

ce HB

2



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

Prime Minister

25 October 1985

You were warned
about borders in
the piece.

MB

Dear Tim

JN 25/10

POLICE AND CRIMINAL EVIDENCE ACT

You asked for a note on police anxieties about the Act.

The aim of the Act is to clarify police powers, and to extend them where they are inadequate. It also provides safeguards designed to maintain public confidence in police operations, and thus to assist in the overall police task. The police are broadly satisfied with the powers, but there remains some discontent over aspects of the safeguards.

The stop and search powers are the most significant new power provided by the Act: such powers have only existed previously in London and a few major centres and they have not included searches for offensive weapons. The Act makes good both these deficiencies, but lays down clear associated procedures in a Code of Practice. Although these are new powers in theory, practice has often been to act as though they did exist. The police feel that the Act and Code may serve to focus public attention on the limited circumstances in which they may lawfully be used. The Government's view has been that stop and search powers have a value in the investigation and prevention of offences, but that they have to be used with the restraint required by the Act if they are not to damage police/public relations.

Tim Flesher, Esq

The Act creates a new power to enter premises under warrant to search for evidence of serious crime. This was the area which led to the greatest criticism of the original Police and Criminal Evidence Bill, and the provisions were subsequently modified to protect personal and confidential material. Some police officers argue that these limitations have made the power complex and unworkable. The safeguards apply, however, to the sort of material (for example, in the hands of doctors and the clergy) to which the police would not in any case have sought access. Though the power may not be used widely, it does give the police an important tool previously unavailable to them for use in major investigations.

The Act also creates a new scheme of general application to powers of arrest: for the first time the possibility of arrest will exist for all offences, rather than to only some. The new arrest powers require some learning by existing officers, but it should be easier for recruits to assimilate, and it will provide a more effective means of enforcing a range of offences where the police have hitherto been virtually powerless.

The main concern of the police service has focussed on the Act's detention provisions. The intention is to establish a firm basis for the powers of the police over suspects at police stations. The Act makes clear the circumstances in which suspects may be searched, the length of time for which they may be held and the precise circumstances in which access to a lawyer may be denied. These are areas where the previous law was uncertain, and it should be of advantage to the police to know exactly what they are entitled to do with prisoners.

The converse of this is the emphasis placed by the Act and the Codes upon proper documentation of the decisions taken about prisoners. It is this above all which has occasioned police anxiety. Breach of the provisions of the Codes of Practice renders an officer liable to disciplinary proceedings, and there is concern that minor deviation from these precise guidelines will lead to the penalising of the officer concerned and to the tainting of any evidence obtained from interrogation. Experience already suggests that many of these anxieties will lessen as the police become used to the provisions. The longer

E. R.

that individual forces have been experimenting with the provisions, the less anxiety there appears to be and the greater the recognition that the scheme is in many respects a rationalisation of existing procedures. There is also some recognition that the provisions need to be approached sensibly, and not blamed for their inability to cope with circumstances in which no procedures could have coped perfectly. (In the aftermath of the Brixton riots, for example, great practical difficulties were encountered at the one police station to which all those arrested were taken: the police now recognise that the difficulties encountered stemmed from the decision to concentrate prisoners in this way and that in a future incident dispersal to a number of stations would be preferable.)

It is likely that police concern over the supposed new pressures being placed upon them by the provision for the custody officer (on whom the main responsibility for the correct treatment of prisoners will rest) will continue for some time. The Home Office has always acknowledged that the custody officer function might require some additional sergeant posts in some forces, and has indicated that consideration would be given on merits to any consequent applications for changes in complement. Authority has been given to variations in complement in a few forces for reasons associated with implementation of the Act, and a close watch will continue to be kept on any evidence that the provisions are tending to confine officers to police station duties. But the general impression is that the service is (perhaps understandably) playing safe in the manpower it is devoting to this task. It is likely that with greater operational experience the police will find not only that there are not the pitfalls now being predicted, but that the Act will as intended increase professionalism among officers.

The Act continues to be criticised by those primarily interested in civil liberties because of the new powers it gives to the police. Police forces by contrast use the safeguards in the Act as an argument in their campaigns for greater resources. Only experience will tell whether their worries prove correct once they become accustomed to the operation of the Act, and this is one of the points which will fall to be thoroughly examined when proposals for new manpower are assessed.

As the Prime Minister will be aware, certain problems over the duty solicitor scheme associated with the Act surfaced late in the day. A note about the scheme and the preparations for its implementation is attached.

Yours,
S. W. Boys Smith

S W BOYS SMITH

DUTY SOLICITOR SCHEME

The right of access to legal advice is one of the principal safeguards in the Act for persons at police stations, and the Act provides for a duty solicitor scheme to ensure that legal advice is readily available whenever required.

This was one of the recommendations for the Royal Commission on Criminal Procedure, and the Government's commitment to it was a key element in the Parliamentary passage of the Bill. Field trials earlier in the year showed, however, that the Royal Commission's estimate of the costs, on which subsequent calculations had been based, was likely to prove a serious underestimate. In July the Lord Chancellor announced that the scheme would

operate in a manner designed to control demands on legal aid, by placing a limit on the amount of advice which could be given in less serious cases.

Although this still represents a significant increase in the amount of advice being given to suspects, the Law Society, who will have to operate the scheme, have argued that the arrangements fall short of the protection which should be available. They are likely to make an issue of the restrictions when the Codes come to be debated in November. The signs are that in some areas, notably London, a full duty solicitor scheme may not be in operation by 1 January next year. From the police's point of view the scheme offers few problems and is generally welcomed: it will simplify the process of contacting a lawyer, and having a lawyer present is seen by most police officers as being as much a safeguard for them as it is for the suspect.

