

## THE POLICE AND CRIMINAL EVIDENCE BILL: SOME MISCONCEPTIONS

The Police and Criminal Evidence Bill, (see Briefing Note No. 41, 9.12.82) now before Parliament, represents a major modernisation of the powers of the police, and a redefinition of the balance between those powers and the rights of individuals in our society. At a time when street crime is the cause of much fear and anxiety, the haphazard and inconsistent extent of police powers serves only to hinder the fight against such crime; and the rights of suspects are made unclear by the lack of statutory controls over arrest, detention and questioning. These issues were examined by the Philips Royal Commission on criminal procedure and it is upon the recommendations of this report that the Bill is based. The Philips Royal Commission was set up by the Labour Government in 1978 in the clear recognition that police powers were largely out of date and no longer suitable to combat crime.

As **Mr Patrick Mayhew**, Minister of State at the Home Office, has said:

'The Bill represents a major step towards making law enforcement more effective. It modernises the law' (*Hansard*, 30th November 1982, Col. 228).

Since the Bill's Second Reading, changes to the clause which covers access to the confidential records of doctors and priests have been announced. These records will become exempt from the provisions of the Bill.

**Police powers to stop and search** will be rationalised. Lord Scarman considered that the power to stop and search was necessary to combat street crime. Powers that exist in London and certain other areas at present will be extended to the whole country, and will be extended to cover searching, on reasonable grounds of suspicion, for offensive weapons. Safeguards will be imposed. The police officer will have to tell the person being searched what is being looked for, why, and by whom he is being searched, and a record must be kept which will be available on request. The Home Secretary, **Mr William Whitelaw**, clarified the issue:

'The Bill creates no new offences: it simply enables the police to establish, by means of a quick search, whether the person concerned has on him something whose possession is already of itself an offence' (*Hansard*, 30th November 1982, Col. 156).

**The power on roadchecks** is defined and restricted. At present, any constable can require any driver to stop, for whatever purpose. The Bill proposes that the power only be used in a defined area, for a defined period, in order to secure the arrest of someone wanted for a serious offence, and then only with the authorization of a Superintendent.

**Powers of entry, search and seizure** are modernised. At present, search warrants may be obtained under about 50 Acts for a haphazard range of articles and evidence of various offences – but there are gaps; for instance, there is no provision for the police to obtain search warrants for evidence of serious offences against the person (including murder and rape). The Bill provides the power to obtain access to evidence of the most serious offences, and applies new safeguards to the issue and execution of search warrants – for example, a warrant may not be issued unless the occupier has unreasonably denied the police access, or would have disposed of the evidence if the police had sought access without a warrant. These provisions will apply only to evidence, not to general information; circuit judges and magistrates, who issue search warrants, will not permit 'fishing expeditions' for information.

**Powers of arrest are redefined.** In future, only more serious offences (those punishable by at least 5 years imprisonment) will carry a power of summary arrest. Virtually all other existing powers of arrest are to be repealed, in favour of a general provision under which a person reasonably suspected of an offence must be dealt with by way of a summons. 'Helping the police with their enquiries' is abolished. A person may be detained in a police station against his will only if he has been arrested. Currently, powers of arrest exist for offences that do not need them, and vice versa (for instance, at present there is no power of arrest for indecent assault, kidnapping, attempting to pervert the course of justice or assaulting a police officer). There

has been criticism of this section of the Bill on the grounds that a person who has committed a minor offence can be arrested if he gives a false name and address or refuses to give one at all. But if an offence has been committed, however trivial, the law is brought into disrepute if an offender can escape prosecution by withholding his name and address; if the law exists, it should be enforceable.

**Detention.** At present, detention is open-ended. The police may detain anyone without charge indefinitely, as the law requires that someone who has been arrested be brought before a court 'as soon as is practicable' if the offence is serious – this phrase is undefined, and the test for what constitutes a serious offence is subjective. The Bill proposes an absolute limit on detention without charge of 96 hours, and during this time there shall be firstly a review of detention after 6 hours by an inspector, and a full review by a magistrates' court after 36 hours, at which the suspect is present and may be represented. Habeas corpus is not abolished, but is expressly preserved. At present habeas corpus is the only remedy for a detained suspect who seeks independent judicial review of his detention, and this is exactly what the Bill provides. The police will also be required to keep an exact record of custody, a copy of which must be made available to the suspect.

**Suspects' rights and safeguards.** The present law provides no statutory right for suspects to have legal advice. Judges' Rules governing questioning are inadequate and vague, and there is insufficient protection for juveniles, the mentally handicapped, and other special groups. In future, there will be a statutory right of access to legal advice, under which the police may withhold such access only in strictly defined cases of serious crime (for example, so that a suspect cannot tip off other suspects, or arrange for evidence to be destroyed). The Judges' Rules will be replaced by a detailed statutory code of practice, which will embody additional safeguards for special groups, such as questioning only in the presence of a parent or other independent adult.

**Fingerprinting, searching and identification.** The Philips Royal Commission recommended compulsory fingerprinting for investigative and identification purposes with a minimum age reduced to 10 years, the age of criminal responsibility. The Bill introduces this. The police already have the power to conduct intimate body searches without the suspect's consent. The Bill regulates and restricts this power to cases involving serious offences or when there are reasonable grounds for thinking that the suspect has an article with which he might cause injury to himself or others. The suspect will always be asked if he wants the search carried out by a doctor, but the doctor need not do so, though his refusal in the absence of the suspect's consent would not remove the need for the search. The rules governing identification parades and other procedures are set out in statutory form.

**Evidence in Criminal Proceedings.** Confessions will be excluded as evidence if they have been obtained under duress, or in consequence of anything said or done likely in the circumstances to make that confession unreliable. The prosecution will be required to prove that the confession was not obtained under these circumstances.

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