Policing and Crime Bill

Briefing on Second Reading
House of Commons

January 2009

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Introduction and summary

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 Policing and Crime Bill. Where we have not commented upon a certain provision in the Bill, that should not be taken as an endorsement of its contents.

3. We welcome the decision not to include in the Bill proposals for directly elected police authority members. In our response to the Policing Green Paper, we opposed this measure on the grounds that it could lead to the politicisation of operational policing and the ceding of a measure of control over policing to extremist or even criminal elements. Our concerns about the Bill's provisions in Parts 1 to 3 now centre upon the following areas:

   - **The Police Senior Appointments Panel should be sufficiently independent of the Home Secretary to provide objective and expert advice;**
   - **Many of the provisions on prostitution will, we believe, be counter-productive and will make conditions less safe for sex workers, leading to a greater risk of violence against them;**
   - **The Bill fails to decriminalise children who are victims of child sexual exploitation**
   - **The use of coercive powers relating to alcohol against children is an inappropriate response to underage drinking and may put children at further risk.**

4. In relation to Part 5 of the Bill (extradition), we are very concerned that the government should not give undertakings to deliver a person to a state where they are at risk of human rights abuses, such as torture, inhuman or degrading treatment or punishment, or unfair trial. We will suggest amendments at later stages of the Bill to ensure that Part 5 cannot operate in this way and to ensure that it is compliant with international obligations regarding the prohibition of torture and non-refoulement, in addition to the European Convention on Human Rights.

Part I: Police Reform

Clause 2: Police Senior Appointments Panel (PSAP)

5. We note the concern of the Association of Chief Police Officers (ACPO) that:[1]

> *Chiefs are very concerned at the unrelenting drift of policy and legislation toward weakening their status as office holders. Our advice to Government around maintaining processes such as chairmanship of the Senior Appointments Panel within the hands of a firmly independent HMIC (Her Majesty's Chief Inspector of Constabulary) stands.*

We too are concerned that operational policing matters should not be subject to political control, in order to preserve the tripartite form of police governance. The arrangements under new section 53B of the Police Act 1996 would lead to the PSAP's being dominated by members nominated or appointed by the Secretary of State, including its Chair.

6. Since the PSAP's function in relation to senior appointments is to be an advisory one, it stands to reason that the members should have a high degree of independence and expertise. Independence from the Secretary of State is necessary so that advice is given, and is seen to be given, on proper grounds and not in fear of disagreement with the Secretary of State's preferences. We will therefore suggest amendments to new section 53B at later stages of the Bill so that a higher degree of independence from the Secretary of State is guaranteed.

Clause 5: Police collaboration

7. New sections 23G and 23H of the Police Act 1996 would allow the Secretary of State, inter alia, to instruct police forces or police authorities to enter into collaboration agreements or to refrain from doing so; to terminate an existing agreement; and to specify terms to be included or not to be included in such agreements.

8. While it is right that there should be a measure of control over the ability in particular of police forces to form and operate such agreements, it is by no means clear that

[1] ACPO statement on the publication of the Policing and Crime Bill, 18 December 2008.

such control should be wielded by the Secretary of State in the manner envisaged nor that her control should be so absolute. We welcome the consultation requirements in new sections 23G and 23H but are concerned that further safeguards may be necessary to ensure that such agreements operate appropriately.

Part 2: Sexual offences and sex establishments

Clauses 13 and 14: Paying for sexual services of a controlled prostitute

9. Clauses 13 and 14 would create new offences in England and Wales and Northern Ireland, respectively, where a person pays or promises payment for the sexual services of a prostitute whose provision of such services is controlled for gain by a third person. The offences are of strict liability, in that it is irrelevant whether or not the client was aware that the prostitute was controlled for gain.

10. It is important to note that the definition of 'controlled for gain' fails, in our view, to differentiate between prostitution in the context of human trafficking, pimping, or in circumstances where the prostitute is simply employed by a third person – for example in an escort agency or brothel.

11. This failure is, we believe, extremely counter-productive, assuming that – as we hope – the aim of the legislation is to combat the coercion of trafficked people and others into prostitution and the exploitation and abuse of prostitutes by violent pimps. To criminalise the use of prostitutes who are willingly employed in sex work, for example in brothels, may lead both to more isolated working by prostitutes on the street or in their own homes or client's homes – isolation leading to greater risks to their safety – and to the prostitution business going further 'underground' – into the hands of organised criminals and in brothels away from the public eye, where prostitutes will be again at greater risk of violence and abuse.

12. JUSTICE has not taken a position on the morality of prostitution but we believe that – as in the case of controlled drugs – while it is possible that legal prohibition may deter some men from using prostitutes, many others – in particular those with less respect for the law in general – will not be so deterred. We believe that the priority should therefore be to ensure that sex work is carried out only by willing participants, in a

safe environment. We believe that these provisions are likely to have the opposite effect.

13. Respect for human dignity and autonomy means that the coercion of people into sex work, whether in the context of human trafficking or pimping in general, should be regarded as a very serious criminal offence. 'Control for gain' however is not a term which is confined to these circumstances.

14. Further, if someone uses a prostitute in the knowledge or belief that they are providing sexual services only because of the fear of violence or from a third person, they too should be regarded as committing a serious offence – perhaps one of rape/attempted rape or sexual assault. In these circumstances a summary only offence punishable by a level 3 fine, like those created in clauses 13 and 14, would not reflect the severity of the offending behaviour.

15. However, where the client is not aware that the prostitute is not acting of her own free will, to criminalise him may deter him from reporting circumstances of violence of which he becomes aware to the police. Further, offences of strict liability – which may be appropriate in regulatory or environmental law – are not appropriate in these circumstances. Effectively, these provisions will criminalise the use of any prostitute other than one who is self-employed. This may deter men from using prostitutes who are not working alone. This is counter-productive in relation to their safety.

16. We therefore believe firstly, that 'control for gain' should be replaced with a definition that criminalises the use of a prostitute who provides sexual services against her free will for fear of violence or other reprisal (such as false imprisonment and/or a threat of being informed upon to the immigration authorities) and that the offence should only be committed where the client knew or believed this to be the case, or at the very least, where he was aware of a substantial risk that it was the case but used the prostitute anyway.

Clause 15: Amendment to offence of loitering etc for purposes of prostitution
Clause 16: Orders requiring attendance at meetings

17. This clause would mean that loitering or soliciting by a prostitute would only be an offence if it takes place on more than one occasion in any period of three months. However, this is in our view a largely meaningless change. The criminalisation, and

use of ASBOs, against street sex workers is likely to make them more unsafe by: encouraging them to seek out more isolated areas in which to work; discouraging them from reporting dangerous clients or attacks; discouraging them from seeking help from services such as needle exchange; etc. While it is understandable that local authorities and communities do not welcome the presence of 'red-light' areas, these will inevitably remain somewhere unless their causes are better addressed.

18. Clause 16 represents an attempt to address causes by requiring convicted prostitutes to attend meetings with a supervisor. However, it must be questioned why this attempt at helping street workers should be carried out through the criminal justice system. Money spent on processing (and re-processing) prostitutes through the criminal justice system could be better diverted into the widespread provision of refuge, addiction and counselling services and through the pursuit and prosecution of violent and coercive pimps and traffickers.

Clauses 18 and 19: Soliciting

19. We oppose the creation of these offences, for similar reasons to our opposition to clauses 13 and 14 above. Criminalisation of kerb-crawlers will not deter those with little respect for the law and is likely to lead to an increase in violence against sex workers: this has already occurred in Sweden after kerb-crawling was outlawed.[2] Like other prohibitory measures, it is likely to push street prostitution into more isolated areas. We believe that these provisions will have little effect on the numbers of men using prostitutes but will make prostitutes less safe.

Clause 20: Closure orders

20. Where premises are being used for child sexual exploitation, clearly offences are being committed; in these circumstances the appropriate remedies must lie in arrest and prosecution of offenders and if necessary care proceedings in relation to the children. Closure orders cannot provide an adequate alternative in these circumstances, and we question whether they would in fact deter such activity – which could of course simply move to different premises not known to the authorities.

[2] See www.prostitutescollective.net

21. However, our objections to Schedule 2 centre upon the use of these orders against ordinary brothels. Again, the legislation fails to distinguish between premises where people are being forced into sex work by violent or coercive pimps and traffickers, and brothels where prostitutes are working of their own free will. In relation to trafficking and coercion, the appropriate remedy again lies in criminal proceedings against the pimps and traffickers concerned; undercover policing, surveillance and other techniques should suffice to facilitate prosecution of those responsible. We again question whether a closure order would do more than force determined traffickers or violent pimps to move the sex workers to other premises (perhaps further away from the public eye, where they may be even less safe).

22. Where a brothel is operating with the free consent of those working within it, however, different considerations should apply. The closure of brothels through closure orders is likely to have counter-productive effects: forcing some prostitutes into street prostitution, or into working in their own homes or client's homes, which is likely to be less safe and will also expose children of prostitutes to risk; pushing other brothels 'underground' into further connection with organised criminals and in less safe, more isolated locations. Like other provisions related to prostitution, therefore, these orders are likely to be counter-productive. If the government wishes to remove brothels from residential areas for understandable reasons, they should provide a safe alternative (for example, licensed brothels in designated non-residential areas).

Part 3: Alcohol misuse

Clause 26: Increase in penalty for offence

23. This provision would increase the maximum fine for consuming alcohol in a designated public place from level 2 (currently £500) to level 4 (currently £2,500). We believe that a £2,500 fine is a disproportionate penalty for an offence of this type, even if committed persistently. We are concerned that hefty fines could be used against problem drinkers with alcohol addiction problems who may already have financial problems and for whom financial penalties will do nothing to counteract their dependence on alcohol and may result in further social exclusion. We therefore question the necessity of this provision.

Clause 29: Offence of persistently possessing alcohol in public place

24. We believe that children and young people who are drinking in public places should not, without more, be subject to criminal sanction; dragging them into the criminal justice system and giving them a criminal record will have damaging effects upon their future prospects for employment and will be little deterrent against common teenage behaviour. In relation to younger children in particular, public drinking suggests a lack of proper supervision and carries evident risks to their health. A welfare-oriented approach should therefore be used. Criminalising this behaviour may also lead to children seeking out isolated locations in which to drink in which they may be at risk, particularly at night.

Clause 30: Directions to individuals who pose a risk of disorder

25. We have serious concerns about the extension of section 27(1) Violent Crime Reduction Act 2006 to 10-15 year olds. Legislation and policy in recent years have shown a progressive intolerance for the presence of young people in groups in public places. The use of this power against children as young as 10 may result in their being directed to leave a place of relative safety (a town centre for example) with the result that they instead gather in isolated places where they can avoid police attention but are also at far greater risk. If children as young as 10 are posing a risk of alcohol-related disorder this is a matter of concern for their legal guardian(s) and for health and welfare services; simply banishing them from public sight is an entirely inappropriate remedy.

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January 2009