

HOME OFFICE CONSULTATION ON POLICE POWERS

The consultation paper, 'Policing: Modernising Police Powers to Meet Community Needs' invited comments by 8 October. This is the response of the London Assembly Liberal Democrat Group and of the Liberal Democrat members of the Metropolitan Police Authority.

A. GUIDING PRINCIPLES

Liberal Democrats on the London Assembly and the MPA support the general thrust of the police reform agenda – ensuring local accountability, creating a modern workforce, and providing the police with the tools they need to carry out their important work effectively. We believe, however, that changes to police powers should be guided by the following principles:

- The case for new powers must be based on evidence demonstrating that they are necessary and that their absence in the past has hampered the fight against crime. The consultation paper has failed to set out the case for many of the proposals in this way.
- Any new powers sought must be proportionate to their intended benefit, and be balanced against the importance of preserving fundamental rights and liberties.
- The exercise of police powers on members of the public are by definition extraordinary and inevitably involve interference with an individual's liberty. As such their use must be limited to appropriate office holders with adequate training and supervision.
- There must be clear accountability for the use of any police powers.

B. COMMENT

Section 2: Arrest

Proposal: Make all offences arrestable.

Comment: The need for simplicity must be balanced with the needs of proportionality. In many instances, the minor nature of an offence would mean it would be disproportionate to exercise a power of arrest. It would therefore be unacceptable if the seriousness of the offence in question will no longer be considered relevant. If arrest powers are simplified, a 'seriousness' test should still be prescribed - for example, the need to satisfy a 'seriousness of incident' test could be employed before an officer exercises his discretion to arrest. To enable monitoring and prevent abuse, this should be spelled out under statute or a relevant code of practice.

Proposal: Remove the distinction between arrestable offences and serious arrestable offences.

Comment: Whether this change is necessary is questionable and we would not support such a change in principle – the statutory protections exist to ensure that the most

serious powers can only ever be used in respect of the most serious offences and this should remain the case.

Section 3: Search warrants

Proposals: Creation of a 'super' warrant.

Comment: There would be considerable practical difficulties and a significant potential for misuse. In practice, such a warrant could potentially mean that the police can gain forced entry to *any* premises where the suspect in question may be, without seeking specific judicial approval for the premises in question, as long as a 'super warrant' has been issued in respect of the subject in question. As such, we question whether a 'super' warrant would ever be proportionate and fear it may violate the right to private life and the sanctity of property rights. If such a warrant were introduced, its issue should be extraordinary, with the existing type of warrant remaining the norm, and subject to the police meeting a specified, and sufficiently high, test of grounds to justify it.

Section 4: Workforce modernisation

Proposal: Extending powers to civilian police staff.

Comment: On a general note, any civilians exercising police powers must be held accountable, trained properly, and should exercise the more serious of their powers under the direct supervision of a constable. The latter would apply to several of the Government's proposed extensions. We have some concerns about the fact that an extension to Community Support Officer (CSO) powers is being proposed so soon after their introduction and before a proper evaluation of their effectiveness has been completed and published. We are concerned that the proposed extension to the power of CSOs to search individuals will in practice lead to CSOs adopting stop and search (-type) powers. We would strongly oppose CSOs exercising such powers – formally or informally – given their limited training and the continued sensitivity surrounding stop and search.

Section 5: Increasing prevention and detection powers

Drug testing

Proposal: Test suspects for Class A drugs at the point of arrest for certain trigger offences.

Comment: We recognise the link between drug use and crime, and agree that it is important that drug users have access to treatment. However we do not believe that mere arrest for a trigger offence is sufficient to justify a compulsory test. We would suggest that a compulsory test prior to charge would only be justified where there are reasonable grounds to suspect that the offence in question has been motivated by drug use or that the offender is a drug user.

Intimate searches

Proposal: Allowing a judge to direct a jury to draw adverse inferences from a refusal to be x-rayed or submit to an intimate search.

Comment: While we recognise the problem, we do not believe that this provides an acceptable solution. Genuine consent cannot be gained by the threat of legal consequences and we question whether consent gained under such duress would satisfy those in the medical profession who are concerned about a breach of medical ethics. We would also strongly oppose any proposal to create an offence of failing to consent where there are sufficient grounds to believe that a suspect may have swallowed a drug (which is discussed in the paper but not formally proposed) on the same grounds.

Proposal: Allow the courts to remand a person suspected of swallowing a drug to custody for a period of time to allow the drug to pass through.

Comment: According to the consultation paper, the average length of time this takes is 12 days. The test of grounds to suspect that the person has swallowed a drug would therefore need to be sufficiently high to justify such lengthy detention, bearing in mind that the maximum detention period prior to charge for suspects under PACE is 36 hours prior and 14 days under the Terrorism Act 2000.

Dealing with protests outside Parliament

Proposal: Legislating to allow the police to impose conditions on *all* demonstrations in the vicinity of Parliament.

Comment: There is no need for this power and we do not support it out of principle. We believe that this proposal risks restricting the right to legitimate public protest. The police can already rely on existing public order legislation or anti-terrorism legislation. We also note that the vague concept of 'the vicinity of Parliament Square' is likely to include the area around 10 Downing Street. We are also concerned that this proposal seems designed to enable the police to 'deal' with the ongoing anti-war demonstration on Parliament Square. In any event the list of potential conditions will have to be specified in legislation.

Section 6: Identification

Proposal: Allow the police to take fingerprint samples of suspects outside a police station in a public place.

Comment: There is clearly a potential for misuse. The paper is not specific on what the person in question must be suspected of doing or how reasonable and strong that suspicion needs to be. There should be sufficiently high tests that the police must meet before such a power can be used, or the power should be limited to a range of 'trigger' offences. We fear that without sufficient safeguards, such a general power could result in the police being able to take fingerprints of all those they stop and search.

Proposal: Allowing the police to take 'visual images' of suspects outside a police station.

Comment: As above, sufficient safeguards must be in place. The paper suggests that they might need to take visual images of those given a Fixed Penalty Notice – we are not convinced that this is necessary and proportionate, and could be unworkable given the wide range of office holders who can issue FPNs.

Proposal: Allow speculative searches against DNA/fingerprint database profiles of DNA and fingerprints obtained covertly.

Comment: This would be acceptable if the covert operation and thus the taking of samples are governed by sufficient safeguards. However what the consultation paper does not specify is whether these samples will be retained or destroyed. Any samples not obtained under PACE should not be retained nor entered onto the national DNA database. We take this opportunity to reiterate the national party's continued concern about the growth of the national DNA database 'by stealth' and the lack of statutory safeguards and provisions governing its use.

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