| Title: **Protection of Freedoms Bill**<br>**Lead department or agency:**<br>Home Office<br>**Other departments or agencies:**<br>Ministry of Justice<br>Department for Education<br>Department for Transport<br>Cabinet Office<br>Department of Health | Impact Assessment (IA)<br>**IA No:** HO0037<br>**Date:** 3 October 2011<br>**Stage:** Final<br>**Source of intervention:** Domestic<br>**Type of measure:** Primary legislation |
|---|---|

# Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**

The Coalition's Programme for Government launched by the Prime Minister and Deputy Prime Minister on 20 May 2010 included an undertaking to "*be strong in defence of freedom. The Government believes that the British state has become too authoritarian, and that over the past decade it has abused and eroded fundamental human freedoms and historic civil liberties. We need to restore the rights of individuals in the face of encroaching state power, in keeping with Britain's tradition of freedom and fairness*". This included a commitment to introduce a 'Freedom Bill'.

**What are the policy objectives and the intended effects?**

What is now known as the Protection of Freedoms Bill contributes to the implementation of 12 other specific commitments (see Evidence Base page 5 for the full list). These relate to:

- the regulation of biometric data;
- the regulation of surveillance;
- the protection of property from disproportionate enforcement action;
- counter-terrorism powers;
- safeguarding of vulnerable groups and disclosure of criminal convictions etc.; and
- freedom of information and data protection.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**

- Option 1: Retain the current position. Do nothing
- Option 2: Introduce the Protection of Freedoms Bill that will take a significant step toward reducing state interference and restoring freedoms. Implement the Bill in full

Option 2 is the preferred option to progress the Government's ambition to reduce the burden of the state on its citizens and to restore the balance between the Government's duty to keep communities safe and protecting individual civil liberties.

| | |
|---|---|
| **When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?** | Review dates have been set for individual provisions in the Bill |
| **Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?** | See individual impact assessments |

**Ministerial Sign-off** For final proposal stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

**Signed by the responsible Minister:**  Date: 06-10-11

# Summary: Analysis and Evidence

Policy Option

**Description: Implement the Bill in full**

| Price Base Year | PV Base Year 2011 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|---|---|---|---|---|---|
| | | | **Low:** Optional | **High:** Optional | **Best Estimate: 407.4m** |

| COSTS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---|---|---|---|---|
| **Low** | Optional | 3 | Optional | **Optional** |
| **High** | Optional | | Optional | **Optional** |
| **Best Estimate** | 31.8m | | 51.4m | **481.7m** |

**Description and scale of key monetised costs by 'main affected groups'**

The main affected groups in relation to the changes to the destruction and retention of DNA and fingerprints are the police as a result of having to destroy fingerprints and DNA samples and profiles. The main affected group in relation to the wheel clamping is the parking industry due to a loss of fee income (partly offset by abolition of licensing) and the annual cost of funding an independent appeals service in relation to keeper liability for certain unpaid parking charges. There will be transitional capital costs to make improvements to the vetting and barring and criminal records processes which will be recovered from the fees paid by customers

**Other key non-monetised costs by 'main affected groups'**

The police, schools and further education colleges, local authorities, the Information Commissioner's Office, public bodies subject to the Freedom of Information Act (FOIA) 2000, forensic science providers, landowners and businesses will be required to make administrative changes in relation to a number of the provisions in the Bill.

| BENEFITS (£m) | Total Transition (Constant Price) | Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---|---|---|---|---|
| **Low** | Optional | | Optional | **Optional** |
| **High** | Optional | | Optional | **Optional** |
| **Best Estimate** | 0.0 | | 101.9m | **889.1m** |

**Description and scale of key monetised benefits by 'main affected groups'**

The main affected groups in relation to the wheel clamping are businesses and the public, as a result of not having to pay clamping and towing release fees. In addition, vehicle immobilisers will not have to pay for a licence from the Security Industry Authority (SIA). The main affected groups in relation to the publication of datasets are the public authorities as defined in Schedule 1 to the FOIA, and individuals and other organisations as a result of increasing availability of public information for re-use and commercial exploitation. In relation to the criminal records scheme, the cost (under current scheme) would have been £36 for an enhanced criminal records disclosure plus £28 to register with the scheme (total of £64). As a result of the new proposals, the cost per person will be only £44 for a disclosure (raised from £36 in April 2011).

**Other key non-monetised benefits by 'main affected groups'**

The provisions of the Bill will enhance individual privacy rights through, for example, the development of a framework for the retention of fingerprints and DNA in relation to law enforcement and introducing parental consent for the use of biometric information systems in schools. Changes to the criminal records and vetting and barring regimes will benefit individuals and public and private sector organisations by providing a more efficient and proportionate process.

**Key assumptions/sensitivities/risks** **Discount rate (%)** 3.5

The above monetised and non-monetised costs and benefits fall to the public and private sectors. Some of the key assumptions and risks set out in the individual impact assessments are unknowns and have not yet been tested.

| Direct impact on business (Equivalent annual)(£m): | | | In scope of OIOO?: | Measure qualifies as |
|---|---|---|---|---|
| **Costs:** | **Benefits:** | **Net:** | **Yes/No** N/A | N/A |

# Enforcement, Implementation and Wider Impacts

| | | | | | |
|---|---|---|---|---|---|
| What is the geographic coverage of the policy/option? | | | England & Wales; and UK | | |
| From what date will the policy be implemented? | | | Various dates from 2012 | | |
| Which organisation(s) will enforce the policy? | | | See individual IAs | | |
| What is the annual change in enforcement cost (£m)? | | | See individual IAs | | |
| Does enforcement comply with Hampton principles? | | | Yes | | |
| Does implementation go beyond minimum EU requirements? | | | No | | |
| What is the $CO_2$ equivalent change in greenhouse gas emissions? (Million tonnes $CO_2$ equivalent) | | | **Traded:** N/A | **Non-traded:** N/A | |
| Does the proposal have an impact on competition? | | | No | | |
| What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable? | | | **Costs:** N/K | **Benefits:** N/K | |
| Annual cost (£m) per organisation (excl. Transition) (Constant Price) | **Micro** | **< 20** | **Small** | **Medium** | **Large** |
| Are any of these organisations exempt? | No | No | No | No | No |

# Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

| Does your policy option/proposal have an impact on…? | **Impact** | **Page ref within IA** |
|---|---|---|
| **Statutory equality duties**[1] Statutory Equality Duties Impact Test guidance | Yes | Individual EIAs prepared where required |
| **Economic impacts** | | |
| Competition Competition Assessment Impact Test guidance | Yes | see individual IAs |
| Small firms Small Firms Impact Test guidance | Yes | see individual IAs |
| **Environmental impacts** | | |
| Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance | No | |
| Wider environmental issues Wider Environmental Issues Impact Test guidance | No | |
| **Social impacts** | | |
| Health and well-being Health and Well-being Impact Test guidance | No | |
| Human rights Human Rights Impact Test guidance | Yes | see Bill ECHR Memorandum |
| Justice system Justice Impact Test guidance | Yes | see individual IAs |
| Rural proofing Rural Proofing Impact Test guidance | No | |
| **Sustainable development** Sustainable Development Impact Test guidance | No | |

[1] Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

# Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

## References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

| No. | Legislation or publication |
|---|---|
| 1 | The Coalition: Our Plan for Government, HMG (2010) |
| 2 | Impact Assessment – Retention of DNA and fingerprints |
| 3 | Impact Assessment – Protection of Biometric information of children in schools |
| 4 | Impact Assessment – Local Authorities use of surveillance under RIPA |
| 5 | Impact Assessment – Wheel clamping reform |
| 6 | Impact Assessment – Introduction of keeper liability for parking charges |
| 7 | Impact Assessment – Section 44 stop and search powers (anti-terrorism legislation) |
| 8 | Impact Assessment – Changes to the vetting and barring scheme and to the Criminal Records Regime (Part 5 of the Police Act 1997) |
| 9 | Impact Assessment – Publication of datasets |
| 10 | Impact Assessment – Extending the coverage of the Freedom of Information Act 2000 |

## Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

## Annual profile of monetised costs and benefits* - (£m) constant prices

| | $Y_0$ | $Y_1$ | $Y_2$ | $Y_3$ | $Y_4$ | $Y_5$ | $Y_6$ | $Y_7$ | $Y_8$ | $Y_9$ |
|---|---|---|---|---|---|---|---|---|---|---|
| **Transition costs** | 18.1m | 3.2m | 10.5m | | | | | | | |
| **Annual recurring cost** | 27.9m | 35.8m | 106.1m | 101.6m | 77.9m | 32.8m | 32.9m | 32.9m | 32.9m | 32.9m |
| **Total annual costs** | 46.0m | 39.0m | 116.6m | 101.6m | 77.9m | 32.8m | 32.9m | 32.9m | 32.9m | 32.9m |
| **Transition benefits** | 0 | | | | | | | | | |
| **Annual recurring benefits** | 55.1m | 55.3m | 135.6m | 136.5m | 120.2m | 94.6m | 105.5m | 105.5m | 105.5m | 105.5m |
| **Total annual benefits** | 55.1m | 55.3m | 135.6m | 136.5m | 120.2m | 94.6m | 105.5m | 105.5m | 105.5m | 105.5m |

* For non-monetised benefits please see summary pages and main evidence base section

Microsoft Office
Excel Worksheet

# Evidence Base (for summary sheets)

**Background**
In May 2010, the Coalition set out its Programme for Government. This set of commitments included a number of proposals intended to "restore the rights of individuals in the face of encroaching state power", and the Queen's speech included a commitment to introduce a Freedom Bill (chapter three, Civil Liberties, in the Programme for Government). The Protection of Freedoms Bill intends to implement a number of the proposals set out in the Programme for Government; however, it is not the only legislative vehicle for taking forward the government's agenda in this area and is not the single solution to restoring civil liberties.

The Home Office business plan 2011-15 http://www.homeoffice.gov.uk/publications/about-us/corporate-publications/business-plan-2011-15/ sets out the Department's priorities for protecting freedom and restoring civil liberties and is the tool by which the Department is held to account for the delivery of the Coalition commitments.

The Bill will also address some of the major issues that the public highlighted as areas of concern to them on the *Your Freedom* website, which ran in the summer of 2010. Many of the public's comments will be included in this legislation (for example, the ban on wheel clamping and changes to the DNA retention policy) or other legislation.

The Bill will contribute to the implementation of 12 specific commitments in the Coalition Agreement. The main provisions will -

- Adopt the protections of the Scottish model (subject to some modifications) for the DNA database;
- Prohibit the finger-printing of children in schools and colleges without parental permission;
- Further regulate CCTV and ANPR systems through the introduction of a statutory code of practice overseen by an independent Surveillance Camera Commissioner;
- Require local authorities' use of powers under the Regulation of Investigatory Powers Act (RIPA) 2000 to be subject to judicial approval;
- Tackle rogue private sector wheel clampers by prohibiting the wheel clamping and towing away of vehicles without lawful authority;
- Introduce safeguards against the misuse of anti-terrorism legislation by significantly restricting the use of 'without reasonable suspicion' stop and search powers and reducing to 14 days the maximum period of pre-charge detention for terrorist suspects;
- Restrict the use of powers of entry by State officials;
- Reform of the criminal records regime and vetting and barring scheme to bring them back to common sense levels;
- Introduce a mechanism so that persons with an historical conviction for consensual gay sex with over-16s may apply for details of such a conviction to be removed from police records;
- Increase transparency by extending the scope of the Freedom of Information Act (FOIA) 2000 to cover companies wholly owned by more than one public authority, by introducing a requirement on public authorities to publish datasets in a reusable format, and by enhancing the independence of the Information Commissioner; and
- Defend trial by jury by repealing the provision for judge-only serious fraud trials in section 43 of the Criminal Justice Act 2003.

This overarching impact assessment has been developed to provide an overview of the costs and benefits of the Bill, taking into account the individual impact assessments that were produced for some, but not all, of the provisions in the Bill. Some of the provisions listed above have little or minor impact and therefore require no impact assessment. Others, such as the regulation of CCTV and limiting the powers of entry will require impact assessments at a future date when the respective codes of practice are developed. The following individual impact assessments have been prepared –

- Retention of DNA and fingerprints;
- Protection of biometric information of children in schools;
- Local authorities' use of covert investigatory powers under RIPA;

- Prohibition of wheel clamping without lawful authority
- Introduction of keeper liability for certain parking charges;
- Section 44 stop and search powers;
- Changes to the vetting and barring scheme and to the criminal records regime (Part 5 of Police Act 1997);
- Publication of datasets; and
- Extending coverage of the FOIA.

**Problem under consideration and rationale for intervention**
The first duty of Government is to protect the public, but that duty must always be discharged carefully and never in a way which blatantly disregards people's historic civil liberties. The Bill is strong on defending security and on protecting and restoring civil liberties. The Government has abolished Identity Cards and the National Identity Register, and is introducing the Protection of Freedoms Bill, which will roll back state interference and reduce unnecessary imposition on citizens.

**Destruction and Retention of fingerprints and DNA**
The Government stated that it would "adopt the protections of the Scottish model for the DNA database".

Under the Police and Criminal Evidence (PACE) Act 1984 the DNA and fingerprints taken from persons arrested for an offence are retained indefinitely on the national DNA and fingerprint databases whether or not the person is subsequently convicted of an offence. On 4 December 2008, the European Court of Human Rights (ECtHR) found in the case of *S and Marper v United Kingdom* (ECHR 1581 http://www.bailii.org/eu/cases/ECHR/2008/1581.html) that the provisions in PACE, permitting the "blanket and indiscriminate" retention of DNA from unconvicted individuals violated Article 8 (right to privacy) of the European Convention on Human Rights (ECHR). In response to this judgment, the then Government brought forward provisions in what are now sections 14 to 23 of the Crime and Security Act 2010 (2010 Act) which, amongst other things, allowed for the retention of fingerprints and DNA profiles for six years of persons arrested for, but not convicted of, an offence. Sections 14 to 18, 20 and 21 of the 2010 Act established a separate approach to the retention DNA profiles and fingerprints by the police for national security purposes and made provisions for the extended retention of DNA and fingerprints on national security grounds. These provisions of the 2010 Act are not in force and will be repealed by the Protection of Freedoms Bill.

The Protection of Freedoms Bill will replace the provisions in the 2010 Act with new provisions broadly modelled on the arrangements in Scotland. Under the Bill, the retention periods for the various categories of data (fingerprints and DNA samples and profiles) depend on a number of factors including the age of the individual concerned, the seriousness of the offence or alleged offence, whether the individual has been convicted, and (for under-18s) whether it is a first conviction. See individual DNA impact assessment for full details Protection of Freedoms Bill | Home Office.

In relation to national security and counter terrorism, the police and Security Service have made clear that national security investigations can last considerable periods of time (in some cases, investigations into individuals have lasted as long as 25 years). A blanket, defined retention timeframe would therefore be damaging to national security. Consequently, DNA profiles and fingerprints should be allowed to be retained beyond any otherwise defined limit where there is a national security case for doing so. This will require a review every two years on a case by case basis and all such determinations would be reviewed by the Commissioner for the Retention and Use of Biometric Material who would be able to overrule a national security determination if he or she was satisfied that a determination should not be made.

The Bill will also put the National DNA Database on a statutory footing.

Rationale
The Government is committed to restoring the overriding presumption that a person is innocent until proven guilty; as of 31 March 2010, just over one million people were on the National DNA Database without a current recorded conviction. These proposals represent an important shift away from the previous Administration's policy of keeping as many people as possible on the Database, whether convicted or not, and will focus on ensuring that the Database is made up primarily of convicted individuals.

Experience in Scotland has shown that the retention of DNA and fingerprints from those charged with serious offences but not subsequently convicted is necessary to ensure that important detections are not lost. Research conducted in 2008 by Professor Jim Fraser, Director of the University of Strathclyde's Centre for Forensic Science[2], found that "retention of forensic data for a three-year period, from individuals subject to proceedings for relevant sexual or violent offences but not convicted, is in principle, appropriate." Professor Fraser also found that "there was extensive support [for the Scottish model] in the consultation responses received. This included the views of police organisations and associations in addition to other agencies and individuals. Responses from independent groups were very positive with the Nuffield Council on Bioethics expressing the view that this approach was 'appropriate and balanced'. GeneWatch also responded in a similarly positive manner".

A number of organisations (including Black Mental Health, the Equalities & Human Rights Commission, GeneWatch and Liberty) who responded to the 2009 consultation on the DNA retention proposals of the previous government, considered that the Scottish model of DNA retention was considerably more proportionate than the proposals in the 2009 consultation document. It is on this basis that a retention period of three years, extendable to a maximum period of five years on application to the courts, has been proposed for individuals charged with but not convicted of serious violent or sexual offences.

**Protection of biometric information of children in schools**

The Programme for Government stated that "we will outlaw the finger-printing of children at school without parental permission".

A number of schools in England and Wales currently use automated fingerprint recognition systems for a variety of purposes, such as controlling access to school buildings, monitoring attendance, recording the borrowing of library books and cashless catering. Iris, face and palm vein recognition systems are also in use, or have been trialled. The processing of biometric information is subject to the provisions of the Data Protection Act 1998 (DPA). The DPA requires the data subject to give consent, or one of a number of other conditions be met, before his/her personal data can be processed. However, there is no requirement, in the case of a person under the age of 18, for consent also to be obtained from the data subject's parents.

Although no official figures exist for how many schools have implemented biometric systems there are indications that their use is widespread. Figures reported come from freedom of information requests by the media and interest groups from which it is estimated that 30% of secondary and 5% of primary schools use biometric systems (Clark, L. (2010) 'One in three secondary schools fingerprinting pupils as Big Brother regime sweeps education system', Mail Online available at: http://www.dailymail.co.uk/news/article-1285305/One-schools-fingerprinting).

The Bill will require schools and further education colleges to obtain the written consent of each parent before obtaining and subsequently processing their child's biometric information. The child (any pupil under 18) will also be able to refuse to provide their biometric data or allow it to be processed. If either the parents or child refuse to give their consent, the school or college will not be able to take/process that child's biometric information. In such circumstances, the school or college must ensure that reasonable alternatives are in place to allow the child to access such school services normally delivered through biometric information systems. This will prevent schools and colleges from disadvantaging children who (or whose parents) refuse to use biometric systems.

Consultation

In September 2010, the Department for Education wrote to 28 interest groups inviting their views on the Government's proposals and this new area of law. The interest groups included school sector stakeholders, children's rights groups, civil liberties groups and suppliers of biometric technologies. Fourteen organisations responded, the majority of which were civil liberties and children's rights groups. The following issues were raised -

- Informed consent - concerns were expressed that some parents and pupils may not be able to give consent because they would lack sufficient information about both the nature of biometric systems and the issues around their use. Examples where given of where parents received only positive information, often in the form of a sales pitch from suppliers of the technologies, rather than a balanced account of the benefits and risks.

[2] Consultation on the Acquisition and Retention of DNA and Fingerprint Data in Scotland (CRES 1058)

- The child's right to refuse - in general, respondents were in favour of pupils having the right to withhold their biometric data even if parents had consented.
- The upper-age limit - with regard to the requirement applying to pupils under age of 18, no respondent raised this as potentially conflicting with the right to privacy of a more mature child.
- Data security and the destruction of unnecessary data - respondents expressed concerns around the security of biometric data held in schools. In particular whether schools where currently applying appropriate security safeguards, such as encrypting stored data.
- It was further suggested that school leadership should be more aware of what they should do to protect biometric data and to ensure that it is properly erased when no longer needed. It was also suggested that schools should inform parents or pupils when their data has been deleted.
- Concerns were also raised regarding the bureaucratic and cost burdens the provisions would put on school and colleges. In particular in relation to gaining parental consent and providing alternatives for pupils.

The Department for Education intends to raise schools' awareness of the DPA requirements and the importance of protecting biometric data through guidance and other communication activities.

Rationale

The rationale for the intervention is based on equity and civil liberties rather than any concern to improve efficiency. The proposal is likely to have some financial impact on schools (administration and provision of alternative systems), however this is balanced against the non-financial benefit of protecting the civil liberties of children in schools and colleges.

**Local authorities' use of surveillance under RIPA**

The Programme for Government stated that "we will ban the use of powers in the Regulation of Investigatory Powers Act (RIPA) by councils, unless they are signed off by a magistrate and required for stopping serious crime".

RIPA is the law which governs the use of a number of covert techniques for investigating crime and terrorism. It was introduced to ensure that the use of covert techniques was properly controlled in line with the UK's human rights obligations. Using covert techniques allows a range of public authorities, (from the police and security agencies to local authorities and organisations, such as the Office of Fair Trading) to investigate suspected offences without alerting an individual that they are part of that investigation.

Local authorities can use three techniques. They can obtain Communications Data, use Directed Surveillance and use Covert Human Intelligence Sources (CHIS). RIPA requires that an authorisation is needed for the use of these investigatory techniques and local authorities can only use them if they are necessary to prevent or detect crime or prevent disorder and their use is proportionate to what is sought to be achieved.

Local authority use across the three techniques for the last two years is detailed below - communications data is based on figures in the annual reports of the Interception of Communications Commissioner; these figures are UK-wide and by calendar year. The figures for directed surveillance and CHIS are derived from information held by the Office of the Chief Surveillance Commissioner; these cover England, Wales and Scotland and are by financial year. Figures are not collated to reflect how many prosecutions and convictions have resulted.

| | **2008** | **2009** |
|---|---|---|
| **Communications Data** | 1,553 | 1,756 |
| | **2008/09** | **2009/10** |
| **Directed Surveillance** | 4,694 | 3,786 |
| **CHIS** | 121 | 113 |

Big Brother Watch (The Grim RIPA May 2010 – their fifth major report) has claimed that -

- Councils have carried out more than eleven surveillance operations using their RIPA powers every day over the last two years
- The report indicated that 372 local authorities in Great Britain had conducted surveillance in 8,575 cases between 1 April 2008 and 31 March 2009

- The Councils reported that this surveillance resulted in only 399 prosecutions (or 4.5% of authorisations)

The Bill will require local authorities' authorisations under RIPA relating to the acquisition and use of communications data, directed surveillance and CHIS to be subject to approval by a magistrate (or a sheriff in Scotland). An order-making power will enable the requirement for judicial approval to be extended to other public authorities eligible to use RIPA powers should Ministers decide to extend this regime in the future.

In parallel with the passage of the Bill, an order will be made (under existing powers in RIPA) to introduce a seriousness threshold for the use of directed surveillance by local authorities. Subject to limited exemptions (which relate to the enforcement of restrictions on the sale of age-related products such as alcohol and tobacco), local authorities will not be able to use directed surveillance when investigating an alleged offence, unless that offence meets or exceeds the threshold of a maximum penalty of six months imprisonment. Applying this threshold will restrict local authorities' use of directed surveillance to more serious cases.

Consultation
The development of this policy has been handled as part of the counter terrorism review and there was a public consultation as part of that review. During the consultation the Home Office received correspondence from a number of human rights groups including Liberty, Justice, a number of councils and the Local Government Association. The Home Office received some correspondence from members of the public.

Rationale
Local authorities have responsibility for a wide range of regulatory offences, including trading standards, employment of minors, consumer scams and environmental protection. It is accepted that it is necessary for local authorities to retain access to their RIPA investigatory powers, but that the circumstances in which councils may do so should be circumscribed and subject to judicial oversight.

There have been a number of concerns around local authority use of covert surveillance in less serious investigations, for example dog fouling or checking that an individual lives in a school catchment area. In cases like this, local authorities have been heavily criticised by the media and human rights groups as the use of covert surveillance is not considered proportionate and it does not safeguard an individual's human rights. The rationale for the intervention is based on equity and providing additional safeguards to ensure that local authorities actions are necessary and proportionate when conducting covert surveillance techniques.

**Wheel clamping reform**
The Programme for Government stated that the Government "will tackle rogue private sector wheel clampers".

Under the Private Security Industry Act 2001, anyone in England, Wales and Northern Ireland involved in the immobilisation of vehicles on private land with a view to charging a release fee (and related activities of blocking in and towing) must be licensed by the Security Industry Authority (SIA). An individual (rather than the company) must hold a vehicle immobilisation licence to carry out such activities and must observe certain requirements. There are approximately 1,550 (Licensing Statistics 2011) licence holders operating in the vehicle immobilisation field.

There has been a continuing high level of complaints made to the Home Office, SIA, DfT and Members of Parliament about wheel clamping and towing on private land, including the level of release fee charged, inadequate signs, immediate clamping or towing away and unreasonable behaviour by operatives (such as demanding immediate cash payment). Regulation of the industry by individual licensing has been in place since 2005 but has not prevented such unreasonable practices and problems. The Government believes that depriving the motorist of their vehicle until they pay a fee is a disproportionate sanction and is open to abuse. It has therefore proposed to ban vehicle immobilisation and towing without lawful authority.

Consultation
Before making its policy decision, the Government took into account responses received to a formal consultation carried out by the previous Government in April 2009 on the options for regulating wheel

clamping companies. Prior to and during the passage of the Crime and Security Act 2010, there was almost universal support by the media of government action to introduce a compulsory licensing scheme for wheel clamping firms. The Government also consulted the public on issues of concern through the Your Freedom website in July. Banning wheel clamping was one of the issues highlighted.
Vehicle immobilisation and towing away were banned in Scotland in 1992. Home Office officials have consulted a number of officials in the Scottish Government and Association of Chief Police Officers Scotland (ACPOS) about the effects of the judgement and the Scottish Government and ACPOS have found no evidence that this has caused any serious problems.

The Bill makes it a criminal offence to immobilise (for example, by attaching a wheel clamp), tow a vehicle or restrict the movement of a vehicle without lawful authority. Further provision is made to extend existing powers to make regulations for the police to remove vehicles illegally, dangerously or obstructively parked and to make the registered keeper of a vehicle liable in certain circumstances for charges incurred as a result of parking on private land. As a result of this ban, the existing licensing regime, administered by the SIA, for persons engaged in vehicle immobilisation will be repealed

The offences relating to wheel clamping under the Private Security Industry Act 2001 to be repealed are - section 3(2)(j): offence of immobilising or towing vehicles without a licence; and section 6: offence of using unlicensed wheel clampers. Individual parking operatives will no longer be required to pay £245 per annum for a licence from the SIA.

Rationale
The rationale for the intervention is that six years of licensing by the SIA of individual clampers has not helped solve the unreasonable practices or problems arising from rogue wheel clampers. The unreasonable practices associated with clamping and towing without lawful authority cannot be rectified by simply regulating these activities. It is estimated that most firms that carry out vehicle immobilisation already have other parking control methods in place (such as ticketing) and will be able to continue to work legally using those.

**Keeper liability for parking charges**
Currently under contract law it is only the vehicle's driver who is responsible for parking related charges incurred on private land. So even if a landowner or a parking company contacts the registered keeper, that person might deny that they were driving and refuse to pay or to provide, or not know, the name of the driver. It is anticipated that this problem will increase when the wheel clamping ban comes into place.

The British Parking Association (BPA) has reported that about 31% of parking charges issued via ticket remain unpaid, after the keeper has been pursued and that in many of these cases the registered keeper claims not to have been the driver and will not, or cannot, give the name of that person. The BPA suggests that this problem is becoming more widespread as motorists' lobbies become increasingly aware of the tactic, and highlight it as a potential evasion of responsibility.

Following the ban on vehicle immobilisation and removal without lawful authority, many landowners are likely to rely more heavily on a 'ticketing' regime. Making the vehicle keeper responsible for such charges will help landowners control parking restrictions on their property and ensure that the wheel clamping ban will not have a disproportionate and unintended effect on landowners' ability to fairly enforce their rights. Landowners will be able to enforce fairly and effectively against the registered keeper of a vehicle. Landowners should also see an increase in their business as more drivers park responsibly and space is made available for legitimate customers. Vehicle keepers will be reasonably held responsible for the consequences arising from the use of his or her vehicle. The vehicle keeper will not be liable if the vehicle was stolen or hired at the material time.

The Government has asked the BPA to establish an independent arbitration mechanism and the keeper liability provisions will not be introduced until this is in place. This is reasonable, and necessary, to achieve parity between the local authority and private enforcement regimes using keeper liability. Currently when a motorist receives a local authority penalty charge notice they can appeal to an independent parking adjudicator. Although a motorist can challenge a private parking charge in the courts or ask Trading Standards to consider whether the claim was fair, this can be daunting and people may often feel that they are obliged to pay.

Consultation
The Department for Transport consulted informally with the BPA, the largest professional association (over 700 corporate members) in Europe representing organisations in the parking and traffic management industry. Its members include, amongst others, manufacturers, car park operators, local authorities, airports and shopping centres. The BPA has asked for the same parking enforcement regime as that operated by local authorities on public roads, in particular the introduction of keeper liability for parking charges, on private land.

Rationale
The aim is to reduce unauthorised parking and its adverse impact on the general public, businesses and wider economy, whilst reducing the levels of unpaid charges when a parking ticket has been issued. The overall effect of keeper liability will be to provide greater consistency between the keeper liability enforcement regimes on the public road and private land. Motorists will have a clearer understanding of their responsibilities for a vehicle, thereby helping landholders to enforce their rights. There will be a reduction in inappropriate parking that causes a loss of business for landowners and benefit to the public as consumers will be able to park near businesses of their choice.

**Section 44 stop and search powers**
The Programme for Government includes a commitment to "introduce safeguards against the misuse of anti-terrorism legislation".

Sections 44 to 47 of the Terrorism Act 2000 (often referred to as "section 44") enable a police constable to stop and search pedestrians or vehicles within an authorised area in order to search for articles of a kind that could be used in connection with terrorism, whether or not the police constable suspects the presence of such articles. The power can only be used in a place and during a time where an authorisation is in place. An authorisation may be made by a senior police officer but must be confirmed by the Secretary of State if it is to last more than 48 hours.

The police have found the power useful in a range of counter-terrorism operations and situations because it is so flexible. However, the lack of requirement for any suspicion, in particular, has led to concerns about misuse, both in terms of the authorisation process, individual stops and searches, and the overall volume.

In June 2010, the European Court of Human Rights (ECtHR) made final its decision in the case *Gillan and Quinton v UK* which found the legislation to be in breach of Article 8 (the right to privacy and family life) of the European Convention on Human Rights (ECHR) because it was not "in accordance with the law". The ECtHR found the legislation was too broadly expressed and the safeguards in place were not sufficient. The Home Secretary took immediate steps to bring the use of the powers into line with the judgment whilst the issue was considered by a review.

The Bill makes changes to terrorism stop and search powers in response to the ECtHR's judgment. The Bill confers a power on a constable to search a vehicle if he or she reasonably suspects that a vehicle is being used for the purposes of terrorism; replaces the powers to stop and search persons and vehicles without reasonable suspicion in sections 44 to 47 of the Terrorism Act 2000 with a power that is exercisable in much more restricted circumstances; and similarly restricts the operation of the power to search persons and vehicles without reasonable suspicion for munitions and transmitters in Schedule 3 to the Justice and Security (Northern Ireland) Act 2007.

The new stop and search power replacing that in section 44 will be subject to a number of safeguards and the Secretary of State will be placed under a duty to prepare a Code of Practice containing guidance on the use of the powers.

Consultation
The counter-terrorism and security powers review was conducted by the Home Office with the full involvement of other government departments, the police, prosecutors and intelligence and security agencies. The Home Office also wrote to key organisations including civil liberty and human rights organisations and those representing the legal profession to make them aware of the review and offering to provide further advice on how they could contribute. Consultation meetings were held in Edinburgh, Belfast, Manchester, Birmingham and London - over 190 organisations were invited to these meetings, such as community groups (including representatives of all the major religions and beliefs), local police

forces, probation and prosecutors, local councils, academics, youth organisations, equality groups and representatives of the legal profession. A dedicated Home Office e-mail and postal address was also provided for those who wanted further information on the review or who wanted to submit contributions.

Rationale

The rationale for the intervention is that there has been significant public, NGO and parliamentary concern over the breadth of section 44 and its misuse by the police. The independent reviewer of terrorism legislation, Lord Carlile, has repeatedly highlighted inconsistencies in the use of section 44 across police forces. On the *Your Freedom* website, repealing section 44 was in the top six most popular ideas in the civil liberties section. The policy objectives are to ensure that the terrorism no-suspicion stop and search powers are necessary, proportionate and effective and that there are sufficient safeguards to prevent misuse of the power. The terrorism stop and search powers must be lawful (including compliance with the ECtHR judgment) whilst also ensuring that the police have the necessary powers to protect the public from the threat of terrorism.

**Changes to the Vetting and Barring Scheme**

The Programme for Government stated that "we will review the criminal records and vetting and barring regime and scale it back to common sense levels".

The vetting and barring scheme (VBS) was set up under the Safeguarding Vulnerable Groups Act 2006, based on the recommendations of Lord Bichard in 2004 following his public inquiry into the tragic murders of Holly Wells and Jessica Chapman in 2002. The key recommendation was to establish a scheme for the registration of people wishing to work or volunteer with children or vulnerable adults. Those working very closely with children and vulnerable adults on a regular basis (known as "regulated activity") and including roles such as teachers, nurses and social workers would have had to apply to become registered with the scheme.

The current Scheme, which has only been partially rolled-out, has been criticised for being too bureaucratic and can be accused of assuming that people who want to work with vulnerable groups are guilty until proven innocent. In June 2010, Ministers announced that the planned implementation of the VBS was to be halted, pending a thorough remodelling of the Scheme. The Home Secretary announced the terms of reference, which were published jointly by the Home Office and Departments for Education and Health, on 22 October 2010 in a Written Ministerial Statement. The terms of reference for the review of the criminal records regime, to run in parallel with the vetting and barring review, were also announced.

The provisions in the Bill are to –

- Retain but revise the barring scheme;
- Create a single organisation to bring together the barring and criminal records disclosure services (Disclosure and Barring Service);
- Redefine the activity covered by the barring regime ("regulated activities");
- Remove the category "controlled activity";
- Remove any requirements for individuals to register with the barring scheme and do away with continuous monitoring;
- Place a duty on employers to undertake a criminal records check on persons entering or working in regulated activity;
- Provide a power for the barring authority (currently the Independent Safeguarding Authority (ISA)) to review barring decisions of its own volition; and
- Change the information sharing arrangements.

In addition to introducing the duty to check on barred status, criminal sanctions are maintained in respect of working in regulated activities whilst barred, and knowingly employing a barred person in regulated activities. The duty to check is expected to be subject to supervision by the various regulatory bodies working in the relevant sectors. Criminal offences will be subject to police investigation in the normal way.

Consultation

The remodelling review has carefully considered whether a barring scheme is needed at all. The review of the regime was prompted, at least in part, by concerns voiced by businesses, voluntary groups, organisations and individuals that the Scheme as currently constituted was disproportionate and

imposed a major bureaucratic and administrative burden. Since October, the review working group has consulted with, and received contributions from, almost 200 stakeholder groups. The overwhelming feedback is that stakeholders seek –

- To retain a central barring function, albeit with a reduced scope
- To be able to check a central barred list
- To have access to fully portable and regularly updated criminal records disclosures

Rationale
A key consideration of the remodelling review has been proportionality of the scheme to its safeguarding aims. Despite the well-intentioned introduction of the Scheme, and despite its merits, many perceive that it developed into a complex and cumbersome central bureaucracy, bringing far too many people within its scope. The barring of unsuitable people from working in particular areas is clearly justified, but the Scheme as a whole needs to be balanced against the rights of the vast majority of people working in such employment.

To support these measures, changes to the criminal records regime will enable greater "portability" of criminal records checks by providing updated status information to employers (as outlined below).

**Changes to the criminal records regime (Part 5 of Police Act 1997)**
Part 5 of the Police Act 1997 provides for the disclosure of centrally held convictions and cautions and, subject to the police assessment of relevancy, of other locally held police information. The criminal records regime has been identified as being disproportionate and unduly burdensome. The Government asked Mrs Sunita Mason (the Independent Adviser for Criminality Information Management) to carry out an independent review, the terms of reference for which were published in October 2010. Mrs Mason submitted a first report on the retention and disclosure of information held on the PNC in March 2010, during the previous administration (2005 to 2010) http://library.npia.police.uk/docs/homeoffice/balanced-approach-criminal-record-information.pdf. The Government has already accepted a significant number of Mrs Mason's recommendation from her first review and some of the recommendations are being furthered in the current review.

The Bill makes a number of changes to Part 5 of the Police Act 1997 these are –

- Change the relevancy test the police apply to intelligence and other information which they hold from "might be relevant" to "reasonably believes to be relevant";
- Introduce the scope for the Secretary of State to issue guidance which the police must have regard to in making decisions about the relevancy of information;
- Remove the provision which allows for the disclosure of information to a potential employer even where the police judge that same information should not be disclosed to the person applying for the role;
- Enable decisions about the relevancy of information to be taken regionally or centrally, rather than by each individual police force as at present (regionalisation);
- Introduce a system for updating criminal record certificates;
- Issuing certificates to the applicant only;
- Improving systems for resolving disputes and representations; and
- Introduce an age limit.

The proposals will have a significant impact in terms of reducing regulation and bureaucracy. In particular, the new capacity to update certificates and improve their portability between roles will reduce the need to obtain multiple certificates and the burden that places on both applicants and employers. Sending certificates to the applicant only will allow any disputes about the contents to be dealt with before the information is sent to the employer and cut out much of the bureaucracy and delay created by the current disputes process. Tightening up the decision making process around what is disclosed on certificates will reduce the amount of information employers have to consider and help them to concentrate and what is actually relevant.

Rationale
The rationale for the intervention is to provide for a more efficient and proportionate regime of criminal records checks. The changes contained in the Bill will also provide greater equity in the way in which

(centralisation and sending certificates to the applicant only) and to the extent to which (relevancy test and independent disputes process) police information is shared.

**Extending coverage of the Freedom of Information Act 2000 and the Publication of datasets**
The Coalition agreement included commitments to "extend the scope of the Freedom of Information Act to provide greater transparency" and "to create a new 'right to data' so that government-held datasets can be requested and used by the public, and then published on a regular basis".

The Bill will make the following changes to the Freedom of Information Act (FOIA) 2000 so as to –

A. Extend the FOIA to companies wholly owned by two or more public authorities (the Act already applies to companies wholly owned by one public authority)
B. Promote the publication, release and re-use of datasets by requiring public authorities to publish or release datasets in response to requests or as part of their publication schemes as available for re-use under the new Open Government Licence, and where reasonably practicable, in a re-useable format.

(A) Section 6 of the FOIA states that 'publicly-owned companies' are classed as public authorities for the purposes of the Act and are therefore subject to its requirements. Section 6 is interpreted to mean that a 'publicly owned company' is one wholly owned by the Crown or a single public authority. However, companies wholly owned by two or more public authorities are not considered to fall within Section 6 and are therefore outside the scope of the Act. This is considered to be illogical and inconsistent with the intentions of the Act. The Government intends to remove this anomaly and bring companies wholly owned by more than one public authority within the scope of the FOIA.

Since coming into force in 2005, the FOIA is now widely used across central and local government and the wider public sector. The primary objective of the FOIA is to increase the openness, transparency and accountability of the bodies it covers. The Government considers that the right to information also:

- Provides more information about how taxpayers' money is spent;
- Enables greater scrutiny of public services and allows the public to gain information about services that affect them;
- Provides the context for better informed public debate;
- Holds bodies to account for decisions that affect the public; and
- Eliminates waste and duplicated effort allowing for more efficient and effective public services.

The intended effect of the extension of the FOIA to companies wholly owned by more than one public authority is to ensure that they are subject to the same scrutiny as companies currently subject to the legislation and that, as a result, they become more open, transparent and accountable.

(B) The FOIA gives any person the legal right to ask a public authority covered by the Act for recorded information they hold. However, it currently makes no provision for re-use at the point of publication or release. The FOIA only requires the provision of the information requested which means that repeat requests have to be made over a period of time to gain sets of information or data for analysis purposes. There is also no obligation for public authorities to provide such data in a format which promotes re-use, for example machine-readable or open, standard format.

Additionally, there is a lack of clarity over the licence for re-use which, for many requesters, is currently a two-step process. Generally, requesters who want to re-use the information must first request the information from the public authority and then apply separately for a licence to re-use it.

The policy objective is that when datasets are released or published, either in response to a request for information or as part of a publication scheme, it is a) mandatory that they be made available for re-use at the point of release under the Open Government Licence or other licence as prescribed by the Controller of HMSO; and b) that where reasonably practicable, they are published in a re-useable format.

When a person receives a dataset, they should immediately be able to see that they can re-use the information and on what terms. A person should not have to apply, as they do currently, to the Office of

Public Sector Information (OPSI) or the copyright holder for the public authority, to find out whether they can re-use the information and on what terms.

The objective is also to encourage and require public authorities through their publication schemes to proactively publish datasets, available for re-use, which will help to promote transparency throughout the public sector. Making this explicit in FOIA will strengthen the ability of the public and businesses to obtain the datasets they need without formally submitting a request under the FOIA.

Rationale

(A) Intervention in this case is justified primarily on the grounds of correcting a potential failure in an existing government intervention. The intention of the FOIA was to cover companies wholly owned by public authorities; amending section 6 will bring legislation into line with this original intention.

There are also a further set of equity and efficiency impacts associated with the proposal. Extending the coverage of the FOIA will give the public greater access to official information about services that affect them, ensuring greater public scrutiny over those companies and potentially greater public confidence in the functions they perform or public services they provide. This may generate direct economic welfare benefits. There may be further economic welfare benefits if, as a consequence, companies operate more closely in line with the preferences of society.

The proposal may also generate efficiency benefits if the increased scrutiny provided by the FOIA leads to those companies being brought into scope operating more efficiently. However, as the proposal is likely to increase the administrative burdens placed on the affected companies, the proposal will generate some associated efficiency costs.

(B) The Government announced its intention to make more information available to the public to help them to hold government to account; reduce the deficit and deliver better value for money in public spending; and realise significant economic benefits to enable business and not-for-profit organisations to build innovative applications and websites using public data. The FOIA was not designed to facilitate and prioritise the proactive and regular release of datasets and make them available for re-use in a re-usable format.

**Summary of Costs and Benefits**

See individual impact assessments for detail

One in One Out

Classification of a proposal as an IN or OUT for the purposes of one-in-one-out is undertaken for each policy within the Bill individually. As such, any direct costs on business have been assessed individually in the impact assessments for those policies that come within scope of ‘one in one out’.

| Estimated Costs | Estimated Savings and Benefits |
|---|---|
| **DNA** | |
| Transition costs: £10.8m (£4.5m DNA Profiles, £188k DNA Samples and £6m Fingerprints)<br><br>Annual Average: £3.1m (£2.3m DNA Profiles, £16k DNA Samples and £370k Fingerprints; £500k for the operating costs of the independent Commissioner)<br><br>PV (over 10 years): £37.7m | PV (over 10 years): £61.8m<br><br>Annual Average: £7.3m/year refrigeration savings |
| **Biometrics in Schools** | |
| Transition costs: £120k (estimate for administration of consent forms and providing alternative systems where necessary)<br><br>Annual Average: £25k (estimate for administration of consent forms and providing alternative systems where necessary)<br><br>PV (over 10 years): £300k | No monetised benefits identified |

| | |
|---|---|
| **RIPA** | |
| Transition costs: £30k (estimated costs to train Magistrates)<br><br>Annual Average: £670k (estimated costs for using Magistrates to approve authorisations)<br><br>PV (over 10 years): £6.0m | No monetised benefits identified |
| **Wheel clamping** | |
| Transition costs: n/a<br><br>Annual Average: £24.1m (loss of fees as a result of having to use alternative parking control methods instead of clamping and towing)<br><br>PV (over 10 years): £207.4m | PV (over 10 years): £210.9m<br><br>Annual Average: £24.5m (benefits to business and public as a result of not having to pay clamp and tow release fees; and approx 1550 licensed vehicle immobilisers will not have to pay £245 a year for a licence) |
| **Keeper Liability for parking charges** | |
| Transition costs: £0.8m one-off cost to parking companies to amend signs and paperwork)<br><br>Annual Average: £0.6m (to fund the independent appeals service)<br><br>PV (over 10 years): £5.4m | PV (over 10 years): £4.0m<br><br>Annual Average: £0.5m (reduction in administrative burdens on DVLA due to less claims being processed from the issue of parking charges) |
| **Section 44 Stop and Search Powers** | |
| Transition costs: £50k (changes to guidance and training) | No monetised benefits identified |
| **Vetting and Barring Scheme and Criminal Records** | |
| Transition costs: £13.7m (2 years)<br><br>Annual Average: £22.9m<br><br>PV (over 10 years): £218.6m | Annual Average: £46.3m<br><br>PV (over 10 years): £390.5m |
| **Section 6 of FOI Act** | |
| Companies brought within the scope of the FOIA will incur transitional costs to set up FOI process and train staff and ongoing costs relating to receiving and responding to requests. The overall impact of these costs is not known, however, based on the information available an indicative scenario has been developed and based on this scenario likely costs would be:<br><br>Transition costs: approx £2k. (to set up FOI processes and train staff)<br><br>Annual Average:<br>Indicative annual costs for companies with a high volume of requests (over 1000 per annum) is £245k<br>Indicative annual costs for companies with a medium volume of requests (between 100-1000 per annum) is £29k<br>Indicative annual costs for companies with a low volume of requests (less than 100 per annum) is £4k | No monetised benefits identified |

| | |
|---|---|
| These costs have not been included in the monetised costs total of the Bill on page 2 | |
| **Publication of datasets** | |
| Transition costs: £6.3m (estimate for compliance costs; this will arise from a one-off increase in the volume of freedom of information requests which will fall away as the publication of datasets becomes part of a public authority's normal business operations). | PV (over 10 years): £221.9m<br><br>Annual Average: £23.3m<br>(this is quantified in a narrow sense - notably the reduction in asymmetrical information that leads to inefficient pricing. By making more information available we anticipate that these pricing distortions will be removed yielding benefits for business estimated at £20m per annum). |