NPIA
National Policing Improvement Agency

Digest

July 2011

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

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

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

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Legal Services

Chief Executive Officer Directorate

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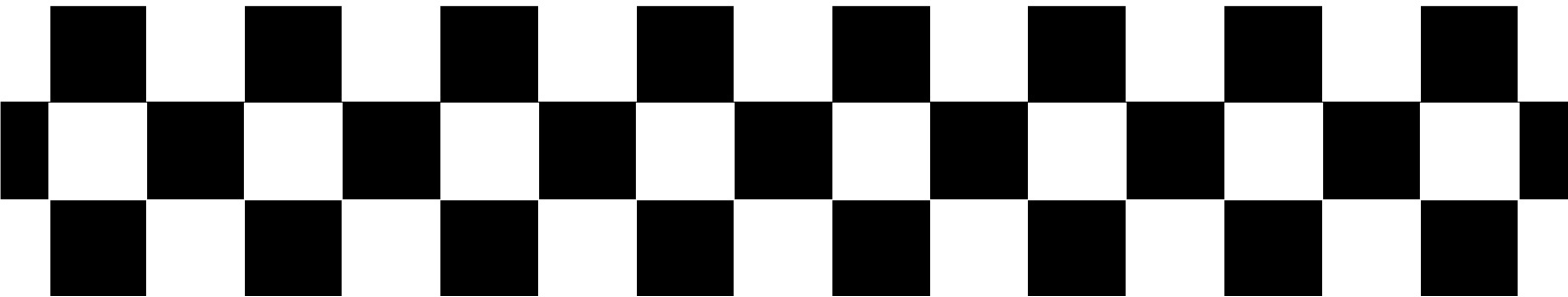

NPIA Digest July 2011

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

There are case reports on the failure of a judge to direct the jury on the need for a course of conduct which amounted to harassment, whether, in the absence of a cylinder, items found could be said to be component parts of a firearm and whether a person can commit an offence of causing death whilst driving without a licence and whilst uninsured if his driving is faultless?

We look at the recently published Terrorism Prevention and Investigation Measures Bill, the launch of the new Prevent strategy, proposals to reform the notification requirements for registered sex offenders and the publication of the Child Exploitation and Online Protection (CEOP) Centre's annual review and centre plan.

Statistical bulletins are covered which detail the trends in cautioning and sentencing, probation supervision and the prison population for possession of a knife or offensive weapon in England and Wales between January and March 2011 as well as key statistics on activity in the Criminal Justice System for the twelve months to December 2010 for England and Wales.

There are also articles on CEOP leading the national response on missing children, the launch of a human trafficking phoneline, proposals to break the cycle of reoffending by giving offenders better access to the skills needed in employment, and the grant of funding to improve resettlement services for those leaving custody.

In addition, we consider new proposals for the sentencing of burglars, the new definitive guideline on assault and the Home Affairs Committee inquiry into the roots of violent radicalisation.

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

Contents

Bills Before Parliament 2010/11 - Progress Report

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

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

The Bill was presented to Parliament on 30 November 2010.

Line by line examination of the Bill took place during the sixth day of committee stage on 16 June. Amendments discussed covered clauses 120-123, 125-127, 129, 130, 132, 135, 136, 140, 142-146, 148, 149, 152-155 and 158 of the Bill.

Report stage - further line by line examination of the Bill - is scheduled for 29 June.

- Protection of Freedoms Bill - The Bill:
  - Provides for the destruction, retention, use and other regulation of certain evidential material;

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

The Bill was presented to Parliament on 11 February 2011.

The Public Bill Committee last met on 17 May 2011. This Bill is awaiting its report stage on the floor of the House on a date to be announced.

- Terrorism Prevention and Investigation Measures Bill - The Bill proposes to abolish control orders and make provision for the imposition of terrorism prevention and investigation measures.

The Bill was presented to Parliament on 23 May 2011.

This Bill has been sent to the Public Bill Committee. It last sat on 23 June 2011.

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

Failure to Direct the Jury on the Need for a Course of Conduct which Amounted to Harassment

Regina v David Roger Widdows [2011] EWCA Crim 1500

On 3 November 2010 David Widdows was convicted of putting a person in fear of violence by harassment contrary to section 4 of the Protection from Harassment Act 1997. He was acquitted of two further counts which both charged rape alleged to have been committed on 6 March 2010. Mr Widdows appealed against conviction and the conviction was quashed on 18 May 2011.

Between August 2008 and March 2010 the appellant was in a volatile relationship with the complainant, Sarah Bunn. During that period they separated several times but got back together after a few hours or days apart. Whilst they were apart the appellant would stay with a friend called Daphne.

The charge under section 4 of the Protection from Harassment Act 1997 concerned six incidents between January 2009 and March 2010. The rapes were alleged to have occurred during the final incident on 6 March 2010.

The incidents can be set out as follows:

- In June 2009, the appellant was staying at Daphne's house but visited the complainant where they had sexual intercourse. He declined to stay the night and returned to Daphne's house. Upset, the complainant visited Daphne's and confronted the appellant. The complainant's evidence was that on opening the door, the appellant shouted at her and was aggressive and nasty. He lifted her and threw her out of the house. Her arm was badly bruised. His evidence was that she was harassing him and that he had taken hold of her arm, perhaps too tightly and forcibly taken her out through the door while she was shouting and screaming. He stated that he had not thrown her out.
- In July 2009, the complainant wanted to spend an evening with a female friend. Her evidence was that the appellant pushed her over and shouted in her face which made her feel awful and lonely. He could not recall the incident but stated that he had never prevented her from seeing her friends.
- The couple were due to go on holiday together in August 2009 but the appellant needed to renew his passport. On the way to the passport office, they argued and the complainant said that the appellant disparaged her navigational skills and put his hand to her ear. When she tried to move his hand, he hit her near the nose and mouth.

He was upset and tended to her injury. His evidence was that she poked him in the eye and while trying to push her away, he accidentally hit her.

- In January 2010 the complainant was unhappy that the appellant had not gone to work and so made him go. While he was there, she sent him a "nice" text. On his return home she said he refused to read the text and threw her on the wooden floor. He pushed her up the stairs. The appellant's evidence was that when he had refused to turn his phone on, she was persistent and he pushed her and told her to go away.
- Later in January 2010, they stayed at a hotel where they both drank alcohol. When they returned to their room, she received a text from a friend's boyfriend which ended with a kiss. Her evidence was that the appellant "lost it", hit her with a boot and dragged her into the bathroom. His evidence was that he was annoyed because the text was something to do with drugs but that it was the complainant who had picked up the boot and he defended himself.
- On 6 March 2010, they had both consumed vodka and cocaine which the complainant provided. They had consensual sexual intercourse in the bathroom. The complainant's evidence was that afterwards and without warning the appellant put his penis into her mouth, persisting despite her objections. He wanted more sex but she said "later". He climbed on top of her and raped her. He then put her face under the shower. His evidence was that the sexual activity was consensual. She then changed and started to slap him. He was trying to contain the situation and thought the degree of force used was reasonable.

Section 4(1) of the Protection from Harassment Act 1997 states:

"A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if her knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions."

Counsel for the appellant submitted that the prosecution under section 4 was misconceived in the circumstances. He asserted that the section is not intended to cover incidents of dispute, even if leading to violence, during a long and mainly affectionate relationship which was sought by both parties.

Secondly it was submitted that it was inappropriate and prejudicial to the appellant to join a charge under section 4 with two charges of rape on the basis that the section 4 allegation was a distraction from the issues in the rape but also because a jury could not be expected rationally to address themselves to

section 4 issues whilst also simultaneously considering charges of rape.

In addition, counsel for the appellant submitted that the summing up was flawed in failing to direct the jury as to the requirements of the offence under section 4, the need for a course of conduct which amounted to harassment. In this regard, reliance was placed on the Court of Appeal case of Curtis [2010] 1 Cr. App. R. 31.

Counsel for the prosecution accepted that this was not a classic case of harassment, however there was evidence that the required elements were present, namely evidence that the appellant had been violent on each of the six occasions and that as a result the complainant feared future violence and the six incidents could properly be called a course of conduct which caused the complainant to fear that violence would be used against her.

Counsel for the prosecution noted that there had been no objection from the defence to the joinder of the section 4 charge with the rape charges. In addition, it was submitted that the case of Curtis was distinguishable in that the incidents were more one sided and more violence was used by the appellant than by the defendant in that case. Counsel accepted that there could have been, but were not, charges of violence against the appellant on each occasion.

In summing up the judge stated:

"So, what do they have to prove on count 1? Well, it is mainly, as it were, laid out. It puts in dates and these are dates within the relationship; caused Sara Bunn to fear violence would be used against her. Well, violence is a fairly ordinary English word; by his course of conduct. Well, that means at least two incidents, a course of conduct, which he knew or ought to have known would cause fear of violence; in other words, on at least two occasions, he behaved in such a way that he knew or ought to have known would cause her to think she was going to be the subject of violence, and the basis of that is that in the past, he had assaulted her. So, in other words, the prosecution are saying that he has caused her on at least two occasions to fear violence would be used because of two previous assaults. In other words, that is what put it into her mind, and he knew or ought to have known she would fear violence. It is not necessary to prove that every time they met he put her in fear. Quite obviously, that did not happen."

In setting out, in considerable detail, the requirements if assault is to be established, the judge went on to suggest that the jury concentrated on three questions:

- Did the appellant cause the complainant at least twice to fear violence would be used against her?

- If so, was that fear caused by at least two unlawful assaults? And
- Did the appellant know or ought he to have known she would fear violence would be used?

Counsel for the prosecution submitted that the direction was adequate and that further reference to or a definition of harassment was not required.

The Court of Appeal noted that the case of Curtis was not cited to the judge, but has much in common with the present case, namely a volatile relationship, six incidents over a four month period, outbursts of ill-temper and bad behaviour interspersed with considerable periods of affection.

In Curtis the court found that it must be established that the course of conduct was conduct amounting to harassment as defined in the authorities. It was stated by the court that harassment includes alarming the person or causing the person distress. In Curtis, the conduct could not be regarded as a "course of conduct amounting to harassment."

The absence of the word harassment from section 4 of the 1997 Act was considered by the Court of Appeal in Curtis in which it was stated by Lord Justice Pill that:

"The "course of conduct" identified in section 4(1) is a course of conduct which amounts to harassment of another. That follows, in our judgment, from the definition in section 1(1)(a), confirmed in section 2 by the reference to "a course of conduct in breach of section 1(1)". Section 1 is headed "Prohibition of harassment". The 1997 Act describes itself as "an Act, to make provision for protecting persons from harassment and similar conduct". On a trial on indictment, the jury may find a defendant guilty of an offence under section 2, as an alternative, on a charge under section 4, which demonstrates that both are concerned with a course of conduct amounting to harassment. The issue is whether, on the evidence, the appellant had pursued a course of conduct in relation to Donna which amounted to harassment of her."

The Court of Appeal took the view that the present case was indistinguishable, in the prosecution's favour from Curtis. When bringing a charge under section 4 the prosecutor, and the judge when summing up, should have regard to the fact that harassment is the concept at the core of the 1997 Act, though the word is not used in section 4. In addition they should have in mind the explanation of harassment in the case of Majrowski v Guy's and St Thomas' NHS Trust [2007] 1 AC 224, namely "stalkers, racial abusers, disruptive neighbours, bulling at work and so forth" and in the case of Thomas v News Group Newspapers Ltd [2001] EWCA Civ 1233 where the practice of stalking was said to be a prime example of harassment.

The Court of Appal stated that a charge under this section is not normally appropriate for use as a means of criminalising conduct, not charged as violence, during incidents in a long and predominantly affectionate relationship in which both parties persisted and wished to continue.

Violence was relied upon as a means of creating the fear of further violence contemplated in section 4, though was not, save for the charges of rape, charged in this case. The Court of Appeal stated that the emphasis in the summing up was what amounts to assault rather than what amounts to harassment. Further guidance was required as to what can be a course of conduct amounting to harassment. It was stated that the description of a number of acts of violence spread over a period of nine months during a close and affectionate relationship does not satisfy the requirement of a course of conduct nor the requirement that it is conduct amounting to harassment.

On the point of the joinder of the charges, the Court of Appeal considered it was not appropriate for the count under section 4 to have been joined with the allegations of rape on the basis that one set of allegations should have been considered without the distraction of the other.

On the basis of the lack of sufficient direction in the summing up as well as the presence of the rape charges, the court found that the conviction could not be regarded as safe and as such the appeal was allowed and the conviction quashed.

The full judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2011/1500.html

In the Absence of a Cylinder, Items could not be said to be Component Parts of a Firearm

Simon Rogers v R [2011] EWCA Crim 1549

On 20 October 2009 Simon Rogers pleased guilty to possessing a Class A drug with intent. On 28 January 2010, he was convicted of possessing a firearm without a firearm certificate (count 1) and possessing ammunition without a firearm certificate (count 2).

Mr Rogers appealed against his conviction on count 1.

On 30 April 2008, the police sought to question Mr Rogers about a matter unrelated to the present charges. He attended the police station and was arrested for an unrelated matter. He remained in custody during the day.

That evening, a refuse collector discovered a bag in a bin a few yards from the address Mr Rogers had given to the police, which contained the component parts of an imitation revolver, a barrel,

trigger and frame and 4 live 9mm rounds of ammunition in an envelope with Mr Rogers' name and address on it. The cylinder of the revolver was missing and the barrel had been modified to allow the passage of an object. Other documents linking Mr Rogers to the revolver were found in the bag and his fingerprints were found on the envelope and other documents. DNA that could match his was also found on parts of the components.

Mr Rogers denied possession of the items found and said he knew nothing about the bag, and had not disposed of the device or ammunition in the bin and knew nothing about them.

Count 1 alleged possessing a firearm without a firearm certificate contrary to section 1(1)(a) of the Firearms Act 1968. Possession of component parts of a firearm is alleged "namely a barrel, frame and trigger of a 9mm revolver."

Section 57(1) of the 1968 Act provides, in so far as is relevant:

"(1) In this Act, the expression "firearm" means a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged and includes-

(a) any prohibited weapon, whether it is such a lethal weapon as aforesaid or not; and

(b) any component part of such a lethal or prohibited weapon; and

(c) any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon;

…"

The case submitted by the prosecution was that the device found was a firearm because it comprised component parts of a prohibited weapon as defined in section 5 of the 1968 Act, a firearm which has a barrel less than 30 centimetres in length or is less than 60 centimetres in length overall (section 5(1)(aba) and section 5(2)).

In an agreed statement of facts it was stated that:

- The revolver was originally designed as a blank firing revolver;
- The barrel had been modified and was now unobstructed or unblocked and was capable of allowing a missile or bullet to be discharged down it;
- At the muzzle, the inside barrel diameter was approximately 9.3mm;
- The cartridges subject to count 2 were of 9mm calibre;
- The revolver cylinder was missing;
- The trigger mechanism was fully functioning.

Counsel for the prosecution accepted that on the evidence, if lethality was required, the prosecution failed. They submitted however that lethality is not required because these were component parts of a prohibited firearm and reading section 57(1)(a) and (b) together, the word "lethal" in the general words in the section is excluded with respect to component parts of a prohibited weapon.

The court expressed surprise at the concession made by the defence accepting that a bullet could be "discharged" along the barrel rather than merely accepting that it could pass through it.

Evidence was called from two experienced firearms examiners at a voire dire, Mr Horn for the prosecution and Mr Fletcher for the defence. Following submissions, the judge determined that the barrel, frame and trigger were component parts of a lethal or prohibited weapon under section 57 of the Firearms Act 1968 and directed the jury:

"As a matter of law I direct you that exhibit 6 is a firearm within that definition. You do not have to worry about that."

Counsel for the appellant submitted that the judge had erred in his determination that the items were capable in law of being components of a firearm, as distinct from an imitation firearm. In addition, he submitted that the question whether they were parts of a firearm was a question of fact for the jury. Furthermore, he submitted that on the wording of section 57, the prosecution were required to prove lethality, which they admitted they had not.

Section 1 of the Firearms Act 1982 applies to imitation firearms which are readily convertible into firearms to which section 1 of the 1968 Act applies. Assuming that, as originally made, the revolver comes within the criteria defined in section 1 of the 1982 Act, section 1(4)(b) has the effect that unless so altered as to become component parts of a firearm, the component parts subject to the present charge could not be subject to a charge either under the 1982 Act or under the 1968 Act.

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It is alleged that the removal of the obstruction from the barrel converted them into components subject to the 1968 Act. The issue is whether in the absence of a cylinder appropriate for a firearm, the unblocked barrel, frame and trigger can be regarded as components of a firearm.

The Court of Appeal considered, on the evidence, that it was doubtful that they could be considered as such. The court found it highly questionable whether the barrel had been so modified

that it could properly be said to be the barrel of a firearm, and there was no evidence of the existence of a cylinder compatible for firing purposes with the modified barrel. The court found the expert for the prosecution, Mr Horn's assertion that they are components of a firearm to be doubtful, given the agreed facts including the lack of evidence about the skill with which the obstruction was removed and the effect of the work done. The Court of Appeal found Mr Fletcher's evidence that, without a cylinder and without further testing, it was impossible to describe the components as components of a firearm to be cogent and determined that the Mr Rogers was at least entitled to have the factual question determined by a jury.

In addition the court noted that were it not for the admission about discharge, which need not on the evidence have been made, there would have been a factual issue on the related question whether it had been proved that a bullet could have been "discharged" from the device, a necessary requirement under section 1 of the 1968 Act, read with sections 5 and 57.

The Court of Appeal concluded that the judge was not entitled to have ruled as he did and as such found the conviction on count 1 to be unsafe. The court determined that there was no need to consider the further question on the requirement of lethality. The appeal was allowed and the conviction on count 1 was quashed.

The full judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2011/1459.html

Can a Person Commit an Offence of Causing Death whilst Driving Without a Licence and whilst Uninsured if his Driving is Faultless?

R v MH [2011] EWCA Crim 1508

Section 3ZB of the Road Traffic Act 1988 created a new offence which was inserted by the Road Traffic Safety Act 2006. This came into force in August 2008. Section 3ZB provides:

A person is guilty of an offence under this section if he causes the death of another person by driving a motor vehicle on a road and, at the time when he is driving, the circumstances are such that he is committing an offence under-

(a) section 87(1) of this Act (driving otherwise than in accordance with a licence),

(b) section 103(1)(b) of this Act (driving while disqualified), or

(c) section 143 of this Act (using motor vehicle while uninsured or unsecured against third party risks).

The respondent, MH, was charged with two counts of causing the death of Mr James Dickinson by driving whilst uninsured (count 1) and driving whilst unlicensed (count 2) contrary to section 3ZB of the Road Traffic Act 1988.

The Recorder of Newcastle, His Honour Judge David Hodson, ruled, on an agreed factual basis, that "as a matter of law a jury could not reasonably be directed that in any real sense the defendant was a cause of" the death of Mr Dickinson. The prosecution sought leave to appeal this ruling.

The issue in this case is whether a person commits the offence contrary to section 3ZB if his manner of driving is faultless and the death had nothing at all to do with the manner of his driving. The appellant CPS submitted that the offence is committed in these circumstances.

The Facts

Shortly after 4.30pm on 25 October 2009, the respondent was driving his van, with his wife and two children as passengers, when it was involved in a collision with a Honda motor car being driven in the opposite direction by Mr Dickinson. Mr Dickinson sustained extensive serious injuries and died that evening as a result of those injuries.

At the time of collision, the visibility was good, although it was just starting to get dark and the road surface was wet. Mr Dickinson had previously worked 8 consecutive 12 hour night shifts from 17 October until 25 October 2009 and had finished his last shift at 8am on 25 October. He was due to recommence

work at 7pm that day and was on his way back to work at the time of the collision. At the time of the accident he had already driven 200 miles that day, with another 200 miles to go.

Toxicology results revealed that Mr Dickinson had used heroin shortly before the collision; the level of free morphine in his blood was such that could be considered toxic and he was "almost certainly" under the influence of heroin at the time of the collision. The side effects of morphine include drowsiness, inability to concentrate and a lack of co-ordination. In addition, Mr Dickinson was also found to have methadone, benzodiazepine and other drugs in his system which were not prescribed drugs.

As a result of the morphine and the lack of sleep, Mr Dickinson was driving erratically, with two witnesses assuming that the driver of the Honda was intoxicated. In contrast, the driving of the respondent was without fault.

Immediately before the collision, Mr Dickinson went around a left hand bend in his own lane, but on exiting the corner swept to the right into the wrong (eastbound) lane. As the respondent's van approached, the Honda veered to the left, but seconds later it drifted back across the central line, about one third of the way into the eastbound lane. The respondent did all he could to avoid the hazard posed by Mr Dickinson's car. Mr Dickinson failed to take any evasive action. The two vehicles collided, offside to offside.

The court stated that in terms of civil law, Mr Dickinson was 100% responsible for causing the accident and the respondent was not in any way at fault for the death. If Mr Dickinson had survived the accident and the respondent's wife or one of his children had been killed in the accident, Mr Dickinson would be guilty of causing their deaths by dangerous driving and, on the prosecution's interpretation of the law, the respondent would have caused their deaths and be guilty of the offence under section 3ZB.

The Respondent's Lack of Licence and Insurance

The respondent has never been the holder of a full driving licence, and at the time of the collision was not insured to drive. The respondent admitted in interview that he was uninsured.

At the time of the collision, the respondent believed that he held a licence. He had previously held a provisional licence which was revoked 10 years ago for medical reasons. He had subsequently attended a medical centre where he undertook a practical driving assessment, which he believed constituted his driving test. On completion he was told "Congratulations, you can have your licence back". In actual fact only a provisional licence was issued to him.

The Recorder's Ruling

His Honour Judge David Hodson stated:

"8. Mr Graham, for the Crown, submits that the prosecution have to prove that the defendant's driving caused the death i.e. was a cause of death but not that he was in any way at fault. He asserts that the defendant's culpability arises from the fact that he was driving whilst uninsured and otherwise than in accordance with a licence.

9. Reduced to bald terms his submission must mean that the defendant caused the death simply by being on that part of the road when the deceased - whilst under the influence of drugs - drove on to the wrong side of the road and into collision with the defendant.

10. I cannot accept that the English language can be so contorted to give such a meaning to the word "cause". The Oxford English Dictionary defines the transitive verb "to cause" as "to be the cause of; to effect, bring about, produce, induce, make." In my judgment that requires some activity, not passivity, on the part of the person said to be doing the causing.

11. The person who caused this accident and hence the death of Mr Dickinson was, it has to be said, Mr Dickinson himself. He was 100% to blame for the accident and his own death. To assert that the defendant was - because he was uninsured and unlicensed - a cause of the death is a distortion of the language.

12. Parliament chose to use the word "cause". It seems to me that by using that word they did not contemplate creating an offence which covered the circumstances of this case. If it had been their intention they could easily have chosen a form of words which would have made that intention crystal clear.

13. I therefore rule that as a matter of law a jury could not reasonably be directed that in any real sense the defendant was a cause of this death."

In submitting that the Recorder was incorrect in law in this conclusion, counsel for the Crown relied on the case of Williams [2010] EWCA Crim 2552. In Williams the appellant, who had no driving licence or insurance, was driving his car on a dual carriageway where there was speed restriction of 30 miles per hour. As he was doing so, L crossed the southbound carriageway, crossed over the central reservation and stepped out in front of the car being driven by the appellant. He died of the injuries he sustained in the collision the following day.

Evidence was given to the effect that the appellant had not been exceeding the speed limit and that L stepped out straight into the path of the appellant's car. The appellant was charged and tried at Swansea Crown Court on a single count of causing death by driving without insurance and without a licence contrary to section 3ZB of the Road Traffic Act 1988.

The judge rejected a submission of no case to answer, determining that the offence could be committed without fault on the part of the appellant. In accordance with his ruling, he summed up the case on the basis that the prosecution did not have prove there was any fault in the manner of the appellant's driving; that the offence was provide if L's death had been caused by the appellant driving without insurance and without a licence. The appellant was convicted.

He appealed against the conviction on the grounds:

- That the offence created by section 3ZB could not be committed without some fault or other blameworthy conduct on the part of the appellant; that "cause" as used in the section had to be construed as importing some fault or other blameworthy conduct; and that his sole fault was a failure to have a licence and insurance which was unrelated to the cause of the accident and the ensuing death; and
- That if that construction of "cause" was not correct, the word should be construed so that the Crown did not merely have to prove the appellant's driving was "a cause" which was not minimal, but that it was a substantial or major cause of the death of the deceased; and that the facts clearly established that the substantial or major cause of death was due to the actions of L and not those of the appellant.

The trial judge had directed the jury that the prosecution does not have to prove that the defendant's driving:

"was the principal or the main cause, or major cause…but it had to be a contributing cause, other than a merely minute or negligible contributing cause that you would discount…"

The court decided that no fault or blameworthy conduct in the manner of driving was required. The court also stated that although the general requirement of morally blameworthy conduct was the background against which the intention of Parliament in attributing criminal liability without blameworthy conduct must be considered, the question for the court was whether when Parliament enacted this offence, it intended to and did depart from the general principle.

Having considered the previous case of Marsh [1997] 1 Cr. App. R. 67, the court went on to say that, as a matter of simple statutory construction, it is plainly right that the offence "can

occur without any blameworthy conduct" and to hold that blameworthy conduct was required would be to re-write section 3ZB.

With regard to the question, whether it was sufficient that the appellant's driving was **a** cause of the death, the court answered this in the affirmative, and determined that the trial judge had been right to explain to the jury that what was necessary was **a** cause that was more than minute or negligible.

In considering the meaning of the word "cause" as used in section 3ZB in the context of the intention of Parliament, the court considered the case of R v Hennigan (1971) 55 Cr. App. R. 262 which determined the meaning of "cause" in death by dangerous driving and stated that that decision makes clear that it is a cause if it is more than negligible or de minimis and stated that they did not think that Parliament can have intended any different definition for section 3ZB. The conclusion that Parliament must have intended that if a person drove unlicensed and uninsured he would be liable for death that was caused by his driving however much the victim might be at fault; it was therefore sufficient that the cause was not negligible. The court noted that it may be a harsh and punitive measure, with an obvious deterrent element, but determined that it was difficult to see how anything else could have been intended.

Commentary on Williams

In his commentary on Williams in the Criminal Law Review, Professor Ormerod, stated that the offence was clearly one of strict liability.

With regard to causation he made the following points:

- The court in Williams concluded that "cause" in section 3ZB has the same meaning as "cause" in death by dangerous driving. In Williams the appellant's driving was "a cause" if it was "more than negligible or de minimis".
- In respect of the above point, it was noted that this still left the jury with a difficult test in asking whether the conduct is a "more than negligible cause". In hard cases, the ambiguity might be such as to provide an opportunity for the jury to acquit, and as such defendants might be less willing to plead guilty or elect summary trial.
- In addition, it was noted that the requirement of causation in causing death by dangerous driving is not straightforward in terms of the law which means that judges will face difficulty in directing.
- Thirdly, the court's decision means that a defendant who is driving while uninsured and unlicensed can escape liability for a death linked to his driving if there is a novus actus

interveniens between the act of the defendant colliding with the victim and the victim dying, such as, for example, a third party driving into the victim's car and killing him, after the defendant has crashed into the victim. In such a scenario, the defendant's for the death will depend on whether the third party broke the chain of causation, which will turn on whether he is acting in a free, deliberate and informed way or if his act is not reasonably foreseeable. In the case of Girdler [2009] EWCA Crim 2666, the court formulated the question of the third party's conduct breaking the chain of causation in terms of whether the jury were sure

"that it could sensibly have been anticipated that a fatal collision might occur in the circumstances in which the second collision did occur."

- Fourthly, the court's decision leaves scope for the defendant to argue that he is not a "but for" cause of the death, for example the scenario of a driver (the victim) who is drunk having fallen asleep at the wheel, crosses over the carriageway into the path of oncoming traffic and hits the defendant's uninsured car which happens to be first in the line of oncoming vehicles. The defendant could surely argue that but for his car on the road, the victim would still have died as he would have collided with the next vehicle in line. This example demonstrates not only how arbitrary liability might be under these offences, but also suggest that the court's approach to the question of causation might be too narrow.

- Finally, Professor Ormerod questioned whether the court ought to have been more ambitious in its interpretation of the statute so as to avoid such a harsh result. The offence requires that the defendant caused the death by his "driving a motor vehicle" on a road". Arguably therefore there has to be a causal link between the driving and not just the fact that the car was on the road at the time and the death. The Court of Appeal's interpretation focuses only on the link between the fact of the vehicle being on the road and the death. In the case of Williams was caused the victim's death was arguable his stepping in front of the defendant's car, not the fact of the defendant driving. In an inquiry into causation, the focus must be on the link between the proscribed consequence (death) and the relevant act - which act of the defendant is it alleged caused the death?

The Court of Appeal's Response to Commentary

In response to Professor Ormerod's first point, it was noted that in Williams the Court of Appeal did not suggest that in circumstances where the victim is 100% responsible for his death, the jury should be directed that in law the defendant did cause the death of the victim. In these circumstances, it seems

that defence counsel would be entitled to address the jury to the effect that the defendant's conduct was or may have been no more than a negligible cause of the death.

The Court of Appeal made no comment on Professor Ormerod's second point.

As to his third point regarding novus actus interveniens, the Court of Appeal stated that in Williams it seemed that the court was of the view that the free informed and voluntary decision of the victim to drive in an extremely dangerous manner does not break the chain of causation (although the jury could still decide that the defendant's driving was or may have been no more than a negligible cause of the death.) As such if Mr Dickinson had ploughed into the respondent's van whilst stationary in a queue of traffic, the respondent it could be said would have caused the death of Mr Dickinson by driving a motor vehicle. The Court of Appeal noted that the free informed and voluntary act of a third party, including the alleged victim, will usually break the chain of causation, as made clear in R v Kennedy [2007] UKHL 38. An example of it not doing so is found in the Empress Car case, which it was said attracted adverse commentary. It was the Empress case which the Court of Appeal in Williams applied.

With regard to the fourth point on the fact that scope is left for the defendant to argue that he is not a "but for" cause of the death, the Court of Appeal responded that on the facts of this case as agreed for the purpose of this ruling this does not arise. It was said that if the deceased in this case would or may have died in another collision at or perhaps about the same time as he did in fact die, then the issue whether the defendant can be said to have "caused" the death may arise.

On the fifth point, that arguable there has to be a causal link between the driving and not just the fact that the car was on the road at that time and the death, the court stated that whilst seeing some force in the argument, it was constrained by the decision in Williams not to accept it, even though it does not seem to have been specifically argued in that case.

The Court of Appeal added, that it could be said that if Parliament intended that a person would be invariably guilty of the offence against section 3ZB even though the person killed was 100% responsible for his death, then Parliament should have made that clear by using express language. It was stated that whether it is in the public interest to prosecute in these circumstances is a matter for the Director of Public Prosecutions.

Conclusion

Counsel for the appellant submitted that the Court of Appeal were bound by Williams and must follow it. Counsel for the

respondent submitted that the Recorder found on the admitted facts that a jury properly directed would have to find that the respondent's driving was only a minimal cause of the deceased's death and as such the appeal should be dismissed. Counsel for the respondent submitted that Williams could be distinguished on its facts. The Court of Appeal stated that Williams could not be distinguished in this way, attractive as the argument made may be.

The Court of Appeal stated that the decision in Williams is quite inconsistent with the proposition that, as a matter of law, a jury properly directed would have to find that the respondent's driving was only a minimal cause of the deceased's death. It follows that the subsequent decision of the Court of Appeal in Williams means that the ruling of the Recorder of Newcastle was wrong in law.

The Court of Appeal was satisfied that the ruling given was wrong in law in the light of Williams and reversed it. Having reversed the ruling, and having regard to section 61 of the Criminal Justice Act 2003, the Court of Appeal determined that a fair trial was possible and as such ordered that the proceedings be resumed.

The full judgment is available at
http://www.bailii.org/ew/cases/EWCA/Crim/2011/1508.html

SI 1081/2011 The Child Abduction and Custody (Parties to Conventions) (Amendment) (No. 2) Order 2011

This Order, which came into force on **1 June 2011**, revokes the Child Abduction and Custody (Parties to Conventions) Order 2011 (SI 746/2011), and amends the Child Abduction and Custody (Parties to Conventions) Order 1986 (SI 1159/1986) as amended by the Child Abduction and Custody (Parties to Conventions) (Amendment) Order 2009 (SI 702/2009), to substitute a new Schedule 1 for the existing Schedule 1.

The new Schedule 1 includes San Marino and Ukraine in the list of Contracting States to the Convention on the Civil Aspects of International Child Abduction, done at the Hague on 25 October 1980. It also includes the correct date of the coming into force of the said Convention between the United Kingdom and San Marino and between the United Kingdom and Ukraine

SI 1230/2011 The Crime And Disorder (Formulation and Implementation of Strategy) (Amendment) Regulations 2011

These Regulations provide in regulations 3 and 4 for the substitution of regulations 3 and 8, respectively, in the Crime and Disorder (Formulation and Implementation of Strategy) Regulations 2007 (the "2007 Regulations") with effect from **1 June 2011**.

Regulation 3 of the 2007 Regulations relates to the composition and meeting of a strategy group for each local government area, whose function is to prepare strategic assessments in accordance with regulations 5 to 7 and to prepare and implement a partnership plan in accordance with regulations 10 and 11.

Regulation 8 of the 2007 Regulations relates to the composition and meeting of a county strategy group which prepares a community safety agreement in accordance with regulation 9.

Regulation 5 of these Regulations omits the requirement in respect of a three year period in regulation 11(1)(a) of the 2007 Regulations in connection with a partnership plan including a strategy for the reduction of re-offending, crime and disorder and for combating substance misuse.

These Regulations apply to England only.

SI 1224/2011 The Crime and Disorder Act 1998 (Responsible Authorities) Order 2011

This Order provides that, with effect from **1 June 2011**, two community safety partnerships in North Yorkshire and seven community safety partnerships in Norfolk are to combine to

form the Hambleton and Richmondshire Community Safety Partnership and the County Community Safety Partnership for Norfolk respectively.

These partnerships will perform the functions conferred by sections 6 and 7 of the Crime and Disorder Act 1998. The Hambleton and Richmondshire Community Safety Partnership will comprise the local government areas of Hambleton District Council and Richmondshire District Council. The County Community Safety Partnership for Norfolk will comprise the local government areas of Breckland District Council, Broadland District Council, Great Yarmouth Borough Council, King's Lynn and West Norfolk Borough Council, North Norfolk District Council, Norwich City Council and South Norfolk District Council.

SI 1307/2011 The Disabled Persons (Badges for Motor Vehicles) (England) (Amendment) Regulations 2011

A disabled person's badge (known as a "Blue Badge") enables the holder to benefit from a range of parking concessions and exemptions from certain charges which apply to other motorists. The Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000 ("the Principal Regulations") make provision regarding the issue of the badges by local authorities. These Regulations amend the Principal Regulations.

These Regulations amend the description of persons to whom a disabled person's badge may be issued to include children between the ages of 2 and 3 who fall within either or both of the descriptions specified in regulation 4(3) of the Principal Regulations. Regulation 4(3) of the Principal Regulations relates to the implications of certain medical conditions.

The Regulations also amend the description of persons to whom a disabled person's badge may be issued to include those in receipt of a specified benefit under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 who have been certified by the Secretary of State as having a permanent and substantial disability which causes inability to walk or very considerable difficulty in walking.

These Regulations came into force on **17 June 2011**.

SI 1340/2011 The Regulation of Investigatory Powers (Monetary Penalty Notices and Consents for Interceptions) Regulations 2011

These Regulations, made under section 2(2) of the European Communities Act 1972, amend the Regulation of Investigatory Powers Act (RIPA) in order fully to implement provisions of Directive 2002/58/EC on privacy and electronic communications and of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free

movement of such data insofar as those provisions are applied by Directive 2002/58/EC.

Section 1(1) of RIPA makes it a criminal offence for a person intentionally and without lawful authority to intercept, at any place within the United Kingdom, any communication in the course of its transmission by means of a public postal service or telecommunications system. Regulation 2 of these Regulations gives a new power to the Interception of Communications Commissioner ("the Commissioner") to serve a monetary penalty notice on a person whom he considers has intercepted without lawful authority, at any place in the UK, any communication in the course of its transmission by means of a public telecommunications system. The Commissioner may not serve a monetary penalty notice if he considers that the person has committed an offence under section 1(1) of RIPA, or if he considers that the interception could be explained by the person's attempt to act in accordance with an interception warrant. Pursuant to section 1(5) of RIPA, conduct that takes place in accordance with an interception warrant has lawful authority.

Sections 3 and 4 of RIPA authorise certain kinds of interception without the need for an interception warrant. Section 3(1) of RIPA authorises interception of a communication where there are reasonable grounds for believing that both the sender and the recipient of the communication have consented to its interception. Regulation 3 of these Regulations repeals the reference to reasonable grounds for belief, with the effect that the interception will be authorised only where both the sender and recipient have consented to it.

Regulation 2 of these Regulations also inserts a new Schedule A1 into RIPA which makes further provision about monetary penalty notices. Part 1 of the Schedule deals with monetary penalty notices. In particular:

(i) Paragraph 1 sets the maximum penalty (£50,000), the period within which payment may be requested by the Commissioner and the information that is to be included in the monetary penalty notice;

(ii) Paragraph 2 allows the Commissioner to include one or more enforcement obligations in a monetary penalty notice. These may require the person on whom the notice is served to cease the interception within a specified time;

(iii) Paragraph 3 requires the Commissioner to serve a notice of intent on a person before he serves a monetary penalty notice. It further sets out the information that is to be included in such a notice and the Commissioner's obligations to deal with representations received in response;

(iv) Paragraph 4 gives the Commissioner powers to vary or cancel a monetary penalty notice;

(v) Paragraph 5 establishes the right for a person on whom a monetary penalty notice is served to appeal to the First Tier Tribunal, and sets out the powers of that Tribunal on appeal. The appeal right includes the right to appeal against any refusal by the Commissioner to vary or cancel the monetary penalty notice. Paragraph 5 further sets out the effect that an appeal has on obligations arising under the monetary penalty notice;

(vi) Paragraph 6 gives the Commissioner powers to recover the penalty or enforce an enforcement obligation through the civil proceedings;

(vii) Paragraph 7 requires the Commissioner to prepare and issue guidance on these new functions.

Part 2 to the Schedule deals with information provisions. In particular:

(viii) Paragraph 9 allows the Commissioner to request information from a person in order to assist the Commissioner in deciding whether to serve a notice of intent on that person. It sets out the information that is to be included in the notice and gives the Commissioner the power to cancel the notice or vary time for compliance where an appeal has been lodged;

(ix) Paragraph 10 establishes the right for a person on whom an information notice is served to appeal to the First Tier Tribunal, and sets out the powers of the Tribunal on appeal;

(x) Paragraph 11 allows the Commissioner to serve a monetary penalty notice on a person who has without reasonable excuse failed to comply with an information notice or who has knowingly or recklessly given false information in response to such a notice. Paragraph 11 gives a maximum penalty (£10,000) and sets out manner in which the penalty may be calculated;

(xi) Paragraph 12 requires OFCOM to comply with any reasonable request made by the Commissioner for advice on technical and similar matters relating to electronic communications, where the request arises in connection with the Commissioner's new functions.

These Regulations came into force on **16 June 2011**.

SI 1434/2011 The Magistrates' Courts (Domestic Violence Protection Order Proceedings) Rules 2011

These rules make provision in respect of proceedings in the magistrates' court for applications for Domestic Violence Protection Orders (DVPOs) under the Crime and Security Act 2010 (CSA).

Rule 4 disapplies section 2(1) of the Civil Evidence Act 1995 (the 1995 Act), which requires parties proposing to adduce hearsay evidence in civil proceedings to give notice of the proposal.

Rule 5 amends rule 2 of the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 (SI 681/1999) (the 1999 Rules) to exclude the 1999 rules in respect of applications for DVPOs. The 1999 Rules make further provision concerning hearsay evidence, including the contents of hearsay notices (rule 3), the procedure to call witnesses for cross-examination on hearsay evidence (rule 4), credibility and the use of previous inconsistent statements (rule 5) and the service of documents (rule 6).

The provisions under the 1995 Act and 1999 Rules have been respectively disapplied or excluded because they are either incompatible with the procedures prescribed for applying for DVPOs under the CSA 2010 or else cease to have effect in consequence of the disapplication or exclusion of other of these provisions.

Section 27 of the CSA 2010 provides that an application for a DVPO must be made by complaint to the magistrates' court. Rule 6 prescribes the procedure to be followed in such circumstances.

These Rules come into force **30 June 2011**.

SI 1418/2011 The Bribery Act 2010 (Commencement) Order 2011

This Order brings into force on **1 July 2011** those provisions of the Bribery Act 2010 which were not brought into force on Royal Assent by section 19(2) of that Act.

SI 1452/2011 The Coroners and Justice Act 2009 (Commencement No. 7) Order 2011

Article 2 of this Order brings into force on **27 June 2011** certain provisions of the Coroners and Justice Act 2009 (the 2009 Act).

Sections 98 to 103 and 105 amend provisions in the Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999) in relation to special measures for vulnerable and intimidated witnesses.

Section 98 extends automatic eligibility for special measures to witnesses under the age of 18 (as opposed to 17).

Section 99 extends automatic eligibility for special measures to witnesses of certain gun and knife crimes listed in Schedule 1A to the YJCEA 1999 (inserted by Schedule 14 to the 2009 Act and brought into force by Article 2(f) of this Order). By paragraph 24 of Schedule 22, references in Schedule 1A to the YJCEA 1999 to Part 2 of the Serious Crime Act 2007 include the offence of incitement at common law.

Section 100 makes provision to allow child witnesses to opt-out of the primary rule in section 21 of the YJCEA 1999, which concerns the giving of evidence in chief by video recorded statement and further evidence by live link.

Section 101 makes special provision for complainants of sexual offences tried in the Crown Court.

Section 102 provides for the presence of a supporter when a witness is giving evidence by live link.

Section 103 relaxes the restrictions on a witness giving additional evidence in chief following admission of the witness's video-recorded statement.

Section 105 amends the definition of "child" in section 35 of the YJCEA 1999. Section 35 of the YJCEA 1999 concerns the protection from cross-examination by the accused of certain protected witnesses.

Section 111 repeals section 138(1) of the Criminal Justice Act 2003 which made provision about the effect of admission of video recorded evidence in chief.

Paragraph 23 of Schedule 22 makes transitional provision in respect of special measures directions made in proceedings commenced before the coming into force of this Order.

SI 1441/2011 The Bribery Act 2010 (Consequential Amendments) Order 2011

This Order, which came into force on **1 July 2011**, makes amendments to subordinate legislation in consequence of the Bribery Act 2010 (the Act). The amendments reflect the abolition of the common law offences of bribery and embracery by section 17(1)(a) of the Act and the repeal, by Schedule 2 to the Act, of the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906, and the Prevention of Corruption Act 1916.

Paragraph 1 of the Schedule to this Order (the Schedule) amends Schedule 1 to the Extradition Act 2003 (Parties to International Conventions) Order 2005 (SI 46/2005) by substituting references to offences abolished or repealed by the Act with offences under section 1 and 6 of the Act.

Paragraph 2 of the Schedule amends regulation 23(1) of the Public Contracts Regulations 2006 (SI 5/2006) by inserting references to offences under section 1 and 6 of the Act.

Paragraph 3 of the Schedule amends regulation 26(1) of the Utilities Contracts Regulations (SI 6/2006) by inserting references to offences under section 1 and 6 of the Act.

Paragraph 4 of the Schedule amends the National Assembly for Wales (Representation of the People) Order 2007 (SI 236/2007) by repealing sub-paragraph (b) of article 117(2) of that Order.

Paragraph 5 of the Schedule amends part 6 of Schedule 1 to the Criminal Defence Service (Funding) Order (SI 1174/2007) by inserting references to offences under section 1, 2 and 6 of the Act.

Paragraph 6 of the Schedule amends Schedule 8 to the Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations (SI 1903/2010) by substituting the references to offences repealed by the Act with references to offences under section 1, 2 and 6 of the Act.

SI 1440/2011 The Crime and Security Act 2010 (Domestic Violence: Pilot Schemes) Order 2011

This Order brings into force sections 24 to 30 of the Crime and Security Act 2010 on **30 June 2011** for 12 months for the purpose of assessing the effectiveness of the provisions by way of regional pilots.

Those sections will only come into force for the purposes of three regional pilots which will take place in three policing divisions in Greater Manchester, the entire police force area of Wiltshire and one territorial policing unit in West Mercia.

These provisions include the power for an authorising officer to issue a domestic violence protection notice to an alleged perpetrator of domestic violence, and the power for a magistrates' court, on application made by complaint by a constable, to make a domestic violence protection order.

New Prevent Strategy Launched

The Home Secretary has unveiled a new strategy to prevent people being drawn into terrorism. This was published along with a review of past Prevent work and an assessment of the extent and causes of radicalisation in the UK and overseas.

The new Prevent programme will:

- Deal with all forms of terrorism and target not just violent extremism but also non-violent extremism, which can create an atmosphere conducive to terrorism and can popularise views which terrorists exploit;
- Ensure government funding and support cannot reach organisations with extremist views who do not support mainstream British values;
- Challenge the ideology that supports terrorism and those who promote it;
- Support sectors and institutions, including universities and prisons, where there are risks of radicalisation;
- Draw on existing successful programmes to protect vulnerable individuals from being drawn into terrorism; and
- Be evaluated rigorously to ensure effectiveness and value for money.

This new strategy will see:

- A greater effort to tackle extremist ideologies, including work with mainstream individuals to make sure moderate voices are heard;
- Tough action to exclude foreign hate preachers;
- Work to tackle terrorist use of the internet for radicalisation, including the filtering of unlawful content by public bodies such as schools and libraries; and work with industry and international partners to crack down on unlawful content hosted in the UK and overseas;
- Action to build upon the success of the multi-agency Channel programme, which identifies and supports people at risk of radicalisation;
- Work with schools, including a more effective inspection regime to ensure that extremists are not participating in the education of young people;
- Greater support for universities and colleges, training staff to recognise the signs of radicalisation and improving awareness of help available to them;
- Renewed efforts in prisons to stop people becoming radicalised and to de-radicalise those who have been involved in extremism before being jailed;

- Extra support, where appropriate, to help faith organisations reach people vulnerable to radicalisation; and
- Closer work with the Charity Commission to investigate allegations of terrorist activity or links.

The Prevent strategy 2011 is available at http://www.homeoffice.gov.uk/publications/counter-terrorism/prevent/prevent-strategy

Tougher Checks for Sex Offenders

The government has launched a targeted consultation seeking views on four key proposals to reform the notification requirements for registered sex offenders. The proposals aim to ensure that the police are provided with important intelligence, so as to allow them to manage registered sex offenders more effectively and robustly and prevent exploitation of gaps in existing legislation.

Currently, sex offenders are required to notify the police of personal details such as address and national insurance number annually and whenever the details change.

The proposals include extending the existing notification requirements to require registered sex offenders to:

- Notify the police of all foreign travel (currently only travel outside of the UK for three or more days is notified);
- Notify weekly where they are registered as having 'no fixed abode' (where a registered sex offender has no sole or main residence and instead must notify the police of the place where they can regularly be found);
- Notify the police when living in a household with a child under the age of 18; and
- Notify the police of passport, bank account and credit card details and provide the police with proof of identification at each notification.

The consultation is aimed at key partners and directly affected parties, including the police, practitioners, other government departments and organisations with a direct interest in the management of sexual offenders, as well as members of the public.

The closing date is 8 August 2011.

The consultation can be accessed at http://www.homeoffice.gov.uk/publications/about-us/consultations/notification-sex-offenders/notif-sex-offenders-consult

Knife Possession Sentencing Quarterly Brief

The Ministry of Justice has published provisional data describing the trends in cautioning and sentencing, probation supervision and the prison population for possession of a knife or offensive weapon in England and Wales between January and March 2011.

Comparisons are drawn between the latest quarter (January to March 2011; "Q1") and the same period in 2010. Longer term comparisons comparing this quarter of 2011 with the same period two years ago are also provided.

Cautioning and Sentencing

Q1 2011 compared to Q1 2010

There has been a decrease of 2% in the total number of disposals given for possession of a knife or offensive weapon from Q1 2010 and Q1 2011, from 5,335 to 5,228.

For juvenile offenders in this period the reduction was 1% (from 998 to 987) and for adult offenders the decrease was 2% (from 4,337 to 4,236).

Between Q1 2010 and Q1 2011 the proportion of offences receiving immediate custodial sentences and suspended sentences for these offences decreased while the proportion of cautions (which includes juveniles receiving reprimands and warnings) remained stable.

In Q1 2011 the percentage of all possession offences which resulted in a caution in England and Wales remained the same as in Q1 2010, namely 21%.

In Q1 2011 33% of all possession offences resulted in a community sentence compared to 31% in Q1 2010.

In Q1 2011 12% of all possession offences resulted in suspended sentence orders compared to 13% in Q1 2010.

In Q1 2011 19% of all possession offences resulted in immediate custody compared to 23% in Q1 2010.

In Q1 2011 32% of sentences were recorded as being over six months compared to 34% in Q1 2010.

The average length of a custodial sentence in Q1 2010 and Q1 2011 were very similar, namely 208 days and 207 days respectively.

For offences committed by juvenile offenders the proportion of offences receiving community sentences rose from 55% to 59%.

For offences committed by adult offenders the proportion of offences receiving immediate custody and a suspended sentence decreased. For immediate custodial sentences this decreased

from 26% in Q1 2010 to 23% in Q1 2011. For suspended sentence orders this decreased from 16% to 15%.

For offences committed by adult offenders, there was an increase in the proportion of offences receiving community sentences from 26% to 27% and cautions from 19% to 20%.

Q1 2011 compared to Q1 2009

The total number of disposals (cautions and sentences) given for possession of a knife or offensive weapon has decreased from 6,784 to 5,228 between Q1 2009 and Q1 2011, a drop of 23%.

For juvenile offenders there was a reduction of 30% during this period. For adult offenders there was a decrease of 21% for these offences during this period.

The proportion of offences receiving cautions, and immediate custodial sentences for these offences decreased during this period, while the proportion of community sentences rose and the proportion of suspended sentence orders remained stable.

In Q1 2011 21% of all possession offences resulted in a caution in England and Wales, compared to 25% in Q1 2009.

In Q1 2011 33% of all possession offences resulted in community sentences compared to 30% in Q1 2009.

In Q1 2011 12% of all possession offences resulted in suspended sentence orders. This figure was the same as in Q1 2009.

In Q1 2011 19% of all possession offences resulted in immediate custody compared to 23% in Q1 2009.

In Q1 2011 32% of sentences were recorded as being over 6 months compared to 27% in Q1 2009.

The average length of a custodial sentence increased in Q1 2011 to 207 days compared to 178 days in Q1 2009.

For juvenile offenders the proportion of offences receiving community sentences rose from 49% to 59%. There was a reduction in the proportion receiving reprimands and warnings and immediate custody.

For adult offenders the proportion of offences receiving cautions decreased from 21% in Q1 2009 to 20% in Q1 2011 and the proportion of adult offenders receiving immediate custodial sentences decreased from 26% to 23%. There was an increase in the proportion of adult offenders receiving community sentences from 25% to 27%.

Probation Supervision Statistics

Q1 2011 compared to Q1 2010 and Q1 2009

Q1 2011 saw a 7% decrease in court order starts under probation supervision for possession of an offensive weapon compared to Q1 2010, and a 22% decrease compared to Q1 2009. There was a 6% decrease in suspended sentence orders over the previous year and a 4% decrease in community orders.

There was a decrease in the proportion of those given unpaid work for community orders as a percentage of all requirements started. In Q1 2011 34% were given unpaid work compared to 37% in Q1 2010 and 35% in Q1 2009.

The proportion of suspended sentence orders given unpaid work was 27% in Q1 2011 compared to 27% in Q1 2010 and 26% in Q1 2009.

For community orders, in Q1 2011, 13% of unpaid work requirements were recorded as being 200 hours or longer, compared to the same figure in Q1 2010 and 20% in Q1 2009.

For suspended sentence orders, in Q1 2011, 17% of unpaid work requirements were recorded as being 200 hours or longer compared to the same figure in Q1 2010 and 21% in Q1 2009.

Prison Population

On 25 March 2011, the population in prison serving a sentence for possession of an offensive weapon was 595. Technical problems have prevented comparison of this figure with previous years.

"Knife Possession Sentencing Quarterly Brief January to March 2011 England and Wales" is available at http://www.justice.gov.uk/publications/statistics-and-data/courts-and-sentencing/knife-possession.htm

Human Trafficking Phoneline Launched

The Metropolitan Police Service has launched a new phoneline for victims of human trafficking.

The freephone number is featured in a poster campaign produced for the charity STOP THE TRAFFIK and the MPS. The posters encourage those who have been trafficked into the UK and forced to work for little or no wages to report the crimes to the police.

Posters are being distributed over the coming weeks by police and partners, including charities, NGOs and other support groups, in a range of public places such as libraries, doctors' surgeries and police stations.

The freephone number 0800 783 2589 asks victims and those who suspect trafficked victims are living in their community to pass on information in confidence to the police. The phone line will be staffed by officers between 9am and 5pm Monday to Friday. At other times messages can be left for officers. In an emergency, people should call 999.

CEOP to Lead National Response on Missing Children

From 1 July 2011, a new dedicated team of experts from the Child Exploitation and Online Protection (CEOP) centre will strengthen and lead the UK's ability to respond to missing children, by bringing considerable expertise to bear and ensuring that the right arrangements are in place to protect vulnerable children.

The new team will lead the national response in partnership with police forces, non-governmental organisations and the wider child protection community.

In particular, the new CEOP capability will include:

- The provision of educational resources and of training for the police;
- Supporting police operations through targeted research and analysis utilising such resources as the Child Rescue Alert system and the MissingKids website;
- Providing operating support for forces and missing children by extending the CEOP 'one stop shop' to include online missing children resources; and
- Ensuring co-ordination arrangements and capability are in place to manage complex or high profile missing children cases.

414 Children Safeguarded from Abuse in the Last Year

The Child Exploitation and Online Protection (CEOP) Centre has published annual results revealing the highest ever totals for the organisation since it began work in 2006.

In 2010-11:

- 414 children have been protected from exploitation and abuse;
- 513 child sex offenders were arrested; and
- 132 child sex offender networks were disrupted and dismantled.

The results are a direct outcome of the partnership model that CEOP operates with its specialist teams working in tandem with local and international forces and the wider child protection community.

CEOP began work in 2006 and since then the cumulative total of children safeguarded or protected is 1,038, while 1,644 child sex offenders have been arrested. In addition, 394 offender networks in total have been dismantled.

CEOP's Annual Review and Centre Plan sets out the complete range of CEOP services and results and highlights the key areas that CEOP will be looking to tackle over the next year. These include:

- Continuing to address the self-generated risk that children place themselves in;
- Understanding and working in partnership to safeguard technological advances;
- Focusing on specialist areas such as the trafficking of children and young people; and
- Providing specialist services and specialist support for instances when children go missing - this function will be taken over by CEOP from 1 July 2011.

"Annual Review 2010-11 and Centre Plan 2011-122 is available at http://www.ceop.police.uk/Publications

Criminal Justice Statistics Quarterly Update to December 2010

The Ministry of Justice has published key statistics on activity in the Criminal Justice System for the twelve months to December 2010 for England and Wales.

Main Findings

Overview of the Criminal Justice System in 2010

In 2010 there were 2.12 million individuals given an out of court disposal or proceeded against at court. This was made up of a 16% decrease in the use of out of court disposals and a 2% fall in the number of defendants proceeded against at court.

Out of Court Disposals

There were 463,000 out of court disposals administered in 2010, 16% less than in 2009 and 31% less than the peak in 2007.

Out of court disposals fell in every offence group and by 16% overall.

Police Cautions

243,000 cautions were administered in 2010. This was 16% less than were administered in 2009 and 33% less than those administered in 2007.

Fewer cautions were administered in every offence group in 2010 except robbery which increased by two offenders from 205 to 207. The decline in cautions was greatest for theft and handling stolen goods which fell by 22%.

Penalty Notices for Disorder (PNDs)

141,000 PNDs were issued in 2010. This was 17% less than the 170,000 issued in 2009 and 32% less than those issued in 2007.

13,900 of these were for drug offences. This amounted to an increase of 21% compared to 2009.

86,700 were issued for summary non-motoring offences, a 22% fall from 2009.

Cannabis Warnings

79,100 cannabis warning were issued in 2010, 10% less than in 2009 and 25% less than in 2008.

Court Proceedings

Prosecutions decreased by 2% overall between 2009 and 2010, but increased by 5% for indictable offences.

1.65 million defendants were proceeded against in magistrates' courts in 2010. This is 2% less than in 2009 and 18% less than the peak of 2.02 million in 2004.

The decrease in prosecutions compared to 2009 was caused by fewer proceedings for summary motoring offences and summary non-motoring offences.

Proceedings increased in every offence group other than indictable motoring offences. There was a 13% increase in proceedings against defendants accused of sexual offences and a 10% decrease in proceedings for drug offences.

In contrast, there was an increase in the number of defendants tried in the Crown Court. 105,000 defendants were tried in the Crown Court in 2010. This was 10% more than in 2009 and 40% than in 2005.

There were increases in each offence group except for fraud and forgery.

Convictions

1.37 million offenders were convicted of a criminal offence in 2010. This was 3% less than in 2009 and 12% less than in 2004.

The largest percentage increases in convictions were for drug offences which increased 9% and sexual offences which increased 13%.

In 2010 83% of defendants proceeded against were convicted. This was a decrease of just under 0.5% compared to 2009 and an increase of 9% compared to 2001.

The conviction ratio varied from 55% for sexual offences to 91% for drug offences.

Between 2009 and 2010 there was a 7% increase in convictions for indictable offences, mainly due to changes in the following offences:

- Convictions for shoplifting increased by 9%. This increase coincided with a decrease in the same period for out of court disposals for shoplifting;
- Convictions for possession of cannabis increased by 17%. This increase coincided with a decrease in the same period for cannabis warnings and cautions for this offence.

"Criminal Justice Statistics Quarterly Update to December 2010" is available at http://www.justice.gov.uk/publications/statistics-and-data/criminal-justice/criminal-justice-statistics.htm

Proposals to get Prisoners into Jobs and out of Crime

The Government has launched a report outlining radical plans to break the cycle of reoffending by giving offenders better access to the skills demanded by employers.

"Making Prisons Work: Skills for Rehabilitation" sets out the Government's commitment to:

- Increase the range and relevance of learning, focussing on the skills employers need;
- Support more work opportunities in prison;
- Improve links with employers, ensuring where possible a relationship with employers has been established before release;
- Boost activity to prepare prisoners for apprenticeship opportunities on release;
- Focus learning delivery towards the end of prisoners' sentences - linking it directly to the needs in the labour market on release;
- Reshape careers advice provided in custody;
- Trial outcome incentive payments - giving colleges and training providers a greater stake in delivering learning successfully;
- Restructure the delivery of offender learning around the clusters of prisons within which prisoners normally move, bringing more coherence to the system.

"Making Prisons Work: Skills for Rehabilitation" is available at http://www.bis.gov.uk/publications

Nacro Wins £1.5m to Improve the Chances of Young People Leaving Custody

A Nacro-led partnership has won a Big Lottery Fund grant worth almost £1.5m to improve resettlement services for the 20,000 people leaving custody each year.

The Beyond Youth Custody project has been funded under the £30m Youth in Focus programme which enables Nacro, and its research partners, the University of Salford, the University of Bedfordshire and research organisation ARCS (UK), to assess and promote the most effective ways to help young people leaving custody resettle successfully and stop returning to crime.

The project will monitor resettlement services to assess how well the young people are progressing, what impact the projects are having and identify what works best for which young people and in what circumstances.

Alongside this, the project will actively promote its findings about effective practice to commissioners, practitioners and policy makers through online activities and resources, events and publications.

New Proposals for the Sentencing of Burglars

The Sentencing Council has launched a three month public consultation on its proposals to introduce a new guideline for judges and magistrates on the sentences for all offences which involve burglary.

The draft guideline, which covers aggravated burglary, burglary of a dwelling, and burglary of premises other than a dwelling, reinforces current sentencing practice and does not propose any reduction in sentences for burglars.

The proposals will bring burglary into a single guideline for Crown and magistrates' courts in order to increase the consistency of sentencing across both courts.

The draft guideline:

- Reinforces the particularly serious nature of aggravated burglary and proposes that the sentences for this offence are always custodial with a range of up to 13 years;
- Proposes that sentences should be up to six years for domestic burglary; and
- Takes a new approach to non-domestic burglary, proposing more focus on harm to the victim beyond the economic implications of a burglary, and suggesting a range of up to four years.

Responses to the consultation should be sent by 4 August 2011.

The Burglary Guideline Public Consultation is available at http://sentencingcouncil.judiciary.gov.uk/sentencing/consultations-current.htm

Definitive Guideline on Assault Takes Effect

Following a three month period of training and implementation, the definitive guideline on assault came into effect on 13 June 2011. It aims to ensure a consistent and proportionate approach to sentencing, with convicted offenders receiving a sentence that reflects both the harm they have caused to their victim and their culpability.

"Assault Definitive Guideline" is available at http://sentencingcouncil.judiciary.gov.uk/guidelines/guidelines-to-download.htm

Terrorism Prevention and Investigation Measures Bill

The Terrorism Prevention and Investigation Measures Bill was introduced into the House of Commons on 23 May 2011. This Bill was introduced following publication of the government's "Review of Counter-Terrorism and Security Powers Review Findings and Recommendations" on 26 January 2011, which stated a commitment to repeal the Prevention of Terrorism Act 2005 and introduce a new system of terrorism prevention and investigation measures (TPIMs).

As such the Bill abolishes the system of control orders, established under the 2005 Act and replaces it with a new TPIMs regime. This is a civil preventative measure intended to protect the public from the risk posed by suspected terrorists who can be neither prosecuted nor, in the case of foreign nationals, deported, by imposing restrictions intended to prevent or disrupt their engagement in terrorism-related activity. In addition, the Bill makes provision for the taking and retention of biometric material from individuals subject to a TPIM notice.

The Bills consists of 27 clauses and eight schedules.

Clauses 1-4 and Schedule 1: New regime to protect the public from terrorism

Clause 1 repeals the Prevention of Terrorism Act 2005.

Under clause 2, the Secretary of State may by notice (TPIM notice) impose TPIMs on an individual provided conditions A to E in clause 3 are met. These conditions are:

- **Condition A** - The Secretary of State reasonably believes that the individual is, or has been, involved in terrorism-related activity ("the relevant activity");
- **Condition B** - Some or all of the relevant activity is new terrorism-related activity;
- **Condition C** - The Secretary of State reasonably considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, for TPIMs to be imposed on the individual;
- **Condition D** - The Secretary of State reasonably considers that it is necessary, for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity, for the specified TPIMs to be imposed on the individual; and
- **Condition E** - The court gives the Secretary of State permission under section 6, or the Secretary of State reasonably considers that the urgency of the case requires TPIMs to be imposed without obtaining such permission.

Under clause 4, "involvement in terrorism-related activity" is defined as one or more of the following:

- The commission, preparation or instigation of acts of terrorism;
- Conduct which facilitates the commission, preparation or instigation of such acts, or which is intended to do so;
- Conduct which gives encouragement to the commission, preparation or instigation of such acts, or which is intended to do so; and
- Conduct which gives support or assistance to individuals who are known or believed by the individual concerned to be involved in conduct falling within the preceding bullet points.

For the purposes of this Act it is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism in general. In addition, it is immaterial whether an individual's involvement in terrorism-related activity occurs before or after the coming into force of this Act.

Part 1 of Schedule 1 sets out the type of measures which may be used. This is an exhaustive list, from which the Secretary of State may impose any or all of the measures that he or she reasonably considers necessary, for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity.

These measures include:

- Requiring the individual to remain overnight or at specified times overnight at a specified residence. This may either be his own residence or a residence provided by the Secretary of State;
- Imposing restrictions on an individual leaving a specified area, or travelling outside that area, namely the UK (in any case), or Great Britain (if that is the individual's place of residence), or Northern Ireland (if that is the individual's place of residence);
- Imposing restrictions on an individual entering specified areas or places (for example particular streets or localities where it is believed his or her extremist contacts live or associate) or types of areas or places (for example internet cafes or airports);
- Imposing a requirement for the individual to comply with directions given by a constable in respects of his or her movements (which may, in particular, include a restriction on movements). Directions may be given only for the purpose of securing compliance with other specified measures, or with a condition imposed under this Act requiring the individual to be escorted by a constable;

- Imposing restrictions on the individual's use of, or access to, specified financial services;
- Imposing restrictions on the individual in relation to the transfer of property to, or by, the individual, or requirements on the individual in relation to the disclosure of property;
- Imposing restrictions on the individual's possession or use of electronic communication devices and/or requirements on the individual in relation to the possession or use of electronic communication devices by other persons in the individual's residence;
- Imposing restrictions on the individual's association or communication with other persons;
- Imposing restrictions on the individual in relation to his or her work or studies;
- Imposing a requirement for the individual to report to such a police station as the Secretary of State may by notice require at the times and in the manner so required;
- Imposing a requirement for the individual to allow photographs to be taken of him/her at such locations and at such times as the Secretary of State may by notice require;
- Imposing requirements for the individual to cooperate with specified arrangements for enabling the individual's movements, communications or other activities to be monitored by electronic or other means.

Applications for permission to do the things specified in the TPIM notice may be made under Part 2 of Schedule 1.

Clause 5: Two year limit on imposition of measures without new terrorism-related activity

A TPIM notice remains in force for one year, beginning with the date on which it is served or from a later date which may be specified in the notice. After a TPIM notice has been in force for a year, the Secretary of State may extend it for a further year. This may only be done once. The notice may only be extended if the Secretary of State continues to:

- Reasonably believe that the individual is or has been involved in terrorism-related activity (condition A);
- Reasonably consider both that it is necessary to impose measures on the individual (condition C); and
- Reasonably consider that it is necessary to impose the measures specified in the TPIM notice (condition D).

Clauses 6 - 9 and Schedule 2: Court scrutiny of imposition of measures

The Secretary of State must seek the permission of the court before imposing measures on an individual. An exception to this is in cases of emergency where the notice must be immediately referred to the court for confirmation.

Consideration of the Secretary of State's application by the court may be done in the absence of the individual, and without him being aware of the application so as to avoid giving him advance warning of the intention to impose a TPIM notice and as such run the risk of the individual absconding before the measures can be imposed.

In determining the application, the court must apply the principles of judicial review.

If the court determines that the Secretary of State's decision that condition A, condition B or condition C is met is obviously flawed, the court may not give permission. If the court finds that the Secretary of State's decision that condition D is met is obviously flawed, the court may grant permission but also give directions to the Secretary of State in relation to the measures to be imposed on the individual.

If the court gives permission for measures to be imposed on the individual, or confirms a TPIM notice made in urgent circumstances, it must give order a directions hearing to be held within 7 days, at which the individual is to have the opportunity to attend. At the directions hearing, the court must give directions for a review hearing in relation to the imposition of measures on the individual. The review hearing must be held as soon as reasonably practicable. The function of the court in this regard is to review the decisions of the Secretary of State that the relevant conditions (namely conditions A, B, C and D) were met and continue to be met. The principles of judicial review are to be applied.

On review, the court may quash the TPIM notice, quash particular measures specified in the notice, or if it chooses not to quash the notice or any of the measures imposed under it, may give directions to the Secretary of State for or in relation to the revocation or the variation of any of the measures.

Clause 10: Criminal investigations into terrorism-related activity

Under clause 10, the Secretary of State must consult the chief officer of police of the appropriate police force as to whether there is evidence available that could realistically be used for the purposes of prosecuting the individual for an offence relating to terrorism. This must be done prior to applying for permission

to impose measures on an individual, or imposing measures in a case of urgency before the permission of the court is obtained.

Once a TPIM notice has been served on an individual, the chief officer must ensure that the investigation of the individual's conduct, with a view to a prosecution for an offence relating to terrorism, is kept under review throughout the period the TPIM notice is in force, and report to the Secretary of State on the review carried out.

Clause 11: Review of ongoing necessity

Under clause 11, during the period that a TPIM notice is in force, the Secretary of State must keep under review whether conditions C and D are met. This reflects the requirement under the Court of Appeal decision in Secretary of State for the Home Department v MB [2006] EWCA Civ 1140 that "it is the duty of the Secretary of State to keep the decision to impose the control order under review, so that the restrictions that it imposes, whether on civil rights or Convention rights, are no greater than necessary."

Clauses 12-15 and Schedule 3: Changes concerning TPIM notices

Provision is made for the measures imposed under a TPIM notice to be varied. This can be done on application to the Secretary of State by the individual. In addition, the Secretary of State has the power to vary the measures imposed at any time, whether or not the individual has made an application for variation. This includes the power to vary the measures without the consent of the individual if the Secretary of State considers the variation to be necessary for the purposes of preventing or restricting the individual's involvement in terrorism-related activity.

Provision is made for the Secretary of State to revive a TPIM notice, but to vary the measures specified in that notice from those that were contained in it prior to its expiry or revocation.

Under clause 13, an individual subject to a TPIM notice has the right to request the Secretary of State to revoke that notice and the Secretary of State is under a duty to consider that request.

The Secretary of State has the power to revoke a TPIM notice at any time by serving a revocation notice (whether or not in response to a request by the individual). This power may be exercised where the Secretary of State considers that it is no longer necessary that the TPIM notice, and the measures imposed under it, remain in force.

The Secretary of State has the power to revive a previously revoked TPIM notice, where he or she continues to reasonably believe that conditions A, C and D are met. This can be done

whether or not the TPIM notice has been extended for a year, or has previously been revoked and revived. However, the Secretary of State may not revive a TPIM notice that has been revoked on the direction of the court. The Secretary of State also has the power to revive a notice that has previously expired without being renewed (after being in force for one of the two years permitted without evidence of new terrorism-related activity) for a period of a year.

Clause 14 makes provision for circumstances in which a TPIM notice is quashed or directed to be revoked by the court. In these circumstances, the Secretary of State may impose a replacement TPIM notice, subject to certain provisions that ensure the replacement notice interacts in the same way as did the quashed or revoked notice with the provisions relating to time limits and new terrorism-related activity.

The new TPIM notice may only be in force for the same period of time as the original notice would have been, including that the replacement notice may not be extended if the original notice had already been extended.

If there is evidence that the individual engaged in further terrorism-related activity since the imposition of the overturned TPIM notice, the Secretary of State may impose a new TPIM notice which triggers a new two year time limit.

Clause 15 provides various provisions in relation to a case in which the courts quash a TPIM notice or a measure imposed under a TPIM notice, or the extension or revival of a TPIM notice, such as the power to stay such a decision until a specified time or pending the outcome of an appeal against the decision. The court's decision does not affect the Secretary of State's power to subsequently impose a TPIM notice (and measures) on the same individual, or to do so on the basis of terrorism-related activity previously relied on to exercise such powers.

Schedule 3 provides that an individual subject to a TPIM notice, who is convicted of an offence of contravention of a TPIM without reasonable excuse, has a right of appeal against that conviction if the TPIM notice (or the measure to which the conviction related) is subsequently quashed. The court must allow such an appeal.

Clauses 16-18 and Schedule 4: Appeals and court proceedings

In addition to the automatic review of the imposition of TPIMs to the court, clause 16 sets out the rights of appeal of an individual subject to a TPIM notice and the function of the court in relation to appeals. Rights of appeal exist against a decision of the Secretary of State to:

- Extend or revive a TPIM notice;
- Vary measures specified in a TPIM notice without the individual's consent;
- Refuse an application for the measures specified in a TPIM notice to be varied;
- Refuse an application for revocation of the TPIM notice; and
- Refuse an application for permission in relation to a measure specified in the TPIM notice.

The only powers available to the court on an appeal under clause 16 are to:

- Quash the extension or revival of the TPIM notice;
- Quash measures specified in the TPIM notice;
- Give directions to the Secretary of State for or in relation to the revocation of the TPIM notice or the variation of the measures specified in the TPIM notice; and
- Give directions to the Secretary of State in relation to permission (for the purposes of a measure specified in the TPIM) or conditions to which the permission is subject.

If the court does not exercise any of these powers it must dismiss the appeal. The principles of judicial review must be applied to this review.

Clause 18 makes further provision for court proceedings in relation to decisions taken under the Bill. An appeal may only be brought from a determination in TPIMs proceedings on a point of law. An individual subject to a TPIM notice may not bring an appeal on a determination of the court in relation to an application by the Secretary of State for permission to impose a TPIM notice or a reference to the court under the urgency procedure.

Schedule 4 makes provision relating to TPIM proceedings, with particular regard to the 'open' and 'closed' elements of such proceedings, including a power to make rules of court and certain requirements that specified matters must be secured by the rules that are made.

Clauses 19-20: Other safeguards

Clause 19 provides that the Secretary of State must report to Parliament on the exercise of his or her powers under this Bill on a quarterly basis. Under clause 20, the Secretary of State must appoint an "independent reviewer" to prepare an annual report on the operation of this Bill, and lay that report before Parliament.

Clause 21: Offence

Under clause 21, it is an offence to contravene measures specified in a TPIM notice without reasonable excuse. The maximum penalties for the offence are:

- On conviction on indictment five years' imprisonment, or a fine of up to £5,000 (in England, Wales and Northern Ireland; £10,000 in Scotland), or both; and
- On summary conviction six months' imprisonment or a fine of up to £5000 (£10,000 in Scotland), or both.

Clause 22 and Schedule 5: Powers of entry

Clause 22 gives effect to schedule 5 which provides for powers of entry, search, seizure and retention in a number of scenarios relating to TPIMs.

Clause 23 and Schedule 6: Fingerprints and other samples

Schedule 6 makes provision for the taking and retention of biometric material from individuals subject to a TPIM notice. Paragraphs 6 to 12 make provision relating to the destruction and retention of material taken from individuals subject to a TPIM notice. Where an individual has no relevant previous convictions, fingerprints and DNA profiles may only be kept for six months after the TPIM notice ceases to be in force. This is subject to the provision that, in the event that the TPIM notice is quashed, the material may be retained until there is no possibility of an appeal against the quashing.

In addition, should the TPIM notice be revived or a new TPIM notice imposed during the six month period following cessation of the TPIM notice that was in force when the material was taken, or within or immediately after the end of the period during which any appeal may be made, the material may be retained for a further six months after the revived or subsequent TPIM notice ceases to be in force (or until there is no further possibility of an appeal against any quashing of that TPIM notice).

As stated in the Protection of Freedoms Bill, material taken under the Police and Criminal Evidence Act (PACE) 1984 or that is subject to the Terrorism Act 2000 or the Counter-Terrorism Act 2008 need not be destroyed if a chief officer of police determines that it is necessary to retain that material for purposes of national security. In such circumstances it may be retained for up to two years. The chief officer of police may renew a national security determination in respect of the same material to extend further the retention period by up to two years at a time.

The purposes for which such material may be used in England, Wales and Northern Ireland are the same as those set out in

relation to material taken under PACE 1984, the Police and Criminal Evidence (Northern Ireland) Order 1989, the Terrorism Act 2000 and the Counter-Terrorism Act 2008. In Scotland any samples taken may be used only in the interests of national security or for the purposes of a terrorist investigation.

Clause 24: Notices

Clause 24 makes provision about the service of notices under the Bill. A TPIM notice, a revival notice or a notice of variation without consent must be served in person on the individual for it to have effect. The other notices, listed in subsection (4) may be served on the individual via his or her solicitor.

Clause 25 and Schedules 7 and 8: Financial and supplemental provisions

Under clause 25, the Secretary of State may purchase services in relation to any form of monitoring in connection with measures specified in TPIM notices, such as electronic monitoring of compliance with the overnight residence requirement.

Schedule 8 provides for a transitional period of 28 days during which existing control orders will remain in force following commencement of this Bill. Provision is made for certain control order proceedings under the 2005 Act to continue (or to be brought) after the repeal of that Act, for the purposes of only determining whether quashing is appropriate. Under this schedule, the Secretary of State may impose TPIMs on an individual who has previously been subject to a control order.

Clause 26: Interpretation

Subsection (2) has the effect that where a new TPIM notice is imposed on an individual who has already been subject to TPIMs for two years, the Secretary of State may take into account evidence he or she relied on in relation to the imposition of the previous TPIM notice. There would also have to be evidence of terrorism-related activity which post-dated the imposition of the earlier TPIM notice for the Secretary of State to have the power to impose the new notice.

Under subsection (3) if a TPIM notice has been revived under clause 13(6), when considering whether there is "new" terrorism-related activity which could found the imposition of measures on the individual beyond two years, that "new" activity must take place at some point after the original imposition of the measures (not after the revival of the measures).

The text of the Bill is available at http://www.publications.parliament.uk/pa/bills/cbill/2010-2012/0193/cbill_2010-20120193_en_1.htm

Home Affairs Committee Announces an Inquiry into the Roots of Violent Radicalisation

The Home Affairs Committee has announced an inquiry to examine the root causes of violent radicalisation in the UK, the individuals and groups particularly vulnerable to radicalisation and where this radicalisation tends to take place, in relation to the primary terrorist threats facing the UK.

In particular, the Committee intends:

- To determine the major drivers of, and risk factors for recruitment to, terrorist movements linked to (a) Islamic fundamentalism, (b) Irish dissident republicanism and (c) domestic extremism;
- To examine the relative importance of prisons and criminal networks, religious premises, universities and the internet as fora for violent radicalisation;
- To examine the operation and impact of the current process for proscribing terrorist groups;
- To consider the appropriateness of current preventative approaches to violent radicalisation, in light of these findings, including the roles of different organisations at national and local level; and
- To make recommendations to inform implementation of the Government's forthcoming revised Prevent strategy.

Those interested in making written submissions are invited to do so by Friday 8 July 2011.

Further information is available at http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news/110525-roots-of-radicalisation-call-for-evidence

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National Policing
Improvement Agency

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