

Positive Action Group

Submission of Positive Action Group (P A G) to the Criminal Justice, Police Powers and Other Amendments Bill 2012 Consultation

A) Introduction

1. Positive Action Group (P A G) is a political lobby group, not a political party. It is a not for profit Association the objectives being to promote an awareness and understanding of politics and citizenship. We encourage members of the public to participate actively in politics by taking part in discussions, making their views known, voting, standing for office and holding public office.
(See Appendix 1)
2. We are pleased to be one of the bodies consulted regarding this Bill.
3. P A G regularly makes consultation submissions as well as contacting government departments with proposals outwith the formal process.
4. In order to stimulate public interest in this consultation process P A G organised a well attended public meeting (25.06.12) to discuss the Bill. The Minister for Home Affairs spoke and answered questions from the audience.
5. There are 35 Clauses in the Bill and the observations in this document reflect opinions expressed at the meeting together with comments received subsequently from members and supporters.
6. The Bill comprises those elements of the lapsed Criminal Justice (Miscellaneous Provisions) Bill 2010 which proposed amending the Police Act 1993, the Police Powers and Procedures Act 1998, the Bail Act 1952 and the Children and Young Persons Act 2001

B) General Comments

1. In his Consultation Statement the Minister for Home Affairs regards the provisions of the Bill necessary for:
 - a. *'effective and efficient policing'*
 - b. *'safeguarding the Islands's international reputation.'*It is against these two yardsticks that our comment is made.
2. The Introduction also refers to careful law enforcement being *'in the national interest of the Island because it conveys a positive image of the Island in the international arena and amongst the business community.*
It goes on to comment that improving Constabulary performance requires updating

regulations and also outdated discipline regulations.

3. Yet these assertions are made at a time when the Department proudly proclaims that the IOM has:

- a) the lowest crime rate in the British Isles
- b) the highest detection rate
- c) the highest satisfaction rate

There is no perceivable local public demand for widespread change to the Criminal Justice system. Neither does there appear to be widespread local public dissatisfaction. On the contrary the public seems satisfied that *effective and efficient policing* is already being undertaken.

It is understandable that the IOM must of course fulfil its cooperative obligations in an international sphere in combatting crime.

4. In view of this it is not unreasonable for the public to expect that supporting evidence be provided in order to help it understand the Department's call for change. We cite 2 examples:

a) The only facts within in the whole Consultation document is given on Page 4, in reference to Part 2 - *Amendments to the Bail Act 1952*

"In the calendar year 2010 the Constabulary arrested over 170 people for breaching their bail conditions. This equates to just over one in twelve of all arrests"

Even this information in isolation is unsatisfactory as it does not indicate the trend in bail breaching over a number of years and the context.

The reader can however deduce that there are about 2000 arrests made in a year with 8.5% of those being for breaching bail conditions.

It could be argued that with the wideranging proposed changes at Part 5 – *Amendments to the Police Powers and Procedures Act 1998* that the overall number of arrests will increase.

b) Again at Part 5–*Police powers in relation to children suspected of a serious offence*

Currently the Police can only detain young people under the age of 14 for homicide.

We understand that the prompt to widen the definition results from one case only, where police arrested a 13 year old for trying to burn down a school. The child was released as soon as a parent arrived as the police had no power to detain to obtain evidence, such as forensic samples, or to interview.

We question whether lowering the definition of a child to as low as 10 years old and potentially broadening the range of attributable serious offences, based on a single example, is justified.

5. With around 2000 arrests annually, some of which are recidivistic, it is apparent that the vast majority of the IOM population of some 85,000 is law abiding.

There is concern that some of the measures within the draft Bill may have a disturbing unintended consequence of drawing innocent citizens into the criminal justice system.

We refer to Clauses 5, 17, 22 and 25

6. The previous 2010 Bill was referred to a House of Keys Select Committee, for detailed consideration.

PAG welcomes the fact that the first two of the Committee's recommendations have been incorporated by the Department in conducting this Consultation

- *Any subsequent draft legislation covering these issues should be split into separate parts which are more easily consulted on;*
- *fresh consultation should take place separately on each part of the Bill, to enable respondents to comment on the proposals contained in the Bill.*

We urge the Department to implement the Committee's 3rd recommendation following publication of the consultation summary, that *the Bill be examined by a Committee* before being presented for first reading

7. The considerable consultation concern with certain of those clauses carried forward from the 2010 Bill to the 2012 Bill ought not be ignored. The new Bill requires careful and detailed consideration. In the Impact Assessment it is noted that the target date for introduction into the branches is *the last quarter of 2012*.

PAG urges that the process is not rushed, particularly as there is no public clamour for change to existing legislation. Referring the Bill to a Committee should ensure thorough examination of detail.

8. Reference is made in the Summary (Page 7) to the "*spirit of the Human Rights Act 2001*" in relation to *Powers of Arrest*.

PAG considers it vital that the provisions of the Bill accord with the Convention rights within the meaning of the The Human Rights Act 2001 and a that clear statement to this effect should accompany presentation of the Bill.

9. PAG opposes the implied discretionary enabling powers of the Department "*by order*", especially at Sections 15, 16, 18, 20, 22 and 25

The use of secondary legislation may give greater flexibility in particular circumstances, but it does facilitate a lower level of parliamentary scrutiny than primary law and as such its use should be limited. Offences need to be defined in primary legislation so that the Bill is robust to ensure unequivocal interpretation.

C) Specific Comments

1. Clause 5 - Bail: Absconding and breach of conditions

- a) At (5) It seems unreasonable to expect a grantee of bail, who has not received a copy of the record of the bail decision to be made liable if bail conditions are not met.
- b) At (7) again it seems unreasonable for a person acquitted by the Court to be liable to custody or fine for a breach of bail conditions for an offence for which guilt was not proven.

2. Clauses 10, 12, 13, 14 – Search warrants

These clauses give power to authorise entry to any premises occupied or controlled by a person and repeated entry any number of times.

There already exists broad powers to search and further increasing the range could be seen as a potential abuse of powers.

These draft clauses ought to be thoroughly reviewed in detail.

3. Clause 11 – Warrants: persons who may accompany constables

As written this clause enables a suitable person to accompany a constable in the execution of a warrant. It is suggested that such a person *possessing scientific or other technical expertise* needs to have had professional training to properly undertake searches.

4. Clause 15 – Additional power of seizure from premises

Safeguard for the preservation of the integrity of seized goods needs to be included in Section 15

5. Clause 17 - Powers of Arrest

For the ordinary law abiding citizen this is potentially highly significant and detrimental, particularly if arrest is challenged.

The clause requires further detailed examination and careful redrafting.

At 27(1) it gives a constable a very broad power of arrest which potentially may be to the detriment of a law abiding person. This is especially so in a constable's judgement as to whether an offence is about to be committed , or suspects a crime is about to be committed.

At 27(7) any offence is liable for arrest. This is too broad a power to be given to the police.

6. Clause 22 - Child arrested for serious offence

Concern has been expressed earlier about the use by the Department of subordinate legislation. Specifying '*by order*' serious offences in relation to children in the Isle of Man has not been justified and the clause should be withdrawn.

7. Clause 23 – Police powers relating to drugs

The clause allowing for an x-ray to be taken should contain more safeguards to ensure that no medical harm to the person results from the process. This may entail checking the suspect's record of x-ray scans. Exposure to too much radiation is harmful.

8. Clause 24 –Audio and visual recording of interviews

At (2) - the visual recording of an interview for a suspect is a different experience from that of an audio recording. In an already stressful situation it is not fair for a suspect to be potentially subjected to further stress if a video record is made of the interview. Some interviewees may be inhibited with the presence of a camera. This part of the clause should be deleted.

In the summary of the Bill no reason, other than the availability of the technology, is given for the the inclusion of visual recording.

It is worth noting that Tynwald members themselves have shunned the use of video to broadcast and record proceedings of the Court and Branches.

The use of modern audio technology in recording interviews seems desirable

9. Clause 35 – Return of missing children

The arrest of a child without a warrant in order to be returned to a responsible person or protection is a very concerning proposal. It is too harsh an authority in this instance. The Department, by asking a question about this in the summary document, is obviously uncomfortable about it. In the case of such doubt the clause should be withdrawn.

10. Clause 25 – Fingerprints

At (2A) what is appropriate consent?

At (6) why is the requirement for consent withdrawn from a person who already has a conviction or an admitted caution? The subsection carries an implication of culpability to the disadvantage of such a detained person.

5. Clause 28 – Samples taken elsewhere than at a police station

At 1(E) – once consent is given as in (1D) it is not capable of being withdrawn. It is not reasonable for an individual not to have the right to a change of mind

Conclusion

1. It is a year ago that the UK witnessed horrific urban rioting. Part of the reason was a frustration with the use of police powers.

There was no trouble here in the Isle of Man. The public has the confidence of the public.

This draft Bill gives much greater power to the Constabulary which is not justified by crime figures or public perception.

As one P A G member stated *"give more powers to the police may equal more abuse of power!"*

The provisions of the Bill need to be drafted to local needs

2. Accordingly P A G urges the Department to ensure that the Bill is given detailed consideration by a Keys Select Committee before being presented to the Branches.

3. The Bill should be compatible with the Human Rights Act 2001

4. Throughout the draft Bill the Department is afforded the privilege of making lawful provision *"by order"*

P A G is opposed to such a widespread use of subordinate legislation for reasons already stated.

Positive Action Group

July 2012

Objectives

To promote awareness and understanding of politics and citizenship

To encourage members of the public to participate actively in politics by taking part in discussions, making their views known, voting, standing for office and holding public office.

To encourage an increase in the percentage turnout of the electorate, by raising awareness of the importance to the electorate of exercising their democratic right to vote - a consequence of which will be that they can help to shape and secure the future of the Isle of Man.

To bring to the attention of Tynwald Members, the Government of the Isle of Man, or any other appropriate bodies, issues or matters of public interest raised by members of P A G; and which may include submissions in response to public consultation exercises.