Police Reform and Social Responsibility Bill

Briefing on Second Reading

House of Commons

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Introduction

1. JUSTICE is a British-based human rights and law reform organisation, whose mission is to advance justice, human rights and the rule of law. JUSTICE is regularly consulted upon the policy and human rights implications of, amongst other areas, policing, criminal law and criminal justice reform. It is also the British section of the International Commission of Jurists.

2. This briefing is intended to highlight JUSTICE's main concerns regarding the Police Reform and Social Responsibility Bill for House of Commons Second Reading. Where we have not commented upon a certain provision in the Bill, this should not be taken as an endorsement of its contents.

3. We strongly welcome the repeal of ss132-138 of the Serious Organised Crime and Police Act 2005 (demonstrations in the vicinity of Parliament) in clause 139 of the Bill. Our concerns about the Bill's provisions at this stage focus upon the following areas:

    - **The election of police and crime commissioners may result in the inappropriate politicisation of operational policing;**
    - **The need to seek authorisation to use a loudspeaker or loudhailer in Parliament Square may interfere with the legitimate use of such devices by organisers to marshal peaceful protests;**
    - **Removal of requirements for representation on the Advisory Council on the Misuse of Drugs may compromise its independence and expertise;**
    - **The proposal that the Director of Public Prosecutions should consent to the issue of private arrest warrants in international criminal cases is unnecessary and contrary to the international rule of law.**

PART 1 - POLICE REFORM

Police and Crime Commissioners

4. The Bill provides for the election of police and crime commissioners (one for each force area, with the Mayor of London acting as commissioner in relation to the Metropolitan police) who would replace police authorities in holding chief constables to account in the

exercise of their functions. Under clauses 5 and 6 of the Bill, commissioners would issue policing and crime plans, which would set out (as per clause 7), inter alia, 'the policing of the police area which the chief officer of police is to provide', 'the financial and other resources which the elected local policing body [ie the commissioner] is to provide to the chief officer of police' and 'the means by which the chief officer of police's performance in providing policing will be measured'. Commissioners will therefore have a very high degree of control over chief constables' functions and budgets.

5. Under clause 38 of the Bill, commissioners will appoint, and may suspend or call for the resignation or retirement of, the chief constable for the relevant force area. A policing and crime panel appointed by the local authority will have a veto over appointments of chief constables according to the provisions of Schedule 8 but will only be able to make recommendations in relation to calls for retirement or resignation and has no role in relation to suspensions.

6. The direct election of individuals to oversee policing in England and Wales was proposed under the Labour government in the Policing Green Paper in 2008, in the form of 'crime and policing representatives' who would sit on, but not replace, police authorities. JUSTICE expressed concerns about this proposal in our response to the green paper, in particular that low turnout in such elections could lead to their being won by extremist political parties (for example, with racist views) or even corrupt elements. Elections for policing and crime commissioners will be held across an entire force area; the size of these areas operates as a safeguard against extremists hijacking a low turnout election; however, we remain concerned that direct elections could result in a competitive 'race to the bottom' on populist law and order policies which may not be effective to reduce crime and may result in the neglect of 'invisible' crimes such as domestic violence in favour of crimes which dominate public concern such as street crime and anti-social behaviour.

7. Police authorities, while retaining strong democratic input (most have 17 members with 9 being local councillors appointed by the local council; the MPA has 23 members), offer the safeguard of plurality in that no one extremist can alone control police functions and budgets. They also offer a range of expertise as in addition to local councillors most contain eight members appointed after advertisements, at least one of whom must be a magistrate (therefore an experienced practitioner in the criminal justice system). Further, while as at September 2010, 9.5% of police authority members are from minority ethnic backgrounds and 30.3% are women, single elected commissioners cannot offer pluralism

as to, for example, gender, religion and ethnicity. The limited role of the policing and crime panels envisaged by the Bill will not compensate for this.

8. The provision for removal of a policing and crime commissioner in the event of serious criminal conviction under clause 30 and otherwise for scrutiny of his/her actions does not address concerns as to failures effectively to address certain types of crime as outlined in paragraph 6, above. We seek reassurance from the government that all sections of the community will be sufficiently protected from all types of criminality under these proposals.

PART 3 - PARLIAMENT SQUARE GARDEN AND SURROUNDING AREA

9. JUSTICE strongly welcomes the repeal of the authorisation regime for demonstrations in the vicinity of Parliament under the Serious Organised Crime and Police Act 2005 and the recognition that this gives to the importance of peaceful protest in the vicinity of Parliament. When the Serious Organised Crime and Police Bill was going through Parliament we said that: '[i]n light of the weight given to the protection of political speech under Article 10 of the Convention, we are particularly concerned at measures that seek to inhibit public protest on the doorstep of Parliamentary democracy itself. It seems an unpleasant irony that, should these provisions become law, freedom of expression will be most at risk in the one place where it should be most protected.'[1]

10. We are concerned, however, that the Bill creates a prior authorisation requirement in relation to the use of loudspeakers and loudhailers. As we said when briefing on the Serious Organised Crime and Police Bill, such equipment can be necessary by organisers of larger demonstrations in order to marshal demonstrators and for example, keep a march on a prescribed route and therefore comply with conditions laid down by police under the Public Order Act 1986. We therefore question why it is necessary to seek authorisation from the Greater London Authority/Westminster Council in relation to use of such devices.

PART 4 - MISCELLANEOUS

Advisory Council on the Misuse of Drugs

[1] Serious Organised Crime and Police Bill, Briefing on Parts 3-6 for House of Lords Second Reading, March 2005.

11. Clause 150 would amend the Misuse of Drugs Act 1971 in order to remove the requirement on the Secretary of State to appoint certain categories of person to the Advisory Council on the Misuse of Drugs – those with wide and recent experience in medicine, dentistry, veterinary medicine, pharmacy, the pharmaceutical industry and chemistry – and those with wide and recent experience of social problems connected with the misuse of drugs. We believe that the Advisory Council is an important independent expert body whose recommendations can provide a rational basis for the classification of drugs under the 1971 Act. We believe that the government should explain the reasons for the inclusion of this clause in the Bill. We were concerned by the sacking of Professor David Nutt in 2009 by the previous Home Secretary and seek assurance that clause 150 does not represent a further attempt to compromise the Council's independence and scientific acumen.

Arrest warrants

12. Clause 151 of the Bill seeks to remove the ability of private individuals to seek and obtain arrest warrants against those accused of international crimes including (inter alia) torture, war crimes, piracy and hijacking, unless the Director of Public Prosecutions gives his consent. Similar proposals were made by the Labour government before the general election. We believe that these proposals are misguided and are contrary to the international rule of law.

13. Two reasons have been cited for this change in the law. The first is that warrants have been sought against officials from states with whom the UK enjoys good diplomatic relations. The Ministry of Justice consultation paper on the topic stated that:[2]

> There is reason to believe that some people, including people with whom the British Government needs to engage in discussion, may not be prepared to visit this country for fear that a private arrest warrant might be sought against them.

[2] *Arrest Warrants – Universal Jurisdiction. Note by the Ministry of Justice* (undated, 2010), p3.

14. Concerns have also been raised at the evidential standard applied on applications for warrants. The consultation stated:[3]

> The issue of a summons or warrant means that criminal proceedings against the suspect have begun, and it can be done on the basis of far less evidence than the CPS would require in order to charge, or than would be needed before a jury could properly convict.

15. In relation to the 'friendly states' question it should firstly be born in mind that immunity from prosecution for war crimes and crimes against humanity applies in relation to government officials enjoy state immunity from prosecution for international crimes,[4] including sitting heads of state, and serving heads of government, foreign ministers, defence ministers and diplomats. A private application for the arrest of Israeli Defence Minister General Shaul Mofaz in February 2004 was refused by the Bow Street Magistrates for precisely this reason. Such officials are therefore free to visit the UK without let or hindrance.

16. In relation to evidence, it should be borne in mind that applications for private arrest warrants are scrutinised by specialist District Judges at the City of Westminster Magistrates' Court (who also deal with terrorism and extradition cases). In *R v West London Justices ex parte Klahn*, Lord Widgery CJ held that, when considering whether to issue a summons or warrant, magistrates should 'at the very least ascertain':[5]

> (1) whether the allegation is of an offence known to the law and if so whether the essential ingredients of the offence are *prima facie* present; (2) that the offence alleged is not 'out of time'; (3) that the court has jurisdiction; (4) whether the informant has the necessary authority to prosecute. In addition to these specific matters it is clear that he may and indeed should consider whether the allegation is vexatious …. Since the matter is properly within the magistrate's discretion it would be inappropriate to attempt to lay down an

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[3] Ibid, p2.

[4] Save where the arrest warrant has been requested by the International Criminal Court: see article 27 of the Rome Statute and sections 2(3) and 23 of the International Criminal Court Act 2001.

[5] [1979] 2 All ER 221 at 223. Emphasis added. See also e.g. *R (Green) v City of Westminster Magistrates Court* [2007] EWHC 2785 at para 35 per Hughes LJ: 'The decision whether or not to issue a summons is a judicial one; it calls for the exercise of judgment'.

exhaustive catalogue of matters to which consideration should be given. *Plainly he should consider the whole of the relevant circumstances.*

The Lord Chief Justice also made clear that the magistrate 'must satisfy himself that it is a proper case in which to issue a summons', and 'must be able to inform himself of all relevant facts' including hearing from a proposed defendant if he feels it necessary to do so.[6] Although the magistrate should not preempt any subsequent proceedings by holding a preliminary hearing on the evidence,[7] nonetheless the magistrate must 'decide whether or not on the material before him he is justified in issuing a summons'.[8]

17. While the test applied for the issue of a warrant is not the same as that applied when considering whether to charge or prosecute, this is true of all arrests and reflects the need for speed in executing an arrest before a suspect can flee or commit further offences. Private parties including solicitors and non-governmental organisations may be in a better position than the Metropolitan police and CPS units responsible for investigating and prosecuting these offences to both receive complaints from victims and build up dossiers of evidence in the first instance. Both the Metropolitan police Anti-Terrorist Unit and the CPS Counter-Terrorism Division responsible for dealing with these offences are, as their names suggest, responsible for investigating and prosecuting terrorist offences and their resources are stretched in attempting also to deal with war crimes, crimes against humanity etc. There is a need to act quickly so that an arrest warrant can be issued in cases where intelligence is received that a suspect may be intending to travel to the UK. A requirement that the DPP consent to prosecution (meaning that the CPS would have to review the evidence) may slow down this process meaning that a suspect can leave the UK before the warrant can be issued.

18. Further, the right of private citizens to seek arrest warrants for suspected war criminals serves as a valuable corrective against what Lord Wilberforce described as

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[6] Ibid.

[7] Ibid: 'There can be no question, however, of conducting a preliminary hearing. Until a summons has been issued there is no allegation to meet; no charge has been made. A proposed defendant has no locus standi and no right at this stage to be heard'.

[8] Ibid, citing Lord Goddard CJ in *R v Wilson ex parte Battersea Borough Council* [1948] 1 KB 43 at 46-47.

'inertia or partiality on the part of authority'.[9] A finding by a magistrate that there exists *prima facie* evidence that a suspect has committed war crimes,[10] sufficient to justify the issuance of a warrant for his or her arrest, must never be lightly dismissed. In particular, an independent judicial determination of this kind may serve as a spur to governmental action. More generally, it may also serve to promote the democratic accountability of the executive.

19. We therefore believe that this proposed change in the law is unnecessary and sends the wrong signal to the international community. The UK must not be allowed to become a safe haven for international criminals. We note further that the provisions of the Bill, while applying to many international crimes, are not extended to genocide and question why, if the DPP's consent is not needed for a genocide arrest, it should be needed in relation to torture, war crimes, or piracy?

20. We therefore believe that clause 151 should be removed from the Bill.

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[9] Lord Wilberforce, *Gouriet v Union of Post Office Workers* [1978] AC 435: 'Enforcement of the law means that any person who commits the relevant offence is prosecuted. The individual … who wishes to see the law enforced has a remedy of his own: he can bring a private prosecution. *This historical right … goes right back to the earliest days of our legal system…*' [emphasis added]. See also at 497 per Lord Diplock: 'In English public law every citizen still has the right, as he once had a duty (though of imperfect obligation), to invoke the aid of courts of criminal jurisdiction for the enforcement of the criminal law by this procedure'.

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[10] Or the other offences for which there is universal jurisdiction under UK law, e.g. torture, genocide and crimes against humanity. For the sake of convenience, all references to 'war crimes' and 'war criminals' in this response should be read as a generic reference to any of the relevant offences of universal jurisdiction.