PROTECTION OF FREEDOMS BILL

PUBLIC READING STAGE

A REPORT BY THE HOME OFFICE FOR THE PUBLIC BILL COMMITTEE

Introduction

The Report

1. This report provides an anonymised synopsis of the views expressed on the Public Reading stage website for the Protection of Freedoms Bill. The report is designed to provide Committee members with an overview of the broad themes that emerged from the comments, and should not be seen as a comprehensive account of all of the issues raised. All of the comments submitted during the Public Reading stage are annexed at the end of the report.

2. The report also includes some commentary on a number of the points raised during the Public Reading stage.

Background to the Public Reading Stage

3. The Coalition's *Programme for Government*, included a commitment to introduce a *'Public Reading stage'* to provide the public with the opportunity to comment online on proposed legislation, with these comments to be discussed during a 'Public Reading day' during the Committee stage of the Bill.

4. On 15 February the Deputy Prime Minister announced in a Written Ministerial Statement that the Protection of Freedoms Bill, which had been introduced the previous Friday (11 February), would act as the pilot Bill for this stage. In his Statement the Deputy Prime Minister underlined that part of the reason for introducing this new stage was to give the public a clear chance to comment on important legislation that would affect their lives. The Deputy Prime Minister noted that the Select Committee on Reform of the House of Commons had indicated that Public Bill Committees received very few submissions from private individuals, and that the public were not actively encouraged to submit such evidence. The introduction of the Public Reading stage is therefore intended to address this issue.

5. The Deputy Prime Minister made it clear in his Statement that the Public Reading stage for the Protection of Freedoms Bill represented a pilot, to be used to test the systems which could be adopted for the full roll-out of this stage. As such there will not be a dedicated 'Public Reading day' during the Committee stage of this Bill.

Statistics

6. The website was launched on Monday 14 February, and closed for comments on 7 March. During this time,
   - The website was visited by 6,604 separate individuals;

- 256 of these individuals posted comments; and
- A total of 568 comments were received (including one written submission sent to the Bill team).

7. The numbers of comments on individual parts of the Bill are detailed in the main body of the report, whilst annex A gives the figures for each clause or Schedule.

Comments received on the process

8. 18 comments were received under the *'What is a public reading stage?'* section of the website.

9. As a pilot it is particularly important to assess the comments received that focus on the nature of the Public Reading stage itself, and on how the process may be refined and improved in advance of this new innovation being applied more widely.

10. There was broad support for the Public Reading stage from those that commented under the *'What is a Public Reading stage?'* section. Most respondents welcomed the opportunity to provide comments on the Bill and saw the pilot as representing a positive step by the Government. One individual even suggested enshrining the Public Reading stage in law to ensure all future Bills were subject to this scrutiny.

11. There were, however, several individuals who voiced concerns regarding whether any of the views and ideas expressed on the site would actually be taken on board by politicians, with some expressing doubt as to whether politicians would even read the comments. These views were also periodically echoed in comments regarding specific clauses in the Bill.

12. The website was arranged on a clause by clause basis, with visitors to the site having to select specific clauses in order to leave comments. Several individuals commented that this way of structuring the website offered no opportunity to suggest new clauses for the Bill. It was suggested that in future there should be a dedicated section where the public can put forward entirely new clauses for inclusion within the Bill.

13. The clause by clause structure for leaving comments also led many individuals to comment on specific clauses when in fact their comments related to the overall policy more generally. For example on clause 1, many individuals left comments on the general DNA retention policy, rather than focussing on the specific clause. The general comments are, of course, perfectly valid, and we will consider the implications for the future design of the Public Reading stage.

14. A common theme amongst the contributions submitted was that the wording of the Bill was very hard to understand. Again, this is a valid point but one that reflects the tension between drafting a Bill in a way that ensures legal certainty and producing laws which the public can readily understand.

15. Although the Explanatory Notes to the Bill were provided on the site, one option might be to give members of the public the option of commenting on these, as an alternative to the text of the Bill itself, on the basis that the commentary on clauses in the Explanatory Notes should provide a more readily understandable explanation of what a particular clause is designed to achieve.

16. Finally on the process adopted for the pilot: there was criticism that the information on the Bill was split across three different websites, with the Cabinet Office hosting the Public Reading page site, the Home Office hosting a page on the Bill which includes various background and supporting documents, and the Parliament website hosting the Bill itself.

Part 1, Chapter 1 – Destruction, Retention and Use of Fingerprints etc

17. The clauses in Chapter 1, covering DNA and Fingerprint retention, were some of the most commented upon clauses in the Bill, receiving over 100 comments.

18. As noted above many of the ideas submitted to the specific clauses here were concentrated on the wider issues surrounding DNA retention.

19. Many of the comments received argued passionately for a universal database, where records of all individuals both innocent and guilty would be stored. Generally these arguments focussed on the potential for such a database to aid the detection of crimes and better protect the public, with respondents often indicating that the innocent had nothing to fear from police holding such information.

20. There were also a great many, equally passionate, comments to the effect that only those convicted of a crime should have their sensitive personal data retained on such a database. Arguments here ranged from the point of principal that the Government had no right to retain such information without an individual having been convicted (by far the most common argument against retention), through to arguments about the increased risk of ‘false positive’ results as the database increases in size (where a match is shown when in fact there is none), the risk of police abuse, or of accidental transfer of DNA (for instance by picking up a knife in a shop, which is then later used in a murder).

21. The Government recognises that the issue of retaining such sensitive personal data is a divisive one, with the vast majority of comments made under Chapter 1 relating to the issue of whether or not the DNA database should include any data taken from those who have not been convicted of a crime. We believe strongly that DNA and fingerprint evidence is a vital tool in the fight against crime; but storing the DNA and fingerprints of over 1 million innocent people undermines public trust in policing. The Government believes that the determination of an appropriate retention period is essentially a matter of political judgement, and feels that the clauses presented in the Bill represent a sound and balanced approach.

22. There were a handful of comments made on the website that revealed some misunderstandings regarding the provisions in this Chapter of the Bill, and the Government's policy intentions. One individual was disappointed that the Bill did not place the National DNA Database on a statutory basis, when in fact clause 23 does just this. There were also a number of calls for the Bill to ensure that biological DNA samples are destroyed, with many of these commentators expressing their disappointment that this measure was not already included in the Bill. Again, this is an issue already dealt with in the Bill; clause 14 makes provision for the destruction of the biological sample as soon as the numerical profile has been derived and, in any event, no later than 6 months after the date the sample was taken.

23. Several individuals questioned whether the police would be required to inform the person to whom a DNA sample and profile relates when their data was to be destroyed. In order to reduce the administrative burden on the police, these provisions will not require the police to proactively notify a person of the destruction of his or her fingerprints, DNA sample or DNA profile. However, it would be open to an individual to make a subject access request to the police under the Data Protection Act 1998; on receipt of such a request, the police would be required to inform the applicant whether or not such biometric material was held. On a similar theme, there were calls for the Bill to ensure that an individual be informed should the police apply to a court to retain a DNA profile for a further two years, following an initial three year retention period. Whilst the Bill does contain specific provision for this, the usual rules of court would ensure that any such affected individual would be informed so that he or she can decide whether to exercise their right to make representations to the District Judge (as provided for in clause 3).

24. There were multiple comments suggesting that the Police National Computer (PNC) arrest/charge record should also be destroyed at the same time as a DNA profile is destroyed. The Bill only deals with the destruction, retention and use of DNA and fingerprints. The issue of retaining other records held on the Police National Computer is currently the subject of a case before the Supreme Court (*R (on the application of C) (FC) (Appellant) v Commissioner of Police of the Metropolis).* The Government will consider the matter further in the light of the Supreme Court's judgment in that case..

25. There were several comments that the 'Commissioner for the Retention and Use of Biometric Material' should be a) accountable directly to Parliament (rather than via the Home Secretary), and b) that their appointment should be confirmed by a select committee with the power of veto.

26. The Government considers that the proposed arrangements for appointing and reporting on the work of the new independent Commissioner provide the appropriate opportunity for Parliament to scrutinise and hold to account the Commissioner in the exercise of their functions. The Commissioner for the Retention and Use of Biometric Material will be an independent office holder. He or she will report annually on the exercise of his or her

functions under the legislation and will also have to be consulted on the preparation and/or revision of the statutory guidance. Both the report and the statutory guidance must be laid before Parliament and, in the case of the guidance on national security determinations, must be approved by both Houses of Parliament.

27. The Home Secretary will not have power to overturn the decisions of the Commissioner as to the retention or otherwise of biometric material held by the Police.

28. Further to this were calls that an individual should be informed that their DNA is going to be kept for national security reasons, and have the opportunity to argue against that decision.

29. The Government considers that it is not possible or appropriate to notify those persons whose DNA profile or fingerprints are retained for national security purposes without compromising the UK's ability to counter the threats we face from, for example, terrorism (both foreign and domestic).

30. The Government is committed to balancing the need to protect national security with the individual rights of people whose biometric information is retained for such purposes. While this will always be a difficult balance to strike, we consider that the provisions in the Bill (especially the new independent Commissioner) succeed in doing so.

Part 1, Chapter 2 – Protection of Biometrics Information of children in Schools etc.

31. There were fewer than 20 comments relating to Chapter 2 of Part 1 of the Bill (the requirement to gain parental consent before processing biometric information of children in schools and colleges).

32. One of the main concerns emerging from comments on this Chapter relates to the requirement to destroy any such data once a child has left the school or college. There was concern that the school may simply retain this data indefinitely. The Government's view is that this issue is already adequately covered by the Data Protection Act 1998. The fifth data protection principle, as set out in that Act, already requires that personal data should be kept no longer than is needed. The guidance from the Information Commissioner[1] makes clear that in practice this means biometric data should be deleted when the pupil leaves the school.

33. There were also some comments that expressed concern that data already collected by a school or college would not be covered by the provisions in this Chapter, and so parental consent for this would not be required. Such data would in fact be covered as the provisions apply to the *processing* of biometric data (using the definition in section 1(1) of the Data Protection Act 1998). This includes the obtaining, storage and further

[1]http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/fingerprinting_final_view.pdf

processing of the data. So although there in nothing in the clauses which mentions retrospective consent, if schools continue to use biometric information systems they will be processing students' biometric data under this definition and so will need to gain written parental consent.

34. A significant number of individuals commented that consent should be sought from the 'legal guardian' as opposed to the parent, in order to ensure those acting in lieu of parents were given the same rights and responsibilities as biological parents. Clause 28(4) provides that the definition of "parent" covers *'any individual who is not a parent of the child but who has parental responsibility for that child.'* The Government is therefore satisfied that these concerns are met by the current drafting of the Bill.

35. The final significant theme to emerge from comments on this Chapter is the issue of the age at which parental consent for processing biometric information in schools should no longer be required. Several commentators suggested that by the age of 16 children were old enough to make their own decisions regarding their biometric data, and parental consent should not be required. The Government have given this issue careful consideration. The issues around the use of biometric data are particularly subtle and complex, and even more mature children may not be able to fully appreciate them. In other areas such as marriage and making a will children under the age of 18 need parental consent. In our view the issues around the giving of biometric data are similar in that respect.

Part 2, Chapter 1 - Regulation of CCTV and other Surveillance Camera Technology

36. There were 31 comments received covering Chapter 1 of Part 2.

37. One of the recurring themes in relation to the further regulation of CCTV and Automatic Number Plate Recognition (ANPR) systems was the overlap of codes of practice that will have effect in this area, and the possibly competing roles of the proposed Surveillance Camera Commissioner and the existing Information Commissioner. Several individuals commented that it was not clear which Commissioner would have primacy in this area, and which code would take precedence.

38. The Government is clear that the role and responsibilities of the new Surveillance Camera Commissioner will complement but be distinct from those of the Information Commissioner. There will be a strong degree of mutual interest between the Information and Surveillance Camera Commissioners. However, nothing in the Bill interferes with the role and responsibilities of the Information Commissioner who will continue to have primacy on and sole responsibility for Data Protection matters. The two Commissioners will work closely together on areas where surveillance camera issues also raise data protection issues. The Surveillance Camera Commissioner will refer data protection issues to the Information Commissioner's Office (ICO) as appropriate, and liaise closely with the

ICO to ensure that any guidance offered on data protection issues is wholly in line with existing data protection legislation and guidance.

39. On the interaction of the codes of practice, the Government is currently consulting on whether users would find it helpful to have a single (combined) code or retain separate documents. The results will inform the direction we take on developing the new surveillance camera code of practice. If separate codes are retained they will be complementary rather than either taking precedence.

40. Another significant point that was raised by one individual on the site relates to the retention periods, and access to, data captured by such surveillance systems. At present both CCTV and ANPR systems are subject to the Human Rights Act 1998, and the Data Protection Act 1998 (DPA). The DPA provides that data should not be retained for longer than is required by the purposes for which it was collected. In practice this means that there is no standard maximum retention period. Organisations like the police have sought to self regulate, however this is exactly the kind of area that we hope the proposed code of practice will address. Several individuals commented that the existence of the Information Commissioner, and the guidance published by him, rendered unnecessary the introduction of the surveillance camera code of practice and the appointment of the new Commissioner. However, the new Code is intended to go wider than CCTV – to cover for example Automatic Number Plate Recognition technology – a point welcomed by the Information Commissioner. The Code is also intended to cover technical aspects which are not currently the focus of the Information Commissioner's code which necessarily concentrates on data protection issues. .

41. A number of individuals commented that the clauses were 'fairly toothless', in particular pointing to the non-binding nature of the code of practice. The Government rejects this view. While it is true that an essentially self regulatory approach is being adopted in the first instance in the light of the existing complex landscape, there are already some important safeguards in law – such as the Data Protection Act. Nothing in our proposals changes or weakens these – indeed we will build on them. The police and local authorities will be <u>required</u> to have regard to the new Code of Practice. This will mean their decisions in this area are subject to judicial review. The Bill also includes provision to enable the duty to have regard to the Code to be extended to other operators of surveillance camera systems.

42. The new Surveillance Camera Commissioner will have a broad remit to monitor the impact of the Code offering advice and recommendations as he or she sees fit. The Commissioner will report annually on his or her work to Ministers; it would be open to the Commissioner in the annual report, or separately, to highlight any concerns he or she may have about how the Code, or an aspect of it, is being applied in practice.

43. Finally on surveillance cameras; one individual raised the issue of whether local authorities could simply subcontract the operation of their surveillance cameras to private companies to avoid being subject to the

Code. We consider that as long as ultimate responsibility for a camera system rested with the local authority, they would have a duty to ensure that any work carried out on their behalf also paid due regard to the Code. It is also worth pointing out that the code will be designed to be of use to all surveillance camera operators, and as such we would imagine that even private companies not under contract to a local authority will wish to have regard to the principles set out in the code.

Part 2, Chapter 2, Safeguards for Certain Surveillance Under RIPA

44. The Chapter, which relates to local authorities' use of surveillance powers under the Regulation of Investigatory Powers Act 2000 (RIPA), received just eight comments on the Public Reading stage website.

45. Perhaps the most consistent theme to emerge from the comments received was a fear that the measures to require a magistrate's approval would prove overly bureaucratic, and serve to prevent local authorities investigating serious crimes. This fear was increased by Government proposals to impose a seriousness threshold before such powers can be used (to be achieved via secondary legislation).

46. We are not stopping local authority investigations but simply limiting the level of intrusion involved in those investigations to a proportionate level. Local authorities can still investigate offences below the threshold, but will be unable to use directed surveillance under RIPA as part of their investigation. We do not think that the legitimate use of RIPA powers by local authorities will be adversely affected by either of these two measures. The Government will work closely with local authorities to ensure that the magistrate's approval system will not have a detrimental impact on operational requirements. We anticipate this will typically take approximately 20 minutes of a magistrate's time, and approval will not need to be sought in open court (as with arrest and search warrants magistrates will be able to authorise such requests out of court). Similarly the threshold test will only prevent usage in low level cases which do not merit the use of such invasive techniques.

47. There was also a call to widen these restrictions on the use of RIPA powers to other public authorities. RIPA does provide for other public bodies to use these techniques. However, as set out in the Coalition Agreement, the Government's priority is to address the public concerns about the disproportionate use of these powers by local authorities. The Government will keep under review the use of RIPA powers by other public authorities; should the need arise, the Bill enables the requirement for judicial approval to be extended to other such bodies.

48. Finally on the use of RIPA powers one individual suggested that local authorities should not be able to use such intrusive techniques at all. The Government does not support such a view. Local authorities have a duty to investigate serious crimes, such as environmental crimes, underage sales, and employment and benefit fraud, where the use of surveillance powers can be justified.

Part 3, Protection of Property from Disproportionate Enforcement Action

49. Only three comments were received on Chapter 1 of Part 3 of the Bill (powers of entry). With most of these displaying some confusion over how the Bill was set out, and the wording that was used. This point was addressed in the introduction to the report.

50. Chapter 2 of Part 3, which amongst other things prohibits wheel clamping without lawful authority, was one of the most commented on parts of the Bill, receiving over 130 comments from members of the public. As with the comments received on the retention of DNA profiles, the debate covering wheel clamping can be characterised by the passion displayed, and the near complete polarisation of views.

51. Under the first clause (clause 54 – which effectively bans wheel clamping and towing away without lawful authority) many of the comments were critical of Government's policy, suggesting that this would in effect amount to a *"trespasser's charter"*, and prevent landowners from legitimately controlling who parked on their land. These comments were reinforced by claims that motorists had an obligation to check that it was legal to park where they were doing so, and that clamping signs often acted as a sufficient deterrent to prevent unauthorised parking.

52. Countering this view there were a considerable number of comments welcoming Government's proposals as *"long overdue"*. A number of these commentators raised concerns regarding clause 54(3), which relates to the presence of a physical barrier. There was a degree of misunderstanding here where several commentators took this clause to mean that if a physical barrier was present at a car park then clamping would still be lawful. This is not the case. Clause 54(3) allows only for physical barriers to be used to control parking by 'blocking in' where the barrier was there in the first instance, such as is commonly the case in multi-storey car parks. Clamping or towing on premises with a physical barrier would be unlawful.

53. A handful of other commentators have suggested that imposing a maximum tariff would tackle the issue of rogue clampers whilst also ensuring landowners could deter unwanted parking.

54. The Government is clear that wheel-clamping and towing away should be banned as they deprive the motorist of the use of their vehicle and often cause motorists significant distress and anxiety. Wheel clamping has been the occasion of a great deal of abusive practice, in particular:
    - The high level of some release fees
    - Inadequate signage, including small size and poor visibility
    - Unreasonable behaviour, for example demanding immediate cash payment, and not accepting credit cards
    - Immediate clamping or towing away
    - Lack of an effective means of contesting a charge

55. For these reasons we consider that a ban on wheel clamping is appropriate (save where there is statutory or other lawful authority).

56. One individual also raised the issue of whether bailiffs would continue to be able to clamp to enforce debt collection. The ban will not affect bailiffs' activities where they are carried out with lawful authority. Lawful authority includes existing statutory powers including the power of certificated bailiffs to immobilise and remove vehicles for unpaid council tax or unpaid national taxes. Lawful authority will include specific powers for bailiffs to enforce debts under a range of existing statutes, as well as common law powers to seize and sell goods to recover a sum of money, in the exercise of which vehicles may be immobilised and towed. This includes the power to immobilise or tow away vehicles in relation to debts enforceable under a Magistrates' Court warrant of distress.

57. One individual asked why the clamping ban will not extend to Northern Ireland. This matter is devolved and the Northern Ireland Minister of Justice has decided that the ban should not apply in Northern Ireland without enough evidence of a problem with clamping and towing as prevalent or comparable with the situation in England and Wales.

58. As well as the ban on wheel clamping, provided for by clause 54, the Bill also includes provisions to enable a parking provider or landowner to recover any unpaid parking charges from the registered keeper of a vehicle where the driver is unknown.

59. This provision proved very controversial attracting over 100 comments. The debate here was passionate with many commentators seeing this provision as the bare minimum defence need by landowners to prevent "rogue parkers" (although many still indicated the threat of clamping was required), whilst others argued that the clause completely undermined the good intention of banning wheel clamping. The argument here tended to be that so called *"rogue clampers"* would simply switch to become *"rogue ticketers"*.

60. The arguments put forward by those in favour of the provision (and in some cases in favour of clamping) are much the same as those deployed to argue against the clamping ban. That is that motorists should have regard for where they park, and that without tight controls landowners will not be able to deter trespassers.

61. A large volume of the comments received here opposed the provisions. Many commentators indicate that private ticketing companies will charge extortionate rates for tickets, in a manner disproportionate to any loss they have suffered. Several individuals point to this provision as the law in effect legitimising the practice of charging *"extortionate"* sums for tickets, and giving the motorist no choice but to pay.

62. Criticism also focused on the lack of regulation of the ticketing industry. Many individuals were critical that in order to obtain personal details of the registered keeper of a vehicle, a company simply had to be a member of the British Parking Association (BPA). There was widespread criticism that the BPA was a private trade organisation, which was in no way independent, the argument continuing that Government should not therefore share the private details of the registered keeper. Some

comments pointed to the perceived failure of the BPA to control its members in the field of clamping as evidence that further regulation is required.

63. The details of the registered keeper will only be divulged to a company which is a member of a Government accredited trade association (ATA). The BPA is currently the only accredited association for the parking sector. The company must abide by the ATA's Code of Practise, The Code includes provisions requiring prominent signs at the entrance to and throughout the site, and an in-house challenge procedure. The presence of the signs required by the Code means that a contract is created between the parking company and the motorist which is subject to Government's Consumer Protection legislation. Under that legislation any parking relate charge must be reasonable, although the Code includes guidance on what such an amount might be. Compliance with Code of Practise is monitored and any companies that break it are expelled from the ATA, and so lose their access to vehicle keeper data. To date 4 companies have been expelled. The ATA did not have a similar "gatekeeper" role for immobilisation/removal. The Government believes that this measure represents a fair balance, and will allow private landowners to defend their property from irresponsible motorists, whilst also protecting motorists from the excesses of rogue parking control.

64. A final point on the keeper liability clause relates to contract law. Many individuals argued that the registered keeper could not be made liable for a charge if they were not also the driver, as they could not have entered into a contract with the parking provider. In such cases, a parking provider in seeking to recover an unpaid parking charge from the vehicle keeper will be relying on the statutory mechanism as set out in the Bill rather than on the presence or otherwise of a contract between the parking provider and vehicle keeper. The keeper may pay the charge or tell the creditor who was the driver at the time. Equivalent provisions already apply in respect of the enforcement of unpaid parking charges in the case of vehicles left on land that is enforced by a local authority, except that the keeper may not transfer responsibility for the charge to the driver at the time.

Part 4 - Counter Terrorism Powers

65. The clauses covering counter terrorism powers did not receive a large number of comments, with the whole of Part 4 only being subject to 39 comments.

66. On the issue of pre-charge detention those who commented had divided opinions. A significant proportion of those who commented felt that terrorism posed a unique threat to the nation, and should be treated as such. Such individuals argued that a maximum of 14 days pre-charge detention was not sufficient and that it was *"better to be safe than sorry"* on this matter suggesting a 28 day maximum was an appropriate time period.

67. Countering these calls for extended pre-charge detention a significant number of commentators supported Government's proposals, indicating 14 day retention represented a sensible measure.

68. There were some calls also for the length of pre-charge detention to be reduced to seven days.

69. The Government considered this issue carefully as part of the review of counter-terrorism and security powers and concluded that 14 days is the appropriate normal maximum pre-charge detention period for terrorist suspects. No one has been held for longer than this period since 2007. However, in order to mitigate the increased risk of going down to 14 days, the Government has published draft legislation extending the maximum period of pre-charge detention to 28 days; such legislation would be introduced to deal with urgent situations where the extended period was considered necessary.

70. The clauses covering changes to the no-suspicion stop and search measures did not attract a large volume of comments.

71. There were a handful of comments from those who opposed any form of no-suspicion stop and search power, with most of these commentators also going on to say that the proposed revised regime could still be open to abuse by the police, with "rolling authorisations" and the potential for police to use the powers to harass individuals.

72. The Government does not accept these arguments. The revised powers will only be available for use in very tightly defined circumstances and the powers are supported by robust statutory guidance. In the case of the concerns about "rolling authorisations" under the provisions in the Bill rolling authorisations will not be permitted. A new authorisation covering the same or substantially the same areas or places as a previous authorisation may be given if the intelligence which informed the initial authorisation has been subject to fresh assessment and the officer giving the authorisation is satisfied that the test for authorisation is still met on the basis of that assessment.

73. Some commentators were concerned that clause 59(1) (which repeals the requirement for same-sex searches) could lead to sexual abuse by police officers. The Government does not accept this. We consider that there may be circumstances where it is not feasible to wait for an officer of the same sex to arrive on the scene and this should not be a legal requirement. The code of practice governing stop and search makes it clear that same sex searches should be conducted where possible. This repeal simply brings no-suspicion stop and search powers into line with other stop and search powers available to the police (where there are no requirements for same-sex searches). It should be emphasised that the searches are not 'strip searches' – police officers can only require the person to remove hats, shoes, gloves, outer coat and jacket.

74. There were also a number of calls for the police to be obliged to issue a "ticket" to each individual stopped under these powers. Any individual

stopped and searched by a police officer should be issued with a form indicating under which power they were stopped. If the officer is called to an emergency during the search they should issue a receipt to the individual, which will explain how to obtain the full form relating to the stop and search.

75. The Government's view is that it would create an unnecessary bureaucratic burden on the police to require them to always issue a 'ticket' or 'receipt' to the individual stopped. Schedule 5 does, though, require the police to provide a written statement to any pedestrian or driver stopped under the new powers who requests such a statement within 12 months of the stop taking place.

76. Finally in this section there were a couple of individuals calling for the amendment of section 5 of the Public Order Act 1986 (which makes it an offence to use threatening, abusive or insulting words or behaviour), to remove the word "insulting" from this legislation, with a view to enhancing freedom of speech. This is does not relate to the clauses in Part 4, however as the individuals noted, there was no option on the website to propose new provisions. A further comment on this issue was also submitted under Part 7 of the Bill.

Part 5, Chapter 1, Safeguarding Vulnerable Groups

77. Chapter 1 of Part 5, which provides for changes to the Vetting and Barring Scheme received only a handful of comments on each clause (a total of 19 comments were received on the Chapter).

78. The comments here were largely positive, supporting Government's proposals to scale back the scheme as balanced and proportionate.

79. Alongside the largely supportive comments there were, understandably, calls from both sides indicating that government had either gone too far and was putting the vulnerable at risk, or had not gone far enough, with the vetting and barring regime still being overly intrusive.

Part 5, Chapter 2, Criminal Records

80. The clauses covering amendments to the criminal records regime proved to be some of the most commented upon in the Bill, sparking over 90 comments and once more revealing some very passionate feelings on the subject. Many of those commenting provided personal accounts of how the current criminal records regime can prevent rehabilitation, with minor or old convictions, cautions, and police intelligence information, acting as a barrier to gaining employment.

81. With very few exceptions the vast majority of individuals commenting here were pressing for minor convictions and cautions to be removed from CRB disclosures. The comments revealed a significant appetite to reform the Rehabilitation of Offenders Act 1974 (ROA), which was seen by many to be outdated. A phrase repeated in many comments was that *"spent should*

mean spent", a reference to the continued disclosure of spent convictions on standard and enhanced criminal record certificates.

82. A further point, that was raised in many comments, relates to the disclosure of non-conviction information; many felt that unless an individual had been found guilty by a court of law, then information should not be disclosed, one individual suggested that disclosure of "soft intelligence" breached their human rights. Related to this were claims that employers viewed any form of disclosure, for a minor or old conviction, or just of police intelligence, as a reason not to employ an individual, so in the words of one commentator employment would be blocked through the disclosure of *"allegations, hearsay, rumour and gossip"*. There was strong criticism too of the change in clause 79 that information would only be disclosed where a chief officer "reasonably believes" it to be relevant. Here several individuals suggested that the change was a token amendment that would make no real difference.

83. There was widespread misunderstanding of clause 78 (which provides for a minimum age for applicants for CRB certificates to be issued). Here several individuals thought that no information held about an individual from before they were 16 would be disclosed. This is not the case; criminal record certificates will continue to include convictions in respect of offences committed by the applicant for a CRB certificate when under 16, the same will apply to any non-conviction information held by the police. This clause instead ensures that an individual has to be at least 16 years old to be eligible to apply for CRB certificate.

Part 5, Chapter 3 - Disregarding Certain Convictions for Buggery etc.

84. There was widespread support for the principle behind this provision, however there were calls for the application to be considered by a court rather than the Secretary of State, to ensure independence. There were also several individuals who suggested that the process of application was unfair, and that such convictions should be automatically deleted.

85. The Government considers that a decision on whether to disregard a relevant conviction can properly be made by the Home Office, taking advice from a panel of experts in appropriate cases. The Bill provides for a right of appeal to the High Court in the event that an application is refused. As to why it is not possible simply to designate all convictions under section 12 or 13 of the Sexual Offences Act 1956 as disregarded convictions without the need for an application process, this is owing to the fact that not all the behaviour covered by these offences has been decriminalised (for example, the section 12 offence also covers non-consensual sex), consequently it is necessary to consider any convictions on a case by case basis.

86. On the effect of the disregard there was considerable concern by some commentators that not all records of a disregarded conviction would be deleted, but in some cases records would be retained but annotated to explain the effect of the disregard.

87. Where it is possible to delete a record of a disregarded conviction, such as those held electronically, this will be done. However there are certain records, such as court ledgers held in national archives, where it will not be possible to delete the record without destroying other court records. It is in these circumstances that records would be annotated to explain the effect of the disregard.

Part 6 - Freedom of Information and Data Protection and Part 7 - Miscellaneous and General

88. Parts 6 and 7 attracted fewer comments (42 and 30 respectively).

89. These comments were clustered around two main themes. Firstly on the changes to the Freedom of Information Act, more than 20 individuals expressed disappointment that the Bill does not repeal the exemption under the Act for information relating to communications with the Royal Family or Household or extend the Act to them.

90. The second issue which attracted a significant number of comments was clause 99, which repeals section 43 of the Criminal Justice Act 2003 which provides for certain serious fraud trials to be conducted without a jury. Here the provision was largely welcomed, as protecting a fundamental right, though some did comment that such cases could impose heavily upon those called to serve as members of the jury.

91. The remaining clauses were largely supported and received few comments.

Annex A

Breakdown of the number of ideas/ comments left on the Public Reading stage website for the Protection of Freedoms Bill, broken down by Part, Chapter and Clause.

Part of Bill	Chapter of Bill	Clause Number	Ideas/ Comments received
Part 1 – Regulation of Biometric Data			127 (+ 1 written submission)
	Chapter 1 – Destruction, Retention and Use of Fingerprints Etc.		112
		1	54
		2	0
		3	7
		4	2
		5	0
		6	4
		7	3
		8	1
		9	4
		10	6
		11	2
		12	1
		13	4
		14	3
		15	1
		16	1
		17	0
		18	5
		19	0
		20	3
		21	1
		22	0
		23	3
		24	3
		25	4
	Chapter 2 – Protection of Biometric Information of Children in Schools Etc.		15
		26	7
		27	6
		28	2
Part 2 – Regulation of Surveillance			31
	Chapter 1 – Regulation of CCTV and Other Surveillance Camera Technology		23
		29	11
		30	0
		31	2
		32	1
		33	5
		34	1
		35	3
		36	0
	Chapter 2 – Safeguards for Certain Surveillance Under RIPA		8
		37	1
		38	7
Part 3 –			143

Protection of Property from Disproportionate Enforcement Action	Chapter 1 – Powers of Entry		6
		39	3
		40	1
		41	2
		42	0
		43	0
		44	0
		45	0
		46	0
		47	0
		48	0
		49	0
		50	0
		51	0
		52	0
		53	0
	Chapter 2 – Vehicles Left on Land		137
		54	29
		55	3
		56	105
Part 4 – Counter Terrorism Powers			39
		57	17
		58	6
		59	9
		60	6
		61	1
		62	0
Part 5 – Safeguarding Vulnerable Groups, Criminal Records Etc.			134
	Chapter 1 – Safeguarding Vulnerable Groups		19
		63	2
		64	3
		65	2
		66	1
		67	1
		68	2
		69	1
		70	1
		71	3
		72	1
		73	0
		74	0
		75	1
		76	1
	Chapter 2 – Criminal Records		93
		77	34
		78	6
		79	47
		80	2
		81	4
	Chapter 3 – Disregarding Certain Convictions for Buggery Etc.		22
		82	11
		83	0
		84	0
		85	9
		86	0
		87	0
		88	0
		89	1

		90	1
		91	0
Part 6 – Freedom of Information and Data Protection			42
		92	8
		93	29
		94	0
		95	2
		96	1
		97	1
		98	1
Part 7 – Miscellaneous and General			30
		99	12
		100	8
		101	0
		102	0
		103	0
		104	0
		105	2
		106	1
		107	7
Schedule 1			0
Schedule 2			0
Schedule 3			0
Schedule 4			3
Schedule 5			0
Schedule 6			0
Schedule 7			0
Schedule 8			0