



Home Office

Police powers to promote and maintain public order

Section 5 of the Public Order Act 1986

Summary of consultation responses and Government response

January 2013

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. In considering any new powers, it is necessary to balance the Government's duty to protect the public with the need to protect individual civil liberties.

On 13 October 2011, the Home Office published a consultation paper to seek views on three areas of police powers which the Government was 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.

The closing date for responses to the consultation was 13 January 2012.

This summary of responses relates to the first issue: the effect of the word 'insulting' in section 5 of the Public Order Act 1986.

The aim of this part of the consultation was 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.

Method of consultation

The consultation was made available on the Home Office website <http://www.homeoffice.gov.uk/publications/about-us/consultations/police-powers/> as a PDF document in both English and Welsh. Responses to the consultation could be completed anonymously online, submitted via email or posted to the Home Office in written form.

The questions sought to understand the significance of the word 'insulting' and the protection it offers to groups targeted by hate crime. The Home Office wanted 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 poppy wreaths on Remembrance Day. We also wanted to examine the threshold for arrest and whether legislative change or further guidance on the interpretation of the law was the way forward.

We would like to thank all those who have given their time to respond and contribute to this consultation process. We have not listed all the individuals who responded to the consultation but a list of organisations is included at the end of this document.

Summary of responses

We received a total of 2,975 responses (410 posted or e-mailed and 2,565 online) to this part of the consultation. 130 organisations responded to the consultation and 2,845 members of the public. A list of key organisations that responded is attached.

The vast majority of respondents expressed a similar view indicating support for the reform of section 5 of the Public Order Act 1986 and the removal of the word ‘insulting’.

Of those who were in support of reform, the majority agreed that the inclusion of ‘insulting’ in section 5 restricted freedom of expression, with a significant subset specifically referring to limitations on the expression of Christian and other religious views. Many of the respondents felt that removal of ‘insulting’ would have no particular impact on specific groups and that, without reform, the current legislative safeguards and guidance to police were insufficient and did not address their concerns.

Police professionals and judicial bodies were more likely to be against the reform of section 5. Most of these respondents said that freedom of expression was a limited right and that interference was justified to protect others from harassment, alarm or distress. Some were concerned that removing the word ‘insulting’ might signal tolerance of hate crime and could be interpreted by the courts as a lowering of the threshold for disrespectful behaviour. There was also concern that the police would lose the ability to nip trouble in the bud before it became more serious disorder, and that cases such as poppy burning and swearing at police officers, which appeared to rely on the ‘insulting’ aspect of section 5, could not be successfully prosecuted.

Police professionals felt the legislation was clear but would welcome more guidance and that safeguards, including their duty to consider Article 10 of the European Convention on Human Rights, were sufficient.

Some groups expressed the view that removing ‘insulting’ would expose minority groups and vulnerable people to low level harassment. Lesbian, gay, bisexual and transgender groups provided mixed responses, with some feeling that they were protected by other legislation while others voiced concern that change would signal tolerance to homophobic behaviour.

The Crown Prosecution Service and Director of Public Prosecutions

The CPS’s initial response to the consultation indicated that there would be difficulties successfully prosecuting some cases if ‘insulting’ were removed from section 5. However, the DPP subsequently considered the case law in greater depth and advised that the CPS were unable to identify any case that could not be characterised as “abusive” as well as “insulting”. The DPP was of the view that from the perspective of the prosecution, “insulting” could safely be removed without undermining the ability of the CPS to bring prosecutions.

A summary of comments by respondents

Key views opposing removal of ‘insulting’

“The essence of this offence is the maintenance of public order and the imposition of criminal sanction on those who breach it. It is not simply to deter a person from being offensive” (Council of HM Circuit Judges of England & Wales)

“While courts may be able to differentiate between insulting and abusive such a distinction may not be so clear at the point of arrest and the retention of insulting lessens ambiguity.” (Her Majesty’s Inspectorate of Constabulary)

“We believe that insulting words can often be more offensive than abusive words as they often strike at the heart of beliefs, cultures and lifestyle. We do not feel that there is a significant difference between ‘insulting’ and ‘abusive’ to regard them as separate and certainly not a difference that which could be defined in practice.” (Magistrates Association)

“It is the view of the PSAEW that the word ‘insulting’ should not be assessed in its own right and should be seen in the context of the overall definition which is also to be threatening, abusive and insulting within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby etc . We believe, therefore, that the comprehensive definition should remain as it allows for an objective assessment of what was said or done, assessment of the impact and the intention of the offender.” (Police Superintendents Association of England and Wales)

“In my view the removal of the word ‘insulting’ from section 5 would have a detrimental impact on our society, its removal would indicate that to ‘insult’ a person or group in a way that is currently an offence is now acceptable, it is not. To allow individuals or groups to unreasonably insult others will cause resentment and would make it more difficult for police to intervene at the earliest opportunity. It is likely to be minority groups that would be found to be the target of these insults and may alienate these people further from the wider society and police.” (The Police Federation of England and Wales)

Stonewall believes that Section 5 of the Public Order Act 1986 is a reasonable and proportional method to tackle offensive homophobic incidents that occur frequently across England and Wales. We therefore believe there is no need to amend Section 5 to remove the term ‘insulting’. (Stonewall)

“We feel that those who are responsible for instigating this debate have lost sight of the fact that section 5 does not outlaw insulting words and behaviour per se, but insulting words and behaviour which foreseeably will cause alarm or distress, and are therefore misrepresenting the debate. We do not understand the basis on which it is claimed that the right to cause distress and alarm through by way of gratuitous insult is protected by the right of freedom of expression.” (Rainbow Hamlets)

Key views for removal of ‘insulting’

“Removal of the reference to insulting words or behaviour from section 5 would mitigate the worst excesses of an offence which has been used in practice to undermine peaceful protest. Liberty urges the Government, however, to consider the wider impact of section 5 and the inclusion of insulting words or behaviour as elements of the offence set out at section 4A.” (LIBERTY)

In our view, it is especially problematic when the alleged victim of the offence is the arresting officer (JUSTICE)

We therefore support the removal of the word ‘insulting’ from s5 POA, although we believe that in addition consideration should be given to reform of the offence as a whole, and at the least that clearer guidance should be issued on the use of even a narrower incarnation of the offence. (JUSTICE)

People may not agree with Christian sexual ethics. It is one of many views which might be regarded as controversial in modern society. But it is quite wrong for the police to seek to silence the expression of these views. Section 5 seems to be regarded as the preferred method of doing so. (Christian Institute)

“Abuse is serious anti-social behaviour which most people would expect the police to try to curb. But insult is such a subjective concept that many people feel it is not appropriate for police intervention. If the police were to arrest everyone who had ever insulted someone and caused them distress, they would have to arrest much of the population.” (Christian Institute)

The sheer breadth of section 5, with its highly subjective concept of being “insulted”, is inherently problematic. I do not believe it can be resolved simply by issuing guidance. (Dominic Raab MP)

It is my considered view that in all foreseeable categories of case, the removal of the word ‘insulting’ from section 5 is highly unlikely to affect the State’s ability to prevent or to prosecute those aspects of criminal behaviour relied upon by the government in its response to the proposed amendment. (Lord MacDonald of River Glaven QC)

Government response

Civil liberties and faith groups have long campaigned for removal of the word ‘insulting’ on the grounds that it restricts free speech. The Government is committed to restoring the rights to non-violent protest and wanted to gain a better understanding of the significance of the word ‘insulting’ and the protection it offers to groups targeted by hate crime. It wanted 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. It also wanted to examine the threshold for arrest and whether legislative change or further guidance on the interpretation of the law was the way forward.

The consultation raised some complex issues which required very careful consideration. The arguments were finely balanced and it has therefore been prudent for the Government to take its time in reaching a decision.

The responses show a clear polarisation between those on one hand who believe that as a minimum ‘insulting’ should be removed from section 5 to protect freedom of expression, and those on the other who feel that insulting words or behaviour can infringe people’s rights to go about their business without being caused harassment, alarm or distress. Furthermore, there is not a clear consensus of views on either side of the argument, within groups or sectors, as seen by a difference of opinion within minority groups, police and criminal justice professionals. There was further disagreement between those seeking to amend section 5 as to the extent it should be amended and what constitutes unacceptable behaviour that the public should expect the police to have powers to prevent.

In addition to the responses to the public consultation, the Government has taken into account the views expressed in Parliament during the passage of the Crime and Courts Bill. On 12 December 2012, the House of Lords voted in favour of an amendment to that Bill, which would remove the word ‘insulting’ from section 5 of the Public Order Act 1986.

In conclusion, having considered the views of respondents to the consultation, the Government intends to remove the word ‘insulting’ in section 5. The Government believes that behaviour such as swearing at police officers and burning poppy wreaths on Remembrance Day are completely unacceptable and the police must have the powers they need to deal with them. However, in light of the Director of Public Prosecutions’ view that the word ‘insulting’ could safely be removed without undermining future prosecutions, the Government has decided not to reverse the amendment to this effect made on 12 December 2012 in the House of Lords to the Crime and Courts Bill.

List of contributors

Combined list, in alphabetical order, of key organisations/groups that responded to the consultation.

Responses were received online, via email and post from the following organisations. This list does not name those who submitted a response in a personal capacity. Those who did so included members of the general public, serving and retired officers.

Policing bodies and forces

Association of Chief Police Officers of England and Wales
British Transport Police
Cheshire Constabulary
Cheshire Police Authority
Hertfordshire Constabulary
Her Majesty's Chief Inspector of Constabulary
Humberside Constabulary
Lancashire Police Authority
Leicestershire Constabulary
Metropolitan Police Service
Norfolk Constabulary
Police Federation of England and Wales
Police Superintendent's Association for England and Wales
Staffordshire Police Authority
West Yorkshire Constabulary survey
Wiltshire Constabulary
West Mercia Constabulary

Minority groups

Blackpool Lesbian Gay Bisexual and Transgender Forum
British Sikh Consultative Forum
British Naturism
British Humanist Association
Diverse CYMRU
LGBT Partnership
Naturist Action Group
National Secular Society
Rainbow Hamlet LGBT
Stonewall

Civil liberty groups

Liberty
Justice
The Peter Tatchell Foundation

Christian groups

Christian Institute
Lawyers Christian Fellowship
Christian Media Trust
Christian Concern
CARE
Christian Voice
Affinity

Criminal justice

The Law Society
Justice Clerks Society
Criminal Justice Alliance
Magistrates Association of England and Wales
Criminal Sub Committee of the Council of HM Circuit Judges

Local government, Councils and Community Safety Partnerships

Birmingham CSP
Salford City Council
Safer Stockton Partnership
Rotherham Metropolitan Council
Wandsworth Council

Parliamentarians

Andrew Robathan MP
Dominic Raab MP
John Glen MP
Adam Afriyie MP
Karl McCartney MP
Edward Lee MP

Other

The British Association of Shooting and Conservation
British Fur Trade Association
Alliance Party of Northern Ireland
Stop Watch

