College of Policing

Digest

November 2013

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

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 College of Policing aims to provide fair access to learning and development for all. To support this commitment, the Digest is available in alternative formats on request. Please email **digest@college.pnn.police.uk** or telephone +44 (0)1480 334568.

Contents

Overview

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 cases on:

- the compatibility with the European Convention on Human Rights (ECHR) of a requirement for an individual to provide a non-intimate sample without his consent by reason of his previous convictions
- the admissibility of bad character evidence in a historic sexual offences case.

We look in detail at:

- the recently published Joint Committee on Human Rights report on the Anti-Social Behaviour, Crime and Policing Bill
- the new strategy to disrupt serious and organised crime
- a collaborative report on the criminal victimisation of people with mental health problems
- the Gay British Crime Survey 2013.

We also look at:

- the response to the Home Office consultation on PACE Codes A, B, E & F and Codes C & H and the updated Codes themselves
- the consultation on the draft Code of Ethics for policing in England and Wales
- the launch of Authorised Professional Practice
- the new National Crime Agency (NCA).

Statistical bulletins are covered which detail football-related arrests and football banning orders for the 2012-13 season, as well as crime in England and Wales for the 12 months to June 2013.

The progress of proposed new legislation through parliament is examined and relevant Statutory Instruments are summarised.

Legislation

Bills before parliament 2013/14 – progress report

On 8 May 2013, the Queen's Speech unveiled the legislative programme for the 2013-2014 parliamentary session. The progress of Bills can be found at: **http://services.parliament.uk/bills/**

Anti-Social Behaviour, Crime and Policing Bill

This Bill is divided into 13 separate parts. First reading took place on 16 October 2013. This stage is a formality that signals the start of the Bill's journey through the Lords. Second reading – the general debate on all aspects of the Bill – took place on 29 October. Committee stage – a line-by-line examination of the Bill – is scheduled to take place on 12 November.

Part 1 – Injunctions to prevent nuisance and annoyance

This is a purely civil injunction, available in the county court for adults and the youth court for 10 to 17-year-olds. It will allow a wide range of agencies, including the police, local councils and social landlords to deal quickly with anti-social individuals, nipping behaviour in the bud before it escalates.

Part 2 – Criminal Behaviour Orders

This will be available following a conviction for any criminal offence and can address the underlying causes of the behaviour through new, positive requirements. Breach will be a criminal offence with a maximum penalty of up to five years in prison for adults. It will demonstrate to the offender and the community the seriousness of the breach.

Part 3 – Dispersal Powers

This will enable officers to require a person who has committed, or is likely to commit, anti-social behaviour to leave a specified area and not return for up to 48 hours.

Part 4 – Community Protection Notices

This part is split into three chapters covering:

- Community Protection Notices
- Public Spaces Protection Orders
- Closure orders.

These new powers will be faster, more effective and available to more agencies to use to tackle a whole range of place-specific anti-social and criminal behaviour.

Part 5 – Recovery of possession of dwelling-houses: anti-social behaviour grounds

Anti-social behaviour can have a negative impact on neighbourhoods and communities. Social landlords have a key role in tackling anti-social behaviour. Provisions in the Bill introduce a new ground for possession to speed up the process in the most serious cases of anti-social behaviour, bringing faster relief to victims and communities.

Part 6 – Local involvement and accountability

The new Community Remedy will give victims of low-level crime and anti-social behaviour a say in the punishment of the offender out of court, while the Community Trigger will give victims of persistent anti-social behaviour the right to demand action where they feel their problems have not been dealt with.

Part 7 – Dangerous dogs

The proposals in the Bill are part of a wider package of measures to reduce dog attacks and make owners more responsible for their dogs. These powers sit alongside anti-social behaviour powers in the Bill that can be used to tackle dangerous dogs and irresponsible owners.

Part 8 – Firearms

The Bill targets those who sell or transfer prohibited weapons or ammunition by introducing a new offence and increased sentencing powers for the courts.

Part 9 – Forced marriages

The Bill makes two changes to tackle forced marriage more effectively:

- criminalising forcing someone to marry
- criminalising the breach of Forced Marriage Protection Orders.

Part 10 – Policing

The Bill builds on government reform of the policing landscape towards greater freedom for the police to take local decisions that fit the needs of the areas they serve. It will enhance the integrity and professionalism of the police by extending the powers and remit of the Independent Police Complaints Commission and the College of Policing.

The Bill will also make changes to the body that reviews police pay by abolishing the Police Negotiating Board and replacing it with an independent Police Remuneration Review Body. The new body will make evidence-based recommendations on police remuneration.

In addition, Clause 124 introduces Schedule 6, which makes amendments to the port and border security powers in Schedule 7 to the Terrorism Act 2000 and the associated Schedule 8 to that Act which governs the detention of persons detained under Schedule 7.

Part 11– Extradition

The measures on extradition proposed in the Bill are designed to improve the efficiency of the operation of the Extradition Act 2003 and follow from a review of the UK's extradition arrangements by Rt. Hon Sir Scott Baker.

Part 12 – Criminal justice and court fees

The Bill will improve the speed and efficiency of the criminal justice system's response to low-level offending by enabling the police to prosecute uncontested minor offences of shoplifting. It will extend the scope of the statutory witness protection scheme to cover other vulnerable individuals. It will also ensure that offenders sentenced to custody will contribute to the costs of supporting victims by removing the power of magistrates' courts to add additional days to a sentence of imprisonment instead of the victim surcharge.

Part 13 – General

This part contains minor and consequential amendments to other enactments and general provisions including provisions in respect of the parliamentary procedure to be applied to orders and regulations made under the Bill.

Offender Rehabilitation Bill

This Bill makes a number of changes to the release arrangements set out in the Criminal Justice Act 2003 for offenders serving custodial sentences of less than 12 months and those serving sentences of between 12 months and two years. The Bill is designed to ensure that all adult offenders serving custodial sentences can be supervised on release for at least 12 months. This Bill is expected to have its second reading debate on a date yet to be announced.

In particular, the Bill:

- applies arrangements for release under licence to offenders serving fixed-term custodial sentences of more than one day but less than 12 months
- introduces new supervision arrangements for offenders released from fixed-term custodial sentences of less than two years so that all offenders are supervised in the community for at least 12 months
- creates a new court process and sanctions for breach of supervision requirements for offenders serving fixed-term custodial sentences of less than two years
- introduces a requirement that offenders sentenced to an extended determinate sentence must have an extension period of supervision of at least one year
- introduces for offenders released from custody a new drug appointments condition for the licence or supervision period, and expands the existing drug testing requirement for licences to include Class B drugs and makes it available during the supervision period

- introduces a requirement that any juvenile who reaches his or her 18th birthday before being released from the custodial element of a Detention and Training Order (DTO) should spend at least 12 months under supervision in the community.

The Bill also makes some changes to the arrangements for community orders and suspended sentence orders. In particular, it:

- creates a new 'rehabilitation activity requirement' for community orders and suspended sentence orders and in doing so abolishes the 'supervision' and 'activity' requirements
- introduces new arrangements for the designation of 'responsible officers' in relation to the supervision of offenders and makes clear that the responsibility for bringing breach action lies with the public sector
- introduces new arrangements for offenders serving community orders or suspended sentence orders to obtain permission from the responsible officer or the court before changing their place of residence.

Statutory Instruments

SI 2013/2462 The Prison and Young Offender Institution (Amendment) Rules 2013

These Rules came into force on **1 November 2013**.

These Rules amend the Prison Rules 1999 (the 1999 Rules) and the Young Offender Institution Rules 2000 (the 2000 Rules).

Under the 1999 Rules prison disciplinary charges are inquired into by either governors or, in certain circumstances, by adjudicators who are District Judges. Equivalent arrangements exist in respect of young offender institutions.

Paragraph 1 of Schedule 1 inserts new rule 55AB into the 1999 Rules to require governors or, as the case may be, adjudicators to impose a requirement (a compensation requirement) on prisoners to pay for the destruction of or damage to prison property where prisoners have been found guilty of causing the destruction or damage at an adjudication. The amount must not exceed the cost of the destruction or damage and, in any event, must not exceed £2,000. The compensation requirement ceases to have effect after two years from when it was imposed regardless of whether the prisoner has paid the full amount due.

Paragraph 2 of Schedule 1 amends rule 55B of the 1999 Rules so that a prisoner may seek a review of the amount ordered to be paid under a compensation requirement. The reviewer may vary the amount required to be paid by the prisoner.

Paragraph 3 of Schedule 1 amends rule 61 of the 1999 Rules so that, where a compensation requirement has been imposed by a governor, the Secretary of State may reduce the amount to be paid.

Paragraph 4 of Schedule 1 inserts new rule 61A into the 1999 Rules; new rule 61A provides the governor with a power to debit money from the money held by the prison for the prisoner in order to recover the amount to be paid under the compensation requirement. The governor must ensure that the prisoner is left with not less than £5 in their prison account after any amount has been debited. Paragraph 4 also provides that a compensation requirement imposed against an inmate in a young offender institution under the 2000 Rules may be enforced as though it were imposed under the 1999 Rules where the person against whom the compensation requirement was imposed is detained in a prison.

Paragraph 5 of Schedule 1 amends rule 82 of the 1999 Rules so that, in contracted out prisons, the director or governor is empowered to exercise the powers conferred on governors in new rules 55AB and 61A.

Schedule 2 makes equivalent amendments to the 2000 Rules.

SI 2013/2460 The Prisons (Interference with Wireless Telegraphy) Act 2012 (Commencement) (England and Wales) Order 2013

This Order brings sections 1 to 4 of the Prisons (Interference with Wireless Telegraphy) Act 2012 into force in respect of England and Wales on **21 October 2013**.

SI 2013/2532 The Retention of Knives (Supreme Court) Regulations 2013

These Regulations came into force on **1 November 2013**.

Section 51C of the Constitutional Reform Act 2005 (inserted by section 30 of the Crime and Courts Act 2013) provides for knives to be surrendered by, or seized from, persons entering the Supreme Court by Supreme Court security officers.

Knives that have been surrendered or seized must be retained in accordance with section 51C of the Constitutional Reform Act 2005.

Regulation 3 sets out the procedure to be followed when a knife is retained and the information which a Supreme Court security officer must provide to the person who surrenders the knife or from whom it is seized.

Regulation 4 requires the chief executive of the Supreme Court to keep a written record of any knives retained by Supreme Court security officers.

Regulation 5 sets out the procedure for making a request for the return of a retained knife.

Regulation 6 provides the procedure to be followed in dealing with a request for the return of a retained knife.

SI 2013/2525 The Criminal Procedure (Amendment) Rules 2013

These Rules make the following amendments to The Criminal Procedure Rules 2013:

- Part 3 – Rule 3.8 is amended to provide for the procedure where the defendant requires interpretation.
- Part 5 – Rule 5.4 is amended to require the court officer to record the identity of any interpreter or intermediary, and to record any waiver by the defendant of the right to attend a hearing and any waiver of the translation of a document.

These Rules came into force on **27 October 2013**.

SI 2013/2554 The Police and Criminal Evidence Act 1984 (Armed Forces) (Amendment) Order 2013

This Order came into force on **31 October 2013**.

Chapter 1 of Part 1 of the Protection of Freedoms Act 2012 amends Part 5 of the Police and Criminal Evidence Act 1984 to replace the existing provisions governing the retention and destruction of fingerprints, footwear impressions and DNA samples and profiles taken by the civilian police in the course of a criminal investigation.

This Order makes equivalent provision, subject to modifications, in respect of the investigation of service offences under the Armed Forces Act 2006. It does so by amending the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009 (the 2009 Order).

Article 2(4) substitutes article 15 of, and inserts new articles 15A to 15N into, the 2009 Order.

New article 15 requires a DNA profile derived from a DNA sample obtained from a person in connection with the investigation of a service offence and retained under any power conferred by the 2009 Order to be recorded on the National DNA Database.

New article 15A sets out the basic requirements for the destruction of fingerprints and DNA profiles (article 15A material) obtained from a person in connection with the investigation of a service offence.

New article 15B enables article 15A material obtained from a person in connection with the investigation of a service offence to be retained until the conclusion of the investigation by the service police or, where legal proceedings are instituted against the person, until the conclusion of those proceedings.

New article 15C provides for the further retention of article 15A material taken from persons who are arrested for or charged with certain serious offences but not subsequently convicted.

New article 15D provides for the further retention of article 15A material taken from persons who are arrested for or charged with certain less serious service offences but not subsequently convicted.

New article 15E provides for the further retention of article 15A material taken from persons who are convicted of recordable service offences. New article 15F makes an exception to new article 15E in relation to persons who are convicted of a first minor service offence, committed when they were under the age of 18.

New article 15G provides for the retention of article 15A material that has been given voluntarily.

New article 15H provides for the retention of article 15A material which would otherwise fall to be destroyed, if the person to whom the material relates consents.

Under new article 15I, where a person arrested for one service offence is subsequently arrested for, charged with or convicted of a second, unrelated service offence, the retention of that person's article 15A material will be governed by the rules applicable to the second offence.

New article 15J provides that all copies of fingerprints and DNA profiles held by the service police must be destroyed when the obligation to destroy material set out in new article 15A applies.

New article 15K makes provision for the destruction of samples obtained from a person in connection with the investigation of a service offence.

New article 15L governs the retention and destruction of impressions of footwear obtained from a person in connection with the investigation of a service offence.

New article 15M restricts the use to which retained fingerprints, DNA and other samples, DNA profiles and footwear impressions may be put.

Paragraph (1) of new article 15N makes provision so that article 15A material and article 15K samples need not be destroyed where such material or samples may fall to be disclosed under an order made under section 78 of the Criminal Procedure and Investigations Act 1996 or an attendant Code of Practice.

Paragraph (4) of new article 15N makes provision so that article 15A material need not be destroyed where it relates to a person other than the person from whom it was taken. This would apply, for example, to material transferred in the course of a physical encounter, such as an assault, where one party's DNA or saliva is recovered from the other party.

Article 2(5)(a) inserts new paragraph 5A into Schedule 2 to the 2009 Order (Transitional provisions), so that the specified offences under former legislation governing the armed forces are 'qualifying service offences' for the purposes of the Order.

Article 2(5)(b) amends paragraph 17 of Schedule 2 to the 2009 Order to provide for the destruction or retention of fingerprints, DNA and other samples, DNA profiles and footwear impressions taken before this Order comes into force ('legacy material'). The period for which legacy material may be retained and used is calculated in the same way as for material taken after this Order comes into force save that, where a period calculated in this way would end on a date before the end of 31 October 2013, article 2(5)(b) makes provision so that such material may be retained or used until the end of 31 October 2013.

SI 2013/2605 The Proceeds of Crime Act 2002 (External Investigations) Order 2013

This Order comes into force on **11 November 2013**. Part 1 extends to England and Wales and Northern Ireland only. Part 2 extends to Scotland only.

This Order makes provision to assist an external investigation, within the meaning of section 447(3) of the Proceeds of Crime Act 2002 (the 2002 Act), by obtaining orders and warrants from the court. The provisions correspond (subject to specified modifications) to the civil recovery investigation provisions in Part 8 of the 2002 Act. Overseas requests to investigate that are criminal in nature will continue to be dealt with through the provisions in the Crime (International Co-operation) Act 2003. This Order extends to England and Wales, Scotland and Northern Ireland.

Articles 3 and 4 provide that the Secretary of State may refer a request in relation to an external investigation to the Director General of NCA or a relevant Director to provide assistance. The external investigation will concern property only where a criminal investigation in connection with the property has not begun, or a criminal investigation in connection with the property has begun but it is unlikely criminal proceedings will be brought, or criminal proceedings brought in connection with the property have been concluded without an order having been made in relation to the property.

Article 5 provides for offences of prejudicing an external investigation. This broadly corresponds to section 342 of the 2002 Act. The article makes it an offence to prejudice an external investigation by making a disclosure about it or by tampering with evidence relevant to the external investigation.

Articles 6 and 7 provide for production orders. These broadly correspond to sections 345 and 346 of the 2002 Act. An application for a production order may be made by an appropriate officer; article 2(1) provides the meaning for an appropriate officer.

Article 8 provides for an order to grant entry. This broadly corresponds to section 347 of the 2002 Act. This power might be used, for example, to enable an appropriate officer to be granted entry to a building in circumstances where a production order had been made in respect of material in a particular office in that building.

Article 11 extends the scope of a production order to cover material held by an authorised government department. This broadly corresponds to section 350 of the 2002 Act.

Article 12 provides that an application for a production order or an order to grant entry may be made without notice to the other party. This broadly corresponds to section 351 of the 2002 Act.

Article 13 provides for search and seizure warrants. This broadly corresponds to section 352 of the 2002 Act. As in articles 6 and 7 an application for a warrant may be made by an appropriate officer. A warrant may be issued if a production order has been made and not complied with and there are reasonable grounds for believing that the material specified in the warrant is on the premises, or the requirements of article 14 are met.

Article 14 refers to two sets of conditions for issuing a warrant in the absence of a production order. This broadly corresponds to section 353 of the 2002 Act. The first set of conditions might be satisfied, for example, where the person who owns the material is abroad and therefore it is not possible to communicate with that person. In such circumstances, it is clear that a production order in respect of that person would have no effect. The second set of conditions might be satisfied where it is impossible to describe the material for the purposes of a production order and access will not be gained without a warrant.

Article 15 sets out provisions regarding how and when a warrant issued by a High Court judge may be exercised. This broadly corresponds to sections 354 and 356 of the 2002 Act. A High Court judge may make the warrant subject to such conditions as the judge sees fit.

Article 16 provides for disclosure orders. This broadly corresponds to section 357 of the 2002 Act. Unlike the other orders covered by this Order, which have to be applied for separately on each occasion, once a disclosure order has been made there is a continuing power of investigation. A person may require that evidence of the authority to exercise disclosure powers is provided. Where this happens, it is envisaged that a copy of the disclosure order will be given to the person.

Article 17 provides for the requirements for the making of a disclosure order. This broadly corresponds to section 358 of the 2002 Act. Owing to the necessarily invasive nature of the disclosure order, it is not anticipated that disclosure orders will be sought unless other powers, such as production orders, have already been sought or would demonstrably not suffice to enable the required information to be obtained.

Article 18 provides for offences in relation to disclosure orders. This broadly corresponds to section 359 of the 2002 Act. As the disclosure order obliges a person to comply with certain requirements, sanctions to compel such compliance are required. There is a maximum penalty of six months imprisonment and/or a level 5 fine for non-compliance and two years imprisonment and/or an unlimited fine for knowingly or recklessly making a false or misleading statement.

Article 19 provides for statements in response to a disclosure order. This broadly corresponds to section 360 of the 2002 Act. The article prevents a statement obtained under compulsion from a person from being used to incriminate them in this jurisdiction (subject to exceptions).

Articles 20 and 21 set out further provisions regarding disclosure orders. These broadly correspond to sections 361 and 362 of the 2002 Act.

Article 22 provides for customer information orders. This broadly corresponds to section 363 of the 2002 Act. A customer information order requires all (or a targeted sample of) banks and other financial institutions to provide details of any accounts held by a person who appears to hold property that is subject to an external investigation. Article 28(6) requires in certain circumstances the prior authorisation of a senior appropriate officer before an appropriate officer can make an initial or variation application for a customer information order. An appropriate officer who is also a senior appropriate officer can apply for the order and variations themselves without requiring further and separate authorisation. As with disclosure orders, a person may require the person serving a notice given under the order to demonstrate that they have the authority they claim. Again, it is envisaged that a copy of the original customer information order will be provided.

Articles 23 and 24 set out the definition of 'customer information' for individuals and for companies and partnerships and the requirements for the making of such an order. These broadly correspond to sections 364 and 365 of the 2002 Act.

Article 25 provides for offences in relation to customer information orders. This broadly corresponds to section 366 of the 2002 Act. As with the disclosure order, there are two offences connected with customer information orders. As the sanctions are directed at non-complaint institutions rather than an individual they are solely financial. The maximum penalties are a level 5 fine for non-compliance and an unlimited fine for knowingly or recklessly making a false or misleading statement.

Article 26 provides for statements in response to a customer information order. This broadly corresponds to section 367 of the 2002 Act. Like the disclosure order, a customer information order requires an institution to divulge information. This article sets out the standard conditions on the use of such information to prevent information obtained under compulsion from being used in this jurisdiction against the financial institution in criminal proceedings against it (subject to certain exceptions).

Articles 27 and 28 set out further provisions in relation to customer information orders. These broadly correspond to sections 368 and 369 of the 2002 Act.

Article 29 provides for account monitoring orders. This broadly corresponds to section 370 of the 2002 Act. An account monitoring order requires a financial institution to provide specified information in relation to an account (for example, details of all transactions passing through the account) during a specified period up to a maximum of 90 days. The information would normally be provided in the form of a bank statement.

Article 30 sets out the requirements for the making of an account monitoring order. This broadly corresponds to section 371 of the 2002 Act. It is anticipated that it will need to be shown that an account monitoring order lasting over a period of time (rather than a one-off production order) is necessary.

Article 31 provides for statements in response to an account monitoring order. This broadly corresponds to section 372 of the 2002 Act. As with the disclosure order and customer information order, an account monitoring order compels an institution to divulge information. Similar to the provisions for disclosure orders and customer information orders, this article sets out the standard conditions on the use of such information to prevent self-incriminatory information being used as evidence in criminal proceedings in this jurisdiction against the financial institution (subject to certain exceptions).

Articles 32 to 34 set out further provisions relating to account monitoring orders. These broadly correspond to sections 373 to 375 of the 2002 Act.

Articles 36 to 69 make equivalent provision for Scotland to that in articles 2 to 35 for England and Wales and Northern Ireland.

Article 70 sets out the functions that seconded constables in Scotland cannot exercise on behalf of Scottish Ministers. This corresponds to section 411 of the 2002 Act.

SI 2013/2604 The Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2013

This Order comes into force on **11 November 2013**.

This Order makes provision for a prohibition on dealing with relevant property which is the subject of an external request, within the meaning of section 447(1) of the Proceeds of Crime Act 2002 (the 2002 Act), by means of proceedings before the High Court (in England, Wales or Northern Ireland) or the Court of Session (in Scotland). The provisions correspond (subject to specified modifications) to the civil recovery provisions in the 2002 Act. Overseas requests that are criminal in nature will continue to be dealt with through the provisions in the Crime (International Co-operation) Act 2003.

Article 3 inserts new Parts 4A and 4B into the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (SI 2005/3181) (the 2005 Order).

In relation to England, Wales and Northern Ireland, **articles 141A and 141B** provide that the Secretary of State may refer to an enforcement authority an external request to prohibit dealing with relevant property in England and Wales or Northern Ireland. The enforcement authority may obtain from the High Court a prohibition order in certain circumstances. The external request may concern relevant property whether or not proceedings have been brought for an offence in connection with the property in the country sending the request.

Articles 141C and 141D explain where proceedings are to take place and the powers of the High Court to prohibit a person from dealing with relevant property by way of a prohibition order.

Article 141E identifies who can make an application for a prohibition order and it enables the High Court to vary or set aside a prohibition order.

Article 141F sets out when relevant property will not be the subject of a prohibition order.

Article 141G provides that the High Court may exclude property from the prohibition order and make exclusions from the prohibition on dealing with property to which the prohibition order applies.

Article 141H provides restrictions on proceedings and remedies in respect of property to which a prohibition order applies.

Articles 141I and 141J enables the High Court to appoint a receiver in respect of property to which a prohibition order applies and deals with the powers of the receiver. The application for the receiver is made by the enforcement authority whether as part of the application for a prohibition order or at any time afterwards.

Article 141K provides for the supervision of the receiver and enables the receiver, any party to the proceedings and anyone else affected by the receiver's actions to ask the High Court to clarify the receiver's powers.

Articles 141L and 141M ensure that where a prohibition order affecting land is applied for, its effect may be reinforced by taking action at the Land Registry to prevent disposal of the land in question.

Article 141N deals with the case where property has been made subject to a prohibition order but the prohibition order is set aside or varied. The person whose property it is may, in certain circumstances, seek compensation at the discretion of the High Court.

Article 141O provides that the enforcement authority may not apply for a prohibition order unless it reasonably believes that the aggregate value of the relevant property which will be the subject of the prohibition order is not less than £10,000. This ensures that prohibition orders will not be used in minor or trivial cases.

Article 141P and 141Q sets out the interrelationship between prohibition orders and insolvency proceedings.

Articles 141ZA to 141ZM of Part 4B make similar provision for Scotland to that in Part 4A for England, Wales and Northern Ireland.

Article 4 sets a limitation period within which proceedings may be brought and widens the scope of when proceedings are deemed to have been brought.

Article 5 makes similar provision to article 4 but in relation to the Limitation (Northern Ireland) Order 1989 (SI 1989/1339 (NI 11)).

Article 6 makes similar provision to articles 4 and 5 but in relation to the Prescription and Limitation (Scotland) Act 1973.

SI 2013/2685 The Police and Criminal Evidence Act 1984 (Codes of Practice) (Revisions to Codes A, B, C, E, F and H) Order 2013

This Order brings into force several revised codes of practice under the Police and Criminal Evidence Act 1984, which will supersede the corresponding existing codes of practice. The revised codes will be brought into operation on **27 October 2013**.

The revisions to **Code A** remove the references to stop and search powers under the Terrorism Act 2000. This follows an amendment to section 66 of the Police and Criminal Evidence Act 1984 made by the Protection of Freedoms Act 2012 (c.9), which removed the requirement for these powers to be included in Code A, and made them subject to a new Code of Practice issued under section 47AA of the Terrorism Act 2000. The revised code A also contains new provisions on the powers to search persons without them being arrested, which were introduced by the Terrorism Prevention and Investigation Measures Act 2011.

The revisions to **Code B** include new provisions on the powers to enter and search premises under the Terrorism Prevention and Investigation Measures Act 2011, for the purposes of serving, monitoring and enforcing notices under that Act. These notices replace the former control order provisions under the Prevention of Terrorism Act 2005.

The revisions to **Code C** achieve two different purposes. The first purpose is to implement the judgment of the Divisional Court in R (On the Application of HC) v Secretary of State for the Home Department and the Commissioner of Police of the Metropolis [2013] EWHC 982 (Admin). This judgment relates to the entitlement of 17-year-olds in police detention to have the assistance of an appropriate adult, and to have their parents informed of the fact of their detention.

The second purpose of the revisions to Code C is to implement obligations arising out of the EU Directive (2010/64/EU) on the right to interpretation and translation in criminal proceedings. In particular, Code C now contains provision concerning the right to a written translation of certain documentation for those in police detention. The revisions to **Code H** follow the changes which are being made to Code C for these purposes.

The revisions to **Codes E and F** include new and amended provision for the conduct and recording of voluntary interviews of suspects who are not under arrest. Under these changes, a sergeant will be responsible for voluntary interview cases, and for giving authority not to make an audio recording. These revised codes also contain amendments and new provision concerning the security of master recordings, in order to ensure consistency across the interview recording provisions in Codes E and F, and the corresponding terrorism provisions.

SI 2013/2742 The Proscribed Organisations (Name Changes) (No.2) Order 2013

This Order came into force on **29 October 2013**.

Part 2 of the Terrorism Act 2000 makes provision about proscribed organisations (including setting out offences in relation to such organisations in sections 11 to 13). An organisation is proscribed if it is listed in Schedule 2 to that Act or operates under the same name as an organisation so listed (section 3(1)).

Section 3(6) of the Terrorism Act 2000 (as inserted by section 22(2) of the Terrorism Act 2006) enables the Secretary of State, by order, to provide that a name that is not specified in Schedule 2 to that Act is to be treated as another name for an organisation that is listed in that Schedule. Article 2 of this Order exercises this power to specify other names for the organisation referred to in article 2, which is listed in that Schedule as both Lashkar-e Jhangvi and Sipah-e Sahaba Pakistan.

Case law

Evidence and procedure

William George Laws-Chapman and Regina [2013] EWCA Crim 1851

A hearing in the Court of Appeal (Criminal Division) on appeal from Maidstone Crown Court before Lord Justice Fulford, Mr Justice Burnett and Mr Justice Hickinbottom. The full case report can be found at **http://www.bailii.org/ew/cases/EWCA/Crim/2013/1851.html**

Summary

The appellant, now 89, was convicted on 8 July 2013 of indecency with a child under the age of 14 contrary to section 1(1) of the Indecency with Children Act 1960 (count 1) and buggery with a person under the age of 21 contrary to section 12 of the Sexual Offences Act 1956 (count 2), in each instance between 1 January and 31 December 1978. He was sentenced to concurrent terms respectively of two years' and eight years' immediate imprisonment.

The sole issue raised on this appeal was whether, in the context of two historic sexual offences dating back to 1978 which involved an allegation of violence, paedophilic behaviour against the will of the victim (who was 12 or 13 years old at the time), the judge was right to admit in evidence a single conviction for buggery in 1985, involving a 17-year-old, which may well have been consensual and of which the court had no details relating to the offence in 1985, save for the identity of the victim and the location of the offence.

Background

The complainant, SB, was born in 1965. Between the ages of 11 and 13 he lived in Carrow Hill, Norwich. His father had a friend called 'Jim' who was a frequent visitor to their house and who invited SB to a local café to play pinball, where he met the owner of the café who, after a few visits, offered him a job washing up.

On one occasion, when SB had finished his work, the owner locked the café and offered him some food in the back room, where he asked SB to model some tattoo transfers. SB was told to remove his shirt and trousers and lie down with his bottom raised. His underpants were pulled down and the transfers were placed on his legs and backside. A knife was placed next to him and he was told not to turn around. SB realised from the sound of the man's breathing that he was masturbating and taking pictures at the same time. The man repeatedly touched and stroked SB's bottom before ejaculating over his back. He then drove SB home in his beige Ford Cortina and told him that if he told anyone he would be hurt with the knife. These events were reflected in count 1.

There was some confusion in SB's evidence as to the location of the café. At one stage he suggested that the café was in the vicinity of Ber Street where a man called Reynolds ran a café, but in due course SB indicated that he had made a mistake when investigating officers took him around Norwich, where he pointed out 16 Wensum Street which was formerly the location of the appellant's café. SB said he recognised the shops opposite. SB failed to identify the appellant when he was shown a number of photographs and, as such, the reliability of his identification of the premises in which he had been allegedly assaulted became an issue of considerable importance in the case.

With regard to count 2, on a later occasion 'Jim' and a scruffy dark-haired man invited SB to Jim's flat, where SB drank a cup of tea which made him feel tired. SB believed he was drugged because he fell in and out of consciousness. They walked him to another flat where SB remembered seeing four or five more men, including the café owner who had previously abused him. SB completely lost consciousness and when he came round he was being anally raped. He believed the perpetrator was the man from the café who he recognised from the sound of his breathing. The others were laughing and encouraging what was happening and then each other man also anally raped him.

SB told nobody about this abuse at the time, repressing the memories of what happened. The memories began to resurface and he had nightmares in the mid 1990s whereupon he began to piece together these past events and ultimately made a report to the police.

The appellant was arrested on 14 March 2012 where he denied the allegations in interview. He said that he had run the café at 16 Wensum Street between 1975 and 1978. He had owned a brown Ford car and a man called Ian worked as a tattooist in the back room. He did not recall the name of the complainant. He agreed that children did sometimes help with the washing up in return for a pack of cigarettes or other similar reward. When asked if he had ever touched any boys inappropriately he stated 'No, definitely no.' When the allegations were put in more details he stated 'I should never think I would want to do that sort of thing' and 'When you're a married man why the hell do you want to do a thing like that.' When asked if he had ever had anal sex with a man, he denied the suggestion.

The appellant did not give evidence or call any witnesses. He denied the entirety of the allegations made by SB. Specifically he suggested that SB was mistaken in his identification of his café being the location of the alleged sexual abuse. He asserted that the true perpetrator was a known paedophile called Roy Reynolds who ran the café near Ber Street.

The application to introduce bad character evidence

On 30 January 2013 the prosecution submitted a written application to introduce evidence of bad character, namely, that the appellant's conviction on 14 November 1985 at Norwich Crown Court for an offence of buggery committed on 29 March 1985 at the rear of the Cathedral Café, Wensum Street was relevant to an important matter in issue between the defendant and the prosecution pursuant to section 101(1)(d) of the Criminal Justice Act 2003.

The ruling

During the trial the judge decided that evidence of the appellant's bad character was admissible. He suggested that the appellant's conviction in 1985 for an offence of buggery on a 17-year-old boy, committed in the back room at the same café when no other details of the incident were available, could properly be described as relevant and admissible evidence of bad character.

The judge referred to section 101 of the Criminal Justice Act 2003, and particularly gateways F, D and G when considering the routes to admissibility. The judge suggested that this evidence served to contradict the impression created in interview by the defendant that he would never have acted as alleged towards the victim in the present case and 'was not that way inclined'. The court accepted that in order for the evidence of bad character to be admissible to correct a false impression given by the appellant, it needed to demonstrate 'a relevant propensity'. For that reason the judge proceeded on the basis that the application by the prosecution was 'founded primarily upon Gateway D, in that it is said that the evidence is relevant to an important matter in issue between the defendant and the prosecution, that issue being…whether the defendant had a propensity to commit offences of the kind with which he is now charged; more particularly whether he had a sexual interest in boys and an inclination for buggery.' The judge also commented on a second strand of propensity, namely a propensity to be untruthful based on the fact that his conviction in 1985 came after a trial, following his denial of the offence.

The judge expressly accepted that for the purposes of section 103(2) of the Criminal Justice Act 2003, the 1985 conviction was not for an offence of the same category as either of the instant offences, in that it related to an offence against a 17-year-old. However, the judge stated 'Nevertheless, it seems to me that the fact that the conviction does provide evidence from which the jury could properly conclude that the defendant had a sexual interest in boys and moreover was inclined towards buggery.'

The judge also determined that the assertion by the defence that the victim in the instant offences had mistakenly identified the appellant, and that the more likely perpetrator was Roy Reynolds who was said to have previous convictions for child sex abuse, meant that the application was properly made out under gateway G as an attack on the character of another.

The judge concluded that:

- no issue of unfairness or injustice existed which could not be cured by appropriate directions
- the prosecution would suffer unfairness if the evidence was excluded
- there was a risk of the jury being misled as regards the suggested involvement of Roy Reynolds if they were unaware of the appellant's previous conviction.

In addition, the judge rejected the suggestion that this evidence would bolster a weak case on the basis of SB's identification of the location of the appellant's café.

The summing up

In summing up the judge did not address the bad character evidence with regard to a propensity on the part of the appellant to be untruthful. Rather, the 1985 conviction was left to the jury to consider as being relevant to the following three issues:

- it corrected a misleading impression that the appellant did not have a sexual interest in boys and was not inclined to act pursuant to that sexual interest
- if he did have such a side to his character, it potentially made it more likely that he committed the offences in 1978
- it was relevant to whether Roy Reynolds, rather than the appellant, was the perpetrator.

The submissions

Counsel for the appellant submitted that the judge was wrong to have admitted this evidence given that it related to a single conviction for buggery that post-dated the instant offences and involved a victim, who at 17 years old, was significantly older than SB was at the time of the offences. It was asserted that the later conviction lacked probative value, given the absence of similarity beyond the fact that it was an offence against the same legislative provision. In addition, the facts of the previous conviction were essentially unknown.

It was asserted that the judge erred in ruling that the evidence was admissible given that it was the defence case that the principal witness was mistaken about in his identification, and that the lies told by the appellant in interview as to his sexual part did not justify the judge's decision to admit the evidence. It was argued that the introduction of this material was unfair and had an adverse impact on the trial.

Although the prosecution sought to uphold the judge's decision in its written submissions, in oral argument, as discussed below, it was conceded that the 1985 conviction was inadmissible and that the conviction was unsafe.

Discussion

As previously stated, very little was known about the 1985 offence save that the appellant was convicted of buggery under the now-repealed section 12 of the Sexual offences Act 1956 on 14 November 1985, for which he received a sentence of eight months' imprisonment, with four month's suspended. The offence was committed on 29 March 1985 and the particulars were that the appellant had committed buggery at the rear of his shop premises, the Cathedral Café, Wensum Street, Norwich, on RF, a 17-year-old man who was under the age of consent that then applied, namely 21 years. The prosecution accepted that the sentence imposed strongly indicated that it was not suggested that the appellant had used coercion, or that this offence was otherwise committed against the will of RF.

It was considered to be highly likely that the circumstances of the 1985 incident no longer constitute a criminal offence of any kind, given that since January 2001 consensual sexual activity between males over the age of 16 (including buggery) has been lawful.

The fundamental nature of the allegations in the instant case was that the appellant committed violent, paedophilic offences against the will of a 12 or 13-year-old victim, and it was critical that none of those features formed part of the 1985 offence. In exploring the relevance of the 1985 conviction, as part of oral submissions the circumstances of the 1985 conviction were transposed into a heterosexual context and the Crown accepted that it was inconceivable that an attempt would be made to introduce the fact that a male defendant, at some stage in the past, had had lawful sexual intercourse with a female, however great the age difference, in support of a prosecution for violent and paedophilic offences, committed against an unwilling young victim. It was noted that mutually agreed sexual relations between individuals over the age of consent do not, certainly without more, tend to prove that the older participant is a paedophile, who has a propensity to commit violent crimes against children.

The court found the judge's directions to the jury revealed a lack of any real relevance to the 1985 conviction. The judge suggested that the jury had been told about the 1985 conviction because the appellant had suggested that he was 'not the sort of person to do something like that ' and that potentially 'his conviction demonstrates that he was someone with a particular side to his character, which included having a sexual interest in boys and being inclined to act pursuant to that sexual interest, even to the extent of buggery'. The court found the judge's directions to the jury to have involved 'wholly flawed reasoning'.

When interviewed by the police, the appellant denied having previously had anal sexual intercourse with a man – an assertion which did not form part of his defence at trial and which could easily have been excluded from the copies of the interview transcripts put before the jury. Instead, the central issue in this case was whether in 1978 the appellant had committed two violence paedophilic offences against the will of the victim. The appellant argued that he had been mistakenly identified, and whether he had had consensual sexual relations with other males over the present-day age of consent on other occasions was not relevant to the question of whether he had committed these offences. The court stated that in its judgment the circumstances of the 1985 offence did not tend to demonstrate that the appellant was more likely to engage in two violent sexual attacks on SB in 1978, or that he had a propensity to commit violent sexual offences against children.

In considering the assertion by the appellant that SB might have confused him for Roy Reynolds, the owner of a café on Ber Street, who had numerous convictions for sexual offences against children, the court found the judge's reasoning in this regard to be equally flawed. It was stated that the 1985 conviction was not to be equated with offences against children of the kind with which this case was concerned, and it would have been of no legitimate use to the jury when assessing whether Mr Reynolds, as opposed to the appellant, was the perpetrator of the 1978 offences.

Conclusion

As previously stated, the prosecution accepted during oral submissions that the 1985 conviction was a highly prejudicial piece of evidence and conceded that it was inadmissible. In those circumstances, the Crown did not seek to uphold the judge's decision, in which he had granted the application to admit this evidence. As such, at the conclusion of the hearing, the Court of Appeal allowed the appeal and quashed the convictions on both counts.

General police duties

R (on the application of R) and A Chief Constable [2013] EWHC 2684 (Admin)

A hearing in the High Court of Justice Queens Bench Division Administrative Court before Lord Justice Pitchford and Mr Justice Hickinbottom. The full case report can be found at: **http://www.bailii.org/ew/cases/EWHC/Admin/2013/2864.html**

Summary

By reason of his previous convictions the claimant was, from 7 March 2011, liable to have a non-intimate sample taken from him without his consent, pursuant to section 63(3B)(a) and (3BA)(a) of the Police and Criminal Evidence Act 1984 (PACE).

On 12 March 2013 the claimant was visited at his home by PC Woodcock who handed him a letter dated the previous day, requesting his consent to the taking of a non-intimate sample. The letter informed him that if he did not consent to the taking of the sample he would be required to attend a police station within seven days, whereby the sample may be taken with the authority of a police officer of the appropriate rank. The letter stated that if the claimant failed to attend, he was liable to arrest.

The claimant stated in his witness statement that he was told by PC Woodcock that 'he had to make arrangements within seven days to provide a non-intimate sample to be placed on the Police National DNA Database.' The statement continued 'I was informed…that if I did not consent voluntarily to give a sample then I could be arrested and a sample could be forcibly taken.' He did not give his consent.

On behalf of the defendant, it was conceded that the purpose of the request was to enable the defendant to compare the claimant's DNA profile with those held by the police in connection with unsolved crime. It was contended that the effect was to assist the detection of crime and to deter the commission of criminal offences by the claimant and others.

There was an issue as to whether the terms of the letter amounted to a request only or to a requirement in the event that consent was not immediately forthcoming.

On 13 March 2013 the claimant's solicitors wrote a pre-action protocol letter challenging the 'decision'. In his reply, the defendant confirmed that if the claimant did not consent to the taking of a sample he would be liable to arrest. On 19 March 2013 the claimant was notified that his appointment at the police station had been made for 26 March 2013. On 25 March the claimant filed his claim form. On 26 March Hickinbottom J granted an injunction restraining the defendant from exercising the power of arrest under PACE. On 26 April 2013 DI Ashman gave his authorisation for the taking of the sample as 'necessary to assist in the prevention or

detection of crime' and made a requirement that the claimant should attend a police station by 1700 on Friday 3 May 2013 in order for a non-intimate sample to be taken under section 63(3B) and paragraph 11 of schedule 2A to PACE. On 3 May 2013 permission to proceed was granted by Kenneth Parker J. The claimant brought a claim for judicial review, seeking an order to quash the decisions to make the requirement, and a declaration that the decision to require him to attend the police station and/or to take a sample was unlawful, as well as damages.

Grounds of claim

The claimant asserted that on 12 March 2013 and/or on 26 April 2013 the defendant unlawfully required his attendance at a police station for the purposes that a non-intimate sample could be taken without his consent. Article 8(1) of the ECHR required the defendant to accord respect for the claimant's private life. It was contended that Article 8 was engaged by the decisions:

- to 'require' the claimant to provide a non-intimate sample
- to 'require' the claimant to attend a police station
- to issue a threat to arrest the claimant if he did not comply
- to take or threaten to take a non-intimate sample without consent for the purpose of speculative searching and retention.

The claimant conceded that the requirement was made for the legitimate purpose of the prevention of disorder or crime. However, his case was that the decision to make the requirement in the circumstances was disproportionate and, therefore, unlawful.

In his witness statement dated 25 March 2013 the claimant stated that he was convicted of unlawful act manslaughter (in November 1984). He stated that he had picked up a male friend and driven to a car park where they were disturbed, he thought, by a security vehicle. His friend fled the car and 'jumped over what I assume he thought was a low wall' from which he suffered injuries from which he died. After that statement was made the defendant recovered the statement made by the claimant under caution on 13 June 1984 at the time of that investigation. That statement was not available to the defendant at the time the decision was made to make the requirement to provide a non-intimate sample. The court however deemed it to be relevant to the credibility of the claimant's assertion that the requirement was disproportionate and as such that statement was admitted in evidence.

In that statement the claimant stated that he engaged in consensual sexual activity with a male who then asked for money. An argument followed, with both men leaving the car and grappling with one another in the immediate vicinity of a wall of about 4 feet 6 inches in height. During the struggle the deceased went over the wall and fell about 25 feet, suffering severe injuries from which he died. The claimant told police at the time that he could not remember whether he had pushed the deceased, as alleged by the prosecution, or not. He was convicted of unlawful act manslaughter following a trial at which he did not give evidence. In his witness statement of March 2013 he stated that before he surrendered himself to the police he 'confessed everything'

to his then partner, whom he later married. In her witness statement of 14 June 1984 she stated that the claimant had told her that he had pushed the deceased over the wall. She retracted this statement two weeks later.

Following his release from prison and well into the 1990s, the claimant was a heavy drinker and was involved in petty crime. During this period the claimant admitted being involved in the kidnap 'of a friend' by taking him 'into the country', describing this incident as a stupid prank. He was convicted and sentenced to four months imprisonment for this offence.

The claimant further asserts that the manner in which the requirement to provide the sample was made was, in any event, unlawful since it failed to comply with the statutory pre-condition that authorisation should be given by a police officer of the rank of inspector **before** the requirement was made. He contended that although the authorisation may, other things being equal, have justified a future requirement such as that made on 26 April 2013, the requirement made on 12 March 2013 was unlawful. However, the claimant asserts that the reasons given by DI Ashman for providing the authorisation failed to strike the required balance between his right to respect for his private life and the public interest in the legitimate aim identified.

Finally, the claimant contends that before the requirement to provide a sample was made the defendant was bound to provide him with an opportunity to make representations in order to ensure fairness and/or to render the demand proportionate, which the defendant failed to do.

S v United Kingdom

In S v UK [2009] 48 EHRR 50, two British nationals who had been required to provide fingerprints and DNA samples under sections 61 and 63 of PACE 1984 following their arrests, challenged the refusal of the police to destroy the samples on their acquittal or discontinuance of the proceedings. The court concluded that the taking and retention of the samples constituted an interference with the applicants' right to respect for their private lives under Article 8(1). The Court concluded that the power of retention under section 64 was blanket and indiscriminate, with the material being retained regardless of the nature or gravity of the offence of which the individual had been suspected. There was no provision for independent review of the decision against defined criteria such as seriousness of the offence, previous arrests and strength of suspicion.

It must be noted that the Court did not consider the question whether a power to demand the taking of a non-intimate sample without the individual's consent was a proportionate interference with the right of respect for his private life when that individual had in the past been convicted of serious offences.

In this matter, the claimant challenged the proportionality of the requirement to submit to the taking of a sample by reference to the period of time since his last conviction, and relies on the improbability, as he submits, that comparison with crime scene samples will disclose further offences committed by him.

The statutory power

Amendments were made to section 63 PACE 1984 following the decision in S v UK with a view to providing a scheme for the taking and retention of samples which complied with Article 8. Section 63(3B)-(3BC) applied to a person who had in the past been convicted of certain serious offences but from whom no sample had been taken or whose sample was insufficient or unsuitable for analyses. Further words were added by schedule 24 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Operation Nutmeg

The request made to the claimant followed the formulation of Operation Nutmeg by the Home Office, which was aimed at those who had been convicted of homicide or sexual offences after 1995 or, having been convicted of such an offence before 1995, subsequently were convicted of 'recordable offences'. Chief Officers were informed of the new powers given by the amendments to PACE 1984 and guidance was issued by the Association of Chief Police Officers (ACPO) dated July 2012. Those who were in prison and qualified under the criteria had been the subject of an earlier operation, Operation Sheen, which was completed in September 2011.

The guidance explained that the purpose of Operation Nutmeg was to ensure that those convicted of homicides and/or sexual offences have a confirmed DNA profile of the National DNA Database (NDNAD) and that this is correctly shown in their PNC record. To achieve this, it was explained that forces would be supplied with details of subjects whose last known location was within their force area. A risk assessment was to be carried out on each subject to identify high risk subjects and ensure that they were located and sampled at the earliest opportunity.

Of the claimant's previous convictions, it is common ground that the claimant's convictions for manslaughter and kidnapping qualified under section 63(3B) PACE 1984.

Appendix F to the guidance issued contained a flow chart which purported to identify the sequence in which the power to require such a sample should be exercised. There was no requirement stated in the guidance that the authorisation of a police inspector should be obtained **before** any step is taken. However, appendix F also advised that when the individual is located the relevant parts of the 'non-intimate sample authority ' should be read to him. This implied that the authorisation must already be in existence before any requirement under schedule 2A to PACE 1984 was made. However, appendix L, which contained a form on which to record the result of the exercise, implied that authorisation would only be obtained after the requested person had arrived at the police station or been arrested. This was also implied by consent and authority forms.

The letter handed to the claimant on 12 March 2013 was based on a pro forma contained in appendix G to the guidance.

The defendant's case

The defendant concedes that no requirement to attend a police station for the purpose of providing a non-intimate sample under paragraph 11 of schedule 2A to PACE 1984 may be made to a person who does not consent to provide such a sample unless an officer of at least the rank of inspector has first given authorisation for the taking of the sample under section 63(3B), as per paragraph 15 of schedule 2A. By paragraph 16, once the authorisation has been obtained the officer must give the individual 7 days within which to attend the police station unless an officer of the rank of inspector authorises the earlier taking of the sample on the ground that it is urgently required for the purpose of investigation of an offence. Under paragraph 17 of schedule 2A, only if the person fails to attend the police station pursuant to the requirement made may an officer arrest him for the purpose of enforcing the requirement.

The defendant further concedes that to the extent that the guidance gives an impression of the statutory powers contrary to that described in the paragraph above, it is incorrect.

The defendant asserts that on 12 March 2013 the claimant was requested to provide a sample, but was not on refusal **required** to attend the police station. He was warned that the consequence of refusal may be a subsequent requirement to attend the police station and arrest in the event of failure to do this. Further, and in any event, the requirement was properly authorised and made by DI Ashman on 26 April 2013.

The defendant submitted that the collection of samples under PACE from those convicted of crime is in accordance with the law and is necessary in a democratic society for the prevention of crime for the purpose of Article 8(2). In a review of the decision the issue for the Court is whether the collection of the claimant's sample for the purpose of speculative checking against other samples and the retention of his DNA profile once produced is a proportionate exercise of the statutory power.

With regard to the proportionality of the authorisation the defendant relied on the terms of the authorisation of 26 April 2013 and the witness statement of DI Ashman, which stated DI Ashman's belief that the taking of a sample from the claimant was necessary for the detection of crime due to his belief that the claimant had committed further offences after DNA profiling became commonly used by the police and that his DNA profile may be held by the police in connection with an, as yet, undetected offence whether a result of being the perpetrator or as a witness to it. In addition, it stated a further reason for DI Ashman's belief that taking a sample was necessary for the detection of crime, namely that 'a man who has previously been convicted of serious offences, is far more likely to offend in the future than is a man of good character.' Further, DI Ashman considered the claimant's Article 8 right stating 'The gravity of the previous convictions, particularly for manslaughter and kidnap, reinforce my view that the obtaining of this non-intimate sample without the appropriate consent is both necessary and proportionate…'

It was part of the defendant's case that the fact that the claimant's profile was not already held on the NDNAD was an accident of timing. After 5 April 2004 any person convicted of any one of the offences committed by the claimant would expect his sample to be taken and his DNA profile to be retained indefinitely.

The defendant did not concede that there was an obligation on the chief constable to afford the claimant an opportunity to make representations before issuing the requirement to attend the police station.

Discussion

Date requirement made

The court considered that the letter of 11 March 2013 constituted a demand that should the claimant refuse to the taking of a sample then and there he **must** attend the police station for the purpose of providing such a sample within 7 days of the delivery of the letter. In the view of the court, that demand was unlawful because it was made without the required prior authorisation of an officer of at least the rank of inspector or above, contrary to paragraph 11(2) of schedule 2A to PACE 1984.

The court stated that it was unsurprising that the demand was made without prior authorisation because the guidance notes published by ACPO were 'seriously inaccurate to the extent that they implied that the requirement to an individual could be issued before the authorisation was given.' Paragraph 15 of schedule 2A makes clear that the authorisation must be obtained first.

Requirement of 26 April 2013

It was the defendant's alternative case that DI Ashman's authorisation of 26 April 2013 made its own requirement that the claimant provide a non-intimate sample. As such it was necessary for the court to decide whether the claimant had established that DI Ashman's requirement constituted an unlawful interference with the claimant's right to respect for his private life under Article 8.

Interference with private life – Article 8(1) ECHR

It was not in dispute, for the reasons given by the European Court of Human Rights in S v UK, that the requirement to provide a non-intimate sample for the purpose of producing a DNA profile for comparison with that held on the NDNAD constituted an interference with the claimant's Article 8 right to respect for his private life.

Proportionality of interference – Article 8(2) ECHR

In S v UK the applicants were to be treated as persons of good character. It was the indiscriminate reach of the statutory power (in particular, its tendency to stigmatise unconvicted persons who had come under suspicion) that rendered the retention objectionable. The amended powers are deliberately confined to particular categories of persons, in this case those who were convicted of serious offences before it became routine to take samples in order to produce DNA profiles for the investigation of crime. It was stated that no stigma attached to the claimant in the present case by reason only of the requirement to provide a non-intimate sample; his convictions for serious offences are a matter of public record and he was only one of 11,000 people who were liable, depending on individual circumstances, as a result of their antecedent history, to provide samples for this purpose.

The claimant attacked the authorisation given in his case on the basis of the statistical improbability that a speculative check would reveal any information of value to the police. It was argued on behalf of the claimant that the absence of suspicion, based on evidence, that he had committed any other offence rendered the present exercise purely speculative and, for that reason, a disproportionate interference with his private life.

It was asserted on behalf of the chief constable that the claimant does have an offending profile which places him within a category of persons to whom the requirement could and should properly have been directed. It was pointed out that the purpose of the exercise was to ascertain whether the claimant continued to commit offences after his last serious conviction in 1993 and that the statistical probability of a match should not determine the issue of proportionality. Having regard for the underlying justification of the exercise, namely the detection of serious crime, it was submitted that on the information available to DI Ashman, it was a proportionate exercise of the statutory power to require a sample from the claimant.

The court accepted the defendant's point that the statistical probability of a match with the crime scene database was not determinative of the issue of proportionality. Further the court stated that acceptance of propensity to commit offences as a measure, albeit an imprecise one, of probability in the detection and proof of further offences is now so widespread that the defendant was fully justified in placing weight upon it.

The court did not consider that the absence of specific grounds for suspicion of the claimant rendered the requirement disproportionate. The essential question for the court was whether the information before DI Ashman, without more, justified the requirement made. Despite the evidence before DI Ashman that there had been a change in the claimant's lifestyle at some stage after his last conviction for a serious offence, the court considered that DI Ashman's conclusions (1) that the claimant may have committed other offences during the period of his admitted offending, and (2) that he may have committed offences after 1995 were justified.

The court considered that significant weight is to be attached to the legitimate interest in the detection of crime. It was recognised that there is a theoretical deterrent effect in the knowledge by the claimant that the police were in possession of his DNA profile, however in the view of the court, it was the objective of solving crime which provided the legitimate justification for the requirement in this case.

The court found that DI Ashman's conclusion that his requirement of the claimant to provide a sample was proportionate in the circumstances was correct. DI Ashman was fully justified in concluding that the public interest in the detection of crime outweighed the limited interference with the claimant's private life.

Opportunity to make representations

In the claimant's case, on 12 March 2013 there was no issue of disputed fact or any issue as to the reliability of an informant or any doubt about the interval of time since the claimant's last conviction. The only question was whether the claimant's admitted convictions justified

a requirement to provide a sample in spite of the interference with the claimant's private life. The court considered the better course of action would be to provide the person to whom the request is made with the chance to respond, however, having deemed the requirement made on 12 March 2013 unlawful, the court was concerned with the position as it was on 26 April 2013 when DI Ashman issued his authority and requirement. By that stage, the claimant had submitted his witness statement in support of his claim that the interference with his Article 8 right by way of a requirement to provide a sample was unlawful. The claimant's evidence was considered by DI Ashman before he made his decision and the court did not accept the claimant's submission that he may have said more had he known of the underlying reasons for seeking a sample. The court determined that it was not demonstrated that the claimant's Article 8 rights were not properly protected.

Conclusion

The court concluded that the requirement of 12 March 2013 was unlawful but that the requirement of 26 March 2013 was lawful. The claim failed on the main issue of proportionality and as such was dismissed.

Policing practice

Crime

Statistical bulletin on crime in England and Wales published

The Office for National Statistics has published its latest statistical bulletin for the 12 months to June 2013 on crime in England and Wales which shows that crime continues to fall. The statistical bulletin can be found at **http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-june-2013/index.html**

Key points

- latest figures from the Crime Survey for England and Wales (CSEW) estimate that there were 8.5 million crimes experienced by households and resident adults in the previous 12 months
- the CSEW also estimated that there were 0.8 million crimes experienced by children aged 10 to 15 resident in the household population
- the headline estimate for crimes against households and resident adults fell by 7% compared with the survey the previous year, which is the lowest in the history of the survey which began in 1981
- the police recorded 3.7 million offences in the year ending June 2013, a fall of 5% compared with the previous year
- victim-based crime accounted for 83% of all police recorded crime (3.1 million offences) and fell by 6% in the year ending June 2013 compared to the year before
- the police recorded 400,156 other crimes against society, a decrease of 8% compared with the previous year
- 230,335 fraud offences were recorded in the year ending June 2013, representing a volume increase of 21% compared with the year before and should be seen in the context of a move towards the centralised recording of fraud by the police
- there were decreases across all the main categories of recorded victim-based crime compared with the previous year, with the exception of theft from the person which rose by 8%, shoplifting which rose by 1% and sexual offences which rose by 9%
- an additional 1.0 million, less serious, offences were dealt with by the courts in the year ending March 2013, which are not included in the police recorded crime figures.

New strategy to disrupt serious and organised crime

The Home Secretary has announced wide-ranging plans to tackle the threat of serious and organised crime under the government's serious and organised crime strategy.

The strategy uses the counter terrorism framework to set out action that will be taken at every opportunity to relentlessly disrupt serious and organised criminals. It focuses on preventing people from getting involved in organised crime, improving Britain's protection against serious and organised criminality and ensuring communities, victims and witnesses are supported when serious and organised crimes occur.

The serious and organised crime strategy can be found at **https://www.gov.uk/government/publications/serious-organised-crime-strategy**

New measures in the strategy include:

- the new National Crime Agency to provide a national lead against organised crime, including cyber crime
- extra funding for additional capabilities in regional police organised crime units
- strengthened powers to attack and seize criminal assets
- a new crackdown on organised foreign criminals operating in this country
- more use of existing intervention programmes such as for gangs and troubled families to prevent people being drawn into organised crime
- more aggressive use of Serious Crime Prevention Orders and Travel Restriction Orders as a deterrent against repeated organised crime offenders
- a lifetime offender management programme to manage interventions against persistent offenders before and after conviction with the aim of reducing reoffending
- new arrangements for reporting and investigating corruption
- new arrangements for public/private sector collaboration on financial crime and cyber crime
- a new cyber emergency response team to deal with the most serious cyber attacks, including cyber crime.

Scrap metal laws to stop metal theft come into force

As of 1 October 2013, all scrap metal dealers will need to apply to their local council for a licence to operate under new legislation. As well as the power to issue licences, under the Scrap Metal Dealers Act 2013 councils have the power to refuse or revoke licences if a dealer is deemed unsuitable.

The offence of buying scrap metal for cash came into force on 1 October 2013 under which rogue traders who buy and sell scrap metal for cash face a fine of up to £5000.

In addition, the Act gives local authorities and the police new powers to enter and inspect premises where they suspect illegal activity.

The Home Office has published supplementary guidance to the Act which can be found at **https://www.gov.uk/government/publications/scrap-metal-dealers-act-2013-supplementary-guidance**

Statistics on football-related arrests and football banning orders season 2012-13 published

The statistics cover all arrests designated in law under schedule 1 of the Football Spectators Act 1989 reported by police to the Football Banning Orders Authority and includes football-specific offences, for example, throwing missiles in a stadium and pitch encroachment, and a wide range of generic criminal offences committed in connection with a football match. This covers such arrests at any place within a period of 24 hours either side of a match.

In addition data was collated for the first time on a full season of football-related offence arrests made by British Transport Police.

In the 2012-13 season, there were 2,456 arrests in connection with all international and domestic football ('regulated') matches involving teams from, or representing, England and Wales, which amounted to an increase of 4%, or 93 arrests, on the total number of arrests in 2011-12 which was the lowest total on record.

The total number of arrests represents less than 0.01% of the total attendance at regulated football matches which was in excess of 39 million people, or one arrest for every 14,000 spectators.

During the season there was on average less than one arrest made per match inside or outside of stadia with no arrests made in 75% of all regulated matches.

58% of all matches were police free, with police resources used where it was necessary to make an arrest.

More than 100,000 English and Welsh club fans travelled to Champions League and Europa League matches outside of England and Wales. These 44 matches resulted in the arrest of 20 away fans.

The number of football banning orders decreased from 2,750 on 9 November 2012 to 2,451 on 20 September 2013 (a fall of 11%). This includes 471 new banning orders imposed during the reporting period.

The full statistical report can be found at **https://www.gov.uk/government/publications/football-related-arrests-and-banning-orders-season-2012-to-2013**

Diversity

'Homophobic Hate Crime: The Gay British Crime Survey 2013' published

Stonewall, the gay equality charity, has published 'Homophobic Hate Crime: The Gay British Crime Survey 2013' which looks in detail at the experiences and extent of homophobic hate crimes and incidents in Great Britain by polling more than 2,500 lesbian, gay and bisexual people across the country. In addition to the examination of homophobic hate crime and incidents, the research also looks at when and where such crimes and incidents are committed and how victims respond, as well as how well the police and criminal justice system serve victims.

The full report can be found at **http://www.stonewall.org.uk/what_we_do/research_and_policy/9286.asp**

The key findings of the report include:

- one in ten people experiencing a homophobic hate crime or incident were physically assaulted
- almost one in five victims were threatened with violence or the use of force
- one in eight victims experienced unwanted sexual contact
- one in eight victims have had their home, vehicle or property vandalised
- harassment, insults and intimidation are most common, reported by more than eight in ten lesbian, gay and bisexual people who have suffered a hate crime or incident
- 50% of those who experienced a hate crime or incident said that the perpetrator was a stranger aged under 25
- three in ten victims said they knew the perpetrator, or one of the perpetrators, whether it was somebody living in their area, a colleague or even a friend or family member
- more than two thirds of those experiencing a hate crime or incident did not report it to anyone
- more than 75% did not report it to the police
- two in five victims of a hate crime or incident did not report it because they did not think it was serious enough to report
- one in 14 victims were concerned about further homophobia from those they would report it to
- more than one in five of those who did report the crime to police did not mention its homophobic nature

- fewer than one in ten victims who reported hate crimes and incidents to the police said it led to a conviction
- 50% of victims who reported a hate crime or incident to the police said it was recorded with no further action taken
- two in five of those reporting a hate crime or incident to the police said it was not recorded as a homophobic incident
- half of those reporting a hate crime or incident were not satisfied with the way it was handled
- two thirds of lesbian, gay and bisexual people feel they are at a bigger risk of being insulted, intimidated or harassed than heterosexual people
- 25% feel the need to alter their behaviour so they're not perceived as gay to avoid being the victim of crime
- 6% of lesbian, gay and bisexual people said that crime is their biggest fear.

Recommendations

The report makes the following recommendations:

For the police

- train all police officers and control room staff to identify and record homophobic hate crimes and incidents
- continue to provide different ways for people to report incidents so that victims feel comfortable reporting 'less serious' crimes and incidents
- use data more effectively to identify particular problems in the force area and take action to address any issues identified
- engage more meaningfully with local lesbian, gay and bisexual people to address the attitude among many victims that homophobic hate crimes are not serious enough to report
- work with schools to challenge homophobic attitudes among young people and encourage young people to stay safe
- be a gay-friendly employer and tell people in the local area about the work being undertaken to support gay police staff and officers.

For police and crime commissioners and the mayor of London

- make a public commitment to tackle homophobic hate crime and to promote lesbian, gay and bisexual equality
- hold the local force to account on how well it is meeting its legal duty to address the needs of lesbian, gay and bisexual victims of crime

- protect and support the existing work of the local force to tackle homophobic hate crime and support lesbian, gay and bisexual victims of crime
- work with lesbian, gay and bisexual people in the local area to find out what their needs are and how well they think the force is supporting them in order to inform strategic priorities
- hold victims services to account on supporting lesbian, gay and bisexual victims of crime.

For the College of Policing

- develop national standards on training of police officers and police staff on homophobic hate crime and lesbian, gay and bisexual equality
- make sure police officers have access to practical resources while on duty to help them handle homophobic hate crimes and incidents appropriately and better support lesbian, gay and bisexual victims of crime
- share best practice amongst police forces on how to increase reporting of homophobic hate crimes and incidents and better support victims
- commission and publish further research to evaluate what measures are effective in encouraging victims to report homophobic hate crimes and incidents to the police.

For the Crown Prosecution Service

- improve the process for keeping victims of homophobic hate crime informed about the progress of their case and the options available to them when testifying
- refer victims of homophobic hate crime to appropriate support agencies
- track the satisfaction of victims throughout the prosecution process
- record and monitor the use of enhanced sentencing including when it hasn't been used and the reasons for this
- monitor online incidents of homophobic hate and resulting cases to develop best practice about successful prosecutions.

For prisons and probation services

- identify and work with the perpetrators of hate crime to challenge homophobic attitudes and reduce the risk of reoffending
- educate young hate crime offenders in particular about the impact of homophobic language and behaviour on victims
- evaluate the impact of rehabilitation work with hate crime offenders
- provide training to probation officers to use restorative justice when working with offenders and victims of homophobic hate crime to identify cases where this may be appropriate for the victim.

For media organisations and technology providers

- have a zero tolerance policy on homophobic hate speech posted on social media platforms and news websites and make sure users know about it. This will give users the confidence to report abuse when they encounter it.
- train moderators on how to identify and remove homophobic abuse perpetrated online
- make it as easy as possible for users to report online homophobic abuse to provide an accurate picture of the problem.

Collaborative report on the criminal victimisation of people with mental health problems published

This study was conducted by a partnership of Victim Support, the Institute of Psychiatry at King's College London, Mind and St George's University of London and Kingston University in collaboration with University College London. It was designed to understand the experiences of victimisation and engagement with the criminal justice system among people with mental health problems.

The full report can be found at **http://www.mind.org.uk/news-campaigns/news/at-risk,-yet-dismissed/**

The study, which involved a quantitative survey and qualitative interviews and focus groups, sought to answer the following questions:

- what proportion of people with severe mental illness had been a victim of violent or non-violent crime in the past year, and how does that compare to the general population?
- what are the barriers and facilitators for people with mental health problems, who have been victims of crime, in reporting crime, progressing through the criminal justice process and accessing support?

The findings of the research include the following:

- 45% of people with severe mental illness (SMI) were victims of crime in the past year
- one in five people had experienced a violent assault; a third were victims of personal crime and a quarter were victims of a household crime
- people with SMI were five times more likely to be a victim of assault, and three times more likely to be a victim of household crime, than people in the general population, after taking into account socio-demographic differences. Women were ten times more likely to be assaulted.
- people with SMI reported vey high rates of sexual and domestic violence, with 40% of women reporting being a victim of rape or attempted rape in adulthood, and 10% being a victim of sexual assault in the past year
- victims with SMI were up to four times more likely to be victimised by their relatives or acquaintances than those from the general population
- 9% of the victims described crimes in psychiatric inpatient settings
- compared to victims who did not have mental health problems, victims with SMI were more likely to suffer social, psychological and physical adverse effects as a result of the crime, and were more likely to perceive the crime as serious
- the impact of domestic or sexual violence was particularly serious with 40% of women and 25% of men who experienced this having attempted suicide as a result

- victims with SMI were as likely to report their experiences to the police and to progress through the criminal justice system as victims from the general population but they were much less satisfied with the police and less likely to report fair or respectful treatment
- a third of victims did not disclose their experiences of being a victim of crime to any professional. This was higher with sexual and domestic violence, where 70% of male victims of sexual assault did not disclose their experience at all. While all the survey participants were receiving support from community mental health teams, 40% did not disclose their experience to a mental health professional.
- victims with SMI were more likely to receive help than those in the general population group. However, while they were more likely to receive talking and practical help, none received crime prevention advice compared to 35% of the general population group. Nearly 50% of SMI victims said their wanted further help and the greatest unmet needs were for practical or financial help, talking help and help with accessing the criminal justice system.
- few victims had contact with Victim Support (10% of those with and without SMI), but most of the people who did were satisfied with the help they received.

The study made the following recommendations:

- develop a strategic response to support and protect people with mental health problems who are victims of crime
- train all staff in health, social care and police services, especially frontline staff, on the experiences and needs of people with mental health problems as victims of crime and how to respond appropriately
- support people with metal health problems to tell someone if they have been a victim of a crime
- measure and improve police and CPS responses to crimes reported by people with mental health problems
- develop effective services that address the substantial impact that being a victim of crime has on people with mental health problems
- remove the barriers and improve the experience of people with mental health problems in courts
- improve communication with people with mental health problems
- empower and support people with mental health problems to help individuals take proactive steps to prevent repeat victimisation themselves where possible
- work collaboratively in partnership to provide joined up services for people with mental health problems
- increase and develop understanding of why people with mental health problems are at such greater risk of crime.

Police

Authorised Professional Practice launched

The College of Policing has launched online policing guidance, Authorised Professional Practice (APP), to the public, making it available on smartphones and tablets for the first time.

APP seeks to consolidate over 650 national policing manuals by reducing their content and making them available digitally, thereby streamlining existing knowledge products and guidance into a simpler online format giving officers and staff instant access to authorised practice and the ability to see how it links to other policing business areas.

The APP website currently covers the following policing areas:

- armed policing
- detention and custody
- intelligence management
- operations
- risk
- civil contingencies
- engagement and communication
- investigation
- prosecution and case management
- road policing
- critical incident management
- information management
- public order
- National Decision Model.

Other titles of policing guidance will continue to be developed and consolidated into 2014.

Some material marked restricted and covering operationally sensitive policing areas will not be available in the public domain including covert policing, counter-terrorism and protected persons policing guidance.

The APP guidance is available at **http://www.app.college.police.uk/**

Her Majesty's Inspectorate of Constabulary's (HMIC) approach to monitoring forces – An overview for the public, forces and local policing bodies

Her Majesty's Inspectors of Constabulary (HMIs) routinely monitor the performance of all police forces to identify apparent issues for closer scrutiny and ensure that:

- emerging problems with the efficiency or effectiveness of individual forces are spotted quickly, and chief constables and local policing bodies are aware of those problems and are taking corrective action
- if problems with the efficiency or effectiveness of a force are enduring and there is a low prospect of them being resolved, those problems are raised formally with the local policing body, so they can respond.

HMIC's overview, published on 26 September 2013, summarises:

- the process HMIs follow in monitoring, and the steps they can take if they have concerns over force performance
- the questions that HMIs ask about each force as part of routine monitoring of efficiency and effectiveness, and the kinds of information that they use to answer those questions
- how HMIC shares information about monitoring, including the role of the Crime and Policing Monitoring Group.

The full overview can be found at **http://www.hmic.gov.uk/publication/hmic-approach-to-monitoring-forces/**

Consultation on the draft Code of Ethics for policing launched

The College of Policing has launched a consultation on the draft Code of Ethics for policing in England and Wales.

The Code provides a framework to set and maintain the highest possible standards of behaviour expected of everyone in policing, emphasising the importance of personal integrity, honesty and fairness and will apply to the more than 220,000 police officers and staff across England and Wales.

It is expected that the final code, which is a national document reflecting the core principles and standards of behaviour that every member of the police service should strive to maintain, will be published in the spring of 2014.

The deadline for submitting feedback on the draft Code of Ethics is Friday **29 November 2013**.

Feedback should be emailed to **integrity.team@college.pnn.police.uk**, or sent by post to:

Integrity Programme
College of Policing
10th Floor, Riverside House
2a Southwark Bridge Road
London SE1 9HA

The draft Code of Ethics, as well as further information, can be found at **http://www.college.police.uk/en/20972.htm**

Guide on Firearms Licensing Law 2013

The Home Office has published updated consolidated guidance on firearms licensing legislation to replace the previous guidance published in 2002.

Updates to the guidance since 2002 include:

- reinforcing the importance of proper assessment, specifically with regards to domestic violence, when considering a person's fitness to carry a firearm. This will ensure evidence of domestic violence is considered without increasing the risk to victims.
- reducing the bureaucracy within police firearms licensing departments by reviewing the conditions on firearm certificates
- wew sections covering emerging issues related to firearms and shotgun licensing. For example new guidance for applicants who wish to possess firearms on UK registered ships in a response to the risk of piracy.

The updated guidance can be found at **https://www.gov.uk/government/publications/firearms-law-guidance-to-the-police-2012**

National Crime Agency goes live

The new National Crime Agency (NCA) became operational on 7 October 2013.

For the first time, a single law enforcement agency will be responsible for leading the national response to cut serious and organised crime.

The NCA will use the expertise and resources of law enforcement across the United Kingdom and abroad, to ensure a consistent and coordinated approach to continuously disrupt the most serious criminals and groups.

The NCA will comprise four commands, namely:

- Organised crime
- Economic crime
- Border policing
- Child exploitation and online protection.

The national response of the NCA is delivered through the four pillars of:

- **Pursue –** prosecute and disrupt people engaged in serious and organised crime
- **Prevent –** prevent people from becoming involved in serious and organised crime
- **Protect –** increase protection against serious and organised crime
- **Prepare –** reduce the impact of serious and organised crime where it takes place.

Further information can be found at **http://www.nationalcrimeagency.gov.uk/**

Criminal justice system

Response to the Home Office consultations on PACE Codes A, B, E & F and C & H published

Separate eight- and five-week public consultations were carried out in respect of Codes A, B, E & F and Codes C & H respectively.

This Government response to the two consultations sets out a summary of the changes, provides a summary of the responses and outlines the Government's proposed next steps.

The revised Codes were laid before Parliament, along with the Statutory Instruments (SI 2013/2685) which brought them into operation on 27 October 2013.

Consultation on PACE Codes A, B, E & F

Summary of changes

Code A

Most of the changes to Code A reflect changes to legislation concerning terrorism powers. Terrorism powers to stop and search are now governed by a new Code of Practice issued under the Terrorism Act 2000 which came into force on 10 July 2012. As such the terrorism provisions have been removed from Code A.

The powers to search persons without them being arrested as introduced by the Terrorism Prevention and Investigation Measures Act (TPIMS) 2011 have been included in Code A. These powers are outside the scope of the terrorism stop and search Code and their inclusion in Code A ensures that the conduct and recording of these searches is subject to that Code.

In addition, Annex F (gender and searching) to Code A has been deleted and superseded by Annex L to Code C.

Code B

Most of the changes to Code B reflect changes to legislation concerning terrorism powers. In Code B, new provisions on the TPIMS powers to enter and search premises for the purposes of serving, monitoring and enforcing TPIMS notices replace the repealed control order provisions under the Prevention of Terrorism Act 2005.

In addition, references to a three calendar month period within which section 16(3) of the Police and Criminal Evidence Act 1984 requires a search warrant to be exercised has been amended to acknowledge enactments which specify a shorter period.

Codes A & B

The threshold for exercising the powers in sections 139B and 139AA of the Criminal Justice Act 1988 on school premises to search persons and to search for weapons was reduced from reasonable belief to reasonable suspicion by section 48 of the Violence Crime Reduction Act 2006. This has now been amended in both Codes.

The summaries of the Equality Act 2010 have also been amended in both Codes for accuracy.

Both PACE Codes A and B have effect from **27 October 2013**.

Codes E & F

The main changes to both complement the 2012 revisions to Codes C and G concerning the conduct and recording of voluntary interviews of suspects who are not under arrest. For voluntary interviews of suspects not in police detention which need not take place at a police station, the changes provide for a sergeant to be responsible along similar lines to the arrangements in place for those in custody.

In addition, the following changes have also been made to both Codes:

- the insertion of the Equality Act 2010 summary which is included in other Codes
- the correction of cross references to the code of practice for video recording interviews in terrorism cases which came into force on 10 July 2012
- to make amendments and new provisions concerning the security of master recordings to ensure consistency in Codes E & F and the corresponding terrorism interview recording provisions
- to make consequential changes arising from Codes C & H concerning the treatment of 17-year-olds and juveniles and interpreters.

Code E applies to interviews carried out **after midnight on 26 October 2013**.

Code F should be considered if an interviewing officer makes a visual recording with sound of an interview with a suspect **after midnight on 26 October 2013**.

Consultation on PACE Codes C & H

Summary of changes

The main changes to Codes C and H mirror each other with regard to safeguards for 17-year-old suspects and for suspects who do not speak and understand English. They are required to:

- comply with the High Court judgment in R on the application of HC (a child, by his litigation friend CC) v Secretary of State for the Home Department and the Commissioner of Police of the Metropolis [2013] EWHC 982 (Admin) concerning safeguards for 17-year-olds
- implement EU Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings.

The changes to which the High Court judgment apply extend the requirement for an appropriate adult, with modifications, to 17-year-olds. Statutory provisions relating to 16-year-olds are not amended and the definition of juvenile for the purpose of PACE in section 37(15) remains.

The changes required by the EU Directive apply to the investigation stage for which the Secretary of State for the Home Department is responsible. The main impact of these changes is the introduction of a right for a suspect to have a written translation of 'essential documents' which are defined in Code C as comprising authorisations of detention under PACE given by police and the court, details of offences charged and written interview records.

This Code C has effect from **27 October 2013**. This Code H applies **after midnight on 26 October 2013**.

The Response to the consultations can be found at **https://www.gov.uk/government/consultations/consultation-on-revised-pace-codes-of-practice-2013**

The revised Codes of Practice can be found at **https://www.gov.uk/government/consultations/consultation-on-revised-pace-codes-of-practice-2013 and https://www.gov.uk/government/consultations/revised-pace-codes-of-practice-c-and-h**

Consultation on data sharing between public bodies

The Law Commission has published a consultation paper on data sharing between public bodies, stemming from reports by public bodies that they cannot always share the data that they need to, and as such miss out on opportunities to provide better services to citizens. Alongside this, it is accepted that there is a need to ensure that the security of data and privacy of individuals are not put at risk.

The aim of the project is to establish what the obstacles are to data sharing between public bodies, and whether these obstacles are desirable. It aims to establish whether these perceived obstacles are embedded in practice or culture, or whether they are to do with the substance of the law or how it is written. It asks:

- does the law itself erect barriers that unduly restrict data sharing between public bodies?
- has a lack of clarity in the law led public bodies to develop cultures that prevent lawful data sharing? Is data sharing just too difficult?
- is there a gap in education guidance and advice?

The consultation is open until **16 December 2013** with the aim to present the findings to Government in the spring of 2014.

The consultation paper can be found at **http://lawcommission.justice.gov.uk/areas/data-sharing.htm**

Parliamentary issues

Report on the Anti-Social Behaviour, Crime and Policing Bill published by the Joint Committee on Human Rights

The Joint Committee on Human Rights has published a report on the Anti-Social Behaviour, Crime and Policing Bill. In it the Committee:

- proposes that the legal framework should distinguish between the powers to stop, question and physically search persons and property, and the more intrusive powers including detention and accessing, searching and copying information on personal electronic devices
- recommends an amendment to introduce a reasonable suspicion requirement before the more intrusive powers are exercisable
- suggests amendments to the Bill to address concerns that the current powers to access, search, examine, copy and retain data held on personal electronic devices, are too wide
- questions whether the powers extend to requiring passwords to electronic devices to be handed over
- recommends that the Government bring forward proposals to introduce safeguards for certain categories of material detained including material subject to legal professional privilege or which would disclose a journalist's sources.

The Committee recommended a number of other amendments to the Bill with regards to preventive measures against anti-social behaviour to ensure that:

- courts take into account the best interests of the child as a primary consideration when deciding measures against children
- current drafting of the Bill is made clearer in relation to:
  - the definition of anti-social behaviour
  - the legislative tests that are to be applied by courts when imposing anti-social behaviour measures
  - the conditions that can be attached to the measures
- the police dispersal powers are properly circumscribed and can only be used for the purpose of tackling anti-social behaviour
- individuals are not evicted from their homes as a result of a conviction for a riot-related offence.

With regard to the Bill's provision to criminalise forced marriage, the Committee recommended that the Crown Prosecution Service develops a strategy on prosecutions of forced marriage with consultation with relevant stakeholders and that the Government reports to Parliament annually on the effectiveness of this new law.

In addition, the Committee recommended additional measures to protect against the potential for prolonged retention of DNA and other personal samples in criminal investigations, namely:

- the establishment of a robust process to ensure that each sample is considered and a determination is made as to whether or not it is required for the purposes of the Criminal Procedure and Investigations Act 1996 (CPIA)
- the establishment of a robust independent audit regime of retained samples under the CPIA to help ensure against unnecessary prolonged retention.

The full report can be found at **http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/56/5602.htm**

Protecting the public
Supporting the fight against crime

As the professional body for policing, the College of Policing sets high professional standards to help forces cut crime and protect the public. We are here to give everyone in policing the tools, skills and knowledge they need to succeed. We will provide practical and common-sense approaches based on evidence of what works.

Contact us

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