The Home Affairs Department received 81 responses to their consultation on the Criminal Justice (Miscellaneous Provisions) Bill 2009.

A few provisions have been removed but the vast majority of the draft Bill (which contains 78 Clauses) is unchanged. Significantly - in over 30 cases - the Home Affairs Department is seeking 'by Order' to self-amend the legislation.

This gives them wide powers to create new offences as and when they please without parliamentary scrutiny. Given that the Isle of Man Constabulary has a presence in that Department there is concern that should the Bill become law, the Police will have an undue influence in the direct formation of this self-amending legislation. Thus the protection afforded the citizen by the separation of powers between the legislative and executive branches of government is breached.

The concerns about individual clauses (attached) are serious in their own right. However, the clauses in aggregate would represent a significant shift in the relationship between the citizen and the state in the Isle of Man. The literal effect would be to remove the Police from the local community and to isolate them in a position of mutual suspicion. This would mirror the culture change that I believe took place in England under New Labour. This culture change was very apparent to those who lived through it and the result was that any engagement with the police became something to be avoided. The English working practice of criminalising the most minor of offences whilst giving the Police the widest possible power of arrest should not, in my view, be adopted in the Isle of Man.

We should take note that Scotland did not follow all of New Labour's changes to policing.

A comparison between the narrow powers of arrest in Scotland and the very wide powers in England shows this:
Scotland - When the police can arrest you

You cannot be arrested without a warrant unless the police have reasonable grounds to believe:

1. You are about to commit a crime;
2. You are in the act of committing a crime;
3. You are accused by an apparently credible witness of committing a crime;
4. You are seen running away from the scene of a crime pursued by others;
5. You are seen threatening danger to the public;
6. You are causing an offence against public decency.

England - When the police can arrest you

Police can arrest you if they have a valid arrest warrant. There are also some situations where they can arrest you without a warrant. These are where:

1. You are in the act of committing certain offences;
2. They have reasonable grounds for suspecting you are committing certain offences;
3. They have reasonable grounds for suspecting you have committed certain offences;
4. You are about to commit certain offences;
5. They have reasonable grounds for suspecting you are about to commit certain offences.

The police can also arrest you if they have reasonable grounds for suspecting you have committed or attempted to commit any offence, or if you are committing or attempting to commit any offence, but it is impractical or inappropriate to serve a summons. However, they can only do this if one of the following conditions applies:

1. They do not know, and cannot get, your name;
2. They think you have given a false name;
3. You have not given a satisfactory address. This means an address where the police can contact you;
4. They think you have given a false address;
5. The arrest is necessary to prevent you causing physical injury to yourself or others;
6. You are committing an offence against public decency;
7. You are causing an unlawful obstruction of the highway;
8. They have reasonable grounds for believing that arrest is necessary to protect a child or other vulnerable person.

If they are arresting you because you have failed to give them a satisfactory address, they must first explain that you may be arrested and give you the opportunity to give them the address.

Note that in Scotland the police can arrest you if you are ‘in the act of committing a crime’ and in England the police can arrest you where ‘they have reasonable grounds for suspecting you are about to commit certain offences’. There is a big difference between actually ‘committing’ a crime and being suspected of being ‘about to commit’ an offence.

This single point typifies the whole Bill. We are all to be treated as potential suspects as we go about our ordinary lives. Gone is ‘innocent until proven guilty’ and we will start to live by permission of the diktats of the Home Affairs Department. Rule by the Legislature becomes rule by the unelected Secretariat.

I think we should all be asking why the Home Affairs Department and the Manx Police want to copy the English policing model. They can only do so with our consent. We should resist any attempt to introduce the English policing model in the Isle of Man and challenge why this Bill is being proposed in the first place. I hope it goes to Committee at the second reading.

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