

<b>Committee:</b>	<b>Date:</b>
Police	11 July 2012
<b>Subject:</b> Protection of Freedoms Act	<b>Public</b>
<b>Report of:</b> Remembrancer	<b>For Information</b>
<p><b><u>Summary</u></b></p> <p>This report summarises the provisions of the Protection of Freedoms Act which are of potential interest to the work of the Committee. These include measures in areas such as surveillance and inspection, entry to property and the vetting of employees, which share the aim of limiting the reach of legal provisions affecting the freedom of the individual.</p> <p>The Act has various legal and operational consequences for the City Police and for the City Corporation more widely.</p> <p><b>Recommendation</b></p> <p>The Committee is invited to note the contents of this report.</p>	

## **Main Report**

### **Background**

1. The topic of “civil liberties” was one of the more natural areas of accord between the Conservative Party and the Liberal Democrats at the time of the last General Election and its immediate aftermath. The Coalition Agreement promised “a full programme of measures to reverse the substantial erosion of civil liberties and roll back state intrusion.” The Protection of Freedoms Bill was portrayed as the primary vehicle for that pledge, although some important issues, such as identity cards and libel laws, have been addressed separately. Most of the significant provisions of the Act take effect in this month or in the coming months.
2. The Act is reported to the Police Committee as the Committee having the most direct interest. Some provisions which have relevance to the work of

the City Corporation more broadly have, however, also been referred to and these provisions will be drawn to the attention of the departments concerned.

### **Counter-Terrorism**

3. The Act reduces the maximum period for which a terrorist suspect may be detained without charge, from 28 to 14 days.
4. The Act replaces, in more restrictive form, existing provisions which enable the authorisation of “stop-and-search” by the police without reasonable suspicion in designated areas. Such authorisation will no longer be given simply because it is considered expedient for the prevention of terrorism, but only if a senior police officer reasonably suspects that an act of terrorism will take place, and considers that the authorisation is necessary to prevent it. Authorisations will only last for 14 days at a time, rather than the previous 28.
5. Security considerations have meant that the City has frequently been designated in recent years as an area where stop-and-search may take place without reasonable suspicion, as part of the counter-terrorism strategy. The changes may therefore have operational consequences for the City Police.

### **Biometric Data**

6. The Act introduces a new regime governing the retention and use of DNA samples and fingerprints taken from persons arrested by the police, in the light of the decision of the European Court of Human Rights that indefinite retention was unlawful. Such data will usually now be retained only for three years where the arrested person is acquitted or released without charge. However, where the person has been convicted of other serious offences, the data may still be retained indefinitely. The National DNA Database will also be put on a statutory footing, and a “Commissioner for the Retention and Use of Biometric Data” appointed to oversee the operation of the new legislation.
7. This part of the Act will have operational consequences for the City Police, which is responsible for the retention and use of biometric data in the course of its investigations.
8. The Act also prohibits schools and colleges from taking biometric data, such as fingerprints, from a pupil without the express consent of the pupil and his or her parents. Where biometric data is used by a school or college to control

access to facilities, reasonable alternatives must be provided for those pupils in respect of whom consent is not obtained. These provisions will apply to the schools and colleges with which the Corporation is associated.

### **Surveillance**

9. The Act requires the Government to introduce a code of practice on the use of surveillance cameras and similar systems. A Surveillance Camera Commissioner will be appointed to oversee the code. The code will not be legally binding, but public authorities will be required to have regard to it, and courts will be able to take it into account in legal proceedings.
10. The code of practice will apply to the City Corporation in its capacity as a local authority and as a police authority, and to the Commissioner of the City Police directly. Given the extensive use of surveillance cameras for security purposes within the City, the Corporation and the Commissioner will have a particular interest in the content and operation of the code.
11. The Act also restricts the use of surveillance by local authorities (including the City Corporation) under the Regulation of Investigatory Powers Act. Authorisation from a magistrate will now be required before a local authority is able (should it wish) to use covert surveillance or surveillance of private communications. The authority will need to demonstrate that the surveillance is necessary and proportionate.

### **Criminal Record Checks**

12. The Act relaxes the vetting and barring scheme applied to those wishing to work with children and vulnerable adults, excluding, for instance, work with children under supervision, work involving only temporary or occasional contact with children, and assistance provided to adults other than by reason of age, ill health or disability. Criminal record checks will also no longer be required for members of local authorities (including the City Corporation) sitting on social services or educational committees, or for members of school governing bodies, unless those roles provide the opportunity for regular unsupervised contact with children.
13. The Act amends the procedure for criminal record checks, so that criminal record certificates will not be sent directly to employers but only to prospective employees (who may then be asked to supply them to the employer). The test for disclosure by the police of unproven allegations against those working closely with vulnerable persons is tightened, so that

chief police officers must now reasonably believe that the information is relevant, rather than simply believe that it might be relevant.

14. The provisions on vetting and barring will have specific operational consequences for the City Police, with respect to the decision to include unproven allegations in enhanced criminal record certificates. They will also have operational consequences for the rest of the City Corporation, particularly in relation to the work of the Director of Human Resources.

### **Powers of Entry**

15. Concerns have been raised in recent years about the number of statutory powers to enter premises without the consent of the occupier and without a warrant. The Act requires all Cabinet Ministers to review all such powers within their remit, and to consider repealing them or adding additional safeguards (which the Act authorises). Certain powers of entry are directly repealed by the Act. The Government is also to issue a code of practice on the use of powers of entry, to which those exercising the powers will be required to have regard.
16. Many of the powers of entry which will be subject to review are exercisable by the City Corporation, for instance in the fields of environmental health, trading standards and planning. Others are exercisable by the City Police. The review will be drawn to the attention of those departments who may wish to consider engaging with the review in order to justify powers of entry. One power which is directly repealed by the Act is that of entering and inspecting boats used to transport goods on inland waterways, which was exercisable by the Corporation in its capacity as a port health authority.

### **Parking Control**

17. The Act makes it a criminal offence to operate wheel-clamping on private land (the powers of local traffic authorities to clamp on the highway are unaffected). Instead, unpaid parking fees will be recoverable from the registered keeper of the relevant vehicle. The Act also authorises the Government to make regulations enabling police forces and local authorities to remove vehicles from private land at the request of the land-owner, where the vehicle is unlawfully abandoned or illegally, dangerously or obstructively parked.
18. As a result of the Act, the City Corporation will no longer be able to make use of wheel-clamping on land such as Hampstead Heath, where the practice

is currently employed to control unlawful parking. During the passage of the Bill for the Act, discussions took place with the Home Office to examine the possibility of including an exemption for public open spaces. However, the Home Office confirmed the view that the Corporation could address the matter through bye-laws enabling clamping to continue, and amendments to the Bill were not pressed.

### **Freedom of Information**

19. The Act amends the Freedom of Information Act so as to require public authorities to release, in re-usable form, electronic collections of raw data ('datasets') held in connection with the performance of their functions. They are to be made available under standard-form licences, subject to the usual exemptions and limitations applicable to freedom-of-information requests. The provisions will apply to the Corporation in respect of data held in its capacity as a local authority, police authority or port health authority.

### **Miscellaneous**

20. Certain miscellaneous provisions are made which may have minor operational consequences for the City Police, including the creation of new offences in relation to stalking and people-trafficking, and the erasure from the record of certain historic convictions relating to homosexual conduct.

### **Recommendations**

21. The Committee is invited to note the contents of this report.

### **Consultation**

22. The Director of Corporate Resources of the City Police has been consulted on this report, and officers in other departments have been made aware of the provisions which are relevant to their work.

### **Contact**

Sam Cook

020 7332 3045

sam.cook@cityoflondon.gov.uk