CONSULTATION ON POLICE POWERS TO PROMOTE AND MAINTAIN PUBLIC ORDER

Home Office

October 2011

Contents

Introduction 3

Summary information 4

Chapter 1: Section 5 of the Public Order Act 1986 5

Chapter 2: Powers to require removal of face coverings 10

Chapter 3: Power to impose curfews 12

Chapter 4: Consultation questions 17

Introduction

The Government has a responsibility to give the police the powers they need to protect the public and property so that communities and law-abiding citizens can live in peace and security. This is particularly important in the wake of the widespread disorder witnessed in August. In considering any new powers, we must balance the duty of the Government to protect the public with the need to protect individual civil liberties.

This consultation seeks input on three areas of police powers which the Government is committed to reviewing: the effect of the word 'insulting' in section 5 of the Public Order Act 1986; new powers to request removal of face coverings; and new powers to impose curfews. We welcome your views on any or all of the parts of the consultation depending upon your area of interest, expertise and activity.

The first part of the consultation addresses concerns about the word 'insulting' in **section 5 of the Public Order Act 1986**. Civil liberties and faith groups have long campaigned for removal of the word 'insulting' on the grounds that it criminalises free speech. The Government has made a commitment to restore the rights to non-violent protest. However, we want to gain a better understanding of the significance of the word 'insulting' and the protection it offers to groups targeted by hate crime. We want to assess the potential impact of reform on the ability of the police to deal with disorder, particularly behaviour such as swearing at police officers and burning poppies on Remembrance Day. We also want to examine the threshold for arrest and whether legislative change or further guidance on the interpretation of the law is the way forward.

The second part of the consultation aims to progress the commitment made by the Prime Minister following the recent disorder in respect of new powers to request the **removal of face coverings**. After the ransacking and arson by looters wearing masks to conceal identification, the Government announced that the police would be given extended powers to demand the removal of face coverings under any circumstances, where there was reasonable suspicion of criminal activity. The consultation document invites comments on the implementation of this commitment.

The third part of the consultation seeks views on whether the police need wider **powers of curfew** to deal with serious disorder and crime, in situations where existing dispersal powers may be insufficient to protect the public. There are particular questions around proportionality and practicality where we would value the views of key partners and members of the public. We are consulting on whether and how there is scope for new policies in this area.

Details of how you can respond to the consultation can be found in Chapter 4 of this document. We hope that you will engage in the consultation process and look forward to receiving your views.

Summary information

OPENING DATE: THURSDAY 13 OCTOBER 2011
CLOSING DATE: FRIDAY 13 JANUARY 2012

SCOPE OF THE CONSULTATION

This consultation welcomes views from all with an interest in public order policing and community safety in England and Wales, including members of the public, on three areas of police powers:

i) the use of the word 'insulting' in section 5 of the Public Order Act 1986;
ii) how police powers to remove face coverings under section 60AA of the Criminal Justice and Public Order Act 1994 should be extended, and;
iii) whether the police need wider powers of curfew to deal with serious disorder and crime.

HOW TO RESPOND

You can choose to address any or all of the sections of the consultation, depending upon your specific area of expertise and interest.
You can complete the online form at http://www.homeofficesurveys.homeoffice.gov.uk/v.asp?i=41428bwhlr. Alternatively, you can copy and paste the questions in the pdf on to a Word document and send your response by email to PolicePowers@homeoffice.gsi.gov.uk, or by post to Police Powers Consultation, Public Order Unit, 5th Floor, Fry, Home Office, 2 Marsham Street, London SW1P 4DF.

You should contact the address given above if you require a copy of this consultation paper in any other format, e.g. Braille, large font, audio.

A summary of responses will be published before or alongside any further action.

IMPACT OF OPTIONS

The Government is interested to hear from community and faith groups and criminal justice professionals where any direct and indirect costs may arise as a result of these proposals. Impact assessments will be prepared and will draw on information provided.

EQUALITY

It is possible that proposals outlined in the consultation or that arise as a consequence, will have an impact on equality issues in relation to age, disability, gender, race or sexual orientation. The Government invites views on any equality-related issues that may be associated with legislative change and comments on mitigating actions.

CONFIDENTIALITY & DISCLAIMER

The information you send us may be passed to colleagues within the Home Office, the Government or related agencies. Furthermore, information provided, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence.

In light of this, it would be helpful if you could explain to us why you regard the information you have provided to be confidential. If we receive a request for disclosure of the information, we will take full account of your explanation but we cannot give assurance that confidentiality can be maintained in all circumstances. Please ensure that your response is marked clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed. The Home Office will process your personal data in accordance with the Data Protection Act; in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Chapter 1: Section 5 of the Public Order Act 1986

OBJECTIVE

1.1 The aim of this part of the consultation is to consider the value of the word 'insulting' in section 5, whether it is consistent with the right to freedom of expression and the risks of removing it from section 5.

BACKGROUND

SECTION 5 OF THE PUBLIC ORDER ACT 1986

Section 5 makes it an offence to:

- Use threatening, abusive or insulting words or behaviour, or disorderly behaviour, or display any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.
- An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.
- It is a defence for the accused to prove –
  - that they had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress, or
  - that they were inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or
  - that their conduct was reasonable.

Section 5 is a summary only offence with the maximum penalty being a fine not exceeding level 3 on the standard scale (£1000).

It should be noted that by virtue of section 31(1)(c) of the Crime and Disorder Act 1998, section 5 is capable of being charged as a discrete **racially or religiously aggravated offence**. An offence is racially or religiously aggravated if:

- at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial or religious group; or
- the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.

Racially or religiously aggravated section 5 is a summary only offence, with the maximum penalty being a fine not exceeding level 4 on the standard scale (£2500).

THE SECTION 5 DEBATE

1.2 Human Rights organisations such as Justice and Liberty, as well as the Joint Committee on Human Rights (JCHR), have argued that section 5 of the Public Order Act gives the police wide discretion to decide what language or behaviour is threatening, abusive or insulting and that "language or behaviour which is merely insulting should never be criminalised in this way".

1.3 There have been some well-publicised cases where Christian preachers have been arrested under section 5 for expressing their religious beliefs, although charges were withdrawn before the cases reached the courts. In another case,

hoteliers were prosecuted in connection with a religious discussion with a Muslim guest.

1.4 Arguments for repealing the reference to 'insulting' words and behaviour in section 5 are based on the view that removing this strand ('limb') of the offence would affect only the most low-level cases. It is unlikely to decriminalise serious, distressing and disruptive conduct which would be captured by the 'abusive' and 'threatening' limbs of section 5 or by alternative provisions such as section 2 of the Protection from Harassment 1997 or section 4A of the Public Order Act 1986 (intentional harassment, alarm or distress).

1.5 Arguments opposing reform have rested on questioning a presumption that 'insulting' behaviours are necessarily of a lesser order than 'abusive' behaviours; questioning whether the removal of 'insulting' might impact adversely on targeting hate crime and understanding whether it would be interpreted by the courts as a lowering of the threshold for disrespectful behaviour.

1.6 There is also a question over whether concerns around section 5 should be focused on the law itself or the interpretation of the law and, to that end, the Association of Chief Police Officers (ACPO) issued revised guidance (Keeping the Peace) to police officers in December 2010 to help them deal more effectively with section 5 cases and give due consideration to freedom of expression issues.

1.7 ACPO guidance characterises the constituent elements of section 5 as **action** (using threatening, abusive or insulting, or disorderly words or behaviour), **awareness** (that the words or behaviour may be threatening, abusive or insulting, or disorderly) and **impact** (being within the sight or hearing of someone likely to be caused harassment, alarm or distress).

LEGISLATION/CASE LAW

1.8 It is important to distinguish between section 4A and section 5 of the Public Order Act 1986. Section 4A creates the distinct offence of intentional harassment, alarm or distress. Under section 4A, a person is guilty of an offence if he/she uses threatening, abusive or insulting words or behaviour, or disorderly behaviour with **intent** to cause a person harassment, alarm or distress, unless objectively reasonable. Section 4A has a higher threshold than section 5 under which a person is guilty of an offence if he/she uses threatening, abusive or insulting words or behaviour, or disorderly behaviour which is likely to cause a person harassment, alarm or distress, unless objectively reasonable. In this case **awareness** of the impact is sufficient, in contrast to section 4A where intention is required.

1.9 Article 10 of the European Convention on Human Rights protects the right of freedom of expression. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Article 10 is not an unqualified right. It states that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

1.10 In Percy v DPP (2001) it was held that section 5 satisfies the necessary balance between the right to freedom of expression and the right of others not to be insulted and distressed. It was also held that it is conduct or behaviour which is gratuitous and calculated to insult that is the subject of the

offence rather than the public expression of an offensive message or opinion. ACPO guidance clarifies that the key is to distinguish between the message or opinion being communicated and the manner in which it is conveyed.

1.11 In DPP v Orum (1989), the courts were clear that a police officer is capable of being 'a person likely to be caused harassment, alarm or distress' by 'threatening, abusive or insulting words or behaviour' for the purposes of section 5 of the Public Order Act 1986. However, it clarified that police officers are expected to display a degree of fortitude and magistrates may take into account the familiarity which police officers have with the words and conduct typically seen in incidents of disorderly conduct.

POLICY CONSIDERATIONS

1.12 The consultation aims to consider five key aspects of the use of the word 'insulting':

- **Relevance:** the significance of 'insulting' as a discrete example of offending behaviour and whether the 'threatening' and 'abusive' limbs of section 5 could cover most conduct that merits criminalisation.
- **Balance:** whether the word 'insulting' in section 5 provides a proportionate response and satisfies the necessary balance between the right to freedom of expression and the right of others to not be harassed, alarmed or distressed. This includes considering whether the threshold for arrest is set at the right level.
- **Impact:** of removal of 'insulting' on racially and religiously aggravated offences (see Background section for details) and the ability of the police to tackle hate crime and disorder.
- **Scope:** the breadth or range of 'insulting' and its usefulness in capturing low level public disorder, e.g. swearing at police officers.
- **Interpretation:** whether safeguards, such as the 'reasonableness' defence and guidance to police officers, are adequate to address concerns.

SECTION 5 CASE STUDIES

The following are examples of unsuccessful section 5 cases. It should be noted that offenders are charged under section 5 without specifying the actual 'limb' of the offence that is being invoked which makes it difficult to assess the impact of removing the word 'insulting'. It is also not clear whether prosecutions, where they were initiated, relied specifically on the word 'insulting'.

'GAY' POLICE HORSE

In 2006, a student at Oxford University, asked a mounted police officer if he realised his horse was gay during a night out with friends after his final exams. He was arrested under section 5 of the Public Order Act for making homophobic remarks after he refused to pay an £80 fine and spent a night in a police cell before charges were dropped.

SCIENTOLOGY PROTESTER

City of London police charged a teenager under section 5 for demonstrating outside the London Headquarters of the Church of Scientology in May 2008 with a placard which said, "Scientology is not a religion, it is a dangerous cult". Charges were dropped when the Crown Prosecution Service ruled the word 'cult' was neither 'abusive or insulting' and no further action would be taken.

CHRISTIAN HOTELIERS

Christian hoteliers were accused of asking a Muslim guest if she was a murderer and a terrorist because she was wearing a 'hijab' at their hotel in December 2009. The court was told that the husband called the Prophet Muhammad a murderer and a warlord while his wife said that the Islamic dress represented oppression and was a form of bondage. The couple denied this version of events and claimed they were told by the guest that Jesus was a minor prophet and that the Bible was untrue. After a two-day trial, the district judge dismissed the case on the basis that the account of the prosecution witness could not be relied on.

CHRISTIAN STREET PREACHER

In April 2010, a Christian street preacher was arrested and charged with a public-order offence when he told a passer-by and a gay police community support officer that, as a Christian, he believed homosexuality was one of a number of sins that go against the word of God. The Crown Prosecution Service dropped the case before it went to court on the grounds that there was insufficient evidence to provide a realistic prospect of conviction.

There are cases where people have been successfully prosecuted under section 5. The 'poppy burning' case overleaf relied specifically upon the 'insulting' aspect of the offence, and the conviction of the accused was upheld at appeal. This case challenges the presumption that 'insulting' behaviours are by their nature of lesser concern than 'abusive' behaviours.

HH: A STREET PREACHER

In a street demonstration in Bournemouth in October 2001, HH a preacher, held up a sign displaying the words "Jesus Gives Peace, Jesus is Alive, Stop Immorality, Stop Homosexuality, Stop Lesbianism, Jesus is Lord". A group gathered and some people were angry and distressed. Police officers attended the scene and asked HH to take the sign down and leave the area. HH was charged, fined and convicted with an offence under section 5. He died before his appeal was heard, and the Divisional Court dismissed the appeal in January 2004. The justices were of the opinion that the words on the sign were insulting and caused distress to persons who were present and that the defendant was aware of that fact.

LUTON ANTI-WAR PROTESTERS

Anti-war protesters shouted "terrorists" and held placards saying "Anglian Soldiers Go To Hell" and "Butchers of Basra" as 200 soldiers marched through Luton town centre to mark their return from Iraq. The protesters were held for public order offences. In finding the accused guilty, the judge said: "I have no doubt it is abusive and insulting to tell soldiers to go to hell and to call soldiers murderers, rapists and baby killers. It is not just insulting to the soldiers, but to the citizens of Luton who were out on the streets that day to honour and welcome soldiers home. …The fact that they say they did not intend their remarks to be insulting does not amount to defence in law. They were fully aware that shocking phrases in such circumstances would inevitably cause distress. …But this went beyond putting a point across, it crossed the threshold of legitimate protest and provoked and caused distress." The judge passed a 2 year conditional discharge on each of the five men and ordered them to pay £500 costs.

THE POPPY BURNERS

A member of Muslims Against Crusades (MAC) and another individual were found guilty of a "calculated and deliberate" insult to the dead and those who mourn them when he burned two large plastic poppies during a two-minute silence on 11 November 2010. According to the judge, "It insults the memory of the dead. It insults those that commemorate the dead. It insults those who have lost loved ones. It insults those who use this occasion publicly to show their gratitude for lives sacrificed. ...In the circumstance that occurred in this case, invoking the criminal law to interfere with freedom of expression is proportionate. The defence of reasonableness does not prevail here."

Chapter 2: Powers to require removal of face coverings

OBJECTIVE

2.1 The aim of the consultation on face coverings is to seek views on supplementing existing provisions for demanding the removal of face coverings in section 60AA of the Criminal Justice and Public Order Act 1994 to strengthen the response both to threat and actual disorder.

BACKGROUND

SECTION 60/60AA OF THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

Section 60/60AA: If an officer of or above the rank of inspector reasonably believes there is a threat of serious violence or that people are carrying offensive weapons, he/she may put a section 60 authorisation in place. This means that police can search people without requiring reasonable suspicion for offensive weapons, and require the removal (or seizure) of masks, scarves etc. that the police reasonably believe are being worn to conceal identity.

Section 60AA: Alternatively, if an officer of or above the rank of inspector reasonably believes that people are likely to commit offences in the area, he/she may put a section 60AA authorisation in place which allows the police to require the removal of (or seizure) of masks, scarves etc. that they reasonably believe are being worn to conceal identity.

Under section 60AA the officer exercising the power must reasonably believe that someone is wearing an item wholly or mainly for the purpose of concealing identity, not simply because it does, in fact, disguise their identity. There is also a power to seize such items where the officer believes that a person intends to wear them for this purpose. There is no power to stop and search for disguises. Guidance provides that where there may be religious sensitivities about ordering the removal of face or head coverings, the officer should permit the item to be removed out of public view. Where practicable, the item should be removed in the presence of an officer of the same sex as the person and out of sight of anyone of the opposite sex.

Authority under section 60AA for a constable to require the removal of disguises and to seize them may be given if the authorising officer reasonably believes that activities may take place in any locality in the officer's police area that are likely to involve the commission of offences and it is expedient to use these powers to prevent or control these activities. This must have an objective basis, for example: intelligence or relevant information, such as a history of antagonism and violence between particular groups; reports that individuals are regularly carrying weapons in a particular locality; or previous incidents of crimes being committed while wearing face coverings to conceal identity.

An authorisation under section 60AA may only be given by an officer of the rank of inspector or above, in writing, specifying the grounds on which it was given, the locality in which the powers may be exercised and the period of time for which they are in force. The period authorised shall be no longer than appears reasonably necessary to prevent, or seek to prevent the commission of offences. It may not exceed 24 hours. An inspector who gives an authorisation must, as soon as practicable, inform an officer of or above the rank of superintendent. This officer may direct that the authorisation shall be extended for a further 24 hours, if considered necessary.

A person who fails to remove an item when required to do so by a constable is liable, on summary conviction, to imprisonment for a term not exceeding one month or to a fine not exceeding level 3 on the standard scale (£1000) or both.

REMOVAL OF FACE COVERINGS: THE NEED FOR NEW POWERS

2.2 In his statement before an emergency session of Parliament gathered to debate responses to the riots, the Prime Minister explained that currently the police can only remove face masks in a specific geographical location and for a limited time. He announced that he would give police the discretion to remove face coverings "under any circumstances" as long as there was reasonable suspicion of criminal activity. The Home Secretary also stated, "I am willing to consider powers which would ban known hooligans from rallies and marches and I will look into the powers the police already have to force the removal of face coverings and balaclavas. If the police need more help to do their work, I will not hesitate in granting it to them."

2.3 Currently officers can demand removal of face coverings in accordance with an authorisation from a senior officer (under section 60AA) which specifies the location and time period for the exercise of the power. This can cause bureaucratic delays and can hinder police response to mass disorder.

2.4 The proposal to give new powers for removal of face coverings is not about race, religion or creed or depriving particular groups of their cultural identity. It is about giving officers the tools they need to identify anyone who may be a suspect or offender in a crime.

2.5 This consultation seeks views on the practicalities of strengthening existing powers: whether this means allowing police officers on the street to use their discretion to require removal of face coverings without seeking written permission from a higher rank and what exactly the threshold for the new power should be. This would prevent build-up of disorder; provide an effective deterrent to criminal activity; and accelerate the response to crime. Input is also sought on safeguards to ensure that the new powers are used appropriately.

POLICY CONSIDERATIONS

2.6 The consultation aims to consider five key aspects of the use of new powers to remove face coverings:

- **Scope:** how new powers should be framed to allow officers to request removal of face coverings without authorisation by a senior officer.
- **Trigger:** whether reasonable suspicion of criminal activity should be the trigger for the new power.
- **Balance:** how to ensure that the new powers are proportionate and balanced with civil liberties.
- **Safeguards:** whether and how guidance/ training, monitoring and privacy provisions would ensure that the powers are used sensibly and sensitively.
- **Penalties:** whether penalties for non-compliance should be made tougher.

Chapter 3: Power to impose curfews

OBJECTIVE

3.1 To seek the views of key partners and members of the public on whether the police should have additional powers to impose curfews to prevent disorder or criminality, and on the oversight arrangements and safeguards that would be required to ensure the use of any new powers was necessary and proportionate.

BACKGROUND

3.2 Following the disturbances in August, the Prime Minister announced that the Government would look at 'the use of existing dispersal powers and whether any wider power of curfew is necessary'. This is part of a concerted programme of work across Government to address issues highlighted by those events which includes work on gangs, problem families and police tactics. In taking that programme forward, we want to take the opportunity to look not just at the disturbances themselves, but also at the underlying causes, and to identify areas where there is scope for a preventative approach to protecting the public. This approach extends to our exploration of potential new powers.

3.3 The police currently have a range of powers to disperse individuals or groups on the grounds of crime or anti-social behaviour, and to take unaccompanied children home or to a safe place.

DISPERSAL POWERS UNDER THE ANTI- SOCIAL BEHAVIOUR ACT 2003 AND THE VIOLENT CRIME REDUCTION ACT 2006

The dispersal powers accorded to the police include:

- The power to designate[1] an area as a 'Dispersal Zone', with the consent of the relevant local authority, and to direct an individual or group to leave that zone and not return for up to 24 hours, if an officer has reasonable grounds for believing that their presence or behaviour has resulted, or is likely to result in a member of the public being harassed, intimidated, alarmed or distressed; and

- The power to direct[2] an individual aged 10 or over to leave any area and not return for up to 48 hours, if an officer believes their presence is likely to contribute to alcohol-related crime and disorder and that it is necessary to give that direction to remove or reduce the likelihood of that crime and disorder occurring. This includes the power to take a person under the age of 16 home, or to a recognised place of safety, once they have been issued with a direction to leave an area.

1 Under sections 30-32 of the Anti-social Behaviour Act 2003
2 Under section 27 of the Violent Crime Reduction Act 2006

3.4 Aside from the Civil Contingencies Act 2004 (which gives powers to Government rather than the police), current police curfew powers are limited to the power to impose a curfew on an individual as a condition of police bail. The previous government also gave Chief Constables and local authorities the power to impose a localised curfew on children under the age of 16, with the Home Secretary's consent. However, this power (called the 'Local Child Curfew Scheme') was never used, and it was repealed in the Policing and Crime Act 2009.

3.5 We have already looked at the existing police dispersal powers as part of the wider Home Office review of anti-social behaviour legislation, and found that they can be confusing, bureaucratic and slow to take effect, with many local authorities requiring a public consultation before a 'Dispersal Zone' can be introduced. We consulted earlier this year on a proposal to streamline those powers into a single 'Direction Power', which would remove the requirement to designate a 'Dispersal Zone' in advance, at the same time as focussing on an individual or group's actual behaviour as opposed to their mere presence (which is part of the current test). We will be bringing forward more detailed policy later in the autumn, as part of our package of more effective measures to deal with anti-social behaviour.

CURFEWS

3.6 The disturbances that took place across England in August showed the serious impact that public disorder and criminality can have on victims, neighbourhoods and businesses, something that was reflected in the tough sentences that have been handed down to those involved. The Government is committed to ensuring that the police have all the powers they need to protect and reassure the public, and to prevent damage to communities and property in the future.

3.7 There may be circumstances in which a curfew – keeping people off the streets altogether – could be more useful to the police than even a streamlined power to disperse people once a problem has started to develop. For example, dispersal powers are not suitable for dealing with large numbers of people, as the officer in question must record his or her grounds for use in each instance. A curfew could also be useful in stopping people travelling into an area to cause problems, as seems to have been the case with a significant proportion of offenders involved in the recent disturbances. Perhaps more importantly, given that 45% of juveniles charged for offences linked to the disorder had no prior cautions or convictions, curfew powers could be a powerful tool to prevent the criminalisation of young people – both in cases of violent disorder, and more broadly – which has a huge long-term impact on their life chances.

3.8 There appears to be some public support for the use of curfews, both in relation to the recent disorder and to deal with wider issues of crime and anti-social behaviour. For example, 82% of respondents in a recent poll on police powers said they would support the use of curfews in dealing with rioters[3]. Previous to that, a survey in 2008 found that 88% of parents would welcome a 9pm curfew for young children, and 85% would support a 10pm curfew for children under the age of 16[4].

3.9 However, the introduction of new powers that could potentially be used to place restrictions on people's freedom of movement is not a step the Government would ever take lightly, and we believe any new curfew powers would need to balance the following principles:

- **Speed** – the need for the police to act swiftly to protect the public.
- **Proportionality** – any restrictions on individuals' movements would need to be proportionate to the potential harm, or the criminality involved.

3 YouGov, August 2011
4 YouGov, July 2008

- **Professional discretion** – operational decisions on the use of any new curfew powers should be a matter for the police alone.
- **Oversight** – use of any new powers should be subject to oversight and strict safeguards.
- **Prevention** – the objective of using any new curfew powers should be, to prevent crime and disorder.

3.10 We are therefore seeking the views of partners and the public on whether additional police curfew powers could be useful and justified, and particularly on a limited, general curfew power. We are also keen to explore whether there are additional powers that could help the police take a more preventative approach to crime, especially youth crime.

LIMITED GENERAL CURFEW

3.11 The aim of a general police curfew power would be to give the police an operational tool to keep members of the public off the streets in a given location, for a given period, in order to prevent or address serious disorder. This could be used instead of dispersal powers in situations that could potentially involve large numbers of people (either likely to offend, or at risk of harm), or where the police needed to empty an area of people quickly for safety and security reasons.

POLICY CONSIDERATIONS

3.12 Our proposal would be for an operational police power to keep people off the streets in a limited geographical area, for a limited period, when this is judged necessary in order to protect the public from serious disorder. The decision would be taken by a senior police officer based on credible intelligence of a serious threat of such disorder in that place and at that time. We are mindful that tests around necessity and proportionality will need to be enshrined in law. This consultation aims to consider the following key aspects of such a proposed new power:

- **Scope:** We are clear that a curfew should operate only over a clearly defined geographic area and for a clearly-defined length of time. We are interested in views on what should be the maximum area and length of time.
- **Seniority of decision-making:** The decision must be taken by a police officer of appropriate seniority and we are interested in views on what rank this might be; we think Superintendent rank or above might be suitable.
- **Oversight and checks and balances:** There would need to be independent oversight of the use of such a power, and we would envisage prior judicial approval being required, with arrangements permitting subsequent validation in circumstances where that was not possible. The Police and Crime Commissioner might also need to be informed in order to have the opportunity to challenge or question the need for a curfew (but would not be involved in the operational decision to impose one).
- **Notice:** It would be necessary to give appropriate notice to people within the curfew zone and to make arrangements for those who needed to be outside for justifiable reasons (for example, emergency workers).
- **Breach:** In the interests of avoiding unnecessary criminalisation, we do not propose making being outdoors in a curfew zone an offence. However, as with current dispersal powers, we are considering whether it should be a criminal offence to breach a subsequent instruction from the police to leave the area. We are interested in views on what might be an appropriate sanction, and what would constitute a deterrent effect.

PREVENTION

3.13 The Government has a responsibility to protect the public from harm. It also has a special responsibility to keep young people safe, and to stop them jeopardising their own life chances. The evidence suggests that the average age of a first offence is 15 and that the earlier someone starts offending, the more likely they are to go

on to a long criminal career. It also tells us that offending by young people often takes place in a group, and that certain factors, such as alcohol, drug use and time spent out of adult supervision are all associated with a greater risk of offending. We are therefore keen to hear views on whether there are additional powers that could help the police nip offending – particularly localised youth offending – in the bud without criminalising people unnecessarily.

3.14 One example would be to make a curfew one of the conditions that could be attached to a **conditional caution**. A conditional caution is an out-of-court disposal for low-level offences, which is available for adults and currently being piloted in five areas for young people. The conditions that can currently be attached must be rehabilitative or reparative (although a punitive, financial penalty condition is available in five pilot areas). These conditions could include restrictions, such as a curfew, if that were deemed appropriate to help rehabilitate an offender or make good the harm they had caused. Attaching a curfew to a conditional caution could nip low-level or emerging criminality in the bud by restricting an offender's movements at times when they were most likely to commit further offences. This could be particularly helpful as a way of getting a young person's behaviour back on track – for instance where groups of peers are a factor in the offending.

POLICY CONSIDERATIONS

3.15 We propose making a curfew one of the recognised options for rehabilitative conditions that can be attached to a caution. It would be important for this to be proportionate, appropriate and achievable and must not prevent an offender accessing their home, place of work or places of religious worship or education, or otherwise inappropriately disrupt the necessities of their daily life. We do not think it would be appropriate to impose this kind of curfew for public protection purposes where the public interest is likely to demand a prosecution (and in many cases the public interest will continue to require a prosecution in court). The consultation aims to consider the following key aspects of such a proposal:

- **Scope:** A curfew attached to a conditional caution would be proposed for particular times within a clearly defined period, and we are interested in what these might be. A police officer or prosecutor could, for instance, propose a curfew of four consecutive Friday nights in a situation where a person had engaged in criminal behaviour at those times.
- **Culpability and consent:** As with all conditional cautions, the offender would need to admit the offence and agree to accept a conditional caution and the proposed conditions (including a curfew). The conditional caution must also be signed to indicate that the offender understands what they are committing to.
- **Addressing risk and offending behaviour:** In considering whether a conditional caution is appropriate, the police officer or prosecutor would need to take into account the risk of re-offending presented by the offender and consider any curfew arrangements that might be appropriate to address them.
- **Breach:** If the curfew was breached, it is very likely that the offender would be prosecuted in court for the original offence. We would welcome views on the implications of this, particularly for young people.

3.16 The use of a curfew as part of a conditional caution would not require primary legislation, but the Code of Practice published by the Secretary of State for Justice and guidance issued by the Director of Public Prosecutions would need to be amended to make clear that a curfew was an option available to police officers and prosecutors.

3.17 There may be other powers that could help the police take a more preventative approach to

local crime or youth crime, and we are keen to hear views from practitioners and members of the public as to what they might be. Parents also have a clear role in being responsible for their children's whereabouts and behaviour, and we would also be interested in views on ways of encouraging them to play their part in preventing youth crime.

Chapter 4: Consultation questions

You can respond to any or all of the sections in the consultation. The closing date for all three parts of the consultation is Friday 13 January 2012.

You can complete the online form at http://www.homeofficesurveys.homeoffice.gov.uk/v.asp?i=41428bwhlr. Alternatively, you can copy and paste the questions in the pdf on to a Word document and send your response by email to PolicePowers@homeoffice.gsi.gov.uk, or by post to Police Powers Consultation, Public Order Unit, 5th Floor, Fry, Home Office, 2 Marsham Street, London SW1P 4DF.

Please give reasons for your answers and examples or details of experience where possible. You do not need to restrict your answers to the boxes, more substantive replies can be provided in the form of a Word document.

Please state whether you are responding as an individual or whether you are representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents; the basis of your experience; and where applicable, how the views of members were collated.

Name (optional)	
Role (optional)	
Organisation	
Additional information	

QUESTIONS ON SECTION 5 OF THE PUBLIC ORDER ACT

1. **Do you think there is a clear difference between 'insulting' words and behaviour and 'abusive' words and behaviour? Please give examples.**

2. **In your experience, are 'insulting' words and behaviours less serious than 'abusive' words and behaviours. Please give examples.**

3. **In your view, does having 'insulting' words and behaviour as a criminal offence restrict people from expressing themselves freely?**

4. **In your view, would removal of the word 'insulting' from section 5 have any particular impact on specific groups? Please give examples.**

5. **If you do have concerns about the word 'insulting' remaining in section 5, can you explain if this is due to interpretation of the word or the actual legislation?**

6. **In your opinion, is the 'reasonableness' defence for 'insulting' (which is a statutory defence in section 5) an adequate safeguard against misuse?**

7. **In your opinion, is guidance to police officers clear on when insulting behaviour constitutes an offence and an arrest should be made and is it sufficiently clear to ensure consistency of decisions?**

8. Do you think that the threshold for arrest under section 5 is set at the right level?

9. Please provide any additional comments in the box below.

QUESTIONS ON POWERS TO REMOVE FACE COVERINGS

1. **In what circumstances would it be appropriate to require removal of face coverings without prior authorisation by a senior officer?**

2. **What should be the trigger under the new power if authorisation by a senior officer is not being sought?**

3. **Do you think that wider powers to demand removal of face coverings may interfere with individual freedoms?**

4. **Do you think that guidance, training and monitoring could help to ensure consistency of officers' decisions? Please give examples.**

5. **Do you think that penalties for a refusal to comply with a demand to remove a face covering should be made more stringent?** (currently offenders are liable to imprisonment for a term not exceeding one month or to a fine not exceeding £1000 or both).

6. **In your view, should officers be required to explain the reason for the demand to remove face coverings?**

7. **Do you think that officers should be required to conduct the identification in reasonable privacy, if requested, even though it might cause a delay in the response?**

8. **Please provide additional comments in the box below.**

QUESTIONS ON POWERS TO IMPOSE CURFEWS

1. **What are your views on the proposal to give the police a limited, general power to impose curfews?**

2. **Do you think there should be limits on the geographical scope and duration of such a curfew power? If so, what do you think would be appropriate limits?**

3. **What do you think would be an appropriate sanction for breach of an instruction to leave a curfew zone?**

4. **What are your views of the proposal to make a curfew one of the recognised rehabilitative options for a conditional caution?**

5. **In what circumstances might a curfew be an appropriate response to low-level offending?**

6. **Are there other powers you think would help the police take a more preventative approach to local crime, particularly youth crime? If so, what are they?**

7. What role should parents play in preventing local youth crime? How could they be encouraged to do so?

8. Please provide additional comments in the box below.

CONSULTATION CO-ORDINATOR

If you have a complaint or comment about the Home Office's approach to consultation, you should contact the Home Office Consultation Co-ordinator, Adam McArdle. Please DO NOT send your response to this consultation to Adam McArdle. The Co-ordinator works to promote best practice standards set by the Code of Practice, advises policy teams on how to conduct consultations and investigates complaints made against the Home Office.

He does not process your response to this consultation.

The Co-ordinator can be emailed at:
Adam.McArdle2@homeoffice.gsi.gov.uk

or alternatively write to him at:
Adam McArdle, Consultation Co-ordinator
Home Office
Performance and Delivery Unit
Better Regulation Team
3rd Floor Seacole
2 Marsham Street
London
SW1P 4DF

ISBN: 978-1-84987-579-0