



Nick Herbert, MP Minister of State for Policing
House of Commons
London
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Dear Mr Herbert,

Re: Proposed changes to Police and Criminal Evidence Act (PACE) 1984.

We are writing with regards to the government's proposed changes to the Police and Criminal Evidence Act (PACE) 1984. As you may be aware, StopWatch is an action group formed of leading organisations from civil society, the legal profession and academia. StopWatch aims to ensure the fair and effective use of stop and search powers to promote safety and positive police community relations.

We write in regard to the proposed changes to the PACE guidance, which were revised in September 2010 and again last week, December 2010. We welcome the decision to drop the new provision allowing officers to use race to select people to search under section 60 and the strengthened wording noting the applicability of search decisions to the Equalities Act 2010. Yet, we remain concerned that there has not been a full and transparent public consultation process around the proposed changes, which will amount to a significant change to the operation of stop and search and have the potential to increase disproportionate targeting of ethnic minority communities and further damage police-community relationships.

We remain concerned about the following issues:

- The amendments remove the requirement to record stop and account. Over two million people are stopped and asked to account for their actions every year. Black and Asian people continue to be disproportionately stopped and asked to account for themselves compared with the white population. Scrapping the stop and account form will severely undermine police accountability to the public, without making the time savings that have been promised. The revisions propose allowing individual police forces to reinstate recording of stops when there are local concerns about disproportionality, but the decision rests entirely in police hands, denying affected communities a role in the decision-making.

- The amendments reduce the recording requirements for stops and searches. The proposals will make it harder for the police or communities to determine the effectiveness of stop and search powers and may lead to allegations of harassment and abuse that cannot be substantiated or disproved. Overall, the changes will weaken both internal and external accountability. Again, we dispute the claim that this will make significant savings in police time and argue that the savings that will be made cannot be balanced against the impact that the power and the reduced requirements has on community trust and confidence in the police.
- The amendments do not go far enough to ensure the fair, effective and accountable use of section 60 of the Criminal Justice and Public Order Act 1994. There is no provision made to ensure that the intelligence used to invoke section 60 stop and search powers meets legal standards or to see that the power is used consistently within and between forces. The safeguards also fail to adequately address the potential for ethnic profiling in the use of this exceptional power without reasonable suspicion.

A longer briefing is provided in the attached document.

We welcome the Government's commitment to address disproportionality in stop and search and endorsement of the National Policing Improvement Agency's "Next Steps" project, made during your speech on 1st December. 'Next Steps' is a pilot initiative that is currently being tested in Dorset, Merseyside and the London borough of Lewisham. StopWatch looks forward to seeing the results of the pilot but is concerned that this is the only government action being undertaken to improve effectiveness and reduce disproportionality in stop and search nationally. The Next Steps process to date has not been transparent: there is no external oversight or community involvement in the process and no external evaluation of how effective and robust Next Steps is as a tool. Next Steps is a diagnostic tool for identifying drivers that may be leading to unfair and ineffective stop and search but it has no power of enforcement. Whatever is identified can simply be ignored by police forces if they wish and as the process is closed, communities will have no idea what has been suggested. Nor will they have a voice to push for relevant changes to be made. An independent evaluation of the NPIA 'Next Steps' project should be undertaken and external oversight and community involvement be included in the project before it is rolled out nationally. Inspection bodies, such as the HMIC or EHRC should be tasked with ensuring that the recommendations made by the 'Next Steps' analysis are implemented in each force. As we noted in our response to the "Policing in the 21st Century" consultation, there are innovative forms of external monitoring being developed which empower local communities to monitor the use of stop and search, address disproportionality and quality of encounters and serve to improve trust and confidence at a local level. These practices should be shared and replicated nationally to complement the work being done under "Next Steps."

We welcome your offer of a public meeting to discuss the proposed changes, made at the Westminster Hall Debate on 1st December. The public have to date been excluded from any meaningful consultation around the proposed changes so we are pleased to hear that external groups will be able to participate. NGOs and community groups should have the opportunity to highlight their opinions on stop and search and give examples of good practice. We would also suggest inviting police leads from various police forces who are working on these issues at a local level as they would be able to contribute some practical, "on the ground" information. We would be happy to help you organise such an event.

We would be also be delighted for the opportunity to meet with you to discuss our concerns further and would be grateful if your office could contact Kjartan Sveinsson – kjartan@runnymedetrust.org – to arrange a suitable time.

Yours sincerely,

STOPWATCH

**Abbreviated response to the StopWatch's response to the proposed changes
to the Police and Criminal Evidence Act 1984 (PACE) Code of Practice A.
Revisions proposed 20th September and 8th December 2010.**

Full version of Stopwatch's response is available at:

<http://www.stop-watch.org/uploads/STOPWATCH-PACE.pdf>

Stop and Account

We believe that the government plans to abolish the requirement that stop and account be recorded and instead allowing individual police forces to decide whether to reinstate such recording is ill-judged, ignores community concerns about stop and account and fails to give communities a role in local decision-making on policing. The on-going disproportionality in stop and account indicates that the problems recognised by the Macpherson Inquiry remain a concern and that the need for full monitoring and accountability continues. When balanced against these concerns the limited bureaucracy created by recording stop and account is necessary. We have calculated the savings that will be made by cutting stop and account recording. Rather than the figures quotes of 450,000 hours of police time it is more likely to be 184,000 hours saved or 6.4 minutes per officer per month or less than an hour and a half per year. This was the conclusion drawn by Sir Ronnie Flanagan in his independent review of policing in 2008, who recognised the importance of recording stops to community trust and confidence and "remained convinced that there is a need for officers to demonstrate accountability to individual members of the public." There is no reason why this advice should be ignored now.

With over two million stop and accounts conducted every year, it is a significant power that should be fully measured and accountable. Although we recognise that stop and account is not disproportionate in every force, it is an important indicator for assessing whether stop and search powers are being used fairly. The proposal to allow forces to reinstate recording of stops when there are local concerns about disproportionality is ill-conceived and confusing. The provision puts too much discretion in the hands of the police to decide when recording is necessary and relies on their good will to monitor it. Recommendation 61 was implemented to improve public trust and confidence in the use of police stops because stops were being misused. Yet the proposed changes make no provision for local communities to participate in making the decision to reinstate the recording process. There is the danger that this provision will result in a post-code lottery, with different levels of service to communities in different policing areas. It also likely to cause confusion amongst members of the public who might be stopped in one area and get a receipt and then travel over police boundaries and be stopped and not get a receipt.

The government has recognised that there is the potential for disproportionality and misuse of stops with this provision and should set national standards mandating the recording of stops as

long as current data continues to show disproportionality in stops. Without this it will be impossible for communities to hold the police to account and safeguard against the discriminatory use of police stop powers.

Reduced recording of stop and search

We believe that the government's plans to reduce the recording requirements for stop and search from 12 points of information to 7 points of information required on the form will undermine monitoring and accountability of stop and search. The forms will no longer record: Name, address and description of person, the outcome of the stop and whether there was any injury of damage caused as a result of the stop and search.

The proposed changes will dramatically undermine the ability of the police and public to monitor and assess police practices that have historically given rise to serious concerns in the UK, at a time when the volume of such police actions are increasing. The changes will make it difficult to assess the *effectiveness* of stop and search. It will no longer be necessary for officers to record on the forms whether the stop and search has resulted in arrest or other positive outcomes such as seizures or fixed penalty notices (FPN). The revised Code requires that a note of whether an arrest was made as a result of the stop and search be made in custody suites at police stations. Yet, all 43 forces across England and Wales have different custody systems that would need to be adapted to do this and no guidance has been provided on how this will be done and how this statistical information will then be linked back to stop and search data. There is no provision for seizures or other positive outcomes to be measured, so this information will be lost. Analysis of what is found during a search and the outcomes of stop and searches serves to determine whether officers' development of suspicion was correct and the objects recovered match what was being searched for. Losing this information takes away a key determinant for supervising officers and external monitoring groups to determine whether stop and searches have met the requirements of PACE. Local communities must be provided with information about police performance and what activities are undertaken by the police in their local areas, with what purpose, and to what effect. It is essential for the outcomes of stop and search be measured and that this statistical information is shared with communities to allow them to assess the legitimacy and effectiveness of the use of stop and search and policing powers more generally.

The removal of the requirement to record the name of the person searched will make it difficult to measure repeat stops and harassment. There are long standing concerns about the use of stop and search to target certain individuals or communities and without collecting name data it will be difficult to assess the validity of these concerns. The December version of the Code highlights the applicability of Equality Act 2010 to stop and search. It states "*The Equality Act 2010 makes it unlawful for police officers to discriminate against, harass or victimise any person on the grounds of the 'protected characteristics' of age, disability, gender reassignment, race, religion or belief, sex and sexual orientation, marriage and civil partnership, pregnancy and maternity when using their powers*" (Para 1.1). Without recording the name of the person stopped it will be impossible to prove or disprove that officers are "harassing or victimising people." Therefore undermining the intention of the Equalities Act and its applicability to stop and search. The police will be unable to answer complaints about repeat stops as they will have no means of proving how many times they have stopped a person.

The revised Code will no longer require officers to record any injury or damage caused as a result of the stop and search. The requirement to record this information acts as a safeguard by reminding officers that their conduct during a stop and search is being monitored and that they are accountable to the public. It can also act as an important safeguard for the police if a complaint is made about their conduct or injuries or damage sustained during the stop and search. This could in effect leave officers open to complaints of use of force or malicious damage.

Reductions in bureaucracy should not be made at the cost of weakening community engagement and accountability. We have calculated the saving that will be made by reducing this information on stop forms, several pieces of which are only tick boxes, on average, individual officers carried out approximately 8 stop searches in the year, which translates into less than one a month. The amount of time the proposed cuts would generally save individual officers is, therefore, minimal – we estimate that, on average, it would be a matter of minutes per officer per month and no more than 10 minutes over a year. This is much less than the 300,000 hours of police time that has been quoted. When set alongside the potential damage to community relations this is a false economy. The idea that completing stop forms is a distraction from “real” police work is simply incorrect, and underestimates both the rigor of modern policing and the fundamental need for accountability and transparency. Real police work is about building trust and confidence, promoting accountability, and building legitimacy around the use of stop and search. Real savings could be made from conducting less but more effective stop and searches and reducing disproportionate stop and searches.

Section 60 of the Criminal Justice and Public Order Act 1994

StopWatch remains concerned about the safeguards in place for the use of the exceptional power of section 60, which carries no requirement of reasonable suspicion. We welcome the decision to drop the provision allowing police officers to select a person to stop and search under section 60 on the basis of ethnicity. Serious questions remain, however, as to how the government could allow such a provision, which effectively writes ethnic profiling into police guidance, to be drafted and circulated. The guidance as stands does not do enough to guard against ethnic profiling under section 60. Although the provision has been strengthened, it still fails to properly address the issue of ethnic profiling. *“Ethnic profiling is the use by the police, security, immigration or customs officials of generalisations based on race, ethnicity, religion or national origin - rather than individual behaviour or objective evidence - as the basis for suspicion in directing discretionary law enforcement actions. It can also include situations where law enforcement policies and practices, although not themselves defined either wholly or in part by reference to ethnicity, race, national origin or religion, nevertheless do have a disproportionate impact on such groups within the population and where this cannot otherwise be justified in terms of legitimate law enforcement objectives and outcomes”* (European Network Against Racism (ENAR) “Factsheet on Ethnic Profiling,” 2009). Where ethnicity is one of several factors involved in an officer’s decision to stop someone, alongside other characteristics such as age, dress (hooded sweatshirts, baggy trousers, perceived gang dress etc.), time of day and / or geography, this still amounts to ethnic profiling. Guidance needs to effectively safeguard against ethnic profiling in everyday circumstances.

National figures show that that black people are stopped and searched under section 60 at 26 times the rate of whites and Asian people 6 times the rate of white people. These figures are based on the measures that have been used by the Ministry of Justice since the introduction of section 95 criminal justice data. They reflect the extent to which black people are disproportionately subject

stop and search under section 60 across the country as a whole. When we look at just London, it shows that black people are stopped and searched under section 60 at 8 times the rate of white people in London and 7 times the rate of white people in the rest of the country. These are unacceptable levels of disproportionality, which must be addressed.

Attempts have been made to justify the high levels of disproportionality in section 60 by noting that the power is concentrated in the London, where a greater proportion of the UK's black and Asian population live. As noted, 76% of stops and searches conducted under section 60 took place in London in 2008/09, this concentration of section 60 stops in London should be subjected to critical scrutiny and must be justified with reference to objective indicators. The number of section 60 stops in London almost trebled between 2007/8 and 2008/9, whilst remaining largely unchanged outside the capital. In 2007/8 London accounted for 33% of section 60 stops but by 2008/9 this increased to 76 per cent. Such a dramatic increase in the use of section 60 stops in London needs to be explained and justified. The concentration of section 60 stops in London and the sharp increase in their use does not reflect what we know about incidence of violence. According to the British Crime Survey (BCS) violent crime remained stable between 2007/8 and 2008/9, while police recorded crime showed a 6% fall in violence against the person. The BCS also showed no change in the use of knives in all types of violent incidents during this period. The number of people admitted to hospital with stab wounds in England fell slightly from 5,239 in 2007/8 to 4914 in 2008/9. Recent figures (covering 2006/7) also show that 26% of people admitted to hospital for stab wounds live in London. These figures raise serious questions about the apparent overuse of stop and search under section 60 in the capital and highlight the need for increased scrutiny of the power.

A consistently low arrest rate of between 1-4% nationally, raises further questions about the accuracy of the intelligence being used to justify section 60 authorisations and highlights the need for external scrutiny of this process. Yet, there is little research into the quality of local intelligence that is used to justify section 60 authorisations. There is also little regulation to ensure that the intelligence used to invoke section 60 stop and search powers meets legal standards (i.e. that there is a credible threat of serious violence in a defined area), or to see that the power is used consistently within and between forces. There is no independent reviewer responsible for reviewing this exceptional power and there has been no investigation by Her Majesty's Inspectorate of Constabulary (HMIC) into the use of the power. There is also no additional practice guidance on how to use the section 60 power as exists for other exceptional powers. The PACE revisions do nothing to rectify this situation and make no provision for effective oversight of the section 60 authorisations, which is essential to ensure that the power is being used lawfully.

We request an independent review into the use of section 60 stop and search powers be conducted and an independent reviewer be appointed to review section 60 as is the case with section 44 counter terrorism stop and search. Safeguards, including effective internal and external supervision, and monitoring, be incorporated into the section 60 provision as an exceptional stop and search power. This should include a public register of section 60 authorisations to allow effective local and national scrutiny of the power.

Inconsistencies in the PACE revisions.

There are several inconsistencies in the latest version of the PACE Code that should be rectified before it becomes national guidance. Firstly, the Code is unclear around same-sex searching.

Para. 2.8 states “*Under section 43 of the Terrorism Act...searches may only be carried out by an officer of the same sex as the person searched.*” It is unclear why this would be required only for searches under the Terrorism Act and not other search powers. This is potentially confusing for members of the public and should be consistent across all search powers. Secondly, the current version of the Code contains different periods for which the hard copies of the forms will be kept at police stations for members of the public to access. Para 2.14B states that any driver or person stopped under section 60 will be entitled to a “written statement” that can form part of the search record or be a separate document within 12 months. Para. 3.8, later states that members of the public are entitled to a copy of the search record within 3 months from the date of the search. This represents a reduction from the previous 12 month period in which members of the public were able to collect a copy. It is unclear why “written statements” have now been introduced into the recording requirements for section 60. This is potentially confusing and unnecessary bureaucracy if stop and search is effectively recorded on stop forms. The length of time that members of the public can access the hard copy of the stop form or information on the stop should be consistent in the Code and across all powers.

StopWatch recommendations

1. A full and transparent consultation be undertaken on the proposed changes to the Police and Criminal Evidence Act 1984 Code of Practice A.
2. The national requirement that officers record stop and account be reinstated.
3. The requirement to record names of those stopped and searched, and injury and damage resulting from the stop and search, be reinstated.
4. No further reductions be made to the recording of stop and search. Emphasis should instead be placed on improving the efficiency of current data collection systems with the ultimate goal of full electronic recording.
5. Any revisions to the PACE Code should include guidance to all police forces to ensure that information on the effectiveness of stop and search is collected consistently. This should include information on how arrests resulting from stop and search will be recorded in custody suites and how other positive outcomes (such as seizures and Fixed Penalty Notices) are to be recorded. It should also be made clear how such information is to feed into local and national monitoring mechanisms.
6. An independent review into the use of section 60 stop and search powers be conducted and an independent reviewer be appointed to review section 60 as is the case with section 44 counter terrorism stop and search
7. Safeguards, including effective internal and external supervision, and monitoring, be incorporated into the section 60 provision as an exceptional stop and search power. This should include a public register of section 60 authorisations to allow effective local and national scrutiny of the power.
8. Inconsistencies in the current version of the Code should be rectified to avoid confusion. These include the requirement for same-sex searching under section 43 of the Terrorism Act but not other

powers and different periods for the public to access copies of stop records and “written statements” of searches at police stations after the event.

9. The PACE Code be extended to cover stop and searches conducted under schedule 7 of the Terrorism Act 2000, requiring that these stops be monitored under the same recording framework as all other stop and search powers; and that data be shared with community monitoring groups.

STOPWATCH