StopWatch's response to the proposed changes to the *Police and Criminal Evidence Act 1984 (PACE)* Code of Practice A.

Revisions proposed 20th September 2010.

October 2010

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Summary

We are concerned that:

- The proposed amendments to the Pace Code of Practice A were made with little-to-no public consultation. They were not publically available on the Home Office website and the timeframe for responses was limited to three weeks rather than the usual 12 week consultation period. The proposed changes represent 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 the relationship between communities and the police.

- 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 and official data shows disproportionate rates of use. 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.

- The amendments allow police officers to stop and search members of the public on the grounds of their ethnicity under section 60 of the Criminal Justice and Public Order Act 1994. This writes ethnic profiling into official police guidance and would breach section 29 of the Equalities Act 2010 and the duty to prevent unlawful discrimination under the Race Relations (Amendment) Act 2000.

We recommend that:

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 recording of 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 put on improving the efficiency of current data collection systems with the ultimate goal of full electronic recording.

5. Any revisions to the PACE Code 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; but also ensure other positive outcomes (such as seizures and Fixed Penalty Notices) are recorded, and how this information will be shared with both local and national monitoring mechanisms.

6. The Terrorism Act 200 be amended to satisfy the European Court of Human Rights Judgment on section 44 and this should then be reflected in the PACE guidelines. Section 44 should be strictly limited, reducing individual officer discretion and ensuring adequate transparency and accountability, so as to minimize the risk of arbitrary and/or discriminatory application of stop and search powers.

7. The provision stating that it is appropriate to select a person to be stopped and searched under section 60 on the basis of the person's ethnic origin (para. 2.25) be removed.

8. An independent review into the use of section 60 stop and search powers be conducted.

9. Safeguards, including effective internal and external supervision, and monitoring, be incorporated into the section 60 provision in line with the exceptional stop and search powers granted under section 44.

10. The 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.

Introduction

The Home Office is proposing amendments to the Code of Practice which governs the use of police powers under the *Police and Criminal Evidence Act 1982 (PACE).*

The proposed changes to the Pace Code of Practice A (hereafter "the Code") have been made with little public consultation. They were shared via e-mail with the limited membership of the PACE review group and were not publically available on the Home Office website. The timeframe for responses was three weeks rather than the usual 12 week consultation timeframe. The proposals represent a significant change to the operation of stop and search; they have the potential to increase disproportionate targeting of ethnic minority communities, and further damage the relationship between these communities and the police.

StopWatch has serious concerns about the amendments proposed and believes they will impact negatively on fairness and accountability. The revisions implement changes made under the Crime and Security Act 2010. They eliminate the national requirement to record 'stops' (stop and account encounters) and implement a reduced level of recording for stop and searches. The revised Code proposes allowing individual police forces to reinstate recording of stops when there are local concerns about disproportionality; however, the decision to do so rests entirely in the hands of the police, with no clear voice or role for the affected communities. The proposed changes also 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. These changes would weaken accountability. The proposals will also allow police officers to stop and search member of the public on the grounds of their race under section 60 of the Criminal Justice and Public Order Act 1994. This writes ethnic profiling into official police guidance and may direct officers to breach race relations legislation.

Removal of the recording of "stop and account"

The proposed amendments to PACE Code A, implement changes made under the Crime and Security Act 2010 and remove the requirement that all police nationally record all "stops". "Stops" or "stop and accounts" cover encounters that fall outside the statutory stop and search powers, where police officers stop members of the public to ask them to account for their actions, behaviour or presence in an area, but do not go on to search them. Currently, police officers are required to make a record when they stop a person in a public place to ask them to account for themselves. The amended Code removes the requirement to record all stop and account, and those stops where the person was detained for

the purposes of a search but it was deemed unnecessary after questioning. A new note for guidance states:

> *"Where there are concerns which make it necessary to monitor any local disproportionality, forces have discretion to direct officers to record the self-defined ethnicity of persons they request to account for themselves in a public place or who they detain with a view to searching but do no search. Guidance should be provided locally and efforts made to minimise the bureaucracy involved. Records should be closely monitored and supervised in line with paragraphs 5.1 to 5.4 and forces can suspend or re-instate recording of these encounters as appropriate." (para. 22A)*

The recording and monitoring of stops, including the reason for the stop, self-defined ethnicity and a copy of the stop record, was recommended by the Macpherson Inquiry into the death of Stephen Lawrence. This was in response to long standing community concerns that stops were being used disproportionately against minority communities and circumventing the safeguards contained in the Police and Criminal Evidence Act 1984 (PACE). The recording of stops was widely consulted with community groups and extensively piloted and implemented by a 2004 amendment to PACE Code A.[1] At the time of its implementation, the Home Office acknowledged the importance of the recording as a means of promoting "trust and confidence in the police by providing transparency and accountability on the spot at a strategic level, for police initiated non-statutory encounters."[2]

The importance of recording stops was again recognised by Sir Ronnie Flanagan in his independent review of policing in 2008. His report recognised the importance of recording stops to community trust and confidence and recommended the recording process be made less burdensome. Sir Flanagan "remained convinced that there is a need for officers to demonstrate accountability to individual members of the public," and agreed with community representatives that "building a national picture of our behaviour and actions as police officers is crucial". Further, he considered that stop and search figures ought to "be given the weight they deserve at force level."[3]

The number of times that police require people to stop and account for themselves is far greater than the number of stop and searches that they conduct (the most recent figures, from 2007/08 record 2,353,918 stop and account

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[1] Quinton, P. and J. Olagundoye (2004). *An evaluation of the phased implementation of the recording of police stops: in response to recommendation 62 of the Stephen* Lawrence Inquiry. London: Home Office; MORI (2004) The Views of the public on the phased implementation of recording police stops, London: Home Office; Shiner, M (2006) *National Implementation of the recording of police stops,* London: Home Office. The amendments were introduced in August 2004, to be implemented by all forces by 1st April 2005.

[2] Home Office (2004), *Recording of Stops Implementation Guide: In Response to Recommendation 61 of the Stephen Lawrence Inquiry Report*. London: Home Office, at 7.

[3] Sir Ronnie Flanagan, The Review of Policing: Final Report (February 2008), Paras. 5.56 - 5.63.

compared to 1,035,438 stop and search). Exercise of the stop and account power is more evenly spread between police forces compared with the stop and search power. Overall in 2007/08, the rate of stop and account for black people was two and a half times higher than for white people. The rate for Asian people was slightly higher than for white people at a rate of 1.2 to 1. This ratio is similar to the previous year and is notably lower than the national disproportionality ratio for stop and search powers.[4]

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. The data collected on stop and account is also an important indicator for assessing whether stop and search powers are being used fairly. Disproportionality in stop and search is often dismissed as an artifact of recording procedures where police officers argue they are more likely to complete a form for ethnic minorities for fear of complaint. Police have also justified disproportionality on the grounds that black people are more likely to be stopped by virtue of their being more "available" on the streets where stop and search is taking place due to higher rates of offending.[5] As noted, disproportionality rates are far less marked in relation to stop and account than stop and search. Since recording requirements and conditions where stops and searches take place are the same as with stop and account, it highlights the fact that police decision-making forms a key part of the process driving disproportionality in stop and search.[6]

The proposal (at Note 22A) to allow forces to reinstate recording of stops when there are local concerns about disproportionality is ill-conceived and confusing. There is disproportionality in stops across most police forces in England and Wales, so at the present time it would be appropriate for all police forces to continue to record stops. 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.

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[4] Ministry of Justice (2009), *Statistics on Race and the Criminal Justice System 2007/08* (London: Ministry of Justice). The confirmed figures for stop and account 2008-09 are not yet publically available.

[5] Shiner, M. (2010), "Post- Lawrence Policing in England and Wales: Guilt, Innocence and the Defence of Organizational Ego, *British Journal of Criminology,* Vol. 50(5): 935-953.

[6] Shiner (2010); Sanders, A. and Young, R. (2006), Criminal Justice. Oxford: Oxford University Press.

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.

Recommendation:

The recording of stop and account should be reinstated.

Changes to the recording of "stop and search"

The proposed amendments to PACE Code A, implement changes made under the Crime and Security Act 2010 and reduce the information collected on "stop and searches." Currently, PACE requires a police officer to complete a full record of a stop and search and, where practicable to do so, provide the individual with a copy of the record at the point of contact. Officers are still required to record:

- date;
- time;
- place;
- self-defined ethnicity (adding officer-perceived ethnicity, if the officer believes there is an obvious discrepancy);
- object of search;
- grounds for search;
- identity of the officer carrying out the stop and search.

It will no longer be necessary to record:

- the name of the person searched or other description of the person, or description of the vehicle;
- whether anything was found as a result of the search;
- whether any injury or damage was caused as a result of the search.

The revised Code maintains a requirement that every stop and search which does not result in an arrest is recorded, and that the person searched will receive either a receipt recording the date and grounds on which they were searched and identifying the constable who carried out the search, or a full copy of the record. Where a person is taken into police custody as a direct result of the stop and search, a record should be made at the station to show that the action originated from 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 is

likely to increase drastically. Moreover, 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 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 injures or damage sustained during the stop and search. This could in effect leave officers open to complaints of use of force or malicious damage.

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,[7] and without collecting name data it will be difficult to assess the validity of these concerns. 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.

It is desirable to reduce bureaucracy in policing but it is essential that all changes result in improved, not weakened, community engagement and accountability.

[7] See for example, Cohen, D. and Lydall, R. "Black Met adviser stopped and searched more than 100 times," *The Evening Standard,* 16th October 2009.

The data currently recorded through stop and search monitoring mechanisms enhance accountability and effectiveness by providing a picture of stops by individual officers and across units and forces. It makes it possible to compare where stops are taking place with maps of local crime patterns, supporting more effective targeting of stops and searches. A certain amount of bureaucracy is necessary to ensure that the police are accountable, effective and transparent.

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. The proposals are misleading about the "cost" of recording vital information, implying that these are a major burden on police officers. Stop and search forms routinely take an average between 2 – 5 minutes to complete. New technologies can reduce this even further. The West Yorkshire Police is amongst several police forces who have rolled out a system of recording stop and search on hand-held computers or PDAs, which cuts the time to record a stop-and-search encounter to two minutes.When balanced against the impact this potentially intrusive power can have on individuals and communities, this is not a large commitment of police resources. The changes proposed in this Code will at best save police officers less than 30 seconds on each stop and search they record on paper forms but will at the same time undermine accountability by making it difficult to measure effectiveness; make it impossible to track repeat stops; and leave the police open to complaints about victimisation or abuse that cannot be substantiated.

Note 19 calls for "*anonymised forms and / or statistics generated from the records should be the focus of examination by members of the public*." Research highlights the usefulness of *both* quantitative and qualitative indicators, with statistical information being scrutinised alongside detailed records of individual stops and other sources of information such as complaints, feedback from community organizations, and satisfaction surveys. Stop and search scrutiny panels in West Yorkshire and Suffolk illustrate national good practice in this area.

<u>Recommendations:</u>

The requirement to record names of those stopped, injury and damage resulting from the stop and search should be retained.

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 but also ensure other positive outcomes (such as seizures and Fixed Penalty Notices) are recorded and how this information will be shared with both local and national monitoring mechanisms.

Changes to section 44 of the Terrorism Action 2000

Section 44 of the Terrorism Act 2000 provides a power to stop and search individuals within a specified area without any grounds of suspicion. An authorisation can be made for 28 days, where it is considered "expedient for the prevention of acts of terrorism." Evidence shows that this power has been used disproportionately against minority ethnic communities. In 2007/8, Home Office statistics showed that of those stopped and searched under section 44, 17.7 percent of the people stopped in England and Wales were identified by the police as Asian, as against 4.7 percent of the population. 63.1 percent of those stopped and searched were identified as White, as against 91.3 percent of the population.[8] The power has also been misused against peaceful protestors.[9]

Earlier this year, section 44 was challenged in the European Court of Human Rights, which held that the power is a violation of the right to privacy. The Court was highly critical of the use of such a broad and intrusive power without any basis of suspicion, as well as of the low threshold of 'expediency' needed to authorise the use of the powers. The European Court of Human Rights highlighted the potential for discrimination and misuse of section 44 stating that: "there is a clear risk of arbitrariness in the granting of such a broad discretion to the police officer. While the present cases do not concern black applicants or those of Asian origin, the risks of the discriminatory use of the powers against such persons is a very real consideration."[10]

On 8th June 2010, the Home Secretary, the Rt. Hon. Theresa May MP, announced that, in response to the decision of the Court of Human Rights, interim guidelines would be put in place pending a review (with a view to legislative amendment) of section 44 to ensure that any search conducted under the section is compatible with the UK's human rights obligations. The new paragraph 2.18A of PACE Code A now sets out these guidelines. Authorisations to search pedestrians, drivers of vehicles and passengers of vehicles or anything carried by a driver or passenger are not to be given under section 44(1) or (2). If such an authorisation is given, it will not be confirmed. All such searches are to be given under section 43, requiring there to be reasonable suspicion that the

[8] Ministry of Justice (2009), *Statistics on Race and the Criminal Justice System 2007/08* (London: Ministry of Justice).
[9] see for example: Johnson, P. "The police must end their abuse of anti-terror legislation," The Telegraph, 3rd October 2005, Available at: http://www.telegraph.co.uk/comment/personal-view/3620110/The-police-must-end-their-abuse-of-anti-terror-legislation.html ; Travis, A. "Stop and search used illegally against thousands, "*The Guardian*, 10th June 2010. Available at: http://www.guardian.co.uk/uk/2010/jun/10/anti-terror-law-illegal-stop-search ; Vidal, J. and Pidd, H. "Police to use terror laws on Heathrow climate protesters" *The Guardian*, 11th August 2007. Available at: http://www.guardian.co.uk/uk/2007/aug/11/ukcrime.greenpolitics/print
[10] Gillan and Quinton v. the United Kingdom (Application no.4158/05), European Court of Human Rights, para 85.

subject of the search may be a terrorist and that the scope of section 44 will still need to be tightened.[11]

The Terrorism Act 2000 must be amended to ensure that section 44 is used only when strictly necessary and ensuring adequate transparency and accountability so as to minimize the risk of arbitrary and/or discriminatory application of stop and search powers. We support Liberty's proposal that, *at a minimum*, the Act should be amended to:

- Require that a section 44 authorisation is only given if either:
  - the events to be held in a specific area;
  - the nature of a place; or
  - specific information received,
  - mean that the person giving the authorisation reasonably believes it is necessary to prevent acts of terrorism.
- Require that authorisations for an area or place are no larger than is reasonably necessary to enable an effective response to a terrorism threat and no more than one square kilometer in total.
- Require that authorisations can be made only by a chief officer of police.
- Require that authorisations do not last longer than is reasonably necessary and must not exceed 24 hours.
- Require that authorisations are not renewed for the same area within 7 days unless renewed in writing by the Secretary of State.
- Require that if the Secretary of State renews an authorisation on six or more occasions he or she must lay a copy of the renewed authorisation before both Houses of Parliament as soon as reasonably practicable.
- Require that notice of an authorisation must be published as soon as reasonably practicable and not later than 7 days after the authorisation is given.[12]

The PACE Code of Practice should then be amended to reflect these changes.

<u>Recommendation</u>

The Terrorism Act 2000 should be amended to satisfy the European Court of Human Rights Judgment on section 44 and this should then be reflected in the PACE guidelines. Section 44 should be strictly limited, reducing individual officer discretion and ensuring adequate transparency and accountability so as to minimize the risk of arbitrary and/or discriminatory application of stop and search powers

[11] Liberty, "Liberty's consultation response on the proposed amendments to the Codes of Practice under the Police and Criminal" Evidence Act 1984, October 2010.
[12] Liberty, "From War to Law: Liberty's response to the Coalition Government's review of Counter-terrorism and Security Powers 2010."

Changes to section 60 Criminal Justice and Public Order Act 1994

The proposed amendment to PACE Code A govern how a stop and search under section 60 should be conducted, setting out the grounds in the Act which allow for an authorisation to be given, and stipulating the required content of a written or oral authorisation. The changes proposed to the Code reflect the amendments made by section 87 of the Serious Crime Act 2007. The revised Code outlines the authority for police officers to conduct a stop and search under this power without reasonable suspicion if an authorising officers believes that a) incidents involving serous violence may take place in any locality and it is expedient to used these powers to prevent their occurrence; b) that persons are carrying dangerous instruments or offensive weapons without good reasons in an area; and c) that an incident involving serious violence has occurred and it is expedient to use the power to find the weapons involved in this incident. Officers at the rank of Inspector and above can give authorisations, but must inform an officer of the rank of superintendent as soon as practicable. Authorisations last for up to 24 hours and may be extended by the senior officer for an additional 24 hours. The revised Code provides guidance for the selection of persons and vehicles to be stopped under section 60.

The amendments provide new grounds on which a person can be selected to be stopped and searched. The selection must *"reflect an objective assessment"* of the nature of the incident, weapon, individuals and vehicles involved. It provides, as an example: *"if the authorisation related to anticipated serious violence or the carrying of offensive weapons involving large numbers of individuals with a recognisable particular overall general appearance, such as being supporters of rival football teams or being within a particular age range, neither of which factors alone would be sufficiently distinctive to support reasonable suspicion… then only those falling within that general appearance should be stopped and if necessary, searched"* (Para 2.14A). The Code notes that the power should not be used to make stops unrelated to the purpose that the authorisation was given.

The revisions to the Code allow police officers to select a person to stop and search on the basis of ethnicity. Although the amendments note that officers should take care not to discrimination against ethnic minorities, it states there

> *There may be circumstances, however, where it is appropriate for officers to take account of the individual's ethnic origin in selecting persons or vehicles to be stopped in response to a specific threat or incident, but this must not be the sole reason for the stop. For example, when the authorizing officer reasonably believes that those likely to be responsible are associated with particular ethnic identities and passes that information on to the officers exercising the powers.* (Para. 2.14A)

This writes ethnic profiling into official police guidance. This paragraph has been deleted in relation to section 44 stop and searches but simply re-inserted under section 60. It is racially discriminatory and breaches section 29 of the Equalities Act 2010 and breaches the duty to prevent unlawful discrimination under the Race Relations (Amendment) Act 2000.

> "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."[13]

Whether ethnicity is the *sole* or one among a range of factors, stop and search conducted on the basis of ethnicity without reasonable suspicion will constitute unlawful discrimination. The use of ethnicity is only permissible if officers have suspect descriptions of individuals involved in a specific threat or incident, where ethnicity is one component of a composite time and location-bound suspect description. In this case stop and searches should be conducted under PACE section 1 not section 60..

Section 60 grants wide exceptional powers without sufficient safeguards on the use of this exceptional power. Reasonable suspicion acts as a safeguard against abuse of stop and search powers as it provides a threshold of suspicion against which officers' use of the powers can be measured. There is evidence that section 60 is subject to the same problems recognised by the European Court of Human Rights in their decision on stop and search under section 44. That is, that the powers "*are neither sufficiently circumscribed nor subject to legal safeguards against abuse*."[14] Without the requirement of reasonable suspicion and adequate safeguards, there is increasing evidence that section 60 is being used as a "catch-all" power in response to low-level disorder.[15]

Since its introduction, the numbers of section 60 stop and searches have increased dramatically. In 1997/98, there were 7,970 section 60 stop and searches; increasing to 11,330 in 2000/01; to 45,600 in 2004/05; to 53,250 in 2007/08 and to 149,955 in 2008/09.[16] This represents a staggering 282 percent

[13] European Network Against Racism and Open Society Justice Initiative (2009) *Factsheet on Ethnic Profiling,* Brussels: ENAR.
[14] Gillan and Quinton v. the United Kingdom (Application no.4158/05), European Court of Human Rights, para 87.
[15] Sanders and Young (2006); Independent Police Complaints Commission (2007) *Report into West Midlands Police Misuse of Section 60 Powers.*
[16] Home Office (2009), Ministry of Justice (2010).

increase in the use of the power last year. 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 basis given for invoking section 60 stop and search powers meet 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.[17]

Even more disturbing is the evidence that this exceptional power is being used disproportionately against minority communities. The latest data shows that the rate of section 60 stop and search for black people is 26.6 times the rate for white people, and for Asian people it is 6.3 times the rate for whites.[18] Between 2005/6 and 2008/07 the number of stop and searches on black people has increased by more than 650 per cent. This is significantly higher than the rates of disproportionality for PACE section 1 or section 44 stop and searches. Many young black and Asian men feel they are stopped and searched simply because they fit a general stereotype, and this is fueling anger and alienation amongst some communities. The rate of arrests resulting from section 60 stop and search have remained consistently under 4 percent, significantly lower than the arrest rate for PACE stop and searches. There appears to be a limit to the skills of officers to distinguish between those actually involved in committing crimes "from those for whom a generalized suspicion exists in the police lexicon – urban males wearing hooded sweatshirts, for example."[19]

Few would disagree with section 60 powers being used in situations with a genuine risk of violence in a clearly delineated area for a short period of time. Beyond these circumstances, the powers given to the police under PACE section 1 provide an adequate tool that includes the safeguard of reasonable suspicion and local monitoring mechanisms. Where police are given extraordinary stop and search powers, safeguards and local mechanisms for external accountability should go beyond that required for section 1 PACE stops to ensure that communities can have confidence that powers are being used fairly and legitimately. The revised Code fails to provide sufficient safeguards on the power and promotes rather than safeguarding against profiling ethnic groups under this power.

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[17] See for example: National Police Improvement Agency (2008), *Advice on Stop and Search in Relation to* Terrorism; National Policing Improvement Agency (2009), *Practice Advise on Schedule 7 of the Terrorism Act 2000*.

[18] Ministry of Justice (2010), accompanying table S3.05a 0809. Population data taken from previous year: Ministry of Justice (2008), Statistics on Race and the Criminal Justice System - 2006/7. (London: Ministry of Justice).

[19] Ben Bowling (2007) "Fair and effective Policing Methods: Towards 'Good Enough' Policing," *Journal of Scandinavian Studies in Criminology and Crime Prevention,* Vol. 8: 17 - 32

Recommendations

The provision that provides that it is appropriate to select a person to be stopped and searched under section 60 on the basis of the person's ethnic origin (para. 2.25) should be removed.

An independent review into the use of section 60 stop and search powers should be conducted.

Safeguards, including effective internal and external supervision and monitoring should be incorporated into the section 60 provision in line with the exceptional stop and search powers granted under section 44.

Inclusion of schedule 7 of the Terrorism Act 2000 with the PACE Code of Practice A.

Schedule 7 of the Terrorism Act 2000 is listed in the annex summary of stop powers but does not fall within this revised Code. There are increasing concerns around the use of schedule 7 stop powers in ports and airports where 'examining officers' are able to stop, question and/or detain people, *without the need for any reasonable suspicion*, to ascertain whether they are likely to be engaged in acts of terrorism or not.[20] According to Home Office data, 10,400 people have been examined under this legislation since 2004; of them, 1,110 were subsequently detained; and 43 were convicted, generating a conviction rate of 0.4 percent based on the total recorded stops, or conviction rate of 3.8 percent when based on the total recorded detentions.[21] There is no information publically available on the ethnicity of those stopped under schedule 7 powers.

There is little doubt that these powers play a role in ensuring that our ports and airports remain a hostile environment for potential terrorists. Nonetheless, there is increasing concern that innocent people detained under Schedule 7 for further questioning are treated in the same manner as an actual terrorist suspect, and that these powers are being used disproportionately against ethnic minority and Muslim communities. For example, the police routinely gather and retain the DNA and fingerprints of people detained under this power, whether or not they face any charge. Nationally, 1,200 people have had their fingerprints and DNA taken.

[20] Examining officers are able to stop and conduct a thorough search of an individual, their possessions and any vehicle that they may be driving as well as of all associated passengers, their possessions and their associated vehicles and to *detain a person for up to 9 hours* for an extensive 'examination.' Schedule 8 extends their powers to obtain the examined individual's DNA and fingerprints.

[21] Figures represent examinations between *1st January 2004* and *30th September 2009* obtained from a Home Office headed letter dated 23.11.09 from Lord West of Spitfield, Counter Terrorism Minister, as a written answer to questions tabled by Lord Ahmed of Rotherham. See: http://www.parliament.uk/deposits/depositedpapers/2009/DEP2009-2992.pdf

The experience of being stopped under this power can have a damaging impact on individuals and communities leaving them feeling alienated from society.[22]

Recommendation

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

[22] Derfoufi, Z (2010) "Schedule 7 – The Need for Greater Accountability," in Sveinsson K. (ed.) *Ethnic Profiling: The Use of "Race" in UK Law Enforcement,* Runnymede Trust: London.

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.

StopWatch's objectives include:

1. Advocating for ethnic disproportionality in stop and search cut by half over the next five years and forces given guidance and support on how to achieve this.
2. Reviewing the use and regulation of stop and search powers that do not require reasonable suspicion such as section 60, schedule 7 and the Road Traffic Act.
3. Ensuring that there is effective monitoring and external accountability of stop and search.
4. Pushing for the creation of a parliamentary champion/ independent reviewer for fair stop and search use, and equality in policing.
5. Securing funding for and promoting research on stop and search and alternatives to the use of the power.

Participating organisations include:

Equanomics UK
Federation of Student Islamic Societies (FOSIS)
Ipswich and Suffolk Council for Racial Equality
Mannheim Centre for Criminology, London School of Economics
Muslim Safety Forum
NACRO
Not Another Drop
Open Society Justice Initiative
Release
Runnymede Trust
School of Law, Kings College London
Second Wave
Turning Point

If you would like further information about StopWatch, please contact Kjartan Sveinsson at: kjartan@runnymedetrust.org