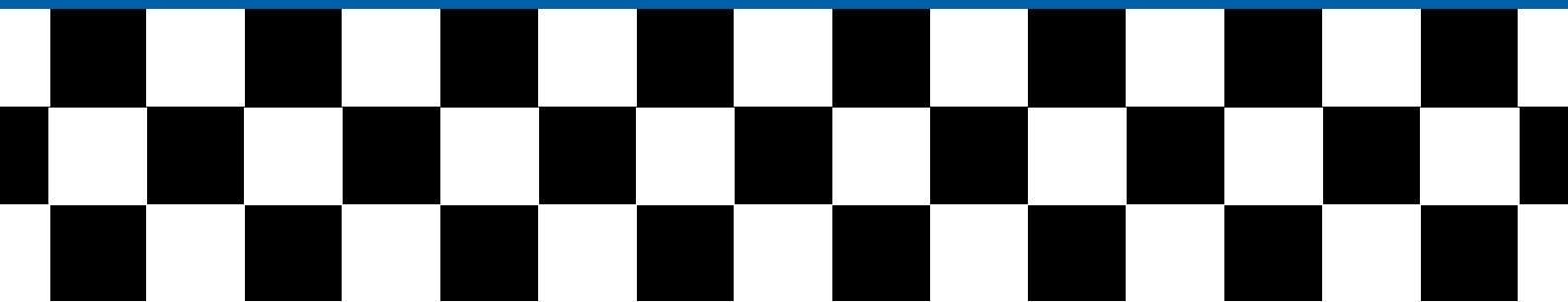


Digest

March 2011

A digest of police law, operational policing practice and criminal justice



The NPIA Digest is a journal produced each month by the Legal Services Team of the Chief Executive Officer Directorate. The Digest is a primarily legal environmental scanning publication intended to capture and consolidate topical and key issues, both current and future, impacting on all areas of policing. During the production of the Digest, information is included from Governmental bodies, criminal justice organisations and research bodies. As such, the Digest should prove an invaluable guide to those responsible for strategic decision making, operational planning and police training.

The NPIA aims to provide fair access to learning and development for all. To support this commitment, the Digest is available in alternative formats upon request. Please email digest@npia.pnn.police.uk or telephone +44 (0)1480 334733.

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Digest Editor: Telephone +44 (0)1480 344568

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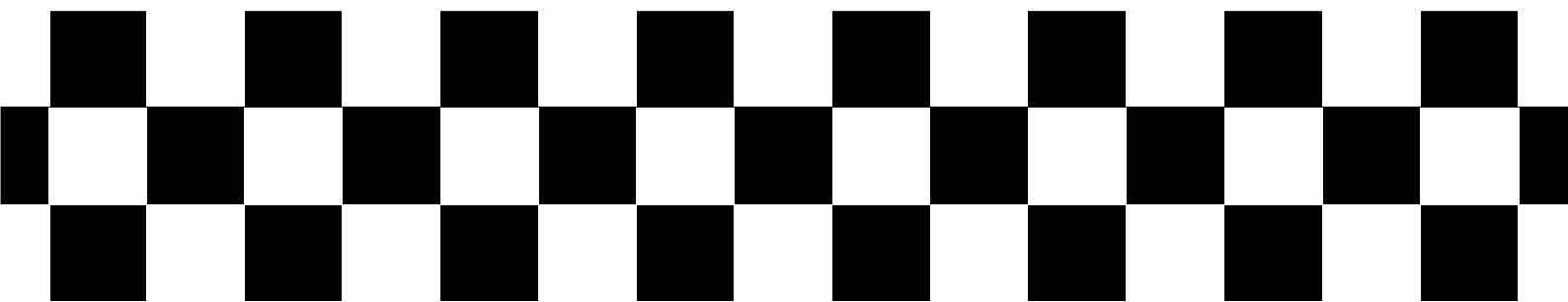
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Digest

Legal Services

Chief Executive Officer Directorate

www.npia.police.uk/digest



NPIA Digest March 2011

This month's edition of the Digest contains a summary of issues relating to police law, operational policing practice and criminal justice.

There are reports of Court of Appeal cases on the admissibility of bad character evidence following a determination that an accused is unfit to be tried, the assessment of benefit derived by a participant to a conspiracy to handle stolen vehicles and the imposition of post-conviction anti-social behaviour orders.

We look in detail at the recently published Review of Counter Terrorism Powers, Home Office Circular 004/2011 with regard to air weapons as well as at the newly introduced Protection of Freedoms Bill.

We address consultations on anti-social behaviour as well as retracting rape and domestic violence allegations.

The twelfth bulletin of the Learning the Lesson Committee which summarises reports and recommendations for improving policing practice is also covered.

We look at statistical bulletins which set out provisional quarterly information on the criminal justice system as of September 2010 and detail police service strength in England and Wales as of 30 September 2010.

There are also articles on crime mapping, dedicated funding to help victims of crime, the launch of gang injunctions, a new online system to report hate crime, funding to tackle knife crime, the production of mental health guidance for criminal justice staff and the establishment of a specialist Appeals Unit by the Crown Prosecution Service.

The progress of proposed new legislation through Parliament is examined and statutory instruments published this month summarised.

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Bills Before Parliament 2010/11 - Progress Report

The following Bills from the 2010/11 session have progressed as follows through the parliamentary process:

- ◆ Police Reform and Social Responsibility Bill - The Bill covers five distinct policy areas: police accountability and governance; alcohol licensing; the regulation of protests around Parliament Square; misuse of drugs; and the issue of arrest warrants in respect of private prosecutions for universal jurisdiction offences. Key areas:
 - Replaces police authorities with directly elected Police and Crime Commissioners, with the aim of improving police accountability;
 - Amends and supplements the Licensing Act 2003 with the intention of 'rebalancing' it in favour of local authorities, the police and local communities;
 - Sets out a new framework for regulating protests around Parliament Square. Relevant sections of the Serious Organised Crime and Police Act 2005 would be repealed and the police would be given new powers to prevent encampments and the use of amplified noise equipment;
 - Enables the Home Secretary to temporarily ban drugs for up to a year, and removes the statutory requirement for the Advisory Council on the Misuse of Drugs to include members with experience in specified activities; and
 - Introduces a new requirement for private prosecutors to obtain the consent of the Director of Public Prosecutions prior to the issue of an arrest warrant for 'universal jurisdiction' offences such as war crimes or torture. The Government's aim in introducing this change is to prevent the courts being used for political purposes.

The Bill was presented to Parliament on 30 November 2010. On 13 December 2010 the House of Commons debated the main principles of the Bill. The Commons decided that the Bill should be given its Second Reading and sent it to a Public Bill Committee for scrutiny.

The Police Reform and Social Responsibility Bill Committee took written evidence and heard oral evidence before considering the Bill clause by clause. The Committee's consideration of the Bill finished on 17 February. The Bill has been reprinted to incorporate the changes made during committee consideration of the Bill and is waiting for its Report stage on the floor of the House.

◆ Protection of Freedoms Bill - The Bill:

- Provides for the destruction, retention, use and other regulation of certain evidential material;
- Imposes consent and other requirements in relation to certain processing of biometric information relating to children;
- Provides for a code of practice about surveillance camera systems and for the appointment and role of the Surveillance Camera Commissioner;
- Provides for judicial approval in relation to certain authorisations and notices under the Regulation of Investigatory Powers Act 2000;
- Provides for the repeal or rewriting of powers of entry and associated powers and for codes of practice and other safeguards in relation to such powers;
- Makes provision about vehicles left on land;
- Provides for a maximum detention period of 14 days for terrorist suspects;
- Replaces certain stop and search powers and to provide for a related code of practice;
- Amends the Safeguarding Vulnerable Groups Act 2006;
- Makes provision about criminal records;
- Disregards convictions and cautions for certain abolished offences;
- Makes provision about the release and publication of datasets held by public authorities and to make other provision about freedom of information and the Information Commissioner; and
- Repeals certain enactments.

The Bill was presented to Parliament on 11 February 2011. This is known as First Reading and there was no debate on the Bill at this stage.

This Bill will be on the Order Paper for a Second Reading debate on 1 March 2011.

A more detailed summary of the Protection of Freedoms Bill is provided in the Parliamentary Issues section of this month's *Digest*.

The progress of Bills in the 2010/11 parliamentary session can be found at <http://services.parliament.uk/bills/>

Assessment of Benefit Derived by a Participant to a Conspiracy to Handle Stolen Vehicles

R v Martin Clark and Raymond Severn [2011] EWCA Crim 15

This appeal concerned the question of benefit derived by Mr Clark from his participation in a conspiracy to handle stolen cars.

Mr Clark and Mr Severn were convicted in June 2007 of conspiracy to handle stolen cars. The conspiracy, involving many co-defendants, concerned high-value prestige cars which had been stolen in 'car-jackings' or in the course of burglaries. 92 cars were stolen but confiscation proceedings concerned 54 cars with a retail value of over £3 million.

The role of Mr Clark and Mr Severn was to assist in the shipment of the cars to East Africa using their business, Eazystore Ltd, which provided storage and shipping facilities. Eazystore rented containers to those who shipped the cars out of the country for £1,300 per container, making a total £62,400.

In confiscation order proceedings, a confiscation order in the sum of £85,000 to be paid within 6 months with 21 months imprisonment in default was imposed on Severn. The prosecution originally relied on a benefit figure of £3 million, however it was subsequently agreed that the figure of £1.5 million should be relied upon on the basis that that represented the value which the owners would have obtained for their cars at the relevant time or the cost of acquiring those cars legitimately. This settlement was approved by the judge.

The same benefit figure of £1.5 million was applied to Clark and a confiscation order in the sum of £769,768.90 was imposed on him to be paid within 6 months with 4 years imprisonment in default.

The sole ground of appeal concerned the assessment of benefit used by the judge. It was submitted that in light of previous authorities the judge was wrong to attribute Clark with the burden of the full value of the cars when his role was only to facilitate the export of the cars.

On behalf of Mr Clark, it was submitted that there was no evidence that he was an equity partner in the enterprise, that he had a joint interest with the ultimate principals of the conspiracy in the sharing of the proceeds. In contrast, the Crown submitted that Clark could not be described as a mere courier or custodian acting for a fee, nor was he merely an employee who was involved for reward in the form of an enhanced wage. Rather it was submitted that in effect the judge had found in his ruling that Mr Clark was a profit-sharing principal.

In reaching its conclusion, the Court of Appeal considered the concept of 'obtaining property' in the 'watershed authority' of *R v May* [2008] 1 AC 1028 concerning conspiracy to commit tax fraud. The court also considered several subsequent authorities concerning advance fee fraud, conspiracy to launder diesel, couriers and custodians of drugs and money and conspiracy to effect illegal entries into the United Kingdom.

The court noted that Mr Clark was a bailee of the cars for the purpose of containerising and transporting them in preparation for their shipment to East Africa. The court deemed him to be an 'integral facilitator' but there was nothing to link him to the original thefts or with the onward sales abroad, or the proceeds of those sales. There was nothing to suggest that the cars were jointly owned by him or Mr Severn with the other conspirators.

The court found that in determining that Mr Clark was "a principal conspirator...an essential cog in the wheel of the conspiracy...an integral facilitator" the judge erred in reasoning from Mr Clark's importance directly to a value judgment that the "assessment of his benefit from the particular criminal conduct should be the valuation of the motor vehicles which passed through his hands at the material times." The court noted that as a matter of principle persons who are paid a fee or salary for their involvement are not conspirators or participants of such a nature as to make it likely, or to suggest the inference, that the property concerned is in their joint ownership.

The court noted that as bailees, Eazystore and Mr Clark prima facie received the cars for the benefit of the thieves and other principals who had stolen the cars and were going to sell them on, rather than for their own benefit. The court acknowledged that it was possible that Mr Clark was going to share in the proceeds of sales as an "equity partner" and as such received the cars as jointly owned property, but determined that such a finding had not been expressly made.

In light of the judge's error, the Court of Appeal quashed Mr Clark's confiscation order and remitted the issue of confiscation back to the judge for his consideration of the issue of benefit in light of this judgment.

The full judgment is available at <http://www.bailii.org/ew/cases/EWCA/Crim/2011/15.html>

Appeal against Imposition of Post-Conviction Anti-Social Behaviour Orders

Kirk Jordan Barclay, Noah Ntuve, Francis Cowan, Trevor Junior Prince Campbell v Regina [2011] EWCA Crim 32

This case concerns four appeals emanating from offending which was uncovered as part of Operation Polar, which took place in late 2009 in the St Paul's area of Bristol with the aim of identifying and arresting street level Class A drug dealers.

All were sentenced to a terms of imprisonment/detention in a young offenders institution, dependent on their age and an anti-social behaviour order (ASBO) was imposed, for a period of 3 years in the case of Mr Barclay and Mr Cowan, and for a period of 5 years in the case of Mr Ntuve and Mr Campbell, in the following terms:

Each was prohibited from:

- ◆ Entering the Ashley Ward, namely St Paul's, Montpeller, Baptist Mills and St Andrews;
- ◆ Associating with thirteen individuals specified in the order; and
- ◆ Carrying or using a mobile phone not registered to his name and which had not been registered with the intelligence officer at Trinity Road Police Station, Bristol.

The appellants appealed against imposition of the ASBOs. The court considered the legal principles underlying imposition of an ASBO, namely the pre-conditions set out in section 1C of the Crime and Disorder Act 1998. The court noted that an ASBO must be tailored to the anti-social behaviour of the particular offender and must be necessary to protect persons from further anti-social acts by him. The terms of an ASBO must be proportionate to the risk of further anti-social behaviour which the offender poses and an ASBO must be precise and capable of being understood by the person subject to it.

It was submitted on behalf of the appellants that imposition of an ASBO was not necessary given the sentences passed and also that the judge had failed to set out the justification for them in the specific circumstances of each appellant's case.

Objection was also taken to the specific prohibitions contained in the ASBOs. It was submitted that to exclude the appellants from the Ashley Ward as a whole could not be justified on the basis that each either lived within the area or had family who lived within that area. In addition it was submitted that this exclusion zone had the effect that the appellants would be excluded from the centre of community and cultural life for the black community in Bristol.

The prohibition on association with certain individuals was challenged on the basis that it lacked a firm evidential basis; there was no evidence that the appellants even knew all those listed let alone associated with them. Counsel for the appellants questioned how they would be able to check that people they met were contained in the prohibition as well as how association could be prevented when in social groups or other settings, particularly when in private, as opposed to the anti-social behaviour in public which was what was objected to.

In addition, it was submitted that the prohibition on using a mobile phone, other than one registered in their own name, and registered with the intelligence office, was a restriction upon the freedom of association of the appellants, as well as the fact that enforcement of such a condition would lead to intrusion and even harassment in the police checking whether a mobile phone found on them was registered as required.

With regard to the necessity for the ASBOs, the Court of Appeal reiterated that stated in *R v Dyer* [2010] EWCA Crim 2096, a similar case arising from Operation Polar, namely that it will assist if judges making ASBOs consider the Guidance produced by the Judicial Studies Board, when considering the impact of a sentence on the necessity for a post-conviction ASBO. Whilst the judge's reasoning in imposing ASBOs on each of the appellants was referred to as being of an "elliptical character", the Court of Appeal noted that it must be set against the background of the information before the court in sentencing each of them, such as the application pack from Avon and Somerset Constabulary for an ASBO setting out the reasons for the application, namely "in order to protect the residents of St Paul's from the nuisance and intimidation caused by...drug dealing and to prevent re-offending...Community meetings and surveys have revealed that drug dealing, and the associated nuisance and intimidation, continues to be the primary concern for local people." Each application detailed the relevant offending of each appellants, as well as previous offences and was tailored to the individual circumstances of each appellant, and each application also referred to each appellant's involvement in open street drug dealing and the misery, fear and frustration that this caused to residents of the St Paul's area, supported by a statement from a Police Sergeant Aston explaining how open street drug dealing can undermine a community's cohesion and how attempts at conventional community policing had proved ineffective.

In light of all the background material before the court, the Court of Appeal stated that it could understand how the judge concluded that the statutory requirement of necessity for an ASBO was met in the case of each appellant. In considering the deterrent impact of the sentence passed in each case the Court of Appeal determined that it was only in the case of Mr Cowan,

whose motivation was to finance his addiction and who had not been subject to custody previously, could it be said that a period of custody, and the drug treatment involved there, could be the basis for concluding that the statutory test had not been met.

However, the Court of Appeal went on to note that these post-conviction ASBOs were not simply directed at future drugs offending by the appellants but also at their involvement in the anti-social behaviour associated with open drug dealing in the area and the effect it had on the area itself and those who lived and worked there, as detailed in the statement of Police Sergeant Aston. The court noted that this consideration was not addressed in *R v Dyer*, nor was it central in other previous decisions of the Court of Appeal on post-conviction ASBOs. In light of this, the court determined that whilst the sentence may have acted as a deterrent with regard to Mr Cowan, the ASBO was necessary in his case, as well as the other 3 appellants, to address other aspects of anti-social behaviour rather than the drugs offending alone.

Following this the court considered the scope of the ASBOs imposed and following *R v Dyer* the court determined that it was appropriate to vary the ASBOs in each case to reduce the area from which the appellants were excluded.

Similarly, the court followed *R v Dyer* in determining that that association prohibition was not unnecessary or disproportionate on the basis that the overwhelming likelihood is that drug dealers are known to each other, but found that providing each of the appellants with photographs and street names of those people with whom they must not associate would make that part of the ASBO clearer and easier to enforce.

The court stated that it was not persuaded that it was unnecessary for the appellants to register their mobile phones in their own names or that such a requirement was disproportionate and encroached upon their freedom of association. In this aspect the Court of Appeal followed the reasoning in *R v Dyer* that such a requirement was necessary since the use of "pay as you go" mobiles by drug dealers was well known. During the course of the appeal, the prosecution accepted that the additional requirement that the appellants' mobile phones be registered with the intelligence officer at Trinity Road Police Station, Bristol was superfluous given the other registration requirement.

As such the Court of Appeal dismissed the appeals against the imposition of the ASBOs but varied them with regard to the area of the exclusion zone and the additional registration requirement concerning mobile phones.

The full judgment is available at
<http://www.bailii.org/ew/cases/EWCA/Crim/2011/32.html>

Admissibility of Bad Character Evidence Following a Determination that an Accused is Unfit to be Tried

R v Adam Creed [2011] EWCA Crim 144

This case concerned a renewed application for leave to appeal which raised questions as to the admissibility of bad character evidence when, following determination by a judge that an accused is not fit to be tried, a jury is to determine whether an accused person did the act or made the omission charged against him as the offence pursuant to Section 4A of the Criminal Procedure (Insanity) Act 1964.

On hearing evidence of Mr Creed's mental state, it was determined, pursuant to section 4 of the 1964 Act that he was unfit to be tried. The jury found that he had committed the actus reus of the single charge of burglary contained on the indictment. During the course of that hearing, evidence of Mr Creed's previous convictions for burglary was admitted with a view to showing a propensity to commit offences of the kind he was charged with, under section 101(1)(d) of the Criminal Justice Act 2003.

The primary submission before the court was that admission of bad character evidence under section 101 is not applicable in proceedings under section 4A of the 1964 Act following a determination that the accused is not fit to be tried.

The court confirmed that for an accused's bad character to be admissible, the accused must be a 'defendant', namely a person charged with an offence in those proceedings and the proceedings must be 'criminal proceedings' in relation to which the strict rules of evidence apply.

The court acknowledged the strength of the submissions made that proceedings under section 4A are not criminal proceedings because the accused is not facing a criminal charge for which he can be found guilty and punished, and as such neither can it be said that a person subject to section 4A proceedings is 'a defendant'. However, to reach this conclusion would leave the question of how the 'gaps' left by Parliament in the section 4A procedure were to be filled.

The court considered jurisprudence on the use of the bad character provisions and the use of the hearsay provisions under the Criminal Justice Act 2003 in relation to proceedings under section 4A and concluded that they are indistinguishable. In doing so the court concurred with previous Court of Appeal jurisprudence with regard to the applicability of the hearsay provisions to the section 4A procedure, namely that it is clear that in proceedings under section 4A the jury must be satisfied

by evidence which would be admissible if the defendant was on trial, indeed a hearing under section 4A should mirror as closely as possible the fact finding process at trial, and as such it is not intended that different rules of evidence apply.

The full judgment is available at
<http://www.bailii.org/ew/cases/EWCA/Crim/2011/144.html>

SI 20/2011 The Motor Vehicles (Insurance Requirements) Regulations 2011

These Regulations, which came into force on **4 February 2011**, make provision with regard to the coming into force of sections 144A, 144B, 144C and 159A of the Road Traffic Act 1988 which introduce the offence of being the registered keeper of a vehicle which does not have insurance cover ("the section 144A offence"), provide for exceptions to that offence, provide that liability to conviction for the offence may be discharged by paying a fixed penalty of £100 and provide for the disclosure of information in connection with enforcement.

- ◆ Regulations 2 to 4 set out the requirements to be met in order to be excepted from the section 144A offence by reason of the vehicle having been sold or transferred, whether for destruction, permanent export or otherwise, having been stolen or being kept off-road;
- ◆ Regulation 5 amends section 144B of the Road Traffic Act 1988 to provide a further exception to the section 144A offence for a vehicle which has been kept off-road since before the coming into force on 1 February 1998 of the requirement, where a vehicle is kept off-road, to declare that it is so kept;
- ◆ Regulation 6 provides that the fixed penalty of £100 is reduced to £50 if that amount is paid within 21 days of notice being given that a section 144A offence has been committed and require a fixed penalty notice to so state; and
- ◆ Regulation 7 provides for the Motor Insurers' Information Centre to make available to the Secretary of State, for the purpose of enforcing the section 144A offence, information relating to vehicle insurance policies in the United Kingdom and to vehicles which are permitted to be used on the road without insurance.

SI 96/2011 The Equality Act 2010 (Commencement No. 5) Order

This Order brings into force various provisions of the Act which were not brought into force by the earlier Commencement Orders. These provisions include enabling powers relating to the public sector equality duty and a provision concerning positive action in relation to recruitment and promotion in Part 11 of the Act.

Article 2 sets out the provisions of the Act for the purpose of making orders specifying the public authorities in Schedule 19 to the Act to which the public sector equality duty applies and for the purpose of making regulations imposing requirements on such public authorities in order to enable the better performance

of the duty. The provisions came into force as of **18 January 2011**.

Under article 3 section 159, which provides for positive action in recruitment and promotion, is brought fully into force on **6 April 2011**.

**SI 144/2011 The Crime and Security Act 2010
(Commencement No. 2) Order 2011**

Section 46 of the Crime and Security Act 2010 is brought into force under this Order, as of **10 February 2011**. Section 46 amends the Firearms Act 1968 by inserting a new offence of failing to take reasonable precautions to prevent minors from having air weapons.

**SI 209/2011 The Criminal Procedure and
Investigations Act 1996 (Defence
Disclosure Time Limits)**

These Regulations, which came into force on **28 February 2011**, set out the relevant period for the purposes of sections 5, 6 and 6C of the Criminal Procedure and Investigations Act 1996 (CPIA). The relevant period is the period within which the accused in criminal proceedings must give:

- ◆ A compulsory defence statement under section 5 of the Act;
- ◆ A voluntary defence statement under section 6 of the Act; or
- ◆ A notice of his or her intention to call any person, other than him or herself, as a witness at trial under section 6C of the Act.

The Regulations extend to England and Wales only.

Regulation 2 provides for the relevant period to begin on the day the prosecutor complies, or purports to comply, with section 3 of the Act (initial duty of prosecutor to disclose). That period expires at the end of 14 days in respect of summary proceedings, or 28 days in respect of Crown Court proceedings. Any such period that ends on specified days such as weekends and bank holidays is to be treated as expiring on the next day that is not one of those specified days.

Under Regulation 3 an extension of the relevant period may be granted by the court when satisfied that the accused could not reasonably have given a defence statement or given notification within the relevant period. There is no limit on the number of days by which the relevant period may be extended or the number of applications for extensions that may be made.

Under Regulation 4 the Criminal Procedure and Investigations Act 1996 (Defence Disclosure Time Limits) Regulations 1997 (SI 1997/684) and the Criminal Procedure and Investigations

Act 1996 (Notification of Intention to Call Defence Witnesses) (Time Limits) Regulations 2010 (SI 2010/214), subject to transitional provisions, are revoked.

SI 229/2011 The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) (No. 2) Order 2011

Part 1 of the Crime (International Co-operation) Act 2003 ('the 2003 Act') provides statutory powers pursuant to which the United Kingdom can both seek and provide various forms of mutual legal assistance concerning criminal matters. Some of those statutory powers can, however, only be exercised where the country in question is a 'participating country' as defined in section 51(2) of the 2003 Act.

Where a country is a Member State of the European Union on the date on which a provision is commenced, that country will, by virtue of section 51(2)(a), fall to be regarded as a participating country for the purpose of the commenced provision. However, where a country is not a Member State on the date on which a provision is commenced, that country must be designated as a participating country in an order made under section 51(2)(b) in order to be regarded as a participating country for the purpose of the commenced provision.

Those powers which can only be exercised in relation to a participating country include the power for the Secretary of State to direct that an application seeking information about banking transactions in England and Wales and Northern Ireland for use abroad be made (sections 32 and 35) and the power for requests to be made to other countries for information about banking transactions for use in the UK (sections 43 to 45).

Under Article 3 Japan is designated as a participating country for the purposes of sections 32, 35, 43, 44 and 45 of the 2003 Act. It is necessary to designate Japan as a participating country for the purpose of these provisions so that the UK may comply with, and benefit fully from, the provisions of an Agreement between the European Union and Japan on mutual legal assistance in criminal matters.

This Order came into force on **4 February 2011**.

Police Service Strength in England and Wales as of 30 September 2010

As of 30 September 2010 there were 142,363 Police Officers (full-time equivalents) in England and Wales, made up of 141,850 officers in the 43 forces of England and Wales as well as 513 officers seconded to central services. In addition, 2,652 officers make up the British Transport Police across England and Wales.

Compared with September 2009 the number of police officers for the 43 forces has decreased by 2,503 or 1.7%. When compared to March 2010 the number of police officers has decreased by 1,926 or 1.3%. Despite these reductions the number of police officers in September 2010 has increased by 566 when compared with September 2007.

78,120 police staff (full-time equivalents) are employed by the 43 forces of England and Wales which is 2,193 or 2.7% less than in September 2009. When compared with March 2010 the number of police staff has decreased by 1.9% or 1,475.

The number of Police Community Support Officers (full-time equivalents) stands at 16,376 as of September 2010, a decrease of 438 or 2.6% since September 2009 and 542 or 3.2% since March 2010.

The number of designated officers in England and Wales, excluding PCSOs, namely Investigation Officers, Detention Officers and Escort Officers increased by 18.5% or 567 from September 2009 to stand at 3,632.

The number of Special Constables has increased in the 43 forces by 2,256 or 15.5% since September 2009 and by 1,267 or 8.2% from March 2010 to stand at 16,772.

The full statistical bulletin is available at <http://rds.homeoffice.gov.uk/rds/pdfs11/hosb0311.pdf>

Gang Injunctions Launched

As of 31 January 2011, court orders under Part 4 and Schedule 5 of the Policing and Crime Act 2009, restricting the movement of people accused of being in gangs can be used by police and local authorities in England and Wales, with a view to breaking down gang culture by imposing prohibitions and requirements.

Examples include a prohibition on:

- ◆ Entering a certain geographical area;
- ◆ Being in public with a particular species of animal, such as a dog which had previously been used as a weapon;
- ◆ Wearing certain 'gang colours' in public.

In addition there will be a requirement for participation in positive activities such as mentoring schemes.

For further information please see

<http://www.homeoffice.gov.uk/media-centre/news/gang-injunctions-launch>

Home Office Circular 004/2011: Crime and Security Act 2010 (Commencement No. 2) Order 2011: Air Weapons

The Home Office have published Circular 004/2011 which advises of the commencement of section 46 of the Crime and Security Act 2010 with regard to air weapons, as of 10 February 2011. The effect of this is to introduce a new section 24ZA into the Firearms Act 1968 so as to make it an offence for a person in possession of an air weapon to fail to take reasonable precautions to prevent someone under the age of 18 from gaining unauthorised access to it. The maximum penalty if convicted of this offence is a level 3 fine (currently £1000).

Section 24ZA(3) provides a defence whereby a person can show he had reasonable grounds for believing the other person to be aged 18 or over.

This offence does not apply to an antique air weapon held as a curiosity or ornament (section 58(2) of the 1968 Act), nor, under section 24ZA(2), does it apply in circumstances where a young person is permitted to have an air weapon with them under one of the exceptions set out in section 23 of the Firearms Act, namely:

- ◆ Where they are under the supervision of a person aged 21 or over (section 23(1));
- ◆ Where they are a member of a Home Office approved club and are engaged as such in, or in connection with, target shooting (section 23(2)(a));

- ◆ Where they are using an air weapon at a shooting gallery (section 23(2)(b));
- ◆ Where they are aged 14 or over and are on private premises with the consent of the occupier (section 23(3)).

In this way there is no change to the circumstances in which a person aged under 18 can be given controlled access to air weapons.

What will constitute 'reasonable precautions' in each case will depend on individual circumstances, however guidance has been drawn up in consultation with ACPO and shooting organisations, as well as others, to assist with the safe-keeping of air weapons.

It is advised that:

- ◆ Air weapons are stored out of sight and separately from pellets;
- ◆ A robust and lockable cupboard is used for storage with the keys kept separately and securely;
- ◆ Air weapons are always stored inside the occupied part of a building and not in an outbuilding, such as a garage or shed;
- ◆ Air weapons are always unloaded when stored;
- ◆ When in use, air weapons are kept under close supervision and are never left unattended.

Further advice on air weapon safety has been published by the shooting organisations and the Home Office will shortly republish its own leaflet on the subject.

Home Office Circular 004/2011: Crime and Security Act 2010 (commencement No. 2) order 2011: air weapons is available at <http://www.homeoffice.gov.uk/about-us/home-office-circulars/circulars-2011/004-2011>

Funding to Tackle Knife Crime

Following publication of "Tackling knife crime together - a review of local anti-knife crime projects" on 2 February 2011, the Home Office has announced a commitment of £18 million for 2011-2013 to support the police and local agencies in tackling knife, gun and gang-related violence.

The report makes a number of recommendations including:

- ◆ Anti-knife crime presentations for school children;
- ◆ More data sharing between police, schools and other agencies on local issues;
- ◆ A best practice website for local organisations;

- ◆ More work with young children to stop them getting involved in knife crime.

The funding will support enforcement and prevention work by police in three knife crime hotspot areas, namely London, Manchester and the West Midlands.

The money includes up to:

- ◆ £3.75m for the three police forces areas where more than half of the country's knife crime occurs - London, Manchester and the West Midlands;
- ◆ £4m for local voluntary organisations across England and Wales working with young people to stop involvement in knife and gang violence;
- ◆ £10m for prevention and diversionary activities and engagement with young people at risk of becoming involved in crime, including knife related violence; and
- ◆ £250,000 for one further year to the Ben Kinsella fund for young people to run anti-knife crime projects in their local area.

The funding will run from April 2011 to March 2013, when it is intended that police and crime commissioners will be in place.

"Tackling knife crime together - a review of local anti-knife crime projects" is available at

<http://www.homeoffice.gov.uk/publications/crime/tackling-knife-crime-together/tackling-knife-crime-report?view=Binary>

Provisional Quarterly Criminal Justice System Information as of September 2010

The Ministry of Justice has published a quarterly statistics bulletin on the criminal justice system, comparing the most recent data for the period ending September 2010 to an earlier period, typically a year earlier, where data are available.

Bringing Offences to Justice

The number of offences brought to justice in England and Wales in the year ending September 2010 was 1.24 million, representing a decrease of 10%, or 1.37 million compared with the year ending September 2009. A fall in the use of out of court disposals is stated as the driver behind this. The number of recorded crimes for the same period fell by 4.49 million to 4.16 million, a decrease of 7%.

The number of serious violent offences brought to justice in this period rose by 1% from 9,642 to 9,720. The number of recorded serious violent crimes in this period fell by 11% from 43,577 to 38,982.

There was an increase in the number of serious sexual offences brought to justice in this period from 11,768 to 12,303 or 5%. The number of recorded sexual crimes for this period rose by 8% from 37,040 to 40,142.

This period saw a drop of 13% in the number of serious acquisitive offences brought to justice, from 109,429 to 95,427. The number of recorded crimes of this type in this period fell by 10% from 855,388 to 769,628.

Public Confidence in the Fairness and Effectiveness of the Criminal Justice System

The British Crime Survey has recorded the proportion of adults who think that the criminal justice system is fair was 61% for the period of September 2009 to September 2010, compared with 59% for the 12 months previously.

42% of adults think that the criminal justice system as a whole is effective for the 12 months up to September 2010, compared to 40% for the previous 12 months.

Experience of the Criminal Justice System for Victims and Witnesses

For the 12 months from September 2009 to September 2010 there was a 2% increase in the proportion of victims and witnesses who were satisfied with their overall contact with the criminal justice system from 83% to 85%.

Recovery of Criminal Assets

The value of assets recovered across England, Wales and Northern Ireland from April to September 2010 was £75.1 million. The value of assets recovered for the 12 months ending September 2010 was £171.3 million, an increase from £137.1 million for the 12 months ending September 2009.

£35 million was collected, including compensation, from enforcement of confiscation orders by HMCS and the Crown Prosecution Service across England and Wales for the period April to September 2010. This compares to £28.2 million collected from April to September 2009.

The value of new confiscation orders obtained across England and Wales from April to September 2010 was £48.2 million, compared to £48.6 million for April to September 2009.

The number of restraint orders obtained across England and Wales from April to September 2010 was 732 as compared to a figure of 666 for April to September 2009.

Enforcement

Payment Rate for Financial impositions

The payment rate across England and Wales for financial impositions for April to September 2010 was 90%, compared with a payment rate of 81% for April to September 2009.

Failure to Appear Warrants

The number of outstanding warrants issued when a defendant commits a bail offence by failing to appear in court has decreased from 22,878 at the end of September 2009 to 19,464 at the end of September 2010.

Community Penalty Breaches

69% of community penalty breaches were resolved within 25 working days of the relevant Unacceptable Failure to Comply, namely the absence or behaviour which is deemed unacceptable under the Offender Management National Standards and is used by the offender management/responsible officer to summons the offender to court, for the quarter ending September 2010, compared with 68% for the quarter ending September 2009.

The full Ministry of Justice statistical bulletin is available at <http://www.justice.gov.uk/publications/docs/cjs-stats-bulletin-sept2010.pdf>

Crime Mapping

As of 31 January 2011, people are now able, for the first time, to see what crime and anti-social behaviour has happened in their locality in the last month simply by entering their postcode at <http://www.police.uk>

Crimes are ordered by type, namely burglary, robbery, vehicle crime, violence, other crime and anti-social behaviour, on interactive maps and the information provided can be downloaded from the site in an open format.

The aim of this tool is to facilitate greater transparency with regard to information about crime and local policing which will allow people to hold their local forces to account, and help communities to engage with the police in a meaningful way. The website will help people to obtain details about their neighbourhood policing team and also provides information and advice on crime prevention.

The crime mapping tool can be utilised at <http://www.police.uk>

New Online System to Report Hate Crime Launched

A new system for victims of hate crime to report the crime online has been launched by the police service.

The website, True Vision, provides information for victims and the public generally about hate crime, why it is important to report hate crime and sets out the different ways in which hate crime can be reported.

It is believed that the website will help to increase the reporting of hate crime by building confidence in victims and offering a range of options which can be used by those who may not wish to talk to the police. In addition the website provides links to organisations that can offer support and advice on hate crime and related issues.

True Vision is supported by all police forces in England, Wales and Northern Ireland and can be accessed at <http://www.report-it.org.uk>

Learning The Lessons Bulletin Published

The twelfth bulletin of the Learning the Lessons Committee has been published. The bulletins summarise investigations conducted by the Independent Police Complaints Commission (IPCC) of police forces where learning opportunities have been identified.

This edition of the bulletin is of a general nature covering a range of themes. A number of recurring issues are identified.

In relation to custody as a place of safety the first case addressed illustrates the danger that vulnerable people with mental ill health can pose to themselves in custody. Where detaining somebody at a police station under the Mental Health Act is unavoidable the detainee should be assessed by a mental health practitioner or doctor as soon as possible to establish appropriate treatment. Risk assessment is paramount. The case also highlights the need to reduce any opportunity for detainees to harm themselves while in custody.

With regard to custody as a place of safety, two of the cases considered in the bulletin underline the difficulties of dealing with people who are vulnerable through drink. Drunkenness should not be mistaken for alcohol withdrawal.

Two cases in the bulletin deal with mistaking illness for drunkenness. The IPCC's recent report "Deaths in or following police custody" recommends that the risk of head injuries being mistaken for drunkenness should be emphasised to custody personnel, with a view to this being included in the standard risk assessment. The Faculty of Forensic and Legal Medicine has issued guidance for custody officers on head injuries.

Two cases in this edition revisit the importance of managing the incident log correctly as highlighted in bulletins 9 and 11. These cases underline the need for forces to have processes in place to manage concerns for welfare proactively.

This edition also highlights the importance of handovers. Custody officers should supervise handovers between detention officers and visit all detainees personally. Where more than one custody officer is on duty, the division of responsibility should be clear and documented. The IPCC recommends that this is done orally and in view of the CCTV in the custody suite. A written record must also be made documenting that the detainee's needs and risks have been explained to custody officers/staff.

The bulletin also addresses the significance of the call category emphasising that it is vital in the case of a missing person that the call handler carries out a risk assessment of that person as part of the initial call.

Bulletin 12: General - February 2011, is available at http://www.learningthelessons.org.uk/learningthelessons_feb2011.pdf

Consultation on Anti-Social Behaviour

A public consultation entitled "More Effective Responses to Anti-Social Behaviour", launched on 7 February 2011, proposes a number of new measures to address criminal and anti-social behaviour (ASB), following a review which determined that there is currently a plethora of tools to tackle ASB which are expensive, too bureaucratic and do not address underlying problems. Subject to consultation these new measures will replace 18 of the formal powers currently available.

Reform of the ASB tools and powers is one aspect of a new approach to ASB that also includes:

- ◆ Information on street level crime and local policing which enables the public to see what crimes are being committed in their neighbourhoods;
- ◆ Pilots in eight police forces establishing a new approach towards handling complaints about ASB, including a new system of logging complaints and improving the use of IT to share information;
- ◆ Plans to speed up the eviction process for social landlords to remove tenants who commit persistent ASB;
- ◆ The work of the government's champion for active safer communities, Baroness Newlove, on how government and local agencies can empower communities and increase local activism.

The new measures include:

Community Triggers

Local agencies will be compelled to act where several people in the same neighbourhood have complained but no action has been taken. Similarly action must be taken if the behaviour in question has been reported to the authorities by an individual three times and no action has been taken. Local authorities would have a duty to inform complainants of intended action within 14 days.

Criminal Behaviour Orders

These orders could be issued by the courts following conviction and could ban the individual concerned from going to certain places, participating in certain activities and could require them to address their behaviour by participation in a drug treatment programme for example. Breach of such an order would carry a maximum penalty of five year's imprisonment.

Community Protection Orders

This would comprise of one order for use by local authorities to stop persistent environmental ASB such as graffiti, or dog fouling and another order for use by police as well as local authorities to tackle more serious criminality and disorder in a specific place such as closure of a property used for drug dealing.

Police Direction Powers

This could be used to direct any individual causing or likely to cause crime or disorder away from a particular place, as well as a power to confiscate related items.

Crime Prevention Injunctions

The intention behind such a tool is to stop bad behaviour before it escalates. Breach of an injunction for adults could result in a sentence of imprisonment, whereas for those under the age of 18 a breach could be dealt with by way of curfews, supervision or detention. A Crime Prevention Injunction would carry the civil burden of proof.

The intention is that these new powers will make it easier to deal with persistent offenders by being more flexible, less bureaucratic and quicker to obtain than current measures.

“More Effective Responses to Anti-Social Behaviour” is available at

<http://www.homeoffice.gov.uk/publications/consultations/cons-2010-antisocial-behaviour/asb-consultation-document?view=Binary>

Review of Counter-Terrorism Powers and Legislation Published

The findings of the review into counter-terrorism and security powers launched in July 2010 have been published by the Home Secretary.

The aim of the review was to ensure that the powers and measures covered by the review are necessary, effective and proportionate and meet the United Kingdom’s international and domestic human rights obligations.

Six key counter terrorism and security powers were considered, namely:

- ◆ The length of detention of terrorist suspects before charge;
- ◆ Section 44 stop and search powers;
- ◆ The use of the Regulation of Investigatory Powers Act (RIPA) 2000 by local authorities and access to communications data more generally;

- ◆ Measures to deal with organisations that promote hatred or violence;
- ◆ Extending the use of “Deportations with Assurances” in a way consistent with the UK’s legal and human rights obligations; and
- ◆ Control orders.

The key recommendations include:

Pre-Charge Detention

- ◆ That 28 day detention without charge is replaced with a detention limit set at 14 days. (28 day pre-charge detention has not been in effect since 25 January 2011 and provision has been made for this reduction to 14 days in the Protection of Freedoms Bill currently before Parliament. Please see the Parliamentary Issues section of this month’s *Digest* for a summary of this Bill);
- ◆ That emergency legislation increasing the period of pre-charge detention to 28 days should be drafted but not introduced in order to deal with urgent circumstances in which a period of 14 days pre-charge detention is not considered sufficient;
- ◆ That the enhanced safeguards for terrorist suspects contained in the Coroners and Justice Act 2009 should be commenced as soon as possible.

Section 44 Stop and Search Powers

- ◆ Section 44 of the Terrorism Act 2000 should be repealed and replaced with a more narrowly defined power, whereby an authorisation for stop and search powers may be made by a senior police officer where he reasonably suspects that an act of terrorism will take place;
- ◆ The maximum period of an authorisation should be reduced from a maximum of 28 days to 14 days;
- ◆ The purposes for which a search may be conducted should be narrowed to looking for evidence that the individual is a terrorist or that the vehicle is being used for purposes of terrorism rather than articles which may be used in connection with terrorism;
- ◆ In addition to the power to shorten the period of the authorisation, or to cancel or refuse it, the Secretary of State should be able to narrow the geographical extent of it;
- ◆ Robust statutory guidance on the use of the power should be developed to limit the discretion of the police and to provide further safeguards on the use of this power;

- ◆ The proposed restrictions to section 44 should significantly reduce concerns about counter-terrorism laws being used against photographers and as such sections 57 and 58 of the Terrorism Act 2000 (relating to possession for terrorist purposes and collection of information respectively) should not be repealed or amended.

Regulation of Investigatory Powers Act (RIPA) 2000 and Local Authorities

- ◆ Local authority use of the following investigatory covert techniques should require approval of a Magistrate, namely use of some communications data, directed surveillance, use of covert human intelligence sources. This should be in addition to the authorisation now needed from a local authority senior manager and oversight by elected councillors;
- ◆ Use of RIPA to authorise directed surveillance only should be restricted to those cases where the offence under investigation carries a penalty of at least 6 months imprisonment. However due to the importance of directed surveillance as a corroborative tool in investigations into underage sales of alcohol or tobacco, this threshold should not be applied to these cases;
- ◆ Similarly this threshold should not be applied to the techniques of communications data or covert human intelligence sources.

Access to Communications Data

- ◆ Following consultation, non-RIPA legal frameworks by which communications data can in principle be acquired should be streamlined to ensure that as far as possible RIPA is the only mechanism by which communications data can be acquired.

Deportation of Foreign Nationals Engaged in Terrorism

- ◆ Deportation arrangements should be pursued with more countries, prioritising those whose nationals have engaged in terrorism related activity, or are judged as likely to do so.

Control Orders

- ◆ The current control order regime should be repealed and a move towards a less intrusive and more tightly defined system should be made;
- ◆ The key features of these new measures will be as follows:
 - They will be imposed by the Home Secretary with prior permission from the High Court, except in urgent cases;
 - The Home Secretary must have reasonable grounds to believe that the individual is or has been involved

in terrorism-related activity and be satisfied that it is necessary to apply such a measure to protect the public from a risk of terrorism;

- The High Court will carry out a full mandatory review of each case, with a power to quash or revoke the measures;
- They will be subject to a maximum time limit of two years;
- They will allow for a flexible overnight residence requirement, which would be verified by an electronic tag;
- Only tightly defined exclusion from particular places and overseas travel will be allowed;
- Greater freedom of communication and association will be allowed than was the case under the control order regime;
- Those subject to these measures will be free to work or study unless this could increase the risk of involvement in terrorism-related activity;
- Only limited restricted can be placed on financial transactions overseas;
- An individual subject to these measures will be required to report regularly to the police;
- Breach of the conditions, without reasonable excuse, will be a criminal offence, subject to a maximum penalty of five years' imprisonment;
- There will be no provision for measures which would deprive an individual of their liberty.

Exceptional Emergency Measures

- ◆ In light of the fact that there may in future be exceptional circumstances in which it is necessary to seek approval for additional restrictive measures, such as curfews and further restrictions on communications, association and movement, draft legislation setting out such additional restrictive measures will be discussed with the opposition, but would only be brought forward if and when it became necessary to have them in place to protect the public from a risk of terrorism. They would only be available following agreement of both Houses of Parliament.

For further information please see <http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/review-findings-and-rec?view=Binary>

CPS Launches Public Consultation on Retracting Rape and Domestic Violence Allegations

As part of a range of improvements to instil increased quality and consistency in the way the Crown Prosecution Service (CPS) handles rape cases, the launch of a 12 week public consultation has been announced by the Director of Public Prosecutions, Keir Starmer QC.

Under proposed interim guidance, effective as of 10 February 2011, individuals who retract truthful allegations of rape or domestic violence out of fear are less likely to be prosecuted for the offence of perverting the course of justice.

In determining whether there is sufficient evidence for a realistic prospect of conviction, prosecutors should:

- ◆ Consider whether the prosecution can prove an allegation was untrue. A charge for perverting the course of justice cannot be brought if there is any doubt;
- ◆ Make no assumption that a retracted allegation was made with the intention of perverting the course of justice. Evidence is needed to prove this;
- ◆ Be aware that victims of domestic violence may sometimes retract true allegations through fear of violence or pressure to do so; and
- ◆ Take particular care in "double retraction" cases that can arise where there is a background of domestic violence.

The full evidential and public interest factors to be considered are set out in the Code of Practice for Crown Prosecutors which is available at <http://www.cps.gov.uk/code>. In applying the public interest factors, the interim guidance indicates that a prosecution for perverting the course of justice is more likely to be appropriate where:

- ◆ Malice was the motivation for a false complaint;
- ◆ A false complaint was sustained for a period of time (particularly where there were opportunities to retract);
- ◆ The original allegation resulted in the suspect being charged and remanded in custody;
- ◆ The suspect against whom the original allegation was made was tried, convicted and/or sentenced;
- ◆ The suspect in the original allegation sustained significant damage to his or her reputation;
- ◆ The suspect against whom the original allegation was made was in a vulnerable position or had been taken advantage of.

It is less likely that a prosecution will be required where:

- ◆ It appears that malice was not the motivation for the original allegation;
- ◆ The retraction of the original allegation arose from threats or pressure to do so by the suspect against whom the original allegation was made, his or her family, friends or other persons;
- ◆ Mitigation may be offered as a result of a history of abuse or domestic violence or intimidation such as to make it likely that a nominal penalty will be imposed;
- ◆ The suspect against whom the original allegation was made was not charged, detained or convicted;
- ◆ The suspect against whom the original allegation was made did not suffer damage to his or her reputation as a result of the allegation;
- ◆ It appears that the person who made the false allegation appears not to fully have understood the seriousness of making a false allegation (having regard to his or her age or maturity).

The consultation closes on 6 May 2011 and the CPS welcomes the views of anyone with an interest in this issue.

The interim guidance can be found at http://www.cps.gov.uk/consultations/pcj_consultation.html

Mental Health Guide for Criminal Justice Staff Launched

Mental health charity "Together" has worked with criminal justice and health agencies to produce guidance to assist frontline criminal justice staff when working with people with mental ill health.

"A common sense approach to working with defendants and offenders with mental health problems" offers guidance to professionals, such as court staff and probation and prison workers, on how to work effectively with those in contact with the criminal justice system who have mental ill health. The guidance also includes advice and information on working with people with alcohol problems, substance abuse issues and learning difficulties.

The guidance will help staff to identify, understand and respond to people in need and also advises staff on how to work together with other health and social care agencies that may be able to help.

“A common sense approach to working with defendants and offenders with mental health problems” is available at <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2011/01/A-common-sense-approach-to-working-with-defendants-and-offenders-with-mental-health-problems.pdf>

Dedicated Funding to Help the Most Vulnerable Victims of Crime

Justice Secretary Kenneth Clarke has announced that £29.4 million of funding will be dedicated to helping vulnerable victims of crime over the next three years.

This is the first time that funding has been guaranteed on a three year basis and will enable sustained support to those most in need.

The money will be used to support the most seriously affected, vulnerable and persistently targeted victims and witnesses.

Voluntary sector groups are able to bid for this money to provide the services necessary to assist their local communities, with the funding pool having opened on 31 January 2011. Funding decisions will be made by April 2011.

The money available will provide renewed funding to:

- ◆ Help victims of serious violent crime;
- ◆ Help individuals bereaved by murder and manslaughter;
- ◆ Help victims of hate crime;
- ◆ Help victims of domestic violence through the use of Independent Domestic Violence Advisors appointed by the courts;
- ◆ Help victims of robbery and burglary;
- ◆ Help victims of anti-social behaviour;
- ◆ Help bereaved families of fatal road traffic crimes.

Up to £10.5 million will go to rape crisis centres to provide help and support to those traumatised by rape and sexual violence, as part of a wider Government commitment to increase the provision of rape crisis centres across England and Wales. Allocations for the homicide fund are for one year only pending the outcome of the Victims Commissioner’s report.

For further information see

<http://www.justice.gov.uk/news/newsrelease280111a.htm>

CPS Opens Specialist Appeals Unit

A specialist Appeals Unit has been established by the CPS with a view to taking on cases in the appeal courts, as well as all work involving the Criminal Cases Review Commission and that concerned with unduly lenient sentences.

The Appeals Unit which is part of the Special Crime Division at CPS Headquarters, was formally launched on 26 January 2011, though it has been taking on work in stages since it was initially set up in June 2010. By the end of March 2011 it will be staffed by 14 lawyers and 24 paralegal staff who will handle all appeals against final decisions in the Administrative Court and the Court of Appeal and all cases in the Supreme Court.

The Appeals Unit can be contacted at:
CPS Appeals Unit, Rose Court, 2 Southwark Bridge, London,
SE1 9HS.

For further information please see
http://www.cps.gov.uk/news/press_releases/103_11

Protections of Freedoms Bill

The Protection of Freedoms Bill was introduced into the House of Commons on 11 February 2011. The Bill continues the aim of the government in its legislative programme to safeguard civil liberties and reduce the burden of government intrusion into the lives of individuals.

The Bill consists of seven Parts, namely:

- ◆ Part 1: Regulation of biometric data;
- ◆ Part 2: Regulation of surveillance;
- ◆ Part 3: Protection of Property from disproportionate enforcement action;
- ◆ Part 4: Counter-terrorism powers;
- ◆ Part 5: Safeguarding vulnerable groups, criminal records, etc;
- ◆ Part 6: Freedom of information and data protection; and
- ◆ Part 7: Miscellaneous and general.

Part 1: Regulation of Biometric Data

Chapter 1 of Part 1 concerns the retention and destruction of fingerprints, footwear impressions and DNA samples and profiles taken during a criminal investigation and adopts the Scottish model for the retention of DNA and fingerprints.

Specifically, it replaces the current framework for retention of fingerprints and DNA samples under the Police and Criminal Evidence Act 1984 with a new system whereby the fingerprints and DNA profiles taken from those arrested for or charged with a minor offence would be destroyed if the decision is made not to charge or following an acquittal.

For those charged with but not convicted of a serious offence, fingerprints and samples may be retained for three years, with provision for a two year extension on application to a District Judge by a chief officer of police.

Under the Bill fingerprints and DNA profiles continue to be kept indefinitely for those persons over 18 who are convicted for a recordable offence.

There is also provision for extended detention on national security grounds.

Under chapter 2 of Part 1 schools and further education colleges are required to obtain the consent of each parent of children under 18 years of age attending the school or college before the biometric data of the child can be processed.

Part 2: Regulation of Surveillance

Chapter 1 of Part 2 makes provision for further regulation of CCTV, Automatic Number Plate Recognition and other surveillance camera technology operated by the police and local authorities. Provision is made for the Secretary of State to prepare a statutory code of practice to this effect. In addition the Bill provides for the appointment of a Surveillance Camera Commissioner to monitor compliance with and the operation of the code of practice.

Under Chapter 2 of Part 2 the Regulation of Investigatory Powers Act 2000 (RIPA) is amended so that judicial approval is required before local authorities are able to use any one of the three covert investigatory techniques available to them under the Act, namely the acquisition and disclosure of communications data, the use of directed surveillance and covert human intelligence sources.

Part 3: Protection of Property from Disproportionate Enforcement Action

Under Chapter 1 of Part 3 a Minister of the Crown (or Welsh Minister) would be able, by order, to repeal unnecessary powers of entry, replace such powers or introduce safeguards.

Chapter 2 of Part 3 makes it a criminal offence to immobilise or move a vehicle or to restrict the movement of a vehicle without lawful authority.

Part 4: Counter-Terrorism Powers

Clause 57 reduces the maximum period of detention for terrorist suspects from 28 days to 14 days.

Clause 58 repeals the stop and search powers under sections 44-47 of the Terrorism Act 2000.

Clauses 58 to 62 replace the stop and search powers previously contained in the Terrorism Act 2000 whereby stop and search of persons and vehicles without reasonable suspicion was permitted, with powers restricted by the requirement of reasonable suspicion that the person is a terrorist and/or that the vehicle is being used for the purposes of terrorism.

Clause 60 amends the Terrorism Act 2000 with regard to the power to stop and search in specified locations by allowing a senior police officer to give an authorisation to allow the stop and search of vehicles (including drivers, passengers and anything found in or on a vehicle) and pedestrians (and anything carried by a pedestrian) to search for anything that may constitute evidence that a vehicle is being used for the purposes of terrorism or that a person is a terrorist. Such an authorisation can be given only where the senior police officer reasonably suspects that an act of terrorism will take place and

considers that the authorisation of the powers is necessary to prevent such an act and that the area(s) or place(s) specified in the authorisation are no greater than is necessary and the duration of the authorisation is no longer than is necessary. An authorisation can only be given if the person giving it reasonably suspects that an act of terrorism will take place and considers that the authorisation of the powers is necessary to prevent such an act and that the area(s) or place(s) specified in the authorisation are no greater than is necessary and the duration of the authorisation is no longer than is necessary.

Part 4 also places a duty on the Secretary of State to prepare a code of practice about the new and amended stop and search powers.

Part 5: Safeguarding Vulnerable Groups, Criminal Records, etc.

Chapter 1 of Part 5 amends the Safeguarding Vulnerable Groups Act 2006, reforming the vetting and barring scheme. In particular the Bill repeals the provisions of the 2006 Act which provide for the monitoring of persons engaged in regulated activity by the Secretary of State.

Chapter 2 of Part 5 makes amendments to the framework for the disclosure of criminal convictions and other relevant information in certificates issued by the Criminal Records Bureau to support the assessment of a person's suitability for employment and other roles.

Under Chapter 3 a person convicted or cautioned for an offence under section 12 or 13 of the Sexual Offences Act 1956 and associated offences, involving consensual gay sex with another person aged 16 or over, can apply to the Secretary of State for that conviction or caution to become disregarded. Provision is made that such disregarded convictions and cautions would be removed from the Police National Computer and other police records.

Part 6: Freedom of Information and Data Protection

Part 6 amends the Freedom of Information Act (FOIA) 2000, providing for the publication of datasets by public authorities subject to that Act and amending the definition of a publicly owned company for the purposes of the FOIA so that it includes companies owned by two or more public authorities.

In addition, the FOIA and the Data Protection Act 1998 are amended by way of changes to the arrangements regarding the appointment and tenure of office of the Information Commissioner as well as changes to the Secretary of State's role in relation to the exercise of certain functions by the Information Commissioner.

Part 7: Miscellaneous and General

Part 7 repeals Section 43 of the Criminal Justice Act 2003 which provides that certain fraud trials may be conducted without a jury.

The text of the Bill is available at
http://www.publications.parliament.uk/pa/bills/cbill/2010-2011/0146/cbill_2010-20110146_en_1.htm



NPIA
National Policing
Improvement Agency

Legal Services
Chief Executive Officer Directorate
www.npia.police.uk

