

From: Stephen Copinger
Sent: 02 May 2005 20:42
To: Police Bill
Subject: Response to certain provisions of Police Bill Consultation

No comments on Q1 - Q11.

Section 3 - Re Knife Crime

Q12. An increase in the penalty for carrying a knife as an offensive weapon, bringing this into line with carrying any other offensive weapon is indeed justifiable. Distinguishing between a knife or other weapon is unnecessary. In all cases having "lawful authority or reasonable excuse" for carrying a potential weapon will apply.

However, the Ministers proposals in respect of licensing of non-domestic knives would in all likelihood be legally unwieldy and unworkable, as well as not being justified by evidence to date. A suitable definition to distinguish between "domestic" and "non-domestic" knives is difficult to the extreme.

Further the Scottish Executive is currently unable to distinguish from statistics between the variety of knives used in knife crime; anecdotal evidence would appear to indicate that most knives crime involves "Stanley" or other DIY/working blades, or large kitchen knives. These would fall within most definitions of "domestic" and therefore restriction of "non-domestic" knives would add unnecessary bureaucracy to no beneficial effect.

Further the proposal to specifically ban on the sale or public possession of swords is wholly unfounded upon any evidence as to their use in criminal activities. On the other hand, swords are generally used by e.g. historical re-enactors, persons in traditional dress, and martial artists, all of whom are currently permitted restricted carrying of their weapons in public under "reasonable excuse" (i.e. that it is not being carried for use as an offensive weapon). The existing law gives adequate sanction against anyone make use of these weapons for criminal purposes.

Accordingly a standardisation of the law, irrespective of the implement in question forming the "offensive weapon" is the most logical position.

Q13. Powers of arrest for the offence of carrying an offensive weapon (not specifically a knife) is acceptable. However, this requires to take account of a "lawful reason" to carry an item that is not per se illegal. A power of arrest solely for carrying a knife is absolutely not justifiable, and the law should not be changed in this respect. If the police officer is satisfied as to the persons name and residence, does not have reason to believe that the knife (or other item) is to be used as an offensive weapon (ergo that the possessor has lawful authority or reasonable excuse to possess the item on their person) why should any arrest be required.

It may however be of benefit to specifically allow an item (rather than the person) to be taken into custody for later reclaiming by the owner. This allows the owner of a potential weapon to pass it into safe custody and satisfies the police absolutely that it is not about to be used as a weapon.

Q14. Increasing the ability to purchase blades to 18 is of dubious benefit. The law currently permits 16 year olds to marry, set up their own households, and live apart from any parent or guardian. Under these proposals, such a householder would be unable to purchase tools legitimately required for everyday use. It does require to be borne in mind that this would prohibit 16-18 year olds from wet shaving, as they would be legally unable to

purchase razors.

If however there is evidence to suggest that 16-18 year olds are disproportionately more likely to use knives criminally, such an increase of age limit could be acceptable on balance of public benefit to inconvenience.

Before introducing any of the above legislative changes (and more so the First Ministers proposals), evidence should be obtained to break down the knife crime statistics to provide detail of how such crimes are being carried out, and target any legislation specifically against the actual crime. No such evidence exists at present, and the proposals therefore lack any real justification beyond an apparent political need "to be seen to be tough on crime".

Accordingly at this stage I would oppose any such proposals to increase the age limit.

I would also suggest that instead of piecemeal amendment of the law in respect of knives and weapons, a complete consolidation of the existing legislation into a single act would be beneficial.

Section 4

Q15 & Q16 Football banning orders as described are an acceptable penalty on conviction of a "football related offence". This can be in addition to or in substitution for other penalties as the case merits.

Summary application on suspicion only has various civil rights implications. If such applications are to be permitted, the presumption must be against the granting of such order, on the basis of presumption of innocence.

However, the restriction of such orders only to football is unnecessary. While it is predominately football events where these will be required at present, it may be beneficial to widen the legislation to any sporting events.

Q17. As this effectively would only be an issue for summary orders, the same comments as above apply - the presumption should be against granting the order, but the serious threat of causing disorder of any kind would be cause for granting of an order.

Q18. The proposals for banning orders on conviction are acceptable. For summary orders, a one year maximum would be appropriate. The proposed penalties for breach of either form of order are appropriate.

Q19. Such orders should be available for any sporting event.

Q20. Yes, subject to judicial review.

Section 5

Q21 & Q22 Notice of intention to process - yes to both.

Q23 & 24 Procedure for notification. Legislation should provide for who should be notified, whether the local authority alone or the local authority and police. However, thereafter it should be for the local authority to have its own procedure for consultation etc. as appropriate for local circumstances, with a single point of contact for the organisers to raise issues with and receive responses from.

Q25. to Q29. Yes. With regard to Q28 specifically, the procedure for notification created and operated by the local authority (per response above) should include provision for this.

Section 6

Q30. Yes, police should have such powers

Q31. Such powers should however only be on arrest, not on charge.

Q32. Provisions should allow a report to be made to the Procurator Fiscal, who could impose a requirement to attend assessment on drug use, and undertaking to undergo appropriate treatment/rehabilitation as a condition of not proceeding with criminal charge(s). (see also comments below on Q46. as to the benefit of "conditional no pro")

Q33 & Q34. Drugs related crimes should automatically permit testing; any other crime should allow testing where there is reasonable suspicion that the accused has used such drugs.

Q35. Such powers should apply in any case where the accused has been arrested. Where a person under 16 is being treated criminally (rather than referred to the Children's Panel) this will indicate a more serious criminal offence has been committed and therefore the same powers should be available. This therefore makes the legal minimum age limit of 8 (age of criminal responsibility).

Q36. Such mandatory testing will, if combined with provisions for the Fiscal to make "no pro" conditional on assessment, allow certain drug users to be diverted from the criminal justice system into rehabilitation.

Section 7

Q37. Subject to the provision that fingerprints and other biometric data is not retained or added to a database, it would be beneficial to both police and the public to allow verification "on the spot" without having to disrupt the individuals normal activities.

Q38. All "spot checks" should be on "reasonable suspicion" of the person having committed an offence. Under no circumstances should the police be undertaking random "ID verification".

Section 8

Q39. It is reasonable to enable the police to require provision of date of birth, as this can be essential information not only for identification but for ascertaining whether an offence has been committed. However, place of birth has no relevance to anything other than identifying the individual from central records - accordingly this should not be compulsory information.

In view of the Scottish legal provision that a person may call themselves what they like providing that this is not for the purposes of fraud, there should also be a power that if the police request information as to whether a person has ever used a specified name, that person is obliged to confirm or deny such use.

Section 9

Q40. Agreed

Q41 & 42. Such a body should have power to accept any complaints, and in the event that it become apparent, whether on initial examination or on subsequent investigation, that the complaint does involve criminality the body should then itself remit to the appropriate Fiscal.

Section 10

Q43, Q44, Q45. No. Plea bargaining on sentence is contrary to the cause of justice.

Q46. Yes, codification of the existing powers would be useful, together with the introduction of "conditional no pro" allowing immunity from prosecution to be agreed subject to the accused doing whatever has been agreed.