

THE MAGISTRATES' ASSOCIATION
JUDICIAL POLICY & PRACTICE COMMITTEE

Policing & Crime Bill Briefing

The sponsoring department for this Bill is the Home Office. Only some of the Bill is of interest to us as magistrates. The sections are:

Part 1 - Police Reform

Clause 1 – public accountability

The police must take account of the views of people in their area about policing. Area is not defined – in a large force like Thames Valley or Hampshire what would constitute an area? The Magistrates Association (the Association) would like to see a definition on the face of the Bill.

We consider that the views of magistrates need to be taken into account. Magistrates are not members of Crime and Disorder Reduction Partnerships (CDRPs) and police authorities cover too large an area for local views to be taken properly into account. An amendment to include the views of the business community has been tabled.

Clause 5 – police collaboration

This deals with joint police working. It may affect where search warrants are issued. The Redknapp case springs to mind where the warrant was issued out of area by the City of London police. The Association would ask for a warrant always to be issued by a magistrate or District Judge(MC) from the area where the property to be searched is located.

Clause 6 – authorisation to interfere with property etc

Clause 6 (2)(ii) would allow a member of another police force to serve a warrant including possibly a search warrant without a member of the local force being present if such an agreement was in place. If the agreements are only for administrative matters, then providing they do not slow down the work of the courts, the Association has no objections.

Part 2 – Sexual Offences and Sex Establishments

Clauses 13 to 24 deal with prostitution

The clauses are full of the currently fashionable 'A', 'B' and 'C' style of identification that seems to be in vogue with those drafting legislation.

Clause 13 – paying for sexual services of a controlled prostitute: England and Wales

This clause amends the Sexual Offences Act 2003 in that it creates an offence for a punter to pay a prostitute where a third person will intentionally gain from these services. Services may be provided anywhere in the world – although proving the presence of a third person in

Thailand might make for some interesting cases. The punter 'ought to be aware' of a third party control rather than has to be aware. This can lead to some issues of where police have jurisdiction to act if, say, the offence takes place abroad. If the aim is to catch internet users of web sites offering escorts or other sexual services, as a punter only has to promise to pay, a booking would be enough to commit the offence.

There is an issue that the new offence makes it illegal to do something that in itself is not illegal. The explanatory notes suggest this is an example of 'strict liability' but this seems to us to stretch the rule as normally a person knows what they should not be doing such as speeding or having no insurance. Benches may have to think long and hard when convicting someone for an offence he didn't know he was committing unless there is a government publicity campaign on this issue to ensure awareness.

The maximum fine is Level 3 and there is no other punishment available for the offence per se. It is surprising in the present climate that there is not a three times caught and a more draconian punishment, but courts can presumably disqualify or confiscate a computer if used in connection with the commission of the offence.

In practice, magistrates are concerned that the offence may be difficult to prove in many cases as there will need to be evidence to prove that the sex worker is controlled for gain.

Clause 15 – amendment to offences of loitering etc for purposes of prostitution

This deals with loitering by persons aged over 18, and adds a new section on persistence as defined by the new clause as 'two or more occasions within three months'. It is not clear whether offering services by a web site would constitute persistent soliciting?

Clause 16 – orders requiring attendance at meetings

This clause requires a court to make an order requiring an offender to attend three meetings (why three is not clear – presumably that is all the Home Office can afford. If it is to come off NOMS budget, then this should be costed by the Ministry of Justice for the financial implications.)

The Association has in the past given good and clear reasons why such an order should not be introduced. Schemes such as the Together Women Project (TWP), when used as part of a community order, are likely to be far more effective. With the serious and multiple problems many sex workers generally present when in court, how can just three meetings affect these problems?

If such an order is made, no other penalty is allowed. The person to be made subject to the order has to agree. If they fail to keep the three meetings they can be arrested on a warrant and re-sentenced for the offence. More draconian, under 16 (3) 1A (4)(b), the court **must** specify the local justice area where the offender will reside while the order is in force. It is not clear whether a failure to reside there constitutes a separate offence and what powers the police have to monitor adherence.

The meetings are not specified as to length of time and who will organise them. Will it be NOMS or a private contractor such as for the drink driving courses? If a breach was contested, there would presumably have to be a hearing in court.

This is a new class of order for the courts with serious implications if not complied with. However, once one has been ordered, it is not clear whether another can be made at a future date or what would be the point. Orders can run for six months. There are no arrangements to ensure completion is noted by the court and the police.

This may be a laudable attempt to deal with first time offenders, but it is unclear whether courts will take up the option to use the scheme without clear evidence that it will have an effect due to the draconian nature of how a failure to attend may be handled and the residence requirements.

The order may in practice be unworkable. A breach is not to be regarded as the same as a breach of a community order.

Clause 18 – soliciting: England and Wales

This has some curious drafting. It contains a ‘B’ but not an ‘A’ and it is not clear in (2) whether the soliciting can be in a vehicle and the person solicited in the street. It is also not clear whether someone soliciting from a private place (such as a shop doorway where the shop is closed unless this is specifically covered in Section 1(4) of the Street Offences Act 1959) would commit an offence? Since the clause only refers to soliciting, we assume loitering is not covered and the act of soliciting must be observed?

This offence carries a level 3 fine.

Clauses 21 – 24 - orders relating to sex offenders

These clauses are mostly technical in nature. However, the time limit for a ban on foreign travel is raised from six months to five years. This brings it into line with the normal maximum for some Football Banning Orders. However, section 118 (4) of the SOA 2003 allowed for an order to be renewed. That might have been appropriate when the maximum was six months, it is at least worth raising whether that power should be reviewed with a new minimum of five years.

Clause 25 – sex establishments

These are dealt with in a single clause covering three pages and many sub sections.

As drafted, it is not clear whether any nudity on the part of the audience of one or more would require regulation if there was no nudity on the part of the performer in terms of 3(10) (a).

Premises may operate such displays so long as it is less than once a month without requiring registration. This raises the issue of how a premises is determined under the Licensing Act 2003 (LA2003) where entertainment is currently regulated.

Appeals are more restricted than under the LA2003. The underlying legislation is out of line with the LA2003 in that there is an appeal from the Magistrates’ Court to the Crown Court. Such appeal route was removed in the LA2003. As an establishment may remain open until the appeal route is exhausted, this may need reviewing. It is not clear what happens to those establishments granted a licence under the LA2003 and whether they will need to reapply for registration as a sex encounter venue?

For the courts, this will only mean more work if councils decide to impose restrictions on premises. A decision to refuse all licences would need to be tested by judicial review. For local residents whose request to a council not to licence any premises is not upheld there appears to be no appeal mechanism, as there is under the LA2003. They may consider themselves worse off unless such an appeal is included. If an appeal is included, the Association believes it should be at the lower cost agreed for appeals by individuals under the LA2003, and not at the full economic cost recovery rate of £400.

Part 3 – Alcohol Misuse

Clause 26 – increase in penalty for offence

Consuming alcohol in a public place becomes a level 4 offence for fine purposes. As most who commit the offence don't have much money, courts will no doubt continue to detain persistent offenders until the rising of the court for non-payment of the fine. Occasional offenders will probably receive a fixed penalty and the courts won't know about them. For youths, the Association believes a Youth Rehabilitation Order might be more appropriate.

Clause 27 – selling alcohol to children - only allows two breaches of the sale of alcohol to children before action is taken. This can have implications for supermarkets and may lead to more appeals if they fall foul of the new law after test purchasing exercises. The Association believes there is a case to be made out for saying that no breach is acceptable and a review of a licence should take place after the first offence as selling alcohol to young people should be regarded as a serious offence the first time that it happens.

Clause 28 – confiscating alcohol from young persons - allows where the confiscation of alcohol from young persons in a public place occurs for the police to take a child they believe to be under 16 home.

Clause 29 – offence of persistently possessing alcohol in a public place - allows anyone under 18 found with alcohol in a public place three times in 12 months to be fined at level 2. Unless each event is recorded, it will be difficult to secure a conviction. We believe a fine might be better replaced with a Youth Rehabilitation Order.

Clause 30 – directions to individuals who represent a risk of disorder - isn't directly about alcohol and allows police to tell anyone over the age of 10 to leave a public place. We welcome this if applied sensibly.

Clause 31 – general licensing conditions relating to alcohol – is, we believe, of key importance with regard to the future of licensing for the sale and consumption of alcohol. The clause is worded innocuously:

Schedule 4 (which makes provision about general licensing conditions relating to alcohol) has effect.

However, in the Schedule, the Secretary of State can impose any mandatory conditions he so wishes on a premises licence, including presumably fixed closing times or removal of permission to consume alcohol outside. The Secretary of State must not impose more than nine mandatory conditions. This effectively nationalises the regulation of the sale of alcohol. It is not clear whether the nine conditions are for all premises or for each class allowing more overall conditions. There is no appeal route and it is not clear that the Secretary of State will

require any parliamentary approval. This might be regarded as a Schedule with draconian possibilities in the hands of the wrong Secretary of State. Any conditions would no doubt be subject to judicial review but do not require any prior consultation.

Part 4 – Proceeds of Crime

Clause 38 – search & seizure of property: Northern Ireland - amends Section 47G Proceeds of Crime Act 2002. There are powers to apply to a justice of the peace for approval to undertake certain actions such as seize property or search persons or property.

Clause 47 D & G – search power: premises and “appropriate approval”

The Magistrates Association believes that the approval of a senior officer should not be acceptable. Magistrates can be reached 24 hours a day 365 days a year and except in the Metropolitan Police area there are generally protocols to ensure availability. Magistrates accept that being called out at 2 am is a risk, albeit a rare one.

Part 7 – Miscellaneous

There are a number of sections dealing with criminal records and certification including for school governors. It would be helpful for an amendment to the effect that any member of the judiciary allowed to sit in court is deemed to be certified. This would cover the issue of magistrates going into schools to give MiC presentations and heads requiring criminal record checks.

Clause 77 – prohibition on importation of offensive weapons – allows the Secretary of State wide powers to define offensive weapons that may not be imported. The Association would be concerned if there were to be a difference between what is defined as an offensive weapon by statute in this country and by the Secretary of State regarding importation.

Clauses 78 – 83 football offences

Banning orders are to be UK wide and certain offences arising from the Orders are to become imprisonable on summary conviction where the offence occurred within the UK. This probably applies more to Scotland and Northern Ireland to bring them into line with England and Wales. The Association’s policy is that the minimum length of football banning orders should be reduced from three years to as many months whilst leaving the maximum at five years as at present. We welcome the substitution of a specified police station for the current general ‘any police station’ subject to the ability to request a change to the specified police station for reasons such as a change of address.

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