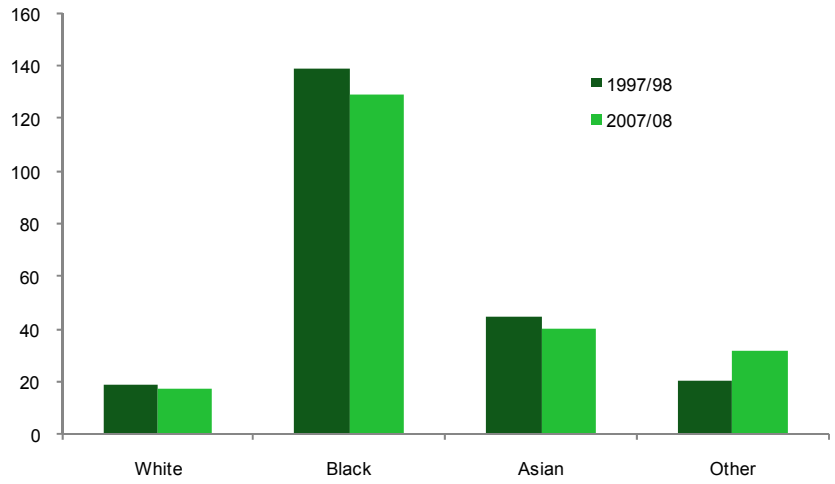
The Metropolitan Police are particularly 'heavy' users of stop and search; Chart 2 shows the proportion of all stops and searches that are conducted by the Met. By 1999/2000, use by the force fell to a level roughly consistent with their relative officer strength (around 21 per cent of all stops), but has since risen: in 2007/08 the Metropolitan police accounted for 38 per cent of all stops.

Chart 2: Stop and search by Metropolitan Police, as a percentage of total in England and Wales



As indicated above, the main area of controversy has been over the use of stop and search in relation to minority ethnic groups. Disproportionality in stop and search refers to the extent to which police powers are exercised on a group out of proportion to the number of that group in the general population. Ethnic minorities remain disproportionately subject to stops and searches, with this effect being much more marked for black people than any other ethnic group. Since 1997/98, black people have been 6.6 times more likely to be stopped than white people and Asians around twice as likely. The evidence on whether disproportionality has fallen over the past decade is mixed. Chart 3, overleaf, shows that use of stop and search on black and Asian people, relative to the size of their respective populations, has declined slightly since 1997/98.

Chart 3: Stops and searches per 1,000 individuals, by ethnicity, 1997/98 to 2007/08



However, in 2007/08, the number of white people stopped and searched was 10 per cent lower, compared with 1997/98, whilst the number of black and Asian people stopped and searched was 55 per cent and 64 per cent higher respectively (see Chart 4 below):[10]

Chart 4: Per cent change in numbers stopped and searched 2007/08 compared with 1997/98

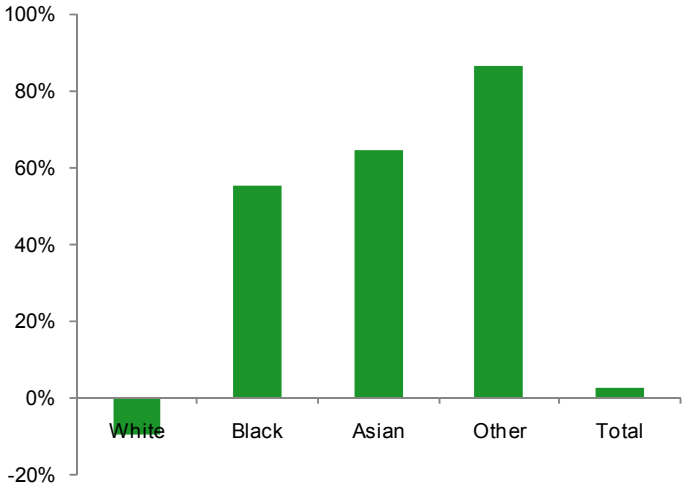
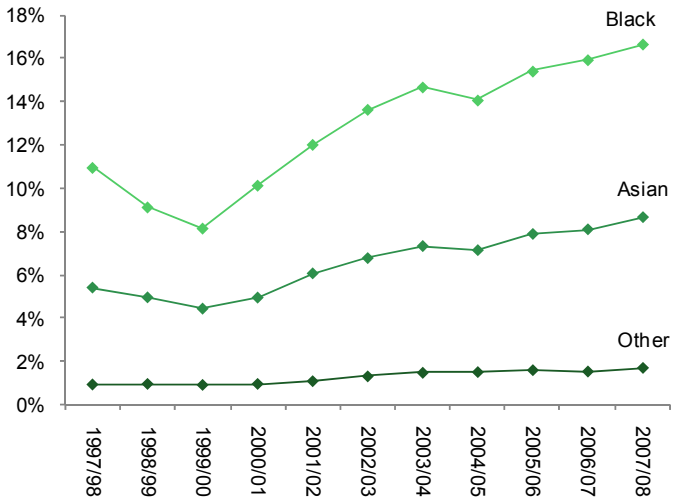


Chart 5: Ethnic minorities as a proportion of all individuals stopped and searched



As a result, ethnic minorities have accounted for an increasing proportion of the total numbers stopped and searched (see Chart 5 above).

[10] The apparently contradictory observations that numbers of stops and searches on ethnic minorities has increased, but have declined per 1,000 people can be reconciled by taking into account the increase in the minority ethnic population between the 1991 Census (on which the 1997/98 figures are based) and the 2001 Census (on which the 2007/08 figures are based).

There have been a number of studies which have questioned the validity of crude comparisons with the resident population. These are discussed in Library Standard Note SN/HA/3878, *Stop and Search*. Factors to bear in mind include:

- The age and class structures of different ethnic groups
- Differences in the use of public spaces at the times and in the places where stops and searches are carried out.

In 1999 the McPherson Report into the death of Stephen Lawrence concluded that the investigation of that death was "marred by a combination of professional incompetence, institutional racism and a failure of leadership by senior officers".[11] The report, whilst not centrally concerned with stop and search powers, did describe the issue as a "universal" area of complaint, citing it as one of four areas in which institutional racism by the police was "primarily apparent":

> Whilst we acknowledge and recognise the complexity of this issue and in particular the other factors which can be prayed in aid to explain the disparities, such as demographic mix, school exclusions, unemployment, and recording procedures, there remains, in our judgment, a clear core conclusion of racist stereotyping [12]

The report recommended that the powers themselves should remain unchanged. However, Recommendation 61 was that compulsory recording (which applied only to stops resulting in searches under PACE) should be extended to cover all "stops", including those resulting in no search:

> 61. That the Home Secretary, in consultation with Police Services, should ensure that a record is made by police officers of all "stops" and "stops and searches" made under any legislative provision (not just the Police and Criminal Evidence Act). Non-statutory or so called "voluntary" stops must also be recorded. The record to include the reason for the stop, the outcome, and the self-defined ethnic identity of the person stopped. A copy of the record shall be given to the person stopped.

These kinds of encounters, which do not involve searches, are known as "stop and account"

The Home Office *Stop and Search Manual*, which provides guidance to the police, also discusses the research in this area, concluding that it raises two "important issues":

> First, it provides evidence of institutional racism which, as defined by the Stephen Lawrence Inquiry, refers to unwitting and routine practices having a disproportionate impact on people from minority ethnic groups.
>
> Second, people's use of public space, and hence their risk of being searched, will be effected by patterns in unemployment, housing and social exclusion. It follow that police decision-making, however neutral, is likely to compound and exacerbate disadvantage and discrimination in other areas of social life.
>
> Some have interpreted research on 'availability' to mean that the disproportionate effect of police activities is no longer a problem. However, the studies in the area maintain that minority ethnic groups "may be more exposed to stop and search," and that discrimination is not ruled out. Findings are also likely to be highly localised, and it

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11 *The Stephen Lawrence Inquiry, Report of an inquiry by Sir William McPherson of Cluny*, Cm4262-I, February 1999

12 paragraph 6.45

is not clear whether similar results would be found in other areas. They also raise important questions about:

- why police searches are targeted towards particular areas; and
- whether such targeting is in proportion in terms of crime problems.

These questions will be addressed in the ongoing RDS research.[13]

As a result of Recommendation 61 of the McPherson report, the Government introduced the recording of stops, in addition to the longstanding requirements for searches to be recorded, with new "stop and account" procedures being rolled out in 2004. However, as discussed below, this has since been abandoned because of the bureaucratic burden it imposed.

1.2 Police bureaucracy

There have been a number of drives in recent years to reduce police bureaucracy.[14] Requirements to complete paperwork in connection with various procedures can be imposed nationally or locally, with some of the local requirements resulting from the force's own policy, and others from variety of partnerships with other organisations.[15] Clearly, some bureaucracy is necessary in modern policing, for example for reasons of accountability, developing organisational knowledge, and managing resources efficiently. The problem lies in deciding which of these activities has a disproportionate cost for service delivery.

There have been various studies of police bureaucracy in recent years. One influential one, published in 2001, was a Home Office commissioned study, *A Diary of a Police Officer*, which found that officers were spending almost as much time in the police station as they were on the streets.[16] In response, the Government appointed Sir David O'Dowd, the former HM Chief Inspector of Constabulary chair the policing bureaucracy taskforce. The taskforce consulted and then on 31 July 2002 put forward 52 'change proposals' for forces to consider. Amongst its key findings were the following:

- New legislation, the rapid pace of change and complicated partnership arrangements were three principal causes for much unnecessary bureaucracy

- There was considerable scope to transfer responsibility for non-core tasks to other organisations and for patrol officers to hand over some administrative work to civilian support staff.[17]

Between 2002 and 2007, senior officers were seconded to the Home Office as bureaucracy champions to support forces implementing the O'Dowd recommendations. In 2007, Sir Ronnie Flanagan, then HM Chief Inspector of Constabulary, was appointed to undertake a review of policing, which included the reduction of bureaucracy. The interim report, published in February 2008, noted a "staggering" increase in bureaucracy since Sir Ronnie's own time as a front line police officer,[18] although it did note that some was beneficial, drawing an analogy with "good" and "bad" cholesterol. It indicated that the review team would give "urgent consideration" to the Stop and Account form, the administration and recording

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13 Home Office, *Stop and Search Manual*, 2005, pp32-3

14 These are discussed in more detail in Library Standard Note SN/HA/3251, *Police Bureaucracy*, available on

15 See for example Library Standard Note SN/HA/5080, *Crime and Disorder Reduction Partnerships*, 29 May 2009, available on the Parliament website

16 Home Office Police Research Series Paper 149, *Diary of a Police Officer*, PA Consulting Group, 2001, pp 10 and 12

17 Sir David O'Dowd CBE, QPM, *Policing Bureaucracy Taskforce: Change Proposals to Increase the Presence of Police in Communities*, 31 July 2002

18 Home Office, *The Review of Policing by Sir Ronnie Flanagan: Interim Report* , September 2007, p8

processes of which one force had estimated at 25 minutes per submission.[19] The final report recommended that the stop and account form should be removed following pilots,[20] and the Government accepted this, removing the national requirement for the form to be completed from January 2009 (although some forces continued to require this locally).[21]

In its July 2008 Green Paper, the Government said that a shift in approach would be needed in general to combat excess bureaucracy:

> Previous work in this area has shown that a 'bonfire of forms' approach will be futile. Achieving this fundamental shift will require national leadership; sensible, locally-relevant, proportionate targets; a rigorous, ongoing approach to freeing officers from red tape; further work on how the police interact with the broader Criminal Justice System (CJS); and ensuring we gain the maximum potential from new technology. [22]

One of the main changes was the replacement of a range of centrally determined targets for police forces with just one "top down" national target: to deliver improved levels of public confidence. The Green Paper also announced that the Government would be appointing a senior "champion" to work on the problem, and Jan Berry, formerly chair of the Police Federation, was subsequently appointed to the role. Her report on her first full year in the role was published in November 2009, and noted that while the stop and account changes appeared to be a success, a more fundamental problem was officers' understanding of the benefits and justification of stops.[23] She also criticised the practice in some forces of still making officers complete "Stop and Account" forms despite the abolition of the national requirement, and of including the number of stops as personal performance indicators, which, she said, could not only encourage unnecessary stops, but also harm community relations.[24]

1.3 The PACE Review

The Government launched a review of the *Police and Criminal Evidence Act* in March 2007 with a consultation document inviting comments on possible revisions to the Act.[25] In its proposals in response to the review, the Government said that it would:

- Examine through pilot sites the ability to reduce the need to provide a record of the stop and recording only ethnicity information

- Remove the requirement for a written record to be provided for stops and searches at the point of contact in cases where the officer exercising the power is using mobile technology with direct input into a force computer system. In such cases, a receipt would be provided.[26]

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19 Ibid, p15
20 Sir Ronnie Flanagan, *The Review of Policing: the final report*, February 2008
21 Home Office press release, *Cuts to police red tape for the year ahead*, 24 December 2008
22 Home Office, *From the neighbourhood to the national: policing our communities together*, 17 July 2008, p38
23 Jan Berry, *Bureaucracy in Policing*, November 2009, pp53-4
24 Ibid, p54
25 Home Office, *Modernising Police Powers Review of the Police and Criminal Evidence Act (PACE) 1984 Consultation Paper,* March 2007. Further information and summaries of responses are available on the *PACE Review* Home Office website [at 16 December 2009]
26 Home Office, *PACE Review: Government proposals in response to the Review of the Police and Criminal Evidence Act 1984*, August 2008, pp9-10

1.4 Announcement of the changes

In a speech to the Police Superintendents Association in September 2009, the Home Secretary, Alan Johnson, said that the forthcoming Bill would contain a provision to slim down the form:

> Over the last few years, we've made huge efforts to cut the laborious and unnecessary paperwork that chains police officers to their desks.
>
> Thirty-six data collection requirements have either been removed or significantly reduced. Scrapping activity-based costing alone has saved around 260,000 hours of police time.
>
> The foot-long stop and account form has gone – saving another 690,000 hours.
>
> The hand-held devices which are steadily replacing the iconic bobby's notebook mean that police officers can do on the beat what could once only be done back to the station, saving half an hour every shift.
>
> Analogue radios have been replaced by infinitely more powerful airwave handsets, making it easier for police officers to communicate, even on the London Tube network and saving more time for officers.
>
> In addition, we will explore whether we can reduce the requirements of the stop and search form. Currently, regardless of whether someone who is stopped and searched is arrested, police officers have to complete the form. It's obviously essential to record the ethnicity of the person and the reason they were stopped, so that any complaint can be properly considered. But there should be no need for the police to record anything further.
>
> In the forthcoming Policing, Crime and Private Security Bill, we will take the first steps towards radically slimming down the form for such incidents.
>
> Despite these developments, I know the bureaucracy dragon has not yet been slain.
>
> Central government may have been slashed, but we were never the only manufacturer of red tape.
>
> Local requirements are often equally, if not more burdensome, and these need to be addressed too. To give one example, while the stop and account form has been abolished, I have heard of instances where neighbourhood police officers are still filling in the form even though it's no longer required.
>
> The confidence target was introduced to ensure that police officers could focus on what really mattered – that they were chasing criminals, not statistics, and so that they can exercise their professional judgement in making their communities safer.
>
> We have rightly been challenged by you and others to go further in reducing bureaucratic burdens on the service. But making further inroads will require more action at force and authority level. It is on this element that Jan Berry's forthcoming review will concentrate.[27]

Further details were given in the policing White Paper published on 2 December 2009:

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[27] Home Office, *Home Secretary's speech at the Superintendents' Association annual conference*, 16 September 2009

> 5.25 We have already ended the requirement for police officers to complete lengthy forms when they are recording a stop and account encounter on the streets. This alone has saved the equivalent of 690,000 hours of police officer time. We will go further by using the Crime and Security Bill currently before Parliament to streamline the recording requirements for stop and search, whilst putting on the face of legislation for the first time the requirement that the self-defined ethnicity of the searched person should be recorded. We agree with Jan Berry's recommendation that police forces need to remove personal performance measures which target the number of such stops which an officer should make. Officers must be free to use appropriate discretion in such matters.[28]

1.5 The Bill

Section 3 of PACE requires a police officer to complete a full record of a stop and search and, where practicable to do so, to provide the individual with a copy of the record at the point of contact. Under the new provisions, just seven items of information will have to be collected:

- Date
- Time
- Place
- Ethnicity
- Object of the search
- Grounds for search
- Identity of the constable carrying out the stop and search

This eliminates the existing requirements for information on:

- whether anything, and if so what, was found; and
- whether any, and if so what, injury to a person or damage to property appears to the constable to have resulted from the search[29]

In addition, section 3 currently requires a note of the person's name or a description of that person, and in the case of a vehicle search, a description of the vehicle. Clause 1(4) removes this requirement.

The current requirement that the constable performing the stop and search must personally make the record of it is also dropped under the new provision. The Explanatory Notes explain that where a person is arrested following a stop and search, the search record will form part of their custody record, rather than the current requirement that it be made on a separate form. There were provisions in the *Serious Crime and Police Act 2005* to allow

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[28] Home Office, *Protecting the public: supporting the police to succeed*,Cm 7749, December 2009, p81

[29] Currently in subsections v and vi of section 3

civilians to perform the role of custody officers,[30] and these had caused some controversy,[31] but they are shortly to be repealed by the *Policing and Crime Act 2009.*[32]

2 The taking, retention and destruction of fingerprints and samples

2.1 The current position

The main legislation governing the taking, retention, use and destruction of fingerprints and samples is sections 61 to 65 of the *Police and Criminal Evidence Act 1984* (PACE). The *Terrorism Act 2000* makes similar provisions in respect of biometric data from people being detained under that Act.

PACE

The taking of fingerprints

The starting point is that no person's fingerprints may be taken without his consent.[33] However, PACE goes on to list a number of exceptions to this rule, in which case the police have the power to take fingerprints without consent. Examples of such exceptions include cases where:

- a person is being detained at a police station having been arrested for or charged with a recordable offence,[34] and either his fingerprints have not already been taken, or his fingerprints have already been taken but they proved insufficient for analysis or comparison;
- a person has been convicted of, or cautioned, reprimanded or warned for a recordable offence; or
- a constable reasonably suspects that a person is committing or attempting to commit an offence, or has done so, but either cannot ascertain the person's name or has reasonable grounds to doubt that the person has given his real name.

The taking of intimate samples

An "intimate sample" is a blood, semen, other tissue fluid, urine or pubic hair sample, a dental impression or a swab taken from any part of a person's genitals or from a person's body orifice other than the mouth.[35]

Intimate samples may be taken from a person who is in police detention, or who is not in police detention but from whom two or more non-intimate samples have previously been taken in the course of the investigation that have proved insufficient for analysis. Both the authorisation of a police officer of at least the rank of inspector and the consent of the person from whom the sample is to be taken are required.[36]

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30 sections 120 and 121

31 See for example "Triumph as sergeants' stripes are saved" *Police Review*, 27 November 2009

32 The repeals are contained in schedule 8, part 13 of the *Policing and Crime Act 2009*, which commences in January 2009 under section 116 of the same Act

33 PACE, s61(1)

34 A recordable offence is any offence punishable with imprisonment and any other offence specified in the Schedule to the *National Police Records (Recordable Offences) Regulations 2000, SI 2000/1139* (as amended).

35 PACE, s65(1)

36 PACE, s62(1)

The taking of non-intimate samples

A "non-intimate sample" is a sample of hair other than pubic hair, a sample taken from a nail or from under a nail, a swab taken from any part of a person's body (excluding their genitals or a body orifice other than the mouth), a saliva sample or a skin impression.[37]

As is the case with fingerprints, non-intimate samples can only be taken with the person's consent unless one of a number of exceptions applies, in which case the police have the power to take a sample without consent. Examples of such exceptions include where:

- a person has been convicted of a recordable offence; or
- a person is in police detention in consequence of his arrest for a recordable offence, or has been charged with a recordable offence (whether or not he is in police detention) and has either not previously had a non-intimate sample of the same type taken, or has had such a sample taken but it proved insufficient.

Requirement to attend a police station

The police may require a person who has been charged with or convicted of a recordable offence, but who is neither in police detention nor held in police custody on the authority of a court, to attend a police station in order to have fingerprints or a sample taken.[38] This power can only be exercised where the person either has not already had a sample taken during the course of the investigation or since conviction, or has had a sample taken but such sample proved to be unsuitable or insufficient for analysis. It may also be exercised in respect of a person subject to a control order.

The power must be exercised within the "allowed period", which is one month from the date or charge or conviction (as the case may be) or the date on which the police are informed that the sample is unsuitable or insufficient.

The retention and destruction of fingerprints and samples

Fingerprints or samples taken from a person in connection with an offence may be retained after they have fulfilled the purposes for which they were taken, but they may not be used other than for purposes related to the prevention or detection of crime, the investigation of an offence, the conduct of a prosecution, the identification of a deceased person or of the person from whom a body part came, or (in respect of samples from persons subject to a control order) in the interests of national security.[39]

While PACE permits the retention of samples, it does not specify any time limits for such retention or any procedure by which samples can be removed. Instead, time limits and a removal procedure (known as the "exceptional case procedure") are set out in non-statutory guidance issued by the Association of Chief Police Officers (ACPO). The guidance states that an individual's record on the Police National Computer (including fingerprints and samples) will be retained until that person is deemed to have attained 100 years of age.[40] A record may be removed prior to this date only by way of the exceptional case procedure:

> Chief Officers have the discretion to authorise the deletion of any specific data entry on the PNC 'owned' by them. They are also responsible for the authorisation of the destruction of DNA and fingerprints associated with that specific entry. It is suggested that this discretion should only be exercised in exceptional cases.

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37 PACE, s65(1)
38 PACE, s63A(4)
39 PACE, s64(1A)-(1AB)
40 ACPO, *Retention Guidelines for Nominal Records on the Police National Computer*, March 2006, para 3.1

> (...)
>
> Exceptional cases will by definition be rare. They might include cases where the original arrest or sampling was found to be unlawful. Additionally, where it is established beyond doubt that no offence existed, that might, having regard to all the circumstances, be viewed as an exceptional circumstance.[41]

During the Lords stages of the *Counter-Terrorism Act 2008*, concerns were raised that the exceptional case procedure in the Retention Guidelines was being too narrowly interpreted; the Conservative peer Baroness Hanham therefore proposed an amendment that would have required the Government to put the removal procedure on a statutory footing.[42] The Lords accepted the amendment by 161 votes to 150, although it was subsequently rejected by the Commons by 277 votes to 209.[43]

Terrorism Act 2000

Schedule 8 to the *Terrorism Act 2000* contains similar provisions to PACE in respect of fingerprints and samples from individuals detained under Schedule 7 or section 41 of the 2000 Act. Fingerprints or non-intimate samples may only be taken from such a person either with his consent, or without consent where either of the following two conditions is satisfied:

- he is detained at a police station and a police officer of at least the rank of superintendant authorises the fingerprints/sample to be taken; or
- he has been convicted of a recordable offence and, where a non-intimate sample is to be taken, he was convicted of the offence on or after 10 April 1995 (29 July 1996 where the sample is to be taken in Northern Ireland).

Intimate samples may only be taken:

- from a person detained at a police station under Schedule 7 or section 41 of the 2000 Act; or
- from a person who has been released from detention, where two or more non-intimate samples were taken from him while he was in detention but which later proved insufficient for analysis or comparison.

In either case, the taking of an intimate sample requires the person's written consent and authorisation from a police officer of at least the rank of superintendent.

Fingerprints and samples taken under the provisions in Schedule 8 may be retained indefinitely, but may only be used for the purposes of a terrorist investigation, for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or in the interests of national security.

The National Fingerprint Database and the National DNA Database

Fingerprints and DNA samples taken and retained under PACE are stored on the National Fingerprint Database (IDENT1) and the National DNA Database (NDNAD) respectively. The

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41 ACPO, *Retention Guidelines for Nominal Records on the Police National Computer*, March 2006, Appendix 2

42 HL Deb 4 November 2008 cc131-138

43 HC Deb 19 November 2008 c266. See also "Government defeat on DNA database", *BBC News website*, 5 November 2008

National Policing Improvement Agency (NPIA) is responsible for both databases. The NDNAD Strategy Board provides governance and oversight of the operation of the NDNAD.[44]

Neither IDENT1 nor the NDNAD is subject to any statutory governance arrangements:

> 7.54 The current regulatory structure is not on a statutory footing and the legislative framework surrounding the forensic use of bioinformation is piecemeal and patchy. The regulatory architecture of forensic services is also currently in a state of flux in the United Kingdom. While different areas of the industry might require specific attention, such as the NDNAD, there is a need to think more holistically and prospectively about the future possibilities and challenges that might come with increased access to, and sharing of data, across forensic databases. An essential aspect of all governance arrangements must be a commitment to transparency and openness both as regards standard operating procedures (SOPs) and decision-making processes. This is in addition to the requirement that those procedures and processes be justifiable in the first place. Another crucial feature of the regulatory structure is the role of an independent oversight body or official.
>
> 7.55 We recommend that there should be a statutory basis for the regulation of forensic databases and retained biological samples. A regulatory framework should be established with a clear statement of purpose and specific powers of oversight delegated to an appropriate independent body or official. This should include oversight of research and other access requests, for example for further testing of samples or familial searching and inferring ethnicity. (...)[45]

These concerns have been echoed in reports by the Home Affairs Committee and the Constitution Committee.[46]

2.2 *S and Marper*: the European Court of Human Rights decision

Article 8 of the *European Convention on Human Rights* provides:

> **Right to respect for private and family life**
>
> 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Two individuals from whom fingerprints and samples had been taken, S (an 11 year old acquitted of robbery) and Marper (a man against whom proceedings for harassment of his partner had been discontinued), brought court proceedings challenging the indefinite retention of their data by the police on the grounds that this was incompatible with Article 8.

Proceedings before the domestic courts were unsuccessful,[47] but S and Marper went on to lodge an application with the European Court of Human Rights. The application was

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44 Further details, including the NDNAD's latest annual report, are available on the NPIA website.

45 Nuffield Council on Bioethics, *The forensic use of bioinformation: ethical issues*, September 2007, paras 7.54-7.55

46 Home Affairs Committee, *Surveillance Society*, 8 June 2008, HC 58-I 2007-08, para 285; and Constitution Committee, *Surveillance: Citizens and the State*, 21 January 2009, HL 18-I 2008-09, para 212

declared admissible on 16 January 2007 and a public hearing before the Grand Chamber took place on 27 February 2008. Judgment was handed down on 4 December 2008.[48] The Court accepted that the retention of fingerprint and DNA information pursued a legitimate purpose, namely the detection and prevention of crime. However, it went on to unanimously hold that the retention and storage of the applicants' fingerprints and DNA samples was disproportionate and not "necessary" in a democratic society, and therefore violated Article 8. The Court said:

> 119. In this respect, the Court is struck by the blanket and indiscriminate nature of the power of retention in England and Wales. The material may be retained irrespective of the nature or gravity of the offence with which the individual was originally suspected or of the age of the suspected offender; fingerprints and samples may be taken – and retained – from a person of any age, arrested in connection with a recordable offence, which includes minor or non-imprisonable offences. The retention is not time-limited; the material is retained indefinitely whatever the nature or seriousness of the offence of which the person was suspected. Moreover, there exist only limited possibilities for an acquitted individual to have the data removed from the nationwide database or the materials destroyed …; in particular, there is no provision for independent review of the justification for the retention according to defined criteria, including such factors as the seriousness of the offence, previous arrests, the strength of the suspicion against the person and any other special circumstances.

2.3 The position in Scotland

Scotland has a different system for the retention of fingerprints and DNA data, to which the European Court of Human Rights drew specific attention in its judgment:

> **Scotland**
>
> 36. Under the 1995 Criminal Procedure Act of Scotland, as subsequently amended, the DNA samples and resulting profiles must be destroyed if the individual is not convicted or is granted an absolute discharge. A recent qualification provides that biological samples and profiles may be retained for three years, if the arrestee is suspected of certain sexual or violent offences even if a person is not convicted (section 83 of the 2006 Act, adding section 18A to the 1995 Act.). Thereafter, samples and information are required to be destroyed unless a Chief Constable applies to a Sheriff for a two-year extension.
>
> (...)
>
> 109. The current position of Scotland, as a part of the United Kingdom itself, is of particular significance in this regard. As noted above (see paragraph 36), the Scottish Parliament voted to allow retention of the DNA of unconvicted persons only in the case of adults charged with violent or sexual offences and even then, for three years only, with the possibility of an extension to keep the DNA sample and data for a further two years with the consent of a sheriff.
>
> 110. This position is notably consistent with Committee of Ministers' Recommendation R(92)1, which stresses the need for an approach which discriminates between different kinds of cases and for the application of strictly defined storage periods for data, even in more serious cases (see paragraphs 43-44 above). Against this background,

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47 [2002] EWHC 478 (Admin) (High Court), [2002] EWCA Civ 1275 (Court of Appeal), [2004] UKHL 39 (House of Lords). A more detailed overview of the domestic proceedings is set out in Library Standard Note SN/HA/4049 *Retention of fingerprints and DNA data*.

48 *Case of S. And Marper v The United Kingdom*, Applications nos. 30562/04 and 30566/04. Press release 880 issued by the Registrar on 4 December 2008 provides an overview of the case.

> England, Wales and Northern Ireland appear to be the only jurisdictions within the Council of Europe to allow the indefinite retention of fingerprint and DNA material of any person of any age suspected of any recordable offence.[49]

More detailed guidance on the current Scottish system is available in a briefing note prepared by the Scottish Parliament Information Centre.[50]

2.4 The Government's response

Keeping the right people on the DNA Database

In response to the S and Marper decision, on 7 May 2009 the Home Office published a consultation paper inviting views on the content of proposed regulations to set out a new framework for the retention of fingerprints and samples in England and Wales.[51] Key proposals included:

- the destruction of any DNA samples[52] taken from a person on arrest, whether that person went on to be convicted or not.
- replacing the blanket retention of DNA profiles[53] with a differentiated approach under which data from convicted adults and juveniles[54] convicted of a serious offence or two or more lesser offences would be retained indefinitely, data from juveniles convicted of a single lesser offence would be retained until their 18th birthday, and data from individuals arrested but not convicted would be retained for either six or twelve years (depending on factors such as offence seriousness).[55]
- introducing regulations in respect of the "exceptional case procedure", by which an individual can apply to the police for the removal of their data, to set out defined criteria for deletion; and
- restructuring the NDNAD Strategy Board to give it a more external, independent membership, and establishing a new strategic and independent advisory panel to monitor the implementation and operation of the new framework and to provide advice and guidance to Ministers through an annual report.[56]

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49 *Case of S. And Marper v The United Kingdom*, Applications nos. 30562/04 and 30566/04, para 36 and paras 109-110

50 Scottish Parliament Information Centre Briefing 09/30, *Criminal Justice and Licensing (Scotland) Bill: Fingerprint and DNA Data*, 1 May 2009

51 Home Office, *Keeping the right people on the DNA database*, May 2009

52 "DNA samples" are the physical samples taken from an individual, such as a mouth swab, hair or blood. DNA samples are currently retained indefinitely and stored in secure sterile laboratories.

53 "DNA profiles" are the computerised records of the pattern of DNA characteristics taken from DNA samples. DNA profiles are currently retained indefinitely on the NDNAD and appear as numeric codes on the Police National Computer.

54 "Juvenile" here means a person aged between 10 and 18 years old: profiles of children under 10 are no longer added to or held on the NDNAD.

55 The six and twelve year retention periods would start running from the date of arrest, or (in the case of an individual subject to a control order) from the date on which that individual is no longer subject to the order. The Home Office arrived at the proposed six and twelve year retention periods partly on the basis of research conducted by the Jill Dando Institute of Crime Science (see section 6 and Annex C of the White Paper for further details of the Jill Dando Institute's research). The head of the Institute has subsequently said that the research was incomplete when it was used by the Home Office (see the following section of this Research Paper).

56 Note that the White Paper does not envisage this new panel acting as an appeal body: appeals against chief constables' decisions regarding the deletion of individual profiles would continue to be conducted by way of judicial review (see para 10.4 of the White Paper).

The Government also indicated that it intended to expand the categories of person from whom biometric data could be taken, in particular from UK residents and nationals convicted of serious offences overseas.[57]

The Conservatives and the Liberal Democrats criticised the proposals as not going far enough to respond to the decision in S and Marper. The Conservatives instead favour the introduction of a retention framework based on the Scottish system,[58] while the Liberal Democrats advocate "a simple rule: if someone is convicted, their DNA will remain on the database; if they are innocent, it will not".[59]

Reaction to the White Paper's proposals

The consultation closed on 7 August 2009 and a summary of responses was published on 11 November 2009.[60] The summary stated that there had been general support for a number of the consultation's proposals, such as those to destroy all DNA samples, to retain the profiles of those convicted of an offence and to clarify the exceptional case procedure and place it on a statutory footing. However, it also outlined a number of criticisms. In relation to the retention of profiles from individuals arrested but not convicted:

> …the significant majority [were] opposed to any form of retention of profiles and fingerprints for persons arrested and against [whom] no further action was taken or acquitted. Most of those opposed to any form of retention considered that the 'state' should not hold personal information on an individual when they are innocent in the eyes of the law. It was entirely inappropriate that a person should be treated the same as a person who had been found guilty and it went against the principle of 'innocent until proven guilty'.[61]

There was also "confusion on the proposed retention policy for young people and concern on the impact of stigmatisation of a young person and their ability to access future opportunities".[62]

The research that had formed the basis for the proposed six and twelve year retention periods was also criticised:

> There were three key criticisms: the sample size was too small; the linking of arrested and not convicted and arrested and convicted but not given a custodial sentence was considered flawed; and the material presented had not been peer reviewed. As a consequence, critics considered that the proposed retention periods were not based on a solid evidence base and required more detailed work to be carried out. Some respondents indicated that scientific certainty was required in order to determine a retention policy, if any, for arrested and not convicted and also for arrested and convicted.[63]

Interviewed for the BBC's Today programme in September 2009, Gloria Laycock, head of the Jill Dando Institute which conducted the research on which the proposed six and twelve year retention periods were based, said that the research had not been ready when it was published in May:

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57 Home Office, *Keeping the right people on the DNA database*, May 2009, para 7.1
58 Conservative Party press release, *Government plan to limit DNA database "doesn't go far enough"*, 7 May 2009
59 HC Deb 25 November 2009 c589
60 Home Office, *Keeping the Right People on the DNA Database: Summary of Responses*, November 2009
61 Ibid, para 2.1
62 Ibid, para 2.12
63 Ibid, para 9.2

> She said: "Their policy should be based on proper analysis and evidence and we did our best to try and produce some in a terribly tiny timeframe, using data we were not given direct access to.
>
> "That was probably a mistake with hindsight, we should have just said 'you might as well just stick your finger in the air and think of a number'.[64]

The human rights organisation Liberty described the Government's response as "extremely disappointing", going on to say:

> The proposals in this consultation are inadequate, very poorly researched and fail to address the Court's conclusion that the current retention regime is a disproportionate interference with the right to respect for private life. At the very least, an issue as important as the retention of intimate DNA profiles on a centralised database, must be properly debated and considered by Parliament and not left to secondary legislation.[65]

GeneWatch UK, a not-for-profit policy research group which focuses on genetic science and technologies, expressed similar views in its response to the consultation.[66]

Commenting on the proposals from the police service's perspective, ACPO recognised the need for balance and proportionality but said that "any outcome which reduces the ability of the service to protect the public and bring those guilty of serious crimes to justice is a cause for serious concern and careful consideration".[67]

The Government's revised proposals

On 11 November 2009, the Home Secretary Alan Johnson announced a revised set of proposals for the retention of fingerprint and DNA data.[68] Accompanying the statement was a new "review of the evidence in relation to a policy of DNA record retention".[69] The revised proposals replicated the original consultation proposals in a number of respects, but made the following key changes:[70]

- Profiles of adults arrested for a serious offence, but not convicted, would now be retained for six years rather than twelve. All profiles from unconvicted adults would therefore be subject to a six year retention period, regardless of the seriousness of the offence for which they were arrested:

> We propose a 6 year retention period for the profiles of unconvicted adults irrespective of the seriousness of the crime for which they were arrested. Although the ECtHR suggested that the seriousness of the alleged offence should be a factor in determining what length of retention was proportionate, the best available evidence indicates that the type of offence a person is first arrested for is not a good indicator of the seriousness of offence he might subsequently be arrested for or convicted of in future. As the retention of the DNA of innocent people is not punitive but rather a measure to

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64 "DNA storage proposal 'incomplete'", *BBC News website*, 25 September 2009. An audio clip of Professor Laycock's comments can be accessed on the Today website.

65 Liberty, *Liberty's response to the Home Office's Consultation: Keeping the Right People on the DNA Database: Science and Public Protection*, August 2009, p3

66 GeneWatch UK and the Open Rights Group, *Submission to the Home Office consultation: 'Keeping the right people on the DNA database'* , August 2009

67 ACPO press release 50/09, *ACPO comment on consultation of DNA Database*, 7 May 2009

68 HC Deb 11 November 2009 cc25-28WS

69 Home Office, *DNA Retention Policy: Re-Arrest Hazard Rate Analysis*, November 2009

70 A table summarising the differences between the original consultation proposals and the revised proposals issued in November 2009 is set out in the summary of responses: see Home Office, *Keeping the Right People on the DNA Database: Summary of Responses*, November 2009, p14

> facilitate the detection of future offences, the Government therefore concludes it is appropriate to have a single retention period.[71]

- Profiles of juveniles convicted of a single minor offence would be retained for five years before being deleted, rather than being deleted once the individual in question reached 18.

- Profiles of 16 and 17 year-olds arrested for a serious offence but not convicted would be retained for six years, in line with the arrangements for adults.

- Profiles of all other juveniles arrested but not convicted would be deleted after three years, regardless of the offence for which they were arrested:

> This corrects a possible anomaly with the original proposal, identified by consultation respondents, that an individual arrested at age 10 might have had their DNA retained for 8 years, whereas someone arrested at age 17 might have had their DNA retained for only 1 year. It also provides an appropriately more lenient approach to juveniles who are arrested but not convicted, compared with those who do receive a conviction.[72]

Both the Conservatives and the Liberal Democrats, as well as the chairman of the Home Affairs Select Committee, have said that the revised proposals still do not go far enough.[73]

Implementing the new framework

The Government had originally intended to implement the new framework by way of proposed order-making powers set out in the *Policing and Crime Bill*, considered during the 2008/09 session. Full details are set out in Library Research Paper 09/39 *Policing and Crime Bill*: *Committee Stage Report*. Both the Conservatives and the Liberal Democrats were opposed to these clauses of the *Policing and Crime Bill*, arguing that changes to the current retention arrangements should be made by way of primary rather than secondary legislation.[74] The Government's proposals to use secondary legislation were also criticised by the Joint Committee on Human Rights, the Lords Constitution Committee and the Lords Delegated Powers and Regulatory Reform Committee.[75]

On 20 October 2009, the *Policing and Crime Bill's* final day in committee before the Lords, the Government withdrew the relevant clauses. Home Office minister Lord Brett said:

> Given that strength of feeling, we feel that it is important to move forward with consensus, if possible. We therefore accept the view that this issue is more appropriately dealt with in primary legislation and have decided to invite Parliament to remove Clauses 96 to 98. As soon as parliamentary time allows, we will bring forward appropriate measures which will place the detail of the retention periods in primary legislation, allowing full debate and scrutiny of the issue in both Houses.[76]

The Government's proposals are now set out in clauses 2 to 20 of the Bill.

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71 HC Deb 11 November 2009 cc26-27WS
72 HC Deb 11 November 2009 c27WS
73 "Police to continue to hold DNA of innocent people", *Guardian*, 12 November 2009
74 Policing and Crime Bill Deb 26 February 2009 cc616-619
75 See: Joint Committee on Human Rights, *Legislative Scrutiny: Policing and Crime Bill*, 31 March 2009, HL Paper 68/HC 395 (paras 1.111 to 1.119); Constitution Committee, *Policing and Crime Bill*, 2 July 2009, HL Paper 128 (paras 10-16); and Delegated Powers and Regulatory Reform Committee, *Policing and Crime Bill*, 12 June 2009, HL Paper 110 (paras 7 to 10)
76 HL Deb 20 October 2009 c668

2.5 The Bill's provisions

The taking of fingerprints and samples

Clauses 2 and 3 would amend PACE to extend the circumstances in which the police could take fingerprints and non-intimate samples from an individual without his consent.

Clause 2 would extend sections 61 and 63 of PACE to enable the police to take fingerprints or non-intimate samples from a person who has been arrested for a recordable offence but who is no longer in police detention.[77] The power would enable the police to take such data in the case of an arrested person released on bail from whom fingerprints or non-intimate samples had not previously been taken, or from a person arrested and released (whether or not on bail) from whom such data has been taken but which later proved incomplete or insufficient for analysis or comparison.

Clause 2 would also introduce a new circumstance in which non-intimate samples could be taken without consent from a person who has been charged with a recordable offence. The new exception would cover cases where a person has previously had a non-intimate sample taken, from which a DNA profile was created and entered on the NDNAD, but the sample has since been destroyed (in accordance with the proposed destruction arrangements in clause 14 of the Bill) and the person now claims that the DNA profile did not come from his sample.

The existing power to take non-intimate samples without consent following conviction would also be extended to cover cautions, reprimands or warnings.[78]

Clause 3 would further extend section 61 of PACE by enabling the police to take fingerprints and non-intimate samples without consent from a UK national or resident convicted of a "qualifying offence" overseas.[79] The police will also have the power to take intimate samples from such persons, although the relevant individual's consent would be required in such cases. Whether the conviction was received before or after the commencement of the new provisions would be irrelevant: the power could therefore be exercised retrospectively.

Clause 6 would introduce a new schedule to PACE giving the police the power to require an individual to attend a police station for the purposes of having biometric data taken under both the existing and proposed new powers. Police officers would have the power to arrest a person who failed to comply with a requirement to attend. In some cases the requirement to attend would be subject to a time limit, for example:

- where it was proposed to take biometric data from an arrested or charged person because previous data had proved inadequate, the power to require attendance would have to be exercised within six months of the day on which the relevant police officer learned of the inadequacy; and

- where it was proposed to take biometric data from a person convicted of an offence (other than a qualifying offence), the power to require attendance would have to be exercised within two years of conviction.

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77 PACE currently only permits the taking of fingerprints or non-intimate samples from people who have been arrested and are in police detention.

78 This would replicate the existing provisions in respect of fingerprints: PACE s61(6)

79 The list of qualifying offences is set out in clause 7 and consists of certain serious violent, sexual or terrorist offences. The Secretary of State would be able to amend the list by order made by statutory instrument using the affirmative resolution procedure.

In other cases, for example persons convicted of a qualifying offence (as listed in clause 7) either in England and Wales or overseas, no time limit would apply and the power to require attendance at a police station could be exercised at any time.

Clauses 8 to 13 would make equivalent provision for Northern Ireland.

The retention, use and destruction of fingerprints and samples

Clause 14 represents the Government's response to the European Court of Human Rights decision in *S and Marper*, as it would establish a new statutory framework for the retention and destruction of fingerprints and DNA data. Section 64 of PACE would be deleted in its entirety and replaced by fifteen new sections, which would implement the Government's final proposals following the Home Office consultation described above.

The new section 64 would permit the indefinite retention of fingerprints, samples, DNA profiles derived from DNA samples and impressions of footwear taken from a person under PACE. However, this retention would be subject to the following new requirements on destruction:

- a DNA sample would have to destroyed as soon as a profile had been derived from the sample, or (if sooner) within six months of the date on which the sample was taken;
- any other sample (e.g. a dental or footwear impression) would have to be destroyed within six months of the date on which it was taken;
- any data given voluntarily would have to be destroyed as soon as it had fulfilled the purpose for which it was taken, unless the volunteer in question was convicted of the offence, had previously been convicted of another recordable offence or consented to its retention;
- data from a person subject to a control order would have to be destroyed within two years of the date on which the order ceased to have effect;
- data from adults arrested but unconvicted would have to be destroyed after six years;
- data from 16 or 17 year olds arrested for a qualifying offence[80] but unconvicted would have to be destroyed after six years, in line with the arrangements for adults;
- data from all other under 18s arrested but unconvicted would have to be destroyed after three years; and
- data from under 18s convicted of a single minor offence would have to be destroyed after five years.

In all cases, the clock would restart if the individual in question was subsequently arrested or charged during the relevant retention period. Chief constables would also have the power to determine that particular DNA profiles or fingerprints should be retained beyond the above destruction periods for the purposes of national security. Such determinations would have initial effect for a maximum of two years beginning with the date on which the material would otherwise have to be destroyed, but they would be renewable.

The "exceptional case procedure" for the removal of biometric data, currently set out in ACPO guidance, would be put on a statutory footing. Subject to the completion of any

[80] See previous footnote

speculative search that the responsible chief constable considered necessary or desirable, data would have to be destroyed immediately if it appeared to the chief constable that the arrest or the taking of the data was unlawful, the arrest was based on mistaken identity, or other circumstances relating to the arrest or the alleged offence meant that it would be appropriate to destroy the material.

In a Westminster Hall debate on 9 December 2009, Home Office minister Alan Campbell indicated that he would be "happy to go further, and to have a conversation about whether there should be guidelines to be absolutely sure that chief constables know what their responsibilities are in that regard".[81]

Data from adults convicted of any offence, or of under 18s convicted of a qualifying offence or more than one minor offence, would not be subject to any destruction requirements and could therefore be retained indefinitely (as is currently the case).

Clause 15 would make equivalent provision for Northern Ireland, while clause 16 would introduce a similar regime for biometric data taken and retained under the *Terrorism Act 2000*.

Separate arrangements would be made in respect of "legacy" data that has already been taken from people arrested but not convicted by the time the Bill comes into force. Clause 19 would require the Secretary of State to make regulations prescribing the manner, timing and other procedures in respect of the destruction of such data: the explanatory notes to the Bill recognise that "this exercise may take some time to complete".[82] The regulations would be subject to the negative resolution procedure.

Governance arrangements

Clause 20 would put the existing National DNA Database Strategy Board on a statutory footing, by requiring the Secretary of State to make arrangements for a board to oversee the operation of the NDNAD, and to publish its governance rules and reporting requirements.

GeneWatch UK has commented that clause 20 would not make the existing Board more independent, nor is there any provision for statutory independent appeals procedure against the retention of data.[83]

3 Domestic violence – "go" orders

3.1 Background

Clauses 21-30 provide for a new remedy for victims of domestic violence, which the Government and others have dubbed "go" orders. There are two parts to this. A senior police officer would be able to issue a "Domestic Violence Protection Notice" to suspected perpetrators which (amongst other possibilities) could exclude the perpetrator from the premises, even if they were the property owner. The police would then have to apply to a court for a Domestic Violence Protection Order lasting between 14 and 28 days, the contents of which could cover the same kind of provisions as the notice. These new tools will be piloted in two police force areas.[84]

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81 HC Deb 9 December 2009 c125WH

82 Explanatory notes, para 62

83 GeneWatch UK website, *Crime and Security Bill* [accessed 17 December 2009]

84 Home Office Press Release, *New powers help victims break cycle of domestic violence*, 29 September 2009; clause 30 of the Bill

The problem

Domestic violence is often a hidden crime, and it is difficult to assess the scale of the problem. British Crime Survey data indicates that domestic violence accounts for 14% of all violent incidents, despite the problem of underreporting.[85]

Around one in four women and one in six men will be a victim of domestic violence in their lifetime, with women at greater risk of repeat victimisation and serious injury. According to the 2007/08 British Crime Survey, 27% of women and 17% men had experienced domestic abuse from a current or former partner since the age of 16. This is equivalent to 4.3 million women and 2.7 million men. Abuse carried out by another family member had been suffered by 10% of women and 8% of men. This is equivalent to 1.6 million women and 1.2 million men. Women are more likely to than men to be repeat victims of partner abuse and to experience more frequent levels of abuse. 44% of women who had experienced any partner abuse in the past year had been victimised on more than one occasion over that period, compared with 32% of men. 18% of female victims of partner abuse reported experiencing six or more instances of abuse over the past year compared with 11% of male victims.

There is a widely recognised problem of attrition in domestic violence cases, despite a number of initiatives to reduce it.[86] A 2004 report by HM Inspectorate of Constabulary found that at each stage of the police investigation and prosecution process, there was a 50% reduction in the number of cases. [87] More recently, a 2009 review by the Association of Chief Police Officers summarised the research evidence as showing that "about a quarter of incidents recorded by the police result in arrest, while only 1½-5% of incidents result in conviction."[88] The Government, the police and the Crown Prosecution Service have all taken steps to tackle the problem. For example, 2008 guidance issued by the National Policing Improvement Agency emphasises officers' duty of positive action at all stages of the police response.[89] The Crown Prosecution Service's policy document sets out in some detail the approach to be taken when victims withdraw support for the prosecution, including the possibility, in more serious cases, that the CPS might nevertheless proceed with the prosecution, once all the reasons for withdrawal have been carefully explored.[90]

Legal remedies

Criminal and civil law remedies to deal with domestic violence are discussed in Library Standard Note SN/HA/3989, *Domestic Violence*. A number of important civil remedies were introduced by the *Family Law Act* 1996, and the *Domestic Violence Crime and Victims Act 2004* amended these with the intention of improving protection for victims. For present purposes, the most relevant remedies are non-molestation orders and occupation orders, although the *Protection from Harassment Act 1997* also introduced important civil and criminal remedies, including restraining orders.

One issue which has caused concern has been the fall in recent years in the number of applications for these civil protection orders, and in the number of orders made in some cases. Some commentators have suggested that this may have been due to an improved

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85 Alison Walker et al, *Crime in England and Wales 2008/09*, Home Office Statistical Bulletin 11/09, July 2009, p55

86 For a discussion of this see Marianne Hester, *Making it through the criminal justice system: Attrition and domestic violence*, Social Policy and Society 5(1) pp79-90, January 2006

87 Her Majesty's Crown Prosecution Service Inspectorate/ Her Majesty's Inspectorate of Constabularies, *Violence at Home: A Joint Thematic Inspection of the Investigation and Prosecution of Cases Involving Domestic Violence*, February 2004, [on 21 September 2009]

88 ACPO, *Tackling perpetrators of violence against women and girls*, *ACPO Review for the Home Secretary*, September 2009, available from the Policies page of the ACPO website (at 3 December 2009)

89 NPIA on behalf of ACPO, *Investigating Domestic Abuse*, 2008, [on 17 September 2009]

90 CPS, *Policy for prosecuting cases of domestic violence,* 2009

response from the criminal justice system, whilst others have argued that the there are still plenty of obstacles in the criminal system, and that there are other explanations.[91]

Non-molestation orders can prohibit either particular behaviour or general molestation.[92] The 2004 Act made breach of a molestation order a criminal offence with effect from 1 July 2007. There has been concern about the downward trend in applications for non-molestation orders. For example, the Conservative Party in their December 2008 strategy document *Ending violence against women* reported concerns from the judiciary that women might be less willing to apply for the orders for fear of criminalising their partners.[93] A literature review by the Legal Services Commission found that the downward trend in protection orders began before the *Family Law Act 1996* came into force, but also noted a sharp drop in the six months after the criminalisation of breaches in the 2004 Act came into force. It concluded that the impact of the 2004 Act would have to be kept "under review".[94] In fact, since both of those reports were published, Ministry of Justice statistics published in September 2009 have shown an increase in the number of applications for non-molestation orders. Total applications to county courts fell from 19,131 in 2002 to 15,871 in 2007, but rose again to 17,141 in 2008.[95]

Occupation orders can define or regulate rights of occupation to the home – for example excluding a perpetrator from the family home, and also possibly from the surrounding area.[96] The numbers of applications and orders made have both been falling. Applications have fallen from 11,924 in 2002 to 7,738 in 2008, and orders made fell from 11,763 in 2002 to 5,099 in 2008.[97] The Association of Chief Police Officers' September 2009 report, *Tackling Perpetrators of Violence against Women and Girls* (discussed further below), states that "courts have previously been reluctant to grant occupation orders, placing emphasis on this being a 'draconian' order requiring restriction to exceptional cases".[98]

The *Protection from Harassment Act 2007* created two criminal offences of harassment, and of "putting people in fear of violence", and also provided for restraining orders. These would forbid a perpetrator from pursuing further conduct against the victim amounting to harassment, or causing fear of violence. Breach without reasonable excuse is an arrestable offence. Originally, these orders were available to courts for people convicted of the criminal offences under the Act. However, changes made by section 12 of the *Domestic Violence Crime and Victims Act 2004*, which came into force (after some delays) on 30 September 2009 mean that the orders are now available for courts to restrain people convicted of *any* offence, and also people who have actually been acquitted, if the court decides that this is necessary "to protect a person from harassment by the defendant".[99]

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91 For a discussion of this see Mandy Burton, *Domestic Abuse Literature Review prepared for the Legal Services Commission*, September 2008, p13

92 section 42, *Family Law Act 1996*

93 p16

94 Mandy Burton, *Domestic Abuse Literature Review prepared for the Legal Services Commission*, September 2008, p22

95 Ministry of Justice, *Judicial and Court Statistics 2008*, Cm 7697, September 2009, table 5.8 and Lord Chancellor's Department, *Judicial and Court Statistics 2006*, Cm 7273, November 2007, table 5.8

96 sections 33-41 *Family Law Act 1996*

97 Ministry of Justice, *Judicial and Court Statistics 2008*, Cm 7697, September 2009, table 5.8 and Lord Chancellor's Department, *Judicial and Court Statistics 2006*, Cm 7273, November 2007, table 5.8

98 ACPO Review for the Home Secretary, *Tackling Perpetrators of Violence Against Women and Girls*, September 2009, (available from the Policies page of the ACPO website), p49

99 *Protection from Harassment Act* sections 5 and 5A. For further background see Library Research Paper 04/44, *The Domestic Violence Crime and Victims Bill: Domestic violence provisions*, 4 June 2004

Other developments

Details of Government action to tackle domestic violence are provided in the Government's annual progress reports on the National Domestic Violence Delivery Plan (the most recent of which was published in August 2009)[100] and in its November 2009 strategy document.[101] Some key services which have been introduced include the following:

Specialist Domestic Violence Courts (SDVCs), which are court systems involving partnership between police, prosecutors, court staff, the probation service and specialist support services for victims. The magistrates sitting in these courts are specially trained, and the partners work together to identify and track domestic violence cases and support victims The first 25 were accredited in 2005/06 , and there are now 127 in England and Wales.[102]

Multi-Agency Risk Assessment Conferences (MARACs), which were introduced in 2003. They bring local statutory and voluntary agencies together to protect women at highest risk of repeat domestic violence. The Government says that over 29,000 women received protection from MARACs in 2008, and at July 2009 there were over 225 across England and Wales.[103]

Independent Domestic Violence Advisers (IDVAs)[104] which were introduced in 2005-06. These are trained specialists providing independent advocacy and support to high-risk victims. By summer 2009 the numbers had increased from 100 to over 700 in England and Wales.[105]

3.2 Consultation on further changes

The Government issued a consultation document in March 2009 which aimed to "generate national debate" on proposals to prevent violence against women and girls.[106] At the same time, it asked Chief Constable Brian Moore from the Association of Chief Police Officers (ACPO) Domestic Abuse Working Group to conduct a full review of what additional powers the Criminal Justice System might take to control the activities of perpetrators of gender based violence (including domestic violence). The review's report was published in September 2009. Press coverage tended to focus on proposals to register and track serial perpetrators of violence against women and girls, and to give people at risk of violence a "right to know" about relevant information in the state's possession. However, another of the report also recommended "go" orders.[107]

3.3 Calls for "go" orders

"Go" orders or barring orders mean that police are given powers to order a suspected perpetrator to leave the home. A number of countries have introduced them in recent years, including Austria, Switzerland, Germany and Poland. In its 2008 report on Domestic Violence, the Home Affairs Committee recommended their introduction, and summarised the evidence it had received, and the situations in other countries, as follows:

> 334. The Men's Advice Line (MALE) recommended that more radical measures should be taken towards perpetrators: "we would like to see the perpetrator removed from the

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100 HM Government, *National Domestic Violence Delivery Plan Annual Progress Report 2008-09*, August 2009
101 HM Government, *Together we can end violence against women and girls: A strategy*, November 2009
102 Ibid p17
103 Ibid
104 Formerly known as Independent Domestic Violence Advocates
105 HM Government, *Together we can end violence against women and girls: A strategy*, November 2009, p17
106 HM Government, *Together we can end violence against women and girls: A consultation document*, March 2009
107 ACPO Review for the Home Secretary, *Tackling Perpetrators of Violence Against Women and Girls*, September 2009, (available from the Policies page of the ACPO website), Proposal 6, pp48-53

house and offered accommodation subject to him engaging in a suitable programme such as the Integrated Domestic Abuse Programme (IDAP) or similar".[343] MALE argues that, apart from allowing the victim to remain in their own home, such an approach would be financially prudent, since re-housing one person would be cheaper than re-housing a whole family.[344] This view was supported by respondents to our eConsultation:

335. A scheme along these lines has been developed by some European countries, so-called "GO" orders. Austria, Switzerland, Germany and more recently Poland have developed legislation which allows the police to take positive action at the domestic violence incident to exclude the perpetrator of violence from the home. The legislation differs between these countries in terms of factors such as the length of the exclusion order and the extent to which the state allows victims to influence the interventions which occur. In Austria, the order is valid for 10 days and controlled by the police for the first three. In Germany the police can ban the perpetrator from the house for 10-14 days.

336. A significant issue for each country in the development of their legislation has been the extent to which the State intervenes to protect the victim (usually woman) and children and can override their stated wishes and feelings or proactively bring in support and information services. In Austria there is a two stage process. In the first instance, the victim cannot influence the imposition of a barring order or "GO" order. The second stage of the process involves the woman taking action on her own behalf. After a barring order has been imposed, the victim can apply for an interim injunction at the Civil Court (Family Court) within ten days. If such an application is submitted, the barring order is automatically prolonged to 20 days.

337. The first Austrian evaluation showed that some women who were interviewed opposed barring orders, because they wanted to stay with their partners and thought this measure was too strict. Others felt that the barring order was important in developing personal understanding that they should separate from their partners. Some women told researchers that the perpetrators had been shocked by their own behaviour and that their relationship had changed for the better. The follow-up evaluation found that the reaction of some interviewees towards eviction and barring orders changed in the course of time. While in the beginning they had opposed these measures (especially when they did not want to give up their partners, but their partners left them), they admitted in the follow-up interviews how helpful the new legislation had been.[345]

338. The breaching of "GO" orders through the perpetrator returning to the residence is an on-going problem. In Germany no specific research on this dimension has been undertaken so far. In some federal states the law bound the police to issue a "GO" order at least once. In most cases where victims asked for the ending of the "GO" order, the perpetrator gained permission to return to or to stay at his residence. However, police have the discretion to continue the "GO" order if they believe that the victim is being threatened or pressured to allow the perpetrator to return though there are problems for the police in distinguishing between a forced and a voluntary statement of the victim.

339. We recommend that the Government introduces "GO" orders, which have proved effective in other European countries in offering an inexpensive and dynamic short term measure of removing the perpetrator from their home, thus allowing the victim to remain in it. We recognise that it is important to ensure that, as far as possible, the victim is involved in the decision to remove the perpetrator from the home. However, it seems to us that a compromise arrangement is possible, with an initial decision to remove the perpetrator taken

> **by the police, and subsequent decisions taken in consultation with the victim. Feedback from victims, through our eConsultation, suggests that they would welcome such a scheme.**
>
> **340. Development of "GO" orders in the UK should be linked with Sanctuary schemes, which we discuss in paragraphs 221 to 227 of this report, to provide further protection to victims who remain in their own home.** [108]

In its response to the Committee, the Government said it was "open to learn from the good practice and experiences of other countries".[109]

The ACPO review document, published in September 2009, provided a more detailed discussion of the international comparisons, particularly in Australia and Germany.[110] The report summarised what ACPO saw as the justification for the proposal as follows:

> The law should be changed to enable the police to issue a Domestic Violence Protection Order of up to 14 days duration, to prevent a suspected perpetrator of interpersonal violence from entering the address of the victim and/or to prevent contact with the victim.
>
> The prosecution of domestic abuse and other forms of interpersonal violence (including so-called 'honour'-based violence and elder abuse) continues to rely, in many cases, on the willingness of the victim to provide evidence. In many incidents, the victim is in no fit state, physically or emotionally, to make complicated and life-changing decisions regarding her safety, residence, financial security and the well-being of her children at the time when the police are investigating an incident or offence. It is not surprising, therefore, that victims sometimes do not wish to, or remain too frightened to, support prosecution. This order would be available only when an offender has been released from police detention without charge or bail.[111]

The main body of the report described a dangerous "gap" in the criminal and civil justice systems for victims of domestic violence:

> 6.1.3 We have learned that there is no readily available, consistent, affordable and timely access to civil court orders at this risky time. Whilst we are aware of a number of examples of good practice, these are not the norm and we believe that a gap exists between how the criminal justice system and civil law processes interact to provide a seamless service to victims at on-going risk of violence.
>
> 6.1.4 If an injunction were available immediately at the point of release from police detention (where no charge has been made, or bail powers are otherwise available), we suggest the victim would not always need to consider relocation and would have some 'protected time' in familiar space to engage with support services and determine her safety plan and future options for herself and her children.[112]

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[108] House of Commons Home Affairs Committee, *Domestic violence, forced marriage and "honour-based" based violence*, 20 May 2008, HC 263 – I, 2007-08, pp107-9

[109] The Government reply to the sixth report from the Home Affairs Committee Session 2007-08 HC 263, *Domestic Violence, Forced Marriage and "Honour"-based Violence*, Cm 7450, July 2008, p85

[110] ACPO Review for the Home Secretary, *Tackling Perpetrators of Violence Against Women and Girls*, September 2009, (available from the Policies page of the ACPO website), pp 50-2

[111] Ibid, p6

[112] Ibid, p48

However, the ACPO review did note that the evaluation of similar orders in Germany and Austria revealed a "high demand for support and advocacy" along with the orders.[113] On this point, it concluded:

> There is strong evidence from other countries that 'emergency injunctions' have a positive impact on the safety of victims, at least in cases of domestic violence. The approach relies on the availability of third-sector support for victims, and an increase in the availability of relevant advocacy/support would need to be considered.[114]

3.4 Announcement

The Government's March 2009 consultation mentioned the operation of "go" orders in other countries:

> Austria, Switzerland, Germany and Poland have developed legislation allowing the police to exclude the perpetrator of domestic violence from the home. The legislation differs between these countries in terms of the length of the exclusion order, and the extent to which the state allows victims to influence the interventions that occur. In Germany the police can ban the perpetrator from the home for 10–14 days.
>
> In Austria, the order is valid for 10 days and controlled by the police. There is a two stage process. In the first instance, the victim cannot influence the imposition of a barring order or 'go' order. The second stage of the process involves the woman taking action on her own behalf. After a barring order has been imposed, the victim can apply for an interim injunction at the Civil Court (Family Court) within 10 days. If such an application is submitted, the barring order is automatically prolonged to 20 days.[115]

It went on to ask what could be learnt from other jurisdictions and the powers they have created to control perpetrators.

In September 2009, the Home Secretary, Alan Johnson, announced at the Labour Party Conference that the Government would be introducing Domestic Violence Protection Orders:

> For too long it seemed to be acceptable that domestic violence against women and girls was a private matter.
>
> It was Labour that introduced specialist domestic violence courts and helped put 720 fully trained independent domestic violence advisers in place. More arrests are being made and conviction rates are rising.
>
> But the police tell us they often find themselves powerless to stop the aggressor in a domestic violence situation - - from returning to the property straight away, putting the victim at risk of more violence.
>
> That must change.
>
> That is why I am bringing forward measures to allow the police to issue Domestic Violence Prevention Orders to stop the aggressor from returning not just to the house, but to the whole immediate area, and forcing him to remain out of the vicinity for a set

[113] Ibid, p51
[114] Ibid p53
[115] HM Government, *Together we can end violence against women and girls: A consultation document*, March 2009, p19

> period. During this time, support will be provided for the victim including counselling and practical options for getting away from a violent partner. [116]

The Impact Assessment provides a more detailed rationale for Domestic Violence Protection Orders.[117] It identified the two main objectives as being reducing the repeat victimisation of domestic violence and providing "police-led immediate protection where, currently, immediate protection does not exist to enable victims of domestic violence to have the time and support needed to consider their future options, including longer-term civil injunctions". Like the ACPO report, it described a gap in current provision:

> Government intervention is needed because there is a current gap in the protection offered to victims of domestic abuse in the immediate aftermath of an incident of domestic violence. If a victim of domestic violence calls out the police, the following means of protection are available:
>
> 1. Arrest the perpetrator, who is charged, or bailed pending a charging decision from the Crown Prosecution Service
>
> 2. The charged perpetrator can either be remanded in custody (though this occurs rarely), or bailed with sufficient conditions to protect the victim.
>
> This is a time during which the victim would reasonably be able to take out a longer-term civil injunction. For domestic violence victims, separation is a dangerous time and being pursued after separation can be particularly dangerous4. In the immediate aftermath of reporting to the police, a victim may be considering leaving the relationship and will need both protection and time to consider their options for the future.
>
> Existing gaps in protection available to victims in the immediate aftermath of reporting a domestic violence incident:
>
> Suspected perpetrator is released pending charge: If a case is pending a charging decision, the Police can and do impose bail conditions before charge. If the bail conditions are then breached then there is no sanction that can be applied, however the police have a power of arrest for breach of bail.
>
> Suspected perpetrator is release with a caution or No Further Action: A suspected perpetrators of domestic violence is arrested but not charged with an offence, leaving the victim vulnerable whilst they make the decision and arrangements to take out a civil injunction.
>
> Suspected perpetrator is charged: If there is a decision to charge for a domestic violence related offence, the suspected perpetrator has a right to bail which can only be withheld if there are substantial reasons to believe that a number of exceptions apply. In lower risk cases, where there has not been much history within the criminal court, the application of bail conditions are harder to justify given that to order bail conditions there must be a substantial likelihood that the suspected perpetrator will carry out one of the exceptions.[118]
>
> Given the high attrition rate from arresting for a domestic violence incident to charging for a domestic violence related offence, it is proposed that the key policy gap in protection is when a suspect is released with a caution or No Further Action and where

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[116] *Alan Johnson's speech to Labour Party Conference*, 29 September 2009

[117] Home office, *Impact Assessment of Domestic Violence Protection Orders (DVPO) - a pilot scheme*, available from the *Crime and Security Bill* page of the Home Office Crime Reduction website [on 16 December 2009]

[118] Ibid, pp4-5

> a suspected perpetrator is charged early in their offending cycle which may not prompt a decision to apply bail conditions

3.5 The Bill

Clauses 21-30 of the Bill provide for the police to issue a domestic violence protection notice (DVPN), which must be accompanied by an application to the magistrates' court for a domestic violence protection order (DVPO). The court must hear the application within 48 hours, and, if granted, the DVPO could last for between 14 and 28 days.

Clause 21 provides that a senior police officer (not below superintendent rank) can issue a DVPN if there are reasonable grounds for believing that a suspected perpetrator has been violent or has threatened violence towards an "associated person", and that the notice is necessary to protect that person from violence. An "associated person" could be a spouse, an ex-spouse, civil partner or former civil partner, cohabitant or former cohabitant, a relative or people who live or have lived in the same household but not as an employee, tenant, lodger or boarder.[119] The notice must provide a provision prohibiting molestation of the victim. If the victim and perpetrator share a house, the notice may also prohibit the eviction or exclusion of the victim, and prevent the perpetrator from entering, require him to leave, or prohibit him from coming with a specified distance of the premises. The authorising police officer would not need the consent of the victim to issue a DVPN.

The DVPN must be served in person and must contain certain information, including the grounds for the notice, and the fact that breach is arrestable.

Like a DVPN, a DVPO can stop the victim being evicted or excluded, can prohibit the perpetrator from entering, or make him leave the premises, and can prohibit him from coming with a specified distance of the premises. The court can grant a DVPO if it is satisfied "on the balance of probabilities" that the suspected perpetrator has been violent towards an associated person, or has threatened violence. Once again, the alleged victim's consent is not necessary, but the court would need to consider his or her opinions, and those of any other "associated persons" living at the premises. Breach of a DVPO could also result in arrest, during which the suspected perpetrator must be held in custody and brought before the magistrates' court within 24 hours.

Clause 30 provides for the pilot schemes which the Government has indicated will be conducted.

3.6 Comments on the proposals

At the time of writing, there were few responses to the provisions in the Bill. However, in its response to the Government's March 2009 consultation document, Refuge (a national charity providing emergency accommodation to victims of domestic violence) welcomed the discussion of "go" orders, albeit with some caution:

> Refuge recommended that the Government adopt 'GO' orders in its response to Safety and Justice in 2003 and so is pleased to see that this legislation (which would allow for perpetrators of domestic violence to be removed from the home for specified time periods) is explored within the consultation paper. Removing the perpetrator from the premises may provide a safe period of time for women and children to access support, explore their options and/or take out a civil injunction against the perpetrator, to apply for residence of the children and obtain a prohibited steps order.

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[119] Clause 21(9) and section 62 of the *Family Law Act 1996*

> At the same time, however, Refuge is aware that this particular proposal is based on practice in Austria, Germany and Switzerland where the removal measure does not 'stand alone' but is linked to wider systems of intervention. Its transferral to the UK context may therefore have different implications and Refuge has a number of questions about how it would work including: where would the perpetrator go?[120]

The Fawcett Society, which campaigns for sex equality, also drew attention for the need for support services in its response to the consultation document:

> The use of 'go' orders is referred to in the consultation paper. These removal laws should be carefully considered and any policy in this respect should be based on an understanding that the use of these laws in Austria, Germany and Switzerland are linked to intervention projects. The laws are not 'stand-alone' but are linked to projects by independent bodies tasked to address gaps in policy and inter-agency cooperation, alongside ensuring the availability of support services for victims and perpetrator interventions.[121]

One of the few analyses of the domestic violence provisions of the Bill itself published at the time of writing is contained in an article published on the *Family Law Week* website by a barrister specialising in family law:[122]

> The intention behind these proposals is to allow the police to take short-term action to protect a person from domestic violence, where the person might in fact be unwilling or unable to take steps to protect themselves. The administrative notice should last for only 48 hours, but there is a glaring loophole on the face of the Bill which does nothing to prevent any number of adjournments of the hearing for the DVPO, and thus extending the 48 hours into many days or weeks. Whilst Article 8 rights are engaged by the notion of an administrative direction to leave the family home, if the proposals are tightened up so as to prevent the DVPN continuing beyond a maximum duration, a Human Rights Act challenge does not look promising. In addition, the notion that the application for a DVPO can be adjourned for three weeks while P is remanded in custody so that medical reports can be obtained does not sit well with the idea that these powers are to be used at an early stage whilst V can go off and obtain advice herself. There may be every reason why, when P has been arrested for breach of a DVPO, there should be such a lengthy remand. It is less attractive for someone to be deprived of their liberty on arrest for such a period for breach of a DVPN, ie when there are reasonable grounds to believe they are in breach of an administrative direction, itself made only on there being reasonable grounds that there has been domestic violence.
>
> Are the new powers necessary? Sitting sad and unimplemented on the statute book is s 60 of the Family Law Act 1996, which would allow rules of court to be made to permit the police (or other persons) to bring an application for orders under Part IV on behalf of victims of domestic violence. Those provisions also allowed for a pilot process, but did not involve separate proceedings. One advantage of the s 60 route is that there would be one set of proceedings, so that for instance the evidence used in the police's application would automatically be available to all the parties in later proceedings. In addition, proceedings for a DVPO are not family proceedings, so the court would not have power, for instance, to make a s 8 order of its own motion. The s 60 procedure could be made available in a wider range of circumstances. The Bill's provisions only

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120 Refuge, *Together we can end violence against women and girls A consultation paper*, May 2009

121 Fawcett Society, *Consultation Response from the Fawcett Society to HM Government Together We Can End Violence Against Women and Girls*, 3 June 2009

122 Michael Horton of Coram Chambers, London, *More Police Powers for Domestic Violence - The Crime and Security Bill Reviewed*, 24 November 2009. Reproduced with permission.

> allow the police to issue notices where there are reasonable grounds to believe there has been violence or the threat of violence. Under s 60(3), if brought into force, the preconditions were to be left to the rules of court (and the Law Commission's draft Bill had recommended that a constable could apply if there was reasonable cause to believe there had been violence, threatened violence, or molestation).11 It was the then Labour opposition who proposed what has become s 60 of the 1996 Act. When it came to power, the government view was to await and see how representative injunction actions such as ASBO's worked in practice before deciding whether to implement s 60. In fact, the court's powers to make orders and injunctions to protect people on applications by persons other than those to be protected have grown and grown over the years. The latest example is the ability of local authorities to apply for forced marriage protection orders under Part 4A of the 1996 Act.
>
> Most of the Bill's provisions therefore might easily be achieved by bringing s60 of the 1996 Act into force. The only new power the Bill adds is the 'go order', the DVPN, the administrative power to order a suspected perpetrator of domestic violence to leave the home. Of course, the police can arrest persons who are suspected of committing criminal offences, and it might be argued that the DVPN power adds little. In any event, if this new power were still considered necessary, a more elegant next step would be to provide that, once a DVPN is issued, the police must bring an application under Part IV on behalf of V.

4 Gang-related violence

Clauses 31-36 deal with injunctions for gang-related violence, which were introduced by the *Policing and Crime Act 2009* (although the provisions are not yet in force) and have been dubbed "gangbos" in the press. As things stand, the legislation does not restrict the age at which an injunction can be given, but the Government has pointed to practical difficulties in enforcement, given the fact that most young people will not have the money for a fine and that they cannot be sentenced to detention for a breach of a civil order.[123] The Bill introduces a lower age limit of 14 for these injunctions, and at the same time provides powers for the court to make a supervision order or detention order where an injunction has been breached. In effect, therefore, this extends these orders to those aged 14-18.

4.1 The problem

In recent years there have been a number of high profile cases of young people dying as a result of gang related violence, such as the shooting of 11 year-old Rhys Jones in Liverpool in 2007 and the murder of Shakilus Townsend by gang members in Thornton Heath in 2008.

There are some problems ascertaining the extent and nature of gang culture in Britain. These include definitional difficulties. A useful discussion of these problems can be found in a February 2009 report by the Gangs Working Group for the Centre for Social Justice. [124] This states:

> The prevalence of gangs and their membership amongst young people in Britain is largely unknown. A number of papers have been written on gang membership in particular areas – compiled by police and academics – and a number of self-reporting

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[123] HL Deb 13 October 2009 c166

[124] The Centre for Social Justice was established by the former Conservative leader, Iain Duncan Smith. It states that its Working Groups are "non-partisan, comprising prominent academics, practitioners and policymakers who have expertise in the relevant fields."

> surveys have included questions on gangs, but a national assessment has not been undertaken.[125]

The report goes on to examine a number of sources before concluding:

> Evidence collected by the Working Group indicates that the perception on the streets – both young people's and practitioners' – is that the gang problem is worsening. One YOT[126] manager told the Working Group that whereas 4 or 5 years ago, gang violence was inter-borough, it is now intra-borough, and this reflects the increase in the number of gangs: from borough wars to postcode wars. This was confirmed by Patrick Regan, CEO of XLP (a youth charity working across some of London's most gang-impacted boroughs) who said:
>
> > 'Expanding young people's horizons is a task becoming ever harder in the urban context as postcode wars become more prevalent and estates more territorial. In London, rivalries which have historically been interborough are becoming intra-borough. The space people feel safe in is constricting...'
>
> Nevertheless, gang membership and violence is still a minority activity – though the impact is far more wide-ranging – and it is vital to keep this in mind. Incessant sensational headlines are creating an image of a country plagued by gang warfare. This is not the case.[127]

The British Library has produced a bibliography on *Youth Gangs, Gun and Knife Crime* which is a useful source of further reading on the subject.

4.2 Government action

In September 2007, the Government announced the *Tackling Gangs Action Programme*, a six-month initiative to target and reduce youth violence, particularly gang-related firearm offence in four cities in England and Wales: Birmingham, London, Liverpool and Manchester. A monitoring report on the implementation of the programme was published in May 2008[128] Also in May 2008, the Government published *Tackling Gangs: A Practical Guide*, aimed at providers of local services such as the police and local authorities, and based on the work done in the four cities under the Tackling Gangs Action Programme. Section 8 of this sets out the various enforcement tools available to target gang members, ranging from dispersal orders[129], anti-social behaviour orders[130] and injunctions to police operations and armed checkpoints. Another initiative has been the Government's *Tackling Knives Action Programme* launched in June 2008, which channelled £2m of resources to work in ten police force areas.[131]

The Government also published a Youth Crime Action Plan in the summer of 2008[132], with a follow-up plan in 2009.[133] The latter stated that it would be tackling gang-related violence by:

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125 The Centre for Social Justice, *Dying to Belong: An in-depth review of street gangs in Britain A Policy Report by the Gangs Working Group Chaired by Simon Antrobus*, February 2009

126 A YOT is a Youth Offending Team, a multi-disciplinary team including police and social workers whose function is to tackle youth offending in the local area

127 Ibid, p71

128 Paul Dawson, *Monitoring data from the Tackling Gangs Action Programme*, May 2008

129 For details on these, see Library Standard Note SN/HA/4048, *Police powers to disperse children and groups under the Anti-Social Behaviour Act 2003*, October 2008

130 For details, see Library Standard Note SN/HA/ 1656, *Anti-social Behaviour Orders* , 15 January 2007

131 For more information, see the *Tackling Knives Action Programme* page of the Home Office's Crime Reduction website.

132 HM Government, *Youth Crime Action Plan* July 2008,

133 HM Government, *Youth Crime Action Plan: One Year On*, July 2009

> - Extending the Tackling Knives Action Programme with an extra £5 million to tackle knife crime and increase targeted police action to tackle a minority of young people who commit serious violence, regardless of the weapon involved. This renewed drive on serious youth violence will include making a greater commitment to tackle the public's fears about the impact of gangs on local communities, building on the work of the police and local agencies which was successful in our earlier targeted programme.[134]

It went on to identify taking "tough action through the courts to tackle gangs" as one of its key objectives.[135]

4.3 The introduction of gang injunctions in the *Policing and Crime Bill 2008/09*

Civil injunctions against gang violence were pioneered by Birmingham City Council between August and December 2007, during which period it obtained some 30 interim injunctions under section 222 of the *Local Government Act 1972*.[136] The advantage of civil injunctions over anti-social behaviour orders (ASBOs) or criminal proceedings was that civil injunctions could be obtained using a lower burden of proof. However, in January 2008, Birmingham County Court dismissed an application by Birmingham City Council for civil injunctions against two alleged gang members. In October 2008, this decision was upheld by the Court of Appeal, which ruled that county courts should not grant civil injunctions in cases where an ASBO would be more appropriate:

> … the court should not indulge in parallel creativity by the extension of general common law principles… it seems to us that, where (as here) a council seeks an injunction in circumstances in which an ASBO would be available, the court should not, save perhaps in an exceptional case, grant an injunction but leave the council to seek an ASBO so that the detailed checks and balances developed by Parliament and in the decided cases will apply.[137]

On 5 February 2009, following the Court of Appeal's ruling, the Home Office announced that new powers to grant injunctions to prevent gang-related violence would be added to the *Policing and Crime Bill*, which had already had its second reading and was in committee:

> The proposed new injunction would enable a court to impose a range of restrictions or requirements on an individual such as:
>
> - not entering a specified place, for example, the neighbourhood that the gang regards as 'its' territory, or the area where the gang has offended because gangs' 'power bases' are partly the result of everyone in their territory knowing them and being frightened of them
> - not being with named members of a gang — gangs are able to intimidate people because they operate in significant numbers, alone gang members are much less able to threaten or commit violence
> - not using or threatening to use violence
> - not using the internet to encourage or facilitate violence
> - not wearing particular items of clothing such as gang colours or balaclavas which prevent identification

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134 Ibid, p26

135 Ibid, p57

136 s222 of the 1972 Act enables local authorities to institute civil proceedings in their own name where they "consider it expedient for the promotion or protection of the interests of the inhabitants of their area".

137 *Birmingham City Council v Shafi and another* [2008] EWCA Civ 1186. For press coverage of the Court of Appeal's decision see, for example, "Anti-gang injunctions thrown out", *BBC News*, 30 October 2008 and "Local government law – ASBOs, injunctions and anti-social behaviour", *Law Gazette*, 12 February 2009

> Alongside this, the government proposes the court should have the power to require those given an injunction to take part in positive activities such as community outreach programmes or mediation sessions between rival gangs, to ensure that they are provided with alternatives to their gang lifestyle.[138]

During the committee stage of the *Policing and Crime Bill*, the Government therefore tabled several new clauses and a new schedule which were given first and second readings without division.[139] However, the new provisions did provoke controversy. For example, Liberty made the following comments in its briefing on the clauses:

> On 12 February 2009 Home Office Minister, Vernon Coaker, introduced a substantive amendment to the Policing and Crime Bill to provide for "injunctions to prevent gang-related violence". In effect these are a mix of control orders/ ASBOs for anyone suspected of engaging in or encouraging or assisting gang-related violence. It is disappointing that these provisions were introduced at this late stage of the Bill process so that they could not be debated during Second Reading, nor could they be properly considered during the Committee stage. Liberty has serious concerns about the introduction of these provisions and the continual blurring of the civil and criminal law. We have long expressed our concern about the control order regime and the extensive use of ASBOs and it is very disheartening to see that this type of approach to crime and disorder continues to be dealt with outside the normal criminal justice processes.[140]

A more detailed critique, including an examination of similar injunctions which were introduced in the United States, was provided in Liberty's briefing for the Lords report stage.[141]

The Joint Committee on Human Rights also expressed concerns:

> We have followed up our earlier report on the Policing and Crime Bill by scrutinising Government amendments which would permit a court to grant an injunction to prevent gang-related violence. We express concern that these amendments were published towards the end of the Committee stage in the first House, thus making effective parliamentary scrutiny more difficult.
>
> "Gang" is not a precise or legal term and we are concerned that gangs injunctions could be used on a wider basis than is currently envisaged. We recommend that the term should be defined in the Bill or, failing that, explained clearly and in detail in guidance.
>
> In our view, the Government has failed to explain the need for the new injunctions, particularly as the Court of Appeal has concluded that a range of powers already exists for dealing with gangs.[142]

The Committee went on to make detailed proposals, including a limit on the duration of an injunction, and an exhaustive list of prohibitions and requirements which may be imposed.

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138 Home Office press release, *Stronger power to tackle gangs*, 5 February 2009
139 PBC Deb 26 February 2009 cc561-582 and 585-604
140 *Liberty's Committee Stage Briefing on new government clauses for the Policing and Crime Bill in the House of Commons*, February 2009
141 *Liberty's Report Stage Briefing and Amendments on the Policing and Crime Bill in the House of Lords*, October 2009
142 Joint Committee on Human Rights, *Legislative Scrutiny: Policing and Crime Bill (gangs injunctions)*, HL 81/HC 441 2008-09, p3

The House of Lords Constitution Committee, like Liberty, raised concerns about the blurring of the boundaries between the civil and the criminal law represented by these measures, along with a range of other measures such as ASBOs. This, they said, was a general concern about the fact that civil measures such as these did not have the same safeguards which were built into the criminal law system, including a high standard of proof and the non-admissibility of hearsay evidence. They contrasted the gang-related violence injunctions with ASBOs, for which the courts had determined that the criminal standard of proof (i.e. beyond reasonable doubt) should normally be applied rather than the civil standard (on the balance of probabilities):

> 5. We recognise that there are differences in detail between anti-social behaviour orders (ASBOs), sex offender orders, football banning orders, serious crime prevention orders, foreign travel orders, and the like. Most, however, enable courts to impose restrictions on liberty based on a civil standard of proof (the balance of probabilities), to do so on the basis of hearsay evidence (often from witnesses who are employees of the state), and on the basis of assessment of the risk of future criminality or wrong-doing.
>
> 6. While the aim of these orders is to prevent future actions rather than to punish past behaviour, the impact on the individual is—as in punishment—the restriction of freedom backed by sanctions. There is a danger that the proliferation of civil preventative orders will undermine basic due process safeguards that have traditionally been present in the criminal law. The fashion for preventative orders brings with it a change in the relationship between citizen and state. A citizen who is subject to legal process by the police or local authorities to prevent what he or she *might* do in the future stands in a different relation to the state to a citizen who is subject to punishment for what he or she *has done* in the past.
>
> **Gang-related violence injunctions**
>
> 7. Clause 33 of the bill provides that when considering whether to grant a gang-related violence injunction, the court must be "satisfied on the balance of probabilities that the respondent has engaged in, or has encouraged or assisted, gang-related violence".
>
> 8. In *R. (on the application of McCann) v Manchester Crown Court* [2002] UKHL 39, the Appellate Committee of the House of Lords considered the standard of proof for ASBOs made under the Crime and Disorder Act 1998. The House held that in applications for ASBOs, given the seriousness of the matters involved, fairness required a "heightened civil standard" of proof; this was "virtually indistinguishable" from the criminal standard and so, for practical purposes, the criminal standard should normally be applied by the courts in relation to ASBOs.
>
> **9. We accept that preventative orders cover a wide range of different situations, some of which have more serious consequences than others. There may be some preventative orders in respect of which the civil standard or a sliding-scale of the standard of proof is appropriate. Gang-related violence injunctions are, however, in the category of preventative orders with the most serious consequences. We are therefore concerned that the bill states expressly that the standard of proof is the civil standard rather than the criminal standard. In our view minimum considerations of due process should require the criminal standard of proof ("beyond reasonable doubt") to be applied in applications for gang-related violence injunctions.**[143]

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[143] House of Lords Constitution Committee, *Policing and Crime Bill*, 2 July 2009, HL 128 2008-09, paras 3-6 and para 9

The Government maintained that the civil standard of proof was the right one to apply to these injunctions:

> As stated in our above response where prosecution is possible, the use of criminal law to deal with gang-related violence will always be the preferred option. These injunctions will be aimed at those against whom, for a variety of reasons, criminal proceedings have not been brought.
>
> The proposed injunction is a civil order and whilst the Government acknowledges the serious nature of gang-related violence we feel that the only appropriate burden of proof to be applied is the civil balance of probabilities. We feel that this is appropriate because the injunction will be granted in the civil courts and any breach of which will be dealt with as a civil contempt of court. The Government is satisfied that civil court procedure adequately safeguards individuals' ECHR Article 6 rights.
>
> Civil courts are well versed in using injunctions to deal with allegations involving criminal or quasi-criminal behaviour for example, housing disputes and domestic violence. An allegation of criminal activity taking place is not enough to put this injunction into the arena of the criminal justice system. The Government is aware of the need to ensure that there are adequate safeguards, especially bearing in mind the nature of the requirements and prohibitions and the duration of the injunctions. It is for these reasons that, in addition to the right to appeal, express provision has been made allowing applications to discharge or vary the injunction to be made by either party as well as enabling the courts to set review hearings.
>
> The Government has carefully considered both the case of *McCann* and the subsequent House of Lords case of *Re B* in which it was clarified that there is only one civil standard of proof. Since it is not a criminal offence to breach an injunction, the Government is content that the situation is distinguished from that of ASBOs. These injunctions are not the tool to be used for anti-social behaviour and therefore the Government is satisfied that any overlap with ASBOs is minimal. As previously highlighted, should there be proof to the criminal standard of criminal activities, the Government would expect criminal proceedings to be considered. However, given these are civil injunctions granted in civil courts, breach of which is a civil contempt of court, the Government is content that the balance of probabilities is the appropriate burden of proof.[144]

4.4 The gang injunctions provisions in the *Policing and Crime Act 2009*

The *Policing and Crime Act 2009* received Royal Assent on 12 November 2009. The provisions relating to gang injunctions are contained in Part 4 of the Bill, which is not yet in force. When it is, a court will be able to grant an injunction where it is satisfied that a person has engaged in, or has encouraged or assisted, gang-related violence, and where the court thinks the injunction necessary:

- to prevent the person from continuing to do so, or
- for the purpose of protecting the person from gang-related violence

"Gang-related violence" is defined as

> violence or a threat of violence which occurs in the course of, or is otherwise related to, the activities of a group that—

> (a) consists of at least 3 people,
>
> (b) uses a name, emblem or colour or has any other characteristic that enables its members to be identified by others as a group, and
>
> (c) is associated with a particular area.[145]

The possible contents of the prohibitions and requirements are set out in section 35. For example, the respondent may be prohibited from being with certain people in particular places or wearing certain articles of clothing. They may also have to participate in particular activities, or be at a particular place at particular times. Prohibitions or requirements can last for up to two years – a time limit which was added as the Bill went through the Lords in response to concerns.[146] Injunctions can be made without the respondent being given notice if the court regards this as necessary, although this must be pending a hearing for which notice has been given. The police can arrest for breach of the injunction without a warrant.

4.5 Applicability of the new provisions to the under 18s

Vernon Coaker, then a Home Office minister, made it clear during the course of the *Policing and Crime Bill* that it would be difficult to apply the provisions to the under-18s, but that officials were working on a solution to this:

> Technically, the injunctions can apply to under-18s. (…) Injunctions, however, have to be enforceable and it is unlikely that they would be enforceable for somebody under 18: the court cannot fine someone who does not have a source of income and most gang members would not have a legitimate source. Nor can the court sentence someone under 18 to detention in a young offenders institution – the penalty for breaching one of these orders – for a civil contempt of court.
>
> Changing the law to enable the courts to use injunctions for under-18s would involve a major change in how civil law interacts with minors – under 18s. However, I recognise that a tool for managing under-18s would be welcomed by those on the front line, seeking to manage gangs, and by those communities most affected by gangs. (…) I have asked my officials to work with others across Government to see whether we can amend how civil injunctions work to enable the provision to be used for under-18s.[147]

Given Vernon Coaker's indication that he did not expect the injunctions to be used for young people under 18, the shadow Home Affairs minister, James Brokenshire, questioned whether the Bill should contain an express provision to this effect.[148] The Liberal Democrat shadow policing minister Paul Holmes agreed that the Bill should include an age limit in order to avoid any confusion about the applicability of injunctions to under-18s, particularly in relation to 16 and 17-year olds.[149] Concerns were also expressed about this in the Lords.[150]

The Joint Committee on Human Rights also thought that under 18s should be explicitly excluded:

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144 House of Lords Select Committee on the Constitution, *Parliamentary Standards Bill & Policing and Crime Bill: Government Responses to the Committee's 17th, 18th and 16th Reports of Session 2008–09*, 2 November 2009, HL Paper 173 2008-09, p6

145 section 34(5)

146 See HL Deb 13 October 2009 c206; HL Deb 5 November 2009 c464

147 PBC Deb 26 February 2009 c566

148 PBC Deb 26 February 2009 c580

149 PBC Deb 26 February 2009 c587

150 See for example HL Deb 13 October 2009 cc164-6

> (T)he Government considers that gangs injunctions are not enforceable against under-18s but is looking to find ways of using civil injunctions against children. We recommend that the Bill should be amended explicitly to exclude under-18s and we are not persuaded that new provision is needed to deal with children, given the range of powers already at the disposal of the courts. [151]

4.6 The Bill

Clause 31 of the Bill adds a new lower age limit to the provisions in the 2009 Act, so that injunctions could be issued only to respondents aged 14 or over. **Clause 36** introduces a new Schedule 5A to the Act, which provides for a court to make a supervision order or a detention order where the court is satisfied beyond reasonable doubt that the injunction has been breached.

Supervision orders used to exist as a community order for young people, but these provisions were repealed by the *Criminal Justice and Immigration Act 2008*, which introduced a new generic community order for young people, the Youth Rehabilitation Order. The new Supervision Orders set out in schedule 5A are similar to these, but offer a more limited range of options – they would be able to include a supervision requirement, an activity requirement and/or a curfew requirement. They would be able to last for a maximum of six months.

A Detention Order would require the defaulter to be detained in a secure training centre, young offender institution or secure accommodation for up to three months. Sub paragraph 7 of the new Schedule 5A states that the detention order cannot be made unless the court is of the view that the injunction breach is so severe or so extensive that no other power of the court is appropriate.

4.7 Comments on the provisions

Liberty has reportedly criticised the changes:

> (...) Anita Coles, from Liberty, said the law had been passed on the understanding it would not be used on children.
>
> "The ink isn't dry and the policy isn't tested but ministers want to spin this power further," she said.
>
> "'Gangbos' are yet another gimmick for punishing people without a fair trial. They will sweep up the innocent more than the guilty and could quickly become divisive along racial lines[152]

5 Anti-social Behaviour Orders and Parenting Orders

5.1 Current legislation

Anti-social Behaviour Orders (ASBOs) are perhaps the most high profile of a range of measures brought in by the Labour Government to deal with anti-social behaviour. They were introduced by the Crime and Disorder Act 1998. Police, local authorities and some other authorities can apply to magistrates for an ASBO where a person aged 10 and over has acted "in a manner which caused or was likely to cause harassment, alarm or distress", and an ASBO is necessary to protect people from further anti-social acts by that person.[153] ASBOs are civil orders containing conditions prohibiting the offender from carrying out

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[151] Joint Committee on Human Rights, *Legislative Scrutiny: Policing and Crime Bill (gangs injunctions)*, 27 April 2009, HL 81/HC 441 2008-09, p3

[152] "Ban on gang membership will apply to 14-year-olds", *BBC News*, 20 November 2009

[153] section 1, *Crime and Disorder Act 1998*, as amended

specific anti-social acts or from entering defined areas. They last for a minimum of two years. Breach of an ASBO is a criminal offence.

Use of ASBOs was slow to begin with, but then increased substantially, reaching a peak in 2005 before dropping off over the next two years. There were 2,229 ASBOs issued in 2007, which was a fall of 15% on the number issued in 2006, and 44% below the 2005 peak.[154]

Parenting Orders were also introduced by the *Crime and Disorder Act 1998*.[155]

Under sections 8 and 9 of the 1998 Act, the Court must make a Parenting Order when it convicts a child or young person under the age of 16, if it is satisfied that one is desirable in the interests of preventing further offending by the child or young person. If the Court is not so satisfied, then the reasons must be stated in open court.

Also, under sections 8 and 9, the Court must make a Parenting Order when it makes an ASBO against a child or young person under the age of 16 if it is satisfied that a one is desirable in the interests of preventing a repetition of the behaviour by the child or young person that led to the Order. Again, if the Court is not so satisfied, it must state the reasons in open Court.

Parenting Orders can also be imposed where:

- a child safety order or a sexual offences prevention order has been made in respect of a child or young person
- a parental compensation order has been made in respect of a child's behaviour
- a person has been convicted of truancy related offences

The order can consist of two elements. The first, which can last up to a year, requires the parent or guardian to comply with certain requirements designed to control the child's behaviour. The second can require them to attend counselling or guidance programmes, lasting up to three months, where they will receive help and support in dealing with their child. In some circumstances, these programmes can be residential. It is not known how many Parenting Orders are issued with ASBOs to 10-15 year olds each year, but the Government states that "take up is very low for a variety of reasons".[156]

5.2 Proposals for change

In 2008, the Government published a Youth Crime Action Plan, a cross-government programme of action to tackle youth crime and anti-social behaviour and reduce re-offending.[157] In the follow up report, published in July 2009, the Government indicated that it intended to introduce "new measures to ensure that parents take proper responsibility for the poor behaviour of their children" by, amongst other things:

> **Providing greater support to struggling parents** who cannot cope with a child's anti-social behaviour through ensuring that a parenting assessment is carried out on

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[154] For further details see Library Standard Note SN/SG/3112, *Anti-social behaviour order statistics*, 30 October 2009

[155] section 8

[156] Home Office, *Impact Assessment of : Mandatory Parenting Orders for parents or carers of 10 to 15 years olds who breach an ASBO*, 28 July 2009

[157] HM Government, *Youth Crime Action Plan 2008*, July 2008

> every child aged 10 to 15 who is considered for an ASBO. For the same age group, we will make a Parenting Order automatic upon breach of an ASBO.[158]

The Government's reasons for introducing the measure are given in more detail in the Bill's Impact Assessment:

> The breach rate for all young people aged 10 to 17 is high at 64% up to December 2007, up 3% from 2006. We wish to do all we can to help them abide by the conditions of their ASBO, mend their ways and not breach. Requiring parents to take responsibility for the behaviour of their children is seen as vital to this. Current practice by Youth Offending Teams (YOTs) favours voluntary engagement over compulsion with Parenting Orders being used rarely – only 128 were made up to 2007. This is despite the fact that courts must consider making a parenting order every time they make an ASBO on a young person. While the decision is the courts' in practice the YOTs can influence over the decision. The response by the courts to using them is very uneven nationally and there are various reasons given for not making use of them. Legislating for the courts to impose mandatory Parenting Orders for parents or carers of 10 to 15 year olds who breach their ASBO will provide agencies with a tool to compel such parents to confront their behaviour.
>
> The rationale is that this measure provides a key opportunity to ensure that parents are equipped to help their child behave and meet the terms of the ASBO. Importantly, it is also provides leverage to compel the engagement of parents that refuse to co-operate. Thus young people, whose parenting needs have been assessed and met, subsequently go on to breach their ASBO there is a strong case for applying more coercive measures on the parents. A mandatory parenting order for parents whose children breach their ASBO is designed to do just this.[159]

5.3 The Bill

Clause 37 provides that when the police, local authority or other authority makes an application for an ASBO in relation to a young person under the age of 16, they must prepare a report on the young person's family circumstances in accordance with regulations made by the Secretary of State. It also creates a requirement on the court to take account of this report when considering whether to make a Parenting Order under section 9 of the 1998 Act.

Clause 38 provides that where a young person under 16 is convicted of an offence of breaching an ASBO, the court must make a Parenting Order unless there are exceptional circumstances. The order must specify the requirements the court considers would be desirable in the interests of preventing any repetition of the behaviour that led to the ASBO being made, or the commission of any further offence by the person convicted.

5.4 Comments

At the time of the Queen's Speech, Frances Crook, the director of the Howard League for Penal Reform commented as follows on these provisions:

> The proposed Crime and Security Bill will widen the ambit of criminality from solely young people to include the parents of recipients of an ASBO, who will have their parenting assessed by a state body. There was also a proposal to criminalise the possession of a mobile phone in prison and an expansion of the DNA database of convicted offenders beyond the realms of an Orwellian nightmare.

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158 HM Government, *Youth Crime Action Plan – One Year On*, July 2009

159 Home Office, *Impact Assessment of : Mandatory Parenting Orders for parents or carers of 10 to 15 years olds who breach an ASBO*, 28 July 2009

> The Bill proposed today is unlikely to solve any of the core objectives outlined in today's speech. People will not be made safer by dragging more young people into prison for defiance of tougher ASBOs, just as they won't be aided by the criminal justice system playing a role in familial difficulties causing criminality. Of course government should support vulnerable families and yes this would reduce crime but support for families is an issue of welfare and comes a little late when your 15 year old son or daughter is locked in prison for defiance of an ASBO. It seems unlikely that family counseling sessions with Jack Straw himself will do little more than pay lip service to the idea of justice reinvestment and community support to prevent crime.[160]

On the same day, the following comments from Joyce Mosely, the chief executive of a young people's charity, Catch 22, were reported:

> 'In our experience, parents do want help when it comes to improving their children's behaviour. If there is now to be a process of mandatory assessment of parenting needs, then these assessments must be followed up with targeted support to help parents develop the skills necessary to make a real difference to their children's behaviour.
>
> 'They should not be a simple declaration of parental failure and must include a commitment to meet the needs they identify.
>
> 'I agree that when a young person breaches the terms of their asbo, we need to look at ways of supporting the entire family to identify the numerous and complex causes for the antisocial behaviour.
>
> 'But placing sole responsibility for a child's behaviour at the feet of parents, does not acknowledge the many reasons for bad behaviour – some of which the parents will have no control over.'
>
> The charity recommends expanding the family intervention project (FIP) model to address the causes of antisocial behaviour and provide incentives to change.[161]

6 Licensing of wheel clamping companies on private land

6.1 Background

Wheel clamping on private land has been a major problem for some years. The legality of wheel clamping on *public* land is clearly set out in legislation but on *private* land, including car parks, it has not expressly been provided for in law.[162] As a result there has been considerable controversy about the behaviour of some private wheel clamping companies and even about the legality of clamping vehicles on private land. The Government's view is that owners of land must be able to take action against those who park without permission and that wheel clamping may be an effective way of dealing with such situations, but that any action must be carried out in a reasonable manner.[163] Cases against wheel clampers are heard in the civil courts.

Clampers are probably subject to the criminal law if it can be shown they have inflicted criminal damage to a vehicle or demanded money with menaces. However, most cases are dealt with in the civil courts. Parking on private land without permission is trespass but a landowner who intends to clamp must display a notice stating that he intends to do so. A

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160 "Another Queen's Speech another criminal justice bill", *Frances Crook's Blog* 18 November 2009

161 "Queen's speech: bill risks 'failure' label for parents", *New Start*, 18 November 2009

162 Background to and full details on the regulation and licensing of wheel clamping on private land are given in House of Commons Library Standard Note SN/BT/1490, available on the Parliament website

163 HL Deb 18 December 2000, c577

significant case in the Appeal Court in 1995, *Arthur and another v Anker,* found in favour of the clamper; it allows owners the right to clamp and impose a fee for the release of the clamp but only in circumstances similar to those in the court case. The law in Scotland is rather different as a result of the different legal codes north and south of the border. On 12 June 1992 three judges ruled that it was illegal to wheel clamp on private land in Scotland. The Justiciary Appeal Court in Edinburgh held that such operations amounted to the crime of extortion and theft.[164] There were, however, no immediate implications for England because the Scottish legal system is separate from that of England and Wales.

Wheel clamping on private land has been a matter of concern to consecutive Governments. In 1993 the then Conservative Government circulated a consultation paper outlining a number of possible options to tackle the problems associated with wheel clamped vehicles on private land.[165] Unfortunately no clear consensus emerged on a way forward. The Labour Government's first transport White Paper, published in July 1998, stated that there was overwhelming support for the regulation of wheel clamping on private land and that regulation would be introduced as part of the general regulation of the security industry.[166] Details were contained in *The Government's proposals for regulating the private security industry in England and Wales*, published in March 1999.[167] This resulted in the *Private Security Industry Act 2001*.[168] The Act created a new non-departmental public body, the Security Industry Authority (SIA), to administer a compulsory licensing scheme for the several categories of private security operatives including wheel clampers ('vehicle immobilisers'), both in-house and contract staff.[169]

The SIA was set up as a non-departmental public body in April 2003. It maintains a national register of licensed individuals and companies that have approved contractor status. In February 2005 the Act was extended so that activities such as 'blocking in' would count as part of the 'vehicle immobiliser' remit and therefore subject to licence.[170]

The licensing system was introduced on 3 May 2005 for the whole of England and Wales. The penalties for those committing an offence under the 2001 Act can be either a summary conviction at a Magistrate's Court with a maximum penalty of six months imprisonment and/or a fine of up to £5,000, or trial on indictment at the Crown Court, whereby an unlimited fine and/or five years imprisonment could be imposed. Section 16 of the 2001 Act makes it an offence for a company to claim it is an Approved Contractor when it is not; this includes indirectly claiming to be an Approved Contractor by displaying the ACS accreditation mark. The penalty for committing an offence under section 16 is a fine of up to £5,000.

The SIA estimated that about 2,000 individuals in England and Wales needed to be licensed as wheel clampers. In the event, about 2,541 individuals (includes operators and managers) have the qualifications to be licensed and about 1,500 have actually been licensed.[171]

Many of the complaints about wheel clamping operations are about the level of charges, which are not regulated by the SIA. However, the British Parking Association (BPA) issued a Code of Practice for the industry in April 2006. The Code provides a model of best practice for individuals or organisations undertaking wheel clamping or removal of vehicles on private

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164 "Black and Penrice v Procurator Fiscal, Hamilton (Law Report)", *The Guardian*, 8 July 1992

165 Home Office, *Wheel clamping on private land: a consultative paper by the Home Office*, February 1993 [Lords DEP 93/030]

166 DETR, *A new deal for transport: better for everyone*, Cm 3950, July 1998, paras 4.190-4.191

167 Home Office, *The Government's proposals for regulating the private security industry in England and Wales*, Cm 4254, March 1999

168 More information on the Act can be found in HC Library Research Paper 01/34

169 Full details of the procedure and criteria for licensing are available on the SIA website

170 *Private Security Industry Act 2001 (Amendments to Schedule 2) Order* (SI 2005/224)

171 HC Deb 18 February 2008, cc450-452W

land. Its main objective is to help raise standards in the parking sector and ensure that wheel clamping and removal is undertaken in a responsible, effective and efficient manner.

The Code includes recommended charges (fees) for wheel clamping activity and guidance on signage; it recommends a maximum release fee for removal of a wheel clamp of £125 for a private car; a maximum fee of £250 for removal and return of a vehicle and a maximum daily storage charge of £35 for removed vehicles. *However, these charges are only recommendations and have no legal force.* The only sanction available is the removal of member companies from the BPA if they do not adhere to the Code of Practice.

6.2 The Bill

Clauses 39 and 40 and the Schedule to the Bill provide for the licensing of companies that undertake vehicle immobilisation (wheel clamping) activities on private land in England, Wales and Northern Ireland. Scotland is exempt because wheel clamping on private land has been illegal there since 1992 (see above).

As indicated above, at the moment individuals who undertake wheel clamping activities on private land must hold a licence from the Security Industry Authority, set up by the *Private Security Industry Act 2001*. However, this scheme has not prevented continued complaints and concerns about the activities of wheel clamping companies who often do not provide adequate signage, charge large fees for vehicle release, tow vehicles within a very short timeframe and offer drivers no formal appeals process. The intention is that by providing a licensing scheme for the *companies* concerned, in addition to individuals, this will close a loophole in the licensing regime and allow for the application of a statutory Code of Practice which will set standards for signage, maximum fines, formal appeals etc.

To be clear, the Bill only provides for the company licensing scheme, it does not give details of what a statutory Code would say, though it is likely to be similar to the voluntary Code drawn up by the British Parking Association.

7 Possession of a mobile phone inside a prison

7.1 Prison contraband: background

The history of prisoners seeking to get hold of things which those holding them prisoner do not want them to have is probably as long as the history of imprisonment itself. Much of the effort in maintaining the security of prisons is concerned with ensuring that prisoners do not gain access to things which might be used in a bid to escape or might otherwise jeopardise security. It has, for example, long been an offence to bring tobacco or "spirituous or fermented liquor" into a prison[172] or unlawfully to introduce letters or other articles.[173] The DirectGov website warns prisoners' visitors against attempting to smuggle drugs or other contraband into the prison:

> Smuggling drugs or other contraband into prisons is a serious offence. It can result in a ban from visiting the prison for several months or even in your arrest.

Library Research Paper 06/62 discusses the Offender Management Bill of 2006-07: the Bill's provisions relating to prisons security are discussed at page 52 onwards. The *Offender Management Act 2007* amended the *Prison Act 1952* by making it an offence to bring, throw or convey (or cause another person to bring, throw or convey) or give to a prisoner anything which might facilitate an escape.[174] The 2007 Act extended the list of items which may not be

[172] *Prison Act 1952* section 40
[173] *Prison Act 1952* section 41
[174] section 21

brought into prisons beyond alcohol and tobacco, to include (amongst other things) controlled drugs, firearms, mobile telephones, cameras and sound recording devices or any other article or substance which the Secretary of State may prescribe under the prison rules.[175]

A Prison Service Order offers guidance to prison governors on the offences of conveying unauthorised articles and comments on the effects of the 2007 Act:

> These provisions have been introduced primarily because of the weaknesses in the previous legislation (Prison Act and Rules). The new provisions will improve the chances of a successful prosecution in circumstances where unauthorised items are brought in and/or used within prisons and will also take into account new technology, particularly mobile telephones and other electronic media, such as cameras and sound-recording devices, given the potential threat to security that these pose within a prison environment.[176]

These offences, though, are all concerned with the smuggling or conveying of the forbidden item into the prison. No offence attaches to the possession of the item once it is within the prison, although Prison Rule 43(5) provides that "the governor may confiscate any unauthorised article found in the possession of a prisoner after his reception into prison, or concealed or deposited anywhere within a prison".[177]

7.2 Mobile phones in prison

All prisoners have to pay for their telephone calls (using credit bought at the prison shop). For some prisoners, use of the telephone is limited to a list of telephone numbers which has to be approved by the prison.[178]

Prisoners may want mobile phones because they are cheaper to use and can receive incoming calls and so enable them to stay in closer contact with family and friends. Others, though, may want them for less worthy reasons ─ specifically, to arrange drug-trafficking and other criminal activity. The Prison Service has dogs trained to detect mobile phones.[179] The Blakey Report on disrupting the illicit drugs supply within prisons, published in 2008, noted that more than 600 mobile phones and SIM cards were being seized every month and drew attention to some of the problems associated with mobile phones in prison:

> 69. Finding phones already in prison is dependent upon searches of cells and other areas. Some prisons have specialist search units; others cite resource difficulties and use generalist officers. The choice must be a matter for governors and depend on the resources they have. However, specialist teams acquire experience and best practice much more readily than non-specialists.

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175 section 22

176 HM Prison Service *Prison Service Order 1100: Conveyance Of Unauthorised Articles And Other Related Offences* 26 March 2008: para 1.3

177 *Prison Rules 1999* (SI 1999/728) as consolidated in 2008

178 HM Prison Service *Other Ways To Keep In Touch* 9undated, accessed 26 November 2009)

179 "A Dog and Phone Tale" *Prison Service News* (undated, accessed 26 November 2009)

> 70. Dogs can be trained to 'sniff' mobile phones and the BOSS chair[180] (see later) and hand held detection devices are of real value.
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> 71. As well as stopping phones from coming in and finding them if they do come in, there is the possibility of 'blocking' signals so that illegal phones become useless. There are two schools of thought on this issue. One would be to allow phones to be used but to find some way of listening in so that intelligence can be gathered. The other view is to block. I favour the latter. It is too big a job to monitor all of the traffic except very selectively and for the purpose of disruption of drugs entry taking away a main tool from the traffickers would be very effective.
>
> 72. The possibility of blocking is presently being addressed by the Service. It is not without technical difficulty, and it would be very expensive. The process should begin first with those establishments with the greatest security and trafficking problems.[181]

The BBC programme *Inside Out* (shown in London) recently investigated the black market trade in mobile phones smuggled into prisons:

> Andrew Wanogho was assassinated on a street in Lewisham by a direct order from a convicted prisoner using a mobile phone illegally smuggled into prison. Elsewhere, smuggled mobiles are being used to negotiate drug deals from behind bars, says David Jamieson, who advises the Government on the big issues affecting HMP Wandsworth.
>
> **(...)**
>
> David Jamieson has recommended to the Government that all prisons implement the [mobile phone blocking] technology. He feels the situation is becoming increasingly urgent, and Colin Moses[182] agrees: "If we want to stop mobile phones, we have to put more resources into prison. If we really want to stop them, we have to resource it. Currently, there doesn't seem to be a will by Government to stop mobile phones."[183]

7.3 The Bill

Clause 41 of the *Crime and Security Bill* would create an offence of possessing without authorisation inside a prison a mobile phone, component of a mobile phone or article designed or adapted for use with a mobile phone. The penalty for this offence would be up to two years' imprisonment (on indictment) or up to 12 months' imprisonment or a fine (on summary conviction).

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[180] The Body Orifice Security Scanner. See Prison Service Instruction 5/2009 *Use of the Body Orifice Security Scanner (BOSS)* 9 March 2009, which describes the BOSS: "The BOSS is a non-intrusive scanning system within a moulded chair, designed to detect small metallic objects, such as mobile phones and their component parts or weapons, concealed within anal or vaginal cavities and the abdominal area. The BOSS utilises the same technology as metal detecting portals employed in airports. Sensors are housed in the chair frame and each sensor in the chair is wired to an audible alarm which will sound if any metal is detected. A button on the alarm panel will also light up on detection".

[181] Ministry of Justice *Disrupting the supply of illicit drugs into prisons: A report for the Director General of National Offender Management Service by David Blakey CBE QPM DL* May 2008: pages 20 - 21

[182] Chairman of the Prison Officers' Association

[183] BBC Press Release *How convicts are carrying out serious crimes behind bars - BBC One's Inside Out investigates illegal phone smuggling* 23 November 2009

8 Air weapons

There are estimated to be between 4 and 7 million air weapons in the UK.[184] They are used for a variety of purposes including target shooting and vermin control and do not need to be held on a firearm certificate.

The Home Affairs Committee looked at air guns as part of its inquiry into firearms controls in 2000.[185] In its response, the Government agreed to consider the Committee's recommendation that the sale of air guns should be permitted only through registered firearms dealers but rejected a licensing system for air guns on the grounds that it would be cumbersome, costly and difficult to administer.[186] In a wide-ranging consultation document on firearms control published in 2004, the Government said: "We do not (…) believe that there should be a system of licensing or further restrictions on the sale of air guns".[187]

Licensable weapons (so-called "section 1 firearms") are subject to secure storage requirements which are laid down in secondary legislation and listed as a condition on the owner's certificate.[188] No such storage requirements currently apply to air guns, although the Home Office and gun trade offer advice to owners on safety.

In recent years, following high-profile incidents where people or animals were injured or killed as a result of air gun use, there have been calls for a tightening of the law. The Impact Assessment published to accompany the Bill explains why the safe storage of air weapons has now risen to become a matter of public concern that can only be addressed through a change in the law:

> Certain tragic cases have recently highlighted the dangers that can occur when young people gain unauthorised access to air weapons. In one case, a 12 year-old boy was shot in the face and killed by his friend while playing with an airgun belonging to the friend's father. In another instance, an 18 month-old toddler was shot and killed by his young sister using their father's airgun, which had been left unattended by the father when target shooting in his garden. In these and other cases children had been allowed to gain unauthorised access to an air weapon with sometimes tragic consequences.[189]

The law on air gun use was originally laid down in the *Firearms Act 1968*, but has been amended several times since then to reflect public concern about misuse of these weapons. The most recent changes were introduced by the *Violent Crime Reduction Act 2006*.[190] Under current legislation, it is an offence for a person under the age of 18 to purchase or hire an air weapon or ammunition for an air weapon. In general, it is also an offence for a person under the age of 18 to have with him an air weapon or ammunition for one.[191] However, the latter offence is subject to certain exemptions:

- A person under the age of 18 may have with him an air weapon or ammunition while he is under the supervision of a person of or over the age of 21.

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184 Home Office, *Crime and Security Bill: impact assessment of controls on safe storage of air weapons*, August 2009, p3
185 *Controls over Firearms*, HC 95 1999-2000, 2 vols
186 *Government reply to the Second Report from the Home Affairs Committee session 1999-2000*, Cm 4864, October 2000, p10
187 Home Office, *Controls on firearms: a consultation paper*, May 2004, p11
188 *Firearms Rules 1998* SI 1998/1941
189 Home Office, *Crime and Security Bill: impact assessment of controls on safe storage of air weapons*, August 2009, p3
190 Effective from 1 October 2007
191 *Firearms Act 1968* s22

- A person over the age of 14 may have with him an air gun on private premises with the consent of the occupier of those premises.

- A person under the age of 18 may borrow and use an air gun for target practice as a member of an approved club, or at a shooting gallery for air guns or miniature rifles.[192]

In the case of someone under 18, it is an offence

- To sell or let on hire an air weapon or ammunition for an air weapon to that person

- To make a gift of an air weapon or ammunition to that person; or

- To part with the possession of an air weapon or ammunition to that person, except where he is permitted to have it by virtue of one of the exemptions listed above.[193]

Clause 42 of the Bill inserts a new sub-section into the 1968 Act making it an offence for a person in possession of an air weapon to fail to take reasonable precautions to prevent it coming into the hands of a person under 18. The new offence will not apply where the young person is permitted to have it with him by virtue of any of the exemptions listed above. A defence will be available if the person charged can show that he believed the young person was over 18 and had reasonable grounds for that belief.[194] The offence is punishable on summary conviction only (i.e. in the magistrates' court) with a maximum penalty of a level 3 fine (£1,000).

The clause offers no definition of "reasonable precautions". In assessing whether the Bill is compatible with the European Convention on Human Rights, the Home Office makes this concession:

> It can be argued that there is insufficient legal certainty in this offence, as it may not be clear in a particular case whether or not reasonable precautions have been taken and therefore whether an offence has been committed. Ultimately, this will be a matter for the courts.[195]

However, the Home Office's response is that there is no potential interference with a citizen's rights under Article 7 of the Convention (no punishment without law), since the phrase "reasonable precautions" is used elsewhere in UK firearms legislation without definition and

> it is acceptable for the purposes of Article 7 that a person can know what conduct comes within the scope of the offence having regard to the wording of the legislation and the courts' interpretation of it.[196]

In comments made in anticipation of the clause, the British Association for Shooting and Conservation (BASC) took the view that "air gun safety should be a matter of common sense rather than legislation." Bill Harriman, the Association's director of firearms, said:

> "It is regrettable that a small number of incidents of abuse and carelessness have prompted government action. However, even a single accident is one too many and BASC understands public concern and will support measures which will reduce the

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192 *Firearms Act 1968* s23
193 *Firearms Act 1968* s24
194 The proposed wording of the defence here exactly mirrors that already used in *Firearms Act 1968* s24(5) (as amended)
195 *Explanatory Notes* para 267
196 *Explanatory Notes* para 268

misuse of airguns while not impinging on the practices of safe and law-abiding airgun users."[197]

[197] BASC press release, *Air gun safety is a matter of common sense*, 18 November 2009