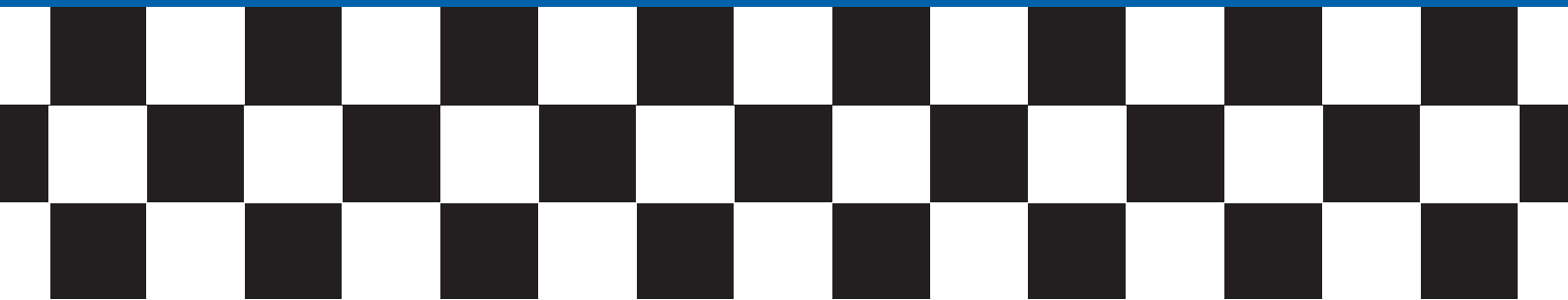


# Digest

January 2012

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.

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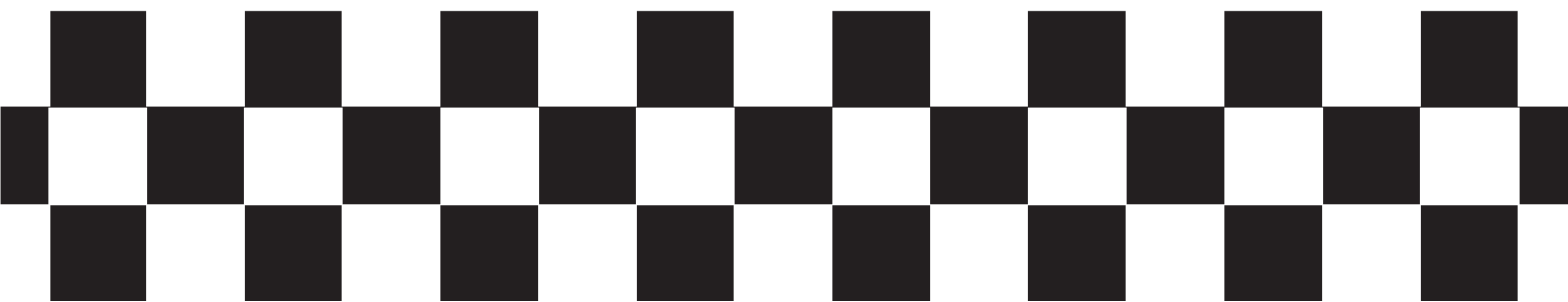
**January 2012**

# **Digest**

**Legal Services**

**Chief Executive Officer Directorate**

**[www.npia.police.uk/digest](http://www.npia.police.uk/digest)**



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## NPIA Digest January 2012

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

There are reports of cases on joint enterprise murder and transferred malice, the evidential presumptions in relation to consent and whether swearing at a police officer constitutes an offence under the Public Order Act 1986.

We look at the Terrorism Prevention and Investigation Measures Act 2011, which recently received Royal Assent, HMIC Inspections of police relationships and the treatment of children and young people whilst in police custody, the Government's response to 'New Landscape of Policing' and the City of London Police report on financial crime against vulnerable adults.

Statistical bulletins are covered which detail the use of police powers under terrorism legislation in the year to June 2011 and IPCC figures on police complaints in England and Wales for the financial year 2010/11.

There are also articles on the Government's first transgender equality action plan, the new equality advisory and support service, the Policing Protocol and the launch of Home Office consultations on forced marriage and domestic violence. New strategies on cyber crime and missing persons are also covered, as well as the most recent Learning the Lessons bulletin.

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

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## Bills Before Parliament 2010/11 - Progress Report

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

- ◆ 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 on 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.

Line by line examination of the Bill took place during the second day of committee stage in Grand Committee on 15 December. Amendments discussed covered clauses 37, 38, 40, 44, 45, 47, 51, 58 and 61 of the Bill. Committee stage continues on 10 January when further amendments will be discussed.

- ◆ 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. It received Royal Assent on 14 December 2011. A more detailed summary of the Act can be found below:

#### [Terrorism Prevention and Investigation Measures Act 2011](#)

- ◆ Legal Aid, Sentencing and Punishment of Offenders Bill - The Bill:
  - Reverses the position under the Access to Justice Act 1999, whereby civil legal aid is available for any matter not specifically excluded;
  - Abolishes the Legal Services Commission;
  - Makes various provisions in respect of civil litigation funding and costs, taking forward the recommendations of the Jackson Review and the Government's response to that review;
  - Makes changes to sentencing provisions, including giving courts an express duty to consider making compensation orders where victims have suffered harm or loss; reducing the detailed requirements on courts when they give reasons for a sentence; allowing courts to suspend sentences of up to two years rather than 12 months; and amending the court's power to suspend a prison sentence;
  - Introduces new powers to allow curfews to be imposed for more hours in the day and for up to 12 months rather than the current six;
  - Repeals provisions in the Criminal Justice Act 2003 which would have increased the maximum sentence a magistrates' court could impose from six to 12 months;
  - Makes changes to the law on bail and remand, aimed at reducing the number of those who are unnecessarily remanded into custody. Under the new "no real prospect" test, people would be released on bail if they would be unlikely to receive a custodial sentence;
  - Makes provision to ensure that, where a person aged under 18 has to be remanded into custody, in most cases they would be remanded into local authority accommodation;
  - Amends provisions relating to the release and recall of prisoners;



- Gives the Secretary of State new powers to make prison rules about prisoners' employment, pay and deductions from their pay. The intention of these provisions is that prisoners should make payments which would support victims of crime;
- Introduces a penalty notice with an education option and provision for conditional cautions to be given without the need to refer the case to the relevant prosecutor;
- Creates a new offence of threatening with an offensive weapon or an article with a blade or point thereby creating an immediate risk of serious physical harm. A minimum sentence of 6 months' imprisonment would normally be given to persons over 18 found guilty of this offence.

The Bill was presented to Parliament on 21 June 2011. Committee stage - line by line examination of the Bill - was scheduled to take place on 20 December.

The progress of Bills in the 2010/11 parliamentary session can be found at:

<http://services.parliament.uk/bills/>

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## Joint Enterprise Murder: Transferred Malice

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### **R v Gnango [2011] UKSC 59**

Permission to appeal was granted in this case in order to enable the Supreme Court to consider the following point of law, certified by the Court of Appeal as being of general public importance:

"If (1) D1 and D2 voluntarily engage in fighting each other, each intending to kill or cause grievous bodily harm to the other and each foreseeing that the other has the reciprocal intention, and if (2) D1 mistakenly kills V in the course of the fight, in what circumstances, if any, is D2 guilty of the offence of murdering V?"

The areas of criminal law that arise in this case are:

- (i) joint enterprise;
- (ii) transferred malice;
- (iii) exemption from liability where a party to what would normally be a crime is a victim to it.

No precedent indicates the result of the interaction of these three areas of law on the facts of this case.

### **The facts**

The respondent and Bandana Man, as he was referred in the case, were involved in an exchange of cross fire in a car park. In that cross fire, a passer by was killed, with scientific examination showing that the bullet to the deceased's head had come from the gun held by Bandana Man. Both the respondent and Bandana Man fled the scene. A man believed to be Bandana Man was arrested but never charged. The respondent was arrested and was charged with murder in respect of the deceased, attempted murder in respect of Bandana Man and having a firearm with intent to endanger life.

In relation to the murder, it was contended that the defendant had aided and abetted the shooting of Bandana man with intent to kill; he had been present and had encouraged it. This argument was rejected by the judge in his ruling. Secondly, the prosecution argued that the gun fight had been a joint enterprise between the respondent and Bandana Man, and as a result the respondent was jointly responsible for the murder. The trial judge directed the jury that, in order to convict they had to be satisfied that the respondent and Bandana Man had made a plan to have a 'shoot out' whether beforehand or on the spur of the moment when they saw each other and fired at each other. The respondent was convicted and appealed. The Court of Appeal overturned his conviction, holding that joint enterprise liability for murder could not arise on the facts of the case.

## **The case before the Court**

The Supreme Court looked at the doctrine of parasitic accessory liability, upon which the Crown sought to establish liability and which arises where:

- (i) D1 and D2 have a common intention to commit crime A;
- (ii) D1, as an incident of committing crime A, commits crime B, and
- (iii) D2 had foreseen the possibility that he might do so.

The Crown sought to suggest that there was a joint intention to have an affray, which was crime A, and that the killing by Bandana Man was crime B, for which the respondent was liable as an accessory because it was within his contemplation as a possible, albeit unintended, incident of crime A. The Supreme Court stated that there was no crime A and crime B in this case. The fallacy of this argument, the Court stated, was that if there was a joint intention to have an affray that intention was to have an affray by shooting at each other with homicidal intent. It was artificial to treat the intention to have an affray as a separate intention from the intention to have a potentially homicidal shooting match.

The Crown's case before the Supreme Court was that the respondent's conviction could be justified on the basis that the respondent aided and abetted the commission of the murder by actively encouraging Bandana Man to shoot at him. In relation to this, the issues for the Court were highlighted as follows:

- (i) Does the victim rule preclude the conviction of a defendant for aiding and abetting a crime in respect of which he is the victim, even where the crime is not designed to protect a particular class of which the victim is a member? If yes,
- (ii) Does the victim rule preclude the conviction of a defendant for aiding and abetting a crime in respect of which he was the intended victim, but where the actual victim is a third party?
- (iii) If the victim rule did not preclude the respondent's conviction for aiding and abetting the murder, was the judge's direction to the jury a sound basis for the jury's guilty verdict?

## **The scope of the victim rule**

The first question the Court considered was whether there is any statutory bar to prosecuting the respondent for being party to a crime in respect of which he was the intended victim. If the answer was no, the Court stated it will then be necessary to consider whether there either is, or should be, a victim rule under the existing common law, or the common law as this

court should develop it. The Court found that there was no applicable statutory victim rule that precludes conviction of the respondent on the basis that he aided or abetted Bandana Man's attempt to kill him or cause him serious injury. It also stated that it could see no reason why the Court should consider extending the common law so as to protect from conviction any defendant who is, or intended to be, harmed by the crime that he commits, or attempts to commit.

### **Was the judge's direction to the jury a sound basis for their guilty verdict?**

The Court stated that if the respondent aided, abetted, counselled and procured Bandana Man to shoot at him he was guilty of aiding and abetting the attempted murder of himself. Under the doctrine of transferred malice, the respondent, if he had aided, abetted, counselled and procured the attempt, was party to the actual murder that resulted. Having regard to the judge's directions, did it follow that the jury must have been satisfied that the respondent had aided, abetted, counselled and procured Bandana Man to shoot at him with murderous intent? If so, his conviction could stand. If not, the Court of Appeal had correctly quashed it.

The judge in the original case directed the jury that in order to convict they had to be satisfied that there was a plan or agreement to "have a shoot out"... "whether made beforehand... or made on the spur of the moment when they saw each other and fired at each other from the steps and the car park respectively". The Court of Appeal observed that the jury was never asked to confront the question whether the shared purpose was not only to shoot but be shot at. The Supreme Court however stated that the judge's direction did not permit the jury to convict if they believed that one of the protagonists might have been the aggressor and the other merely responding in self defence. If was an unequivocal direction that the jury could convict only if they were satisfied that the protagonists had formed a mutual plan or agreement to have a gun fight in which each would attempt to kill or seriously injure the other. The Court stated that, contrary to the finding of the Court of Appeal, the direction of the judge required the jury to consider whether they were satisfied that the respondent and Bandana Man had a common plan or agreement to shoot at each other and be shot at. If they were so satisfied, and their verdict indicated that they were, it was a proper basis for finding that the respondent was guilty of murder.

The Court considered whether to hold the respondent guilty of murder would be so far at odds with what the public would be likely to consider the requirements of justice as to call for a reappraisal of the application of the doctrine in the case. They concluded to the contrary. On the jury's verdict, the respondent

and Bandana Man had chosen to indulge in a gunfight in a public place, each intending to kill or cause serious injury to the other, in circumstances where there was a foreseeable risk that this result would be suffered by an innocent bystander. It was a matter of fortuity which of the two fired the fatal shot. In these circumstances, it was in accord with the demands of justice that the gunmen should each be liable for the murder of the deceased. The Court allowed the appeal and restored the respondent's conviction for murder.

In the judgement, the defendant was considered separately as being liable both as a principal to the agreed joint activity of shooting with intent to kill or cause serious injury, and as an accessory to the act of firing the shot. The Court quoted Archbold, 2011 edition, para 18-1, where it is stated

"the distinction between a joint principal and an abettor is sometimes difficult, if unnecessary, to draw".

The decision, the Court stated, simply reflects the reality that whether an offence is committed as a principal or as an accessory, the offence is the same offence and the defendant is guilty of it. There may be many situations where it is important to distinguish between the principal and the accessory, but this, the Court stated, was not such a case. On the jury's verdict, both men agreed to the joint enterprise of having a shoot-out. Whether, on strict analysis, that made the respondent guilty as a principal to Bandana Man's actus reus of firing the fatal shot, or guilty as one who had 'aided, abetted, counselled or procured' his firing of that shot created no practical difficulty of the facts of the case in hand and did not affect the result.

The judgement can be read in full at:  
<http://www.bailii.org/uk/cases/UKSC/2011/59.html>

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## Evidential Presumptions Relating to Consent

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### **R v Ciccarelli [2011] EWCA Crim 2665**

This appeal raises a point about evidential presumptions relating to consent, which are set out in section 75 of the Sexual Offences Act 2003. Consent is defined by section 74 of the Act and provides “for the purposes of this Part, a person consents if he agrees by choice, and has the freedom and capacity to make that choice.”

Section 75 of the Act provides:

- (1) If in proceedings for an offence to which this section applies, it is proved:
  - (a) that the defendant did the relevant act,
  - (b) that any of the circumstances specified in subsection (2) existed, and
  - (c) that the defendant knew that those circumstances existed,

the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he consented, and the defendant is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

Of the circumstances specified in subsection (2), subsection (2) (d) is relevant to the case in hand. It states “the complainant was asleep or otherwise unconscious at the time of the relevant act”.

### **The facts**

The appellant touched, in a sexual way, a young woman who was asleep or unconscious through drink and possibly drugs without her consent. The only issue was whether he might reasonably have believed that she was consenting. The judge in the original case concluded that no sufficient evidence had been adduced in accordance with section 75(1) to raise the issue and indicated that she would give appropriate directions to the jury. Following this ruling, the appellant pleaded guilty. The appeal against conviction was brought on the basis that the ruling was wrong and that his guilty plea was tendered in the context of an incorrect ruling.

The Court emphasised that it was not considering a situation which arises between couples in an established relationship, who understand each other and what is and what is not appropriate and acceptable to them in their sexual relationship. In this case the appellant and the complainant had met on about

three previous occasions, when nothing romantic or sexual had occurred between them.

It was not in dispute that the appellant sexually assaulted the complainant when she was asleep and when he knew she was asleep. Further, it was not in dispute that the complainant did not, in fact, ever consent to be touched sexually by the appellant in any way. The only question was whether sufficient evidence had been adduced for the issue of whether he reasonably believed that the complainant consented to him touching her sexually to be raised. If there was sufficient evidence, the issue would be left to the jury.

It was submitted that the judge's ruling was wrong. It was suggested that section 75 of the 2003 Act reverses the ordinary principles relating to the burden of proof in criminal cases. The Court of Appeal did not agree; stating that Section 75 is an evidential provision. It relates to the matters of evidence, and in particular evidential presumptions about consent in circumstances where as matter of reality and common sense, the strong likelihood is that the complainant will not, in fact, be consenting. If however, in those circumstances there is sufficient evidence for the jury to consider, then the burden of disproving them remains on the prosecution. Before the question of the appellant's reasonable belief in the complainant's consent could be left to the jury, some evidence beyond the fanciful or speculative had to be adduced to support the reasonableness of his belief in her consent to him touching her sexually when, and although, she was asleep.

In this case the reasonableness of his belief that the sleeping complainant was consenting was based on the single advance she had, according to him, made towards him at an earlier stage in the evening when she was awake, in a different place, before she was taken to the flat he shared with his girlfriend and went to bed drunk. The issue of the appellant's reasonable belief in the complainant's consent will be considered by the jury provided that there is evidence which is sufficient to raise that issue. The Court held that the judge was entirely justified in concluding that the evidence did not raise any issue for consideration by the jury. The appeal was dismissed.

The judgement can be read in full at:

<http://www.bailii.org/ew/cases/EWCA/Crim/2011/2665.html>

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## Swearing at a Police Officer

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### Harvey v DPP [2011] EWCA Crim B1

The appellant was stopped and searched by a police officer and a PCSO, on suspicion of possession of cannabis. During this the appellant swore at the officers and was warned that if he continued to swear he would be arrested for an offence under section 5 of the Public Order Act 1986. The appellant swore at the officers again and was arrested for the offence under section 5. He was subsequently charged and convicted of the offence of using threatening, abusive or insulting words or behaviour contrary to section 5 of the 1986 Act and was fined £50.

Section 5 of the Public Order Act 1986 states:

“A person is guilty of an offence if he:

- (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
- (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.”

Neither officer gave evidence of having been harassed, alarmed or distressed, nor was there evidence of anyone else having been harassed, alarmed or distressed. The justices stated:

“We were of the opinion that the offence under Section 5 of the Public Order Act 1986 had been proved. We believed that this was a public area in the middle of a block of flats: there were people around who do not need to hear frightening and abusive words issuing from a young man. It was not only the words but the tone in which they were said which causes alarm.”

### Appeal

The questions before the court were as follows:

- (1) As part of the decision that the appellant had committed the offence alleged under section 5 of the Public Order Act 1986, were the justices entitled to conclude that the use by the appellant of the words “Fuck this man. I ain’t been smoking nothing”, “Told you you wouldn’t find fuck all”, and “No. I’ve fucking told you no” amounted to threatening, abusive or insulting words and/or behaviour or disorderly conduct?
- (2) Were the justices entitled to conclude that the officers were likely to have been caused harassment, alarm or distress as a result of the use by the Appellant of the words above, in the absence of any specific evidence that either officer



felt threatened by the Appellant's conduct or felt harassed, alarmed or distressed?

- (3) Were the justice's entitled to conclude that the bystanders who witnessed the incident or who may have been in the open area of the flats or resident in their homes were persons likely to have been caused harassment, alarm or distress, in the absence of any specific evidence that such a result was likely?

The Court found that the justices were entitled to conclude that the use of expletives, by the appellant, amounted to abusive words or behaviour. There are a number of cases which establish that expletives such as "fuck" or "fucking" are potentially abusive words, whether addressed to a police officer or to a member of the public, however, as the Court stated, Parliament has not made it an offence to swear in public as such. The offence under section 5 involves the use of threatening, abusive or insulting words within the hearing of someone who was caused, or was likely to be caused harassment, alarm or distress by hearing them. In *DPP v Orum* [1988] 88 Cr App Rep 261, it was stated:

"Very frequently words and behaviour with which police officers will be wearily familiar will have little emotional impact on them save that of boredom. It may well be that in appropriate circumstances, justice will decide...as a question of fact that the words and behaviour were not likely in all the circumstances to cause harassment, alarm or distress to either of the police officers. That is a question of fact for the justices to be decided in all the circumstances, the time, the place, the nature of the words used, who the police officers are, and so on."

The Court in the present case, while finding that the justices were entitled to conclude that the use of the expletives by the appellant amounted to abusive words or behaviour, held that there was no evidence on which they could have concluded that either of the officers had been caused or was likely to have been caused harassment, alarm or distress as a result. Where witnesses have given oral evidence of an incident which forms the basis of a charge under section 5 of the 1986 Act, but have said nothing and been asked nothing about experiencing harassment, alarm or distress, there is no sound basis for the court to reach the conclusion for itself. The only possible candidates for being the victims of harassment, alarm or distress, other than the police officers themselves, were the group of youngsters who had gathered around or other neighbours. It was wrong to infer in the absence of evidence from any of them, that a group of young people who were in the vicinity would obviously have experienced alarm or distress on hearing 'the rather common place swear words used'. In relation to the neighbours and people in the flats, it is not

enough simply to say that the incident took place outside a block of flats and that “there were people around who do not need to hear frightening and abusive words issuing from a young man”. There was no evidence that anybody, other than the group of young people, were within earshot.

The answers to the second and third questions, as stated above, were no and the conviction was quashed.

The judgement can be read in full at:

<http://www.bailii.org/ew/cases/EWCA/Crim/2011/B1.html>

### **SI 2744/2011 The Policing Protocol Order 2011**

Section 79 of the Police Reform and Social Responsibility Act 2011 requires the Secretary of State to issue a Policing Protocol, namely a document setting out, or otherwise making provision about, the ways in which relevant persons should exercise or refrain from exercising functions so as to encourage, maintain or improve working relationships or limit or prevent the overlapping or conflicting exercise of functions. "Relevant persons" for these purposes are the Secretary of State (in the exercise of her policing functions), elected local policing bodies (namely police and crime commissioners and the Mayor's Office for Policing and Crime), chief officers of police forces maintained by elected local policing bodies, and police and crime panels. These persons must have regard to the Policing Protocol in exercising their functions. The Policing Protocol comes into force on **16 January 2012**.

### **SI 2865/2011 The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) (No.2) Order 2011**

The Legal Services Act 2007 (the 2007 Act) contains a scheme requiring the authorisation of those who provide certain legal services. Part 5 of the 2007 Act provides that bodies which have been designated as licensing authorities under Schedule 10 may issue licences to firms which are wholly or partly owned or controlled by those who are not so authorised, permitting those bodies to offer legal services, or a mixture of legal services and other services, to the public. Schedule 13 requires that, before granting a licence, the licensing authority must approve the holding by a non-authorised person of certain interests in the body. This Order, which came into force on **30 November 2011**, amends the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 so as to permit a licensing authority to ask about spent convictions and cautions when deciding whether to give such approval.

### **SI 3016/2011 The Crime and Security Act 2010**

This Order brings into force sections 34 to 36 and 39 of the Crime and Security Act 2010 on **9 January 2012** which enable injunctions to prevent gang-related violence to be enforced against those aged 14 to 17. Sections 37 and 38 of the Crime and Security Act 2010 were brought into force on 31 January 2011 by an earlier commencement order.

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## HMIC Review of Police Relationships Published

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Her Majesty's Inspectorate of Constabulary (HMIC) has published a report following a review which focused on what police forces and those who govern them are doing to safeguard the requirement for the 'impartiality and honesty' of policing in England and Wales. 'Without Fear or Favour - a review of police relationships' did not find any evidence to support a contention of endemic corruption in Police Service relationships. However, the report states that more robust systems are needed if the service is to avoid undermining public trust, and, ultimately, police legitimacy.

The review examined all Home Office police forces, police authorities, the British Transport Police and the National Policing Improvement Agency. In addition to looking at the issue of inappropriate relationships from the perspective of the police, HMIC also looked at the issue from the perspective of the public. The review found that the majority of people do not think corruption is common and trust the police to tell the truth. Around a third, however, thought that there was some problem with corruption. The public also said that they associate integrity with being treated fairly. The service must, the report states, be absolutely transparent not only in being fair but also in being seen to be fair.

The overall findings of the review can be summarised as follows:

- ◆ There was no evidence to support any contention of endemic corruption in Police Service relationships, either in relation to the media or more generally, with the majority of police officers and staff striving to act with integrity. Instances of deliberate malpractice in relation to these matters appear to be infrequent.
- ◆ The review found instances of enforcement action against individuals at all levels, where sufficient evidence had arisen.
- ◆ Visible consistent leadership is a key contributor to promoting integrity and raising awareness of and focus on these issues.
- ◆ Few authority and force leaders have these relationship issues on their radar and were broadly unaware of the risks to their organisations reputation.
- ◆ There is a hugely inconsistent approach across the Service and a lack of clarity about where the boundaries lie in a number of these areas, particularly around:
  - relationships between the police, the media and others;
  - acceptable hospitality and gratuities; and

- which second jobs are compatible with police employment.
- ◆ There was clear evidence of major contracts and procurement being professionally and consistently managed. The checks and balances, however, are less evident on spends of around £5,000 and under.
- ◆ Support in terms of training and education is inconsistent and fails to identify appropriate values and standards.
- ◆ There are good examples of anonymous reporting systems in place with a positive reactive commitment from Professional Standards Departments (PSDs).
- ◆ Governance and oversight is generally weak, and limited proactive checks and balances take place.
- ◆ Many forces and authorities appear complacent, with an “it would not happen here” mentality in evidence, especially in non-metropolitan forces.
- ◆ To reduce public perceptions of corruption, police will need both to be fair, and be seen to be fair.
- ◆ Police need to be conscious that their reputation in the eyes of the public may be damaged by the perception that there is a conflict of interest, even where this proves not to be the case.

The review makes six recommendations:

- ◆ Forces and authorities should institute robust systems to ensure risks arising from relationships, information disclosure, gratuities, hospitality, contracting and secondary employment are identified, monitored and managed.
- ◆ There should be clear boundaries and thresholds in relation to these matters. Such limits should be consistent and Service wide.
- ◆ Training courses should include appropriate input in relation to integrity and anti-corruption. In particular, given the importance of leadership to securing high standards of integrity (a theme which runs through this review), the Strategic Command Course (in January 2012) and the High Potential Development Scheme should encompass these issues.
- ◆ Chief officer teams should review their corporate governance and oversight arrangements to ensure that those arrangements are fulfilling their function in helping promote the values of their force in the delivery of its objectives, and that they are, through their actions and behaviours, promoting the values of the organisation and making

sure good corporate governance is seen as a core part of everyday business.

- ◆ HMIC expects the Service to have detailed proposals in the above areas ready for consultation with all relevant parties by April 2012.
- ◆ An assessment relating to these matters should be conducted by HMIC by October 2012 to inform incoming Police and Crime Commissioners and Police and Crime Panels.

HMIC 'Without Fear or Favour - a review of police relationships' can be accessed in full at:

<http://www.hmic.gov.uk/publication/review-police-relationships/>

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## Operation of Police Powers under Terrorism Legislation

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The Home Office has published a quarterly statistical bulletin, providing information on terrorism arrests, outcomes and stops and searches.

### **Terrorism arrests and outcomes:**

In the year ending 30 June 2011:

- ◆ 134 people were arrested for terrorism-related offences, compared with 131 in the previous 12 months. In total, 1,998 people have been arrested for terrorism-related offences since 11 September 2001.
- ◆ 31 percent of those arrested were charged; 52 percent of these charges were terrorism related.
- ◆ No individuals were held in pre-charge detention for longer than seven days.
- ◆ Of those charged with terrorism-related offences in this period, three had been convicted of a terrorism-related offence and 13 were awaiting prosecution.
- ◆ Trials for 12 defendants were completed by the Crown Prosecution Service Counter-Terrorism Division in this period, with three-quarters of defendants convicted.
- ◆ 116 people were in prison for terrorist/extremist or related offences on 30 June 2011, of whom 28 were classified at domestic extremists/separatists.

### **Stops and searches under the Terrorism Act 2000**

In the year ending 30 June 2011:

- ◆ There were 675 stops and searches in Great Britain under s44 of the Terrorism Act 2000, a decrease of 99 percent on

the previous 12 months. 18 percent of those stopped and searched under these powers classified themselves as Asian or Asian British. The powers under s44 were replaced by powers under section 47A of the Act, on 18 March 2011; however, as yet there have been no uses of these powers.

- ◆ The Metropolitan Police made 1,283 stops and searches under s43 Terrorism Act 2000. 34 percent of those searched classified themselves as Asian or Asian British.
- ◆ In total, seven arrests were made following stops and searches under s44, but none of these were identified as terrorism related.

Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops and searches - Quarterly update to June 2011 can be accessed in full at:

<http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/counter-terrorism-statistics/hosb1911/hosb1911?view=Binary>

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## Missing Children and Adults Strategy

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The Government has published a new strategy, providing a core framework in which agencies can work to delivery the best protection for missing children, adults and their families. It is estimated that 200,000 people go missing in the UK every year, with the vast majority vulnerable and in need of protection and support. At a local level current legislation places responsibilities on a range of local partners, such as local authorities, the police and health partners in relation to the care and protection of young people under the age of 18. At national level, steps have already been taken to strengthen the arrangements to support missing children. Responsibility for national missing children services has been transferred to the Child Exploitation and Online Protection Centre (CEOP); putting in place, for the first time within the UK, a dedicated capability on missing children.

The Missing Children and Adults strategy outlines the following three key objectives:

- ◆ **Prevention** - reducing the number of people who go missing - through prevention strategies, education work and early intervention in cases where children, young people and adults repeatedly go missing.
- ◆ **Protection** - reducing the risk of harm to those who go missing - by ensuring local agencies provide a tailored, risk based response to cases of missing children, young people and adults and that they work together to find the person

and to close cases as quickly as possible at a local and national level.

- ◆ **Provision** - providing missing people and their families with support and guidance - by referring promptly and ensuring that missing people and their families understand how and where to access help and support.

The Government will identify opportunities to promote and support conversations at local level on the delivery of the strategy's ambitions and will review progress through regular engagement with partners to consider the strategy's impact. The Government will also work with national Inspectorates to ensure accountability and transparency on issues around tackling missing persons and in support of this, Her Majesty's Inspectorate of Constabulary will undertake a thematic inspection of the police management of missing persons in 2012/13.

Missing Children and Adults - A Cross-government Strategy can be accessed in full at:

<http://www.homeoffice.gov.uk/publications/police/missing-persons-strategy?view=Binary>

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## IPCC Report on Police Complaints

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The Independent Police Complaints Commission (IPCC) has published a report, providing figures on complaints about the police in England and Wales for the financial year 2010/11. The complaints have been made by members of the public about the conduct of people serving with the police and are dealt with under the Police Reform Act 2002. The report is intended to help inform the public debate by presenting an overview of the numbers and types of complaints, and information about how these were resolved. The report states:

- ◆ A total of 33,099 complaint cases were recorded during 2010/11; a reduction of 4% compared with the previous year.
- ◆ Police forces are expected to record complaints within ten working days. 87 percent were recorded within this time limit, and there appears to have been some improvement in recent years.
- ◆ During 2010/11 a total of 59,442 allegations were recorded (there may be one or more allegations attached to a complaint case). This is an increase of 2 percent on the previous year.
- ◆ Five allegations account for 69 percent of all those recorded during 2010/11. These were:



- Other neglect or failure in duty (27 percent);
  - Incivility, impoliteness and intolerance (18 percent);
  - Other assault (12 percent);
  - Oppressive conduct or harassment (7 percent);
  - Unlawful/unnecessary detention (5 percent).
- ◆ During 2010/11 the allegation rate per 1,000 officers/staff was 225 and a total of 58,667 allegations were finalised.
  - ◆ It took an average of 59 working days to deal with an allegation through local resolution, an average of 132 working days to deal with an allegation through a local investigation and an average of 324 working days to deal with an allegation through a supervised investigation.
  - ◆ A total of 11,136 allegations were dispensed, discontinued or withdrawn.
  - ◆ A total of 35,503 complaint cases were finalised during 2010/11. A case is finalised once all police action has been concluded. This is 9 percent more than during the previous year.
  - ◆ It took on average 107 working days to complete a complaint case - seven days longer than during 2009/10.
  - ◆ During 2010/11 a total of 6,173 appeals were made to the IPCC about the handling of a complaint by a police force; an increase of 15 percent on the previous year.
  - ◆ The number of people who complained about the conduct of someone serving with the police during 2010/11 was 33,788 - a reduction of 3 percent on the previous year.
  - ◆ The majority of complainants were men, White and aged between 18 and 49.
  - ◆ A total of 37,779 people serving with the police were subject to a complaint during 2010/11 - a reduction of 3 percent on the previous year. The majority of complaints were about police officers rather than police staff.
  - ◆ The majority of those facing complaints were men and were White.

The IPCC Police Complaints statistics for England and Wales 2010/11 can be accessed in full at:

<http://www.ipcc.gov.uk/en/Pages/stats.aspx>

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## Cyber Security Strategy Published

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The Government has published a new Cyber Security Strategy; setting out the actions that the government will take to reduce the risk and secure the benefits of a trusted digital environment for businesses and individuals. 'Protecting and promoting the UK in a digital world' states the ways in which the UK will support economic prosperity, protect national security and safeguard the public's way of life by building a more trusted and resilient digital environment. Cyber security is ranked as a tier 1 national security priority, and the government has committed £650 million over the next four years to improve its defences. It's vision, as set out in the strategy, is;

'to derive huge economic and social value from a vibrant, resilient and secure cyberspace, where our actions, guided by our core values of liberty, fairness, transparency and the rule of law, enhance prosperity, national security and a strong society'.

In order for this vision to be achieved by 2015, the Government wants the UK:

- ◆ To tackle cyber crime and be one of the most secure places in the world to do business in cyberspace;
- ◆ To be more resilient to cyber attacks and better able to protect our interests in cyberspace;
- ◆ To have helped shape an open, stable and vibrant cyberspace which the UK public can use safely and that supports open societies;
- ◆ To have the cross-cutting knowledge, skills and capability it needs to underpin all the cyber security objectives.

The action plan sets out what the Government will do, in partnership with the private sector and other countries, to deliver it's vision. This includes:

- ◆ Continuing to build up in GCHQ and MOD sovereign UK capability to detect and defeat high-end threats;
- ◆ Establishing a new operational partnership with the private sector to share information on threats in cyberspace;
- ◆ Bringing together existing specialist enforcement capability on cyber crime into the National Crime Agency;
- ◆ Building an effective and easy-to-use single point for reporting cyber fraud and improving the police response at local level for those who are victims of cyber crime;
- ◆ Encouraging the courts in the UK to use existing powers to impose appropriate online sanctions for online offences.

The UK Cyber Security Strategy; Protecting and promoting the UK in a digital world, can be accessed in full at:  
<http://www.cabinetoffice.gov.uk/sites/default/files/resources/uk-cyber-security-strategy-final.pdf>

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## **Report Published on Financial Crime against Vulnerable Adults**

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A report has been published by the City of London police which examines the current threat towards vulnerable adults from financial crime and explains the methods used to commit such crimes and the impact these have on the victims. 'Financial Crime against Adults' was commissioned by the Home Office, department for Health and the Association of Chief Police Officers (ACPO) and highlights how victims are slipping through the care system, being left with no savings and becoming reliant on the state to support them in retirement.

The 'No Secrets' guidance, published by the Department of Health and the Home Office in 2000, defines a vulnerable adult as:

'Someone who is, or may be, in need of community care services, by reason of mental or other disability, age or illness; and who is, or may be, unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation'.

The guidance document also describes financial abuse as including theft, fraud, pressure in connection with wills, property, inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits.

There are a range of perpetrators who target vulnerable adults in a variety of ways. A distinction can be made between those acting in a position of trust and all other perpetrators. Some may simply be driven by opportunity and those occupying a position of trust may have a greater opportunity to commit financial crime. Research suggests that financial abuse is most frequently perpetrated by a person acting in a trusted capacity, such as a family member or, to a lesser extent, a friend, neighbour or a care worker or other professional. Vulnerable adults are also targeted by organised criminals, who prey on the victims' reduced ability to protect themselves.

The report states that professionals and society as a whole face difficulties in determining who may, or may not be, a vulnerable adult. Furthermore, crime data does not characterise the victim as vulnerable or non-vulnerable. It goes on to state that it should no longer be acceptable that financial crime is all too frequently considered not to constitute 'significant harm' and makes the following recommendations for next steps:

- ◆ This assessment should be published and made widely available to raise awareness of the threat that financial crime poses to vulnerable adults and to help organisations to consider ways of improving their safeguarding arrangements at a local level;
- ◆ Any improvements made should reflect the key principles set out by the government in relation to safeguarding vulnerable adults;
- ◆ Following the government's commitment to put Safeguarding Adults Boards on a statutory footing, consideration should be given to their role in addressing the threat of financial crime against vulnerable adults and ensuring existing barriers to addressing the threat are overcome and removed;
- ◆ Toolkits for practitioners (including the police, adult services and financial sector workers) should be developed to support staff in improving the safeguarding response to protect those who demonstrate an inability to protect themselves from the harm of financial crime;
- ◆ Findings from this assessment should inform the 'Safeguarding and investigating the abuse of vulnerable adults' guidance that is currently being developed by the National Policing Improvement Agency (NPIA) and the ACPO vulnerable adults portfolio, as well as future training packages for police and safeguarding partners.

'Financial Crime Against Adults' can be accessed in full at: <http://www.cityoflondon.police.uk/NR/rdonlyres/4164FF69-AEBA-4D54-9ED4-4D0ECD80B8/0/VulnerableAdultsReport.pdf>

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### **Forced Marriage Consultation Launched**

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The Government is seeking views on whether it should be a criminal offence to force someone to marry or whether the current arrangements provide adequate protection. A forced marriage is described in the consultation paper as a marriage in which one or both spouses do not (or in the case of some vulnerable adults, can not) consent to the marriage but are coerced into it. This coercion can include physical, psychological, financial, sexual and emotional pressure.

The Forced Marriage (Civil Protection) Act 2007 provides a specific civil remedy to prevent a forced marriage and to assist victims where a marriage has already taken place. This is done through a Forced Marriage Protection Order (FMPO), and can include any number of provisions that the court deems necessary to protect an individual who is at risk of forced marriage, or who has already been forced into marriage.

Breach of an order is dealt with as a civil contempt of court, which is punishable with a fine or up to two years imprisonment. The Government has made a commitment to make a breach of such an order a criminal offence.

The paper poses a number of questions, including whether the model for breaching a FMO should follow that for breach of a non-molestation order, which has been a criminal offence since 1 July 2007. The applicant to the original order can choose whether to contact the police and deal with the breach within the criminal jurisdiction, or apply in the originating county court to have the breach dealt with as a civil contempt of court. The two jurisdictions are exclusive: if someone has been convicted of the breach in a criminal court they cannot be punished for civil contempt and vice versa.

The consultation paper also sets out the arguments for and against making forcing someone to marry a specific criminal offence:

#### **Arguments in support of making a criminal offence:**

- ◆ A new offence could have a deterrent effect and send a clear signal (domestically and abroad) that forcing a person to marry is unacceptable;
- ◆ A new offence could empower young people to challenge their parents or families;
- ◆ A new offence could make it easier for the police, social services and health services to identify that a person has been forced into marriage as existing legislation may not be easily linked with forced marriages;
- ◆ A new offence would provide punishment to the perpetrator.

#### **Arguments in support of keeping existing arrangements**

- ◆ Victims may stop asking for help and/or applying for civil remedies due to a fear that their families will be prosecuted and/or because of the repercussions from failed prosecutions;
- ◆ Parents may take their children abroad and force them to marry or hold them there, to avoid a prosecution taking place in the UK;
- ◆ An increased risk that prosecution or threat of prosecution may make it more difficult for victims to reconcile with their families;
- ◆ The behaviour criminalised may overlap with existing offences.

The Forced Marriage Consultation closes on 30 March 2012 and can be accessed in full at:  
<http://www.homeoffice.gov.uk/publications/about-us/consultations/forced-marriage/forced-marriage-consultation?view=Binary>

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## Plan to Advance Transgender Equality Published

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The Government has published its first transgender equality action plan, which forms part of the wider work to build an equal and fair society. It follows the publication, in March of this year, of 'Working for Lesbian, Gay, Bisexual and Transgender Equality: Moving Forward', which included the Government's commitments to tear down barriers and advance equal opportunities for lesbian, gay, bisexual and transgender people in all areas of society.

The action plan addresses some of the obstacles faced by transgender people in all aspects of public life. The Government sets out its commitment to tackle transphobic bullying, stating that it wants to support schools to act as leaders and advocates for change. Anti-bullying guidance has already been issued to support head teachers in tackling all forms of bullying, including transphobic bullying, and separate statutory guidance will be issued to extend the powers of head teachers to respond to pupils who bully others outside school premises. The Government also states its commitment to support employers and transgender people in the workplace. Research has been published on the barriers and opportunities faced by employers developing lesbian, gay, bisexual and transgender friendly workplaces. Advice is also being updated for employers on recruiting and employing transgender employees.

The Equality Act 2010 includes a public sector Equality Duty, requiring public bodies, when exercising their functions, to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between people with different protected characteristics. This includes gender reassignment. The government will shortly be publishing an 'Accountability and Transparency Support Package' which will help the voluntary, community and social enterprise sector and the public to use the public sector Equality Duty to hold public bodies to account.

The action plan commits to:

- ◆ Reform Health services to ensure greater consistency in commissioning gender identity services;
- ◆ Publish a clear and concise guide for health practitioners, including GPs and Primary Care Trusts, on the treatment and care available;
- ◆ Amend the Legal Aid Sentencing and Punishment of Offenders Bill to raise the starting point for murders motivated by hostility towards a transgender person from 15 to 30 years.

'Advancing transgender equality: a plan for action' can be accessed in full at:  
<http://www.homeoffice.gov.uk/publications/equalities/lgbt-equality-publications/transgender-action-plan?view=Binary>

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## **New Equality Advisory and Support Service**

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The Government is commissioning a new Equality Advisory and Support service, which will provide information, advice and support to individuals who may be victims of discrimination. The service will be available to people living in England, Wales and Scotland irrespective of their means. It will provide expert advice and support, tailored to individual circumstances and, in particular, will encourage problems to be resolved early and informally where possible. The new service will provide the same level of support on human rights as the current Equality and Human Rights Commission (EHRC) helpline, which the Government has decided not to continue to fund from the end of 2011-12.

Further information on the Equality Advisory and Support Service can be found at:  
<http://www.homeoffice.gov.uk/publications/equalities/government-equality/New-service-further-info/>



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## Learning the Lessons: Bulletin 15

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The Learning and Confidence Committee has published its latest bulletin, summarising general issues that have arisen from investigations conducted by the Independent Police Complaints Commission (IPCC) where learning opportunities have been identified. Bulletin 15 includes case summaries on the following:

- ◆ Searching for drugs;
- ◆ Protecting vulnerable women;
- ◆ Missing persons;
- ◆ Working with other forces;
- ◆ Working with the ambulance service and the health service;
- ◆ Dealing with people in custody; and
- ◆ Automatic Number Plate Recognition (ANPR).

Learning the Lessons: Bulletin 15 can be accessed in full at:  
[http://www.learningthelessons.org.uk/Documents/LearningtheLessons\\_Dec2011.PDF](http://www.learningthelessons.org.uk/Documents/LearningtheLessons_Dec2011.PDF)

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## Consultation on Domestic Violence Definition Launched

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The Government has launched a consultation; seeking views on whether the current cross-government definition of domestic violence should be widened and whether it is applied consistently across government and understood by practitioners, victims and perpetrators. In 2004, the government introduced a single, non-statutory definition of domestic violence. It is used by government departments to inform policy development and to assist agencies in identifying cases of domestic violence. The current definition defines domestic violence as:

'any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality'.

The consultation paper sets out four options for consideration:

◆ **Option 1 - The government's definition of domestic violence remains the same.**

This option seeks views on whether the cross government definition should remain the same or should it be widened or amended. In addition it seeks views on whether the definition is applied properly by government departments and frontline practitioners.

◆ **Option 2 - The definition of domestic violence is amended to include coercive control.**

This option asks for views on whether the cross-government definition should also include the wording of 'coercive control'. Coercive control is a complex pattern of abuse using power and psychological control over another such as financial control, verbal abuse or forced social isolation.

◆ **Option 3 - The government's definition of domestic violence is extended to all 16-17 year olds.**

The current cross-government definition of domestic violence applies to adults over the age of 18. This option seeks views on whether the cross government definition should be extended to include 16-17 year olds.

◆ **Option 4 - The government's definition of domestic violence is extended to all those under 18.**

The current cross-government definition of domestic violence applies to adults over the age of 18. This option seeks views on whether or not the cross government definition should be extended to include all those under 18.

The Consultation closes on 30 March 2012 and can be accessed in full at:

<http://www.homeoffice.gov.uk/publications/about-us/consultations/definition-domestic-violence/>

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## Progress on Tackling Violence against Women and Girls

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A review has been published examining the progress that has been made following the launch of the action plan to tackle violence against women and girls. The action plan, published in March of this year, includes 88 cross-government actions aimed at tackling this issue and outlines the plan to challenge the attitudes and behaviour that allow such violence to happen in the first place. The review shows the progress that has been made, including the introduction of the Teenage Relationship Abuse campaign which aims to prevent teenagers becoming victims or perpetrators of abusive relationships and the Ministry of Justice commitment to alter the way in which conviction rates for rape are measured.

The 'Call to End Violence against Women and Girls (VAWG): Action Plan Progress Review' can be accessed in full at: <http://www.homeoffice.gov.uk/crime/violence-against-women-girls/strategic-vision/>

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## HMIC Report on the Treatment of Young People in Custody

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Her Majesty's Inspectorate of Constabulary (HMIC) has published a report, following an inspection which examined a child or young person's journey, from the point of arrival at the police station through to charge (and sometimes beyond). 'Who's looking out for the children' focused on two aspects of this process; the role of the Appropriate Adult and whether children and young people who had been charged and were waiting to appear in court were being placed in suitable local authority accommodation. In line with the Police and Criminal Evidence Act 1984 (PACE), the report considered children and young people aged 10-16 years who are entitled to have an Appropriate Adult. If a child aged 10-16 is charged with an offence and denied bail, the police are required, except under specific circumstances, to transfer them to the local authority for accommodation, which has to accept them. PACE creates an anomaly for 17 year olds, who are treated as adults in a police station.

The report found:

- ◆ Recruiting procedures for Appropriate Adults were generally sound, as were training programmes across the six areas inspected. However policies, procedures, and call out arrangements did not properly consider the needs of the child or young person. This resulted in children and young people being detained in police cells for longer than necessary.

- ◆ Other than in one area, information flow between Youth Offending Teams (YOTs) and Appropriate Adults was found to be ineffective. Appropriate Adults often knew little about the child or young person they were sent to support, and the feedback Appropriate Adults provided to YOTs focussed on processes and not the best interests of the child or young person. As a result, Appropriate Adults were often ill prepared and did not take a proactive role in promoting the needs of children and young people.
- ◆ Police custody records were inadequate, often found to be completed incorrectly and lacked detail in a number of key areas (for example why bail was denied, why there were delays in conducting interviews, or why the parent or guardian was unsuitable to act as an Appropriate Adult).
- ◆ The physical environment of the custody areas did not encourage children or young people to disclose vulnerabilities or special needs. There was limited assessment of these needs while in police detention by healthcare professionals with knowledge of safeguarding issues.
- ◆ Investigating officers made little adjustment in interviews for difficulties in communication, and when vulnerabilities were raised these issues were not found to have been relayed back to custody staff. Age-appropriate literature was not available, and guidance for parents/guardians was legalistic in content and difficult to understand.
- ◆ There was a lack of any credible assessment of the quality of service provided by Appropriate Adults, who were found to be passive in interviews and unlikely to challenge the police.
- ◆ There was a lack of understanding amongst custody staff about the meaning of 'risk to the public of significant harm', and the legislation itself is unclear and confusing.
- ◆ In nearly two-thirds of the cases reviewed no Local Authority accommodation was sought.

As a result of the findings, the report makes nine recommendations, including recommending that the police ensure all information relating to the detention of children and young people is accurately recorded and shared with relevant partners and that the Home Office adopt the definition of a child outlined in the Children Act 2004 within PACE and clarify the section of PACE relating to secure and non-secure accommodation.

'Who's looking out for the children? - A joint inspection of Appropriate Adult provision and children in detention after charge' can be accessed in full at:

<http://www.hmic.gov.uk/publication/whos-looking-out-for-the-children/>

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## Terrorism Prevention and Investigation Measures Act 2011

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The Terrorism Prevention and Investigation Measures Bill received Royal Assent on 14 December 2011; replacing the existing system of control orders with a new regime designed to protect the public from terrorism. It follows the government's review of counter-terrorism and security powers, which recommended repealing control orders and replacing them with a more focused and targeted system of Terrorism Prevention and Investigation Measures (TPIMs).

The Act provides for the Secretary of State to impose specified TPIMs on an individual if the following conditions are met:

- ◆ The Secretary of State reasonably believes that the individual is, or has been, involved in terrorism-related activity ('the relevant activity');
- ◆ Some or all of the relevant activity is new terrorism-related activity;
- ◆ 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;
- ◆ 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;
- ◆ The Court:
  - (a) gives the Secretary of State permission under section 6 of the Act, or
  - (b) the Secretary of State reasonably considers that the urgency of the case requires TPIMs to be imposed without obtaining such permission.

For the purposes of the Act, involvement in terrorism-related activity is regarding as one or more of the following:

- (a) the commission, preparation or instigation of acts of terrorism;
- (b) the conduct which facilitates the commission, preparation or instigation of such acts, or which is intended to do so;
- (c) conduct which gives encouragement to the commission, preparation or instigation of such acts, or which is intended to do so;

- (d) conduct which gives support or assistance to individuals who are known or believed by the individual concerned to be involved in conduct falling with paragraphs (a) to (c).

It is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism in general. It is also immaterial whether the individual's involvement in terrorism-related activity occurred before or after the Act came into force.

The measures have a two year time limit and can include:

- ◆ Requiring an individual to stay overnight at a specified address;
- ◆ Requiring an individual to report to a police station on a daily basis;
- ◆ Excluding an individual from specific places or areas;
- ◆ Preventing an individual from contacting particular individuals;
- ◆ Prohibiting travel overseas.

The review of counter-terrorism and security powers recognised that in exceptional circumstances, additional more stringent measures may be required. As a result, draft legislation has been published, which can be introduced to Parliament if necessary, allowing more restrictive measures to be imposed. These include relocation, lengthy curfews and further restrictions on communications, association and movement.

The Terrorism Prevention and Investigation Measures Act 2011 has been enacted in full and can be accessed at:  
<http://www.legislation.gov.uk/ukpga/2011/23/contents/enacted>

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### **Home Affairs Committee Publishes Report on August Riots**

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The Home Affairs Committee has published a report into the riots that took place earlier this year. 'Policing Large Scale Disorder; Lessons from the disturbances of August 2011' follows an inquiry into the riots, in which the Committee focused on those aspects where they could add most value: principally the police response, the costs of policing the disorder, and the role of social media. The report notes that although the disparate nature of the riots made it hard to draw many overarching conclusions, there were clearly some lessons to be learned from the way on which the operation was policed.

The Committee reiterated that what ultimately worked in quelling the disorder was increasing the number of police officers on the street. In the event of similar disorder in the

future, the report states the focus should be on increasing the number of officers on the street as quickly as possible; both by deploying the maximum numbers of officers within the force in question and by calling on the resources of neighbouring forces, and if necessary, forces across the country. The current mutual aid system is intended to deal with increased demand for officers in one or a few areas; different arrangements are required for deploying officers where there is widespread disorder. Mutual aid arrangements need to be reviewed to assess whether it would be possible to increase numbers more rapidly and to determine how best to deal with a situation in which different forces in different areas of the country require additional assistance at the same time.

The report states that it is vital to note that, although these events are grouped together in the public mind as the 'August riots', they were different phenomena in different cities and even in different parts of the same city, making it difficult to draw generalised conclusions. It is as important to understand why disorder did not take place in some cities as it is to understand why it did in others. The Committee found that the death of Mark Duggan was a significant factor in the disorder that took place in Tottenham and stated that, in the event of a fatal shooting of a member of the public by a police officer, it is essential for the force to communicate swiftly with the victim's family.

The Committee could not recommend any increase in police powers as a result of the August disturbances, without seeing specific evidence of a need for such powers. It stated that it would have been inappropriate as well as dangerous to have deployed water cannon and baton rounds. The lessons learned in the past in Northern Ireland over the use of such equipment should not be lost on policing in the mainland when rioting occurs. The Committee stated that they were not convinced the public order training for commanders, and for individual officers, is adequate at present and urged the government to take these concerns into account when responding to the recommendations on public order training made in the review by Her Majesty's Inspectorate of Constabulary.

The report recommends that all police forces should have a communication strategy in place so that if it is decided that there is a credible threat of severe public disorder, all businesses in the affected area are given early and consistent advice about what action they should take. It also recommends that the Government urgently clarify whether police authorities will be able to recover the total cost of policing the riots, as initially suggested by the Prime Minister. In relation to the Riot (Damages) Act 1886, the Committee recommended that the victims surcharge be reviewed to consider whether it should be increased for public order incidents and in other cases

where compensation is triggered. In addition, it recommends permanently extending the deadline for making a claim under the Act to 42 days.

While social media was undoubtedly used by some of those who took part in the disturbances, the report states that other, older forms of communication and media played a part in spreading the disorder. The Committee commended the police forces that used social media during the riots to spread messages to inform and reassure the public and recommended that all forces make use of these media. It also stated that it would be actively unhelpful to switch off social media during times of widespread and serious disorder and strongly recommended against such action.

Policing Large Scale Disorder: lessons from the disturbances of August 2011 can be accessed in full at:

<http://www.parliament.uk/documents/commons-committees/home-affairs/HC%201456-I%20Final%20Report.pdf>

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## Policing Protocol

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In line with the requirements under the Police Reform and Social Responsibility Act 2011, the Secretary of State has issued a Policing Protocol, which sets out the ways in which relevant persons should exercise their functions. For the purposes of the Protocol, 'relevant persons' are:

- ◆ The Secretary of State (in the exercise of her policing functions);
- ◆ Elected local policing bodies (namely police and crime commissioners (PCCs) and the Mayor's Office for Policing and Crime);
- ◆ Chief officers of police forces maintained by elected local policing bodies, and
- ◆ Police and Crime Panels.

The 2011 Act establishes PCCs within each force area in England and Wales, with the exception of the City of London, and gives them responsibility for the totality of policing within their force area. In addition, it requires them to hold the Chief Constable of the force to account for the operational delivery of policing. The Act does not, however, impinge on the common law legal authority of the office of constable, or the duty of constables to maintain the Queen's Peace without fear or favour. The Protocol states that it is the will of both Parliament and the Government that the office of constable shall not be open to improper political interference.

The Protocol sets out the legal powers and duties of PCCs, which include:



- ◆ Setting the strategic direction and objectives of the force through the Police and Crime Plan;
- ◆ Scrutinising, supporting and challenging the overall performance of the force;
- ◆ Holding the Chief Constable to account for the performance of the force's officers and staff;
- ◆ Deciding the budget, allocating assets and funds to the Chief Constable; and setting the precept for the force area; and
- ◆ Appointing and removing the Chief Constable.

It also sets out the financial responsibilities of PCC's and the Chief Constable, with the former being ultimately accountable to the public for the management of the police fund and the latter holding day to day responsibility for managing the allocated budgets after they have been approved by the PCC.

The Policing Protocol comes into force on 16 January 2012 and can be accessed in full at:

<http://www.legislation.gov.uk/ukxi/2011/2744/contents/made>

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## **Government Responds to the New Landscape of Policing**

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The Government has published its response to the fourteenth report of the Home Affairs Select Committee (HASC); *New Landscape of Policing*. The Committee, in its report, referred to Tom Winsor's review of pay and conditions stating that it did not adequately resolve the issue of how to give police chiefs greater powers to manage, without undermining the special role of police officers. In response the Home Secretary has referred the Windsor recommendations about police pay and conditions to the police negotiating machinery with progress still ongoing.

Concerns were also raised about the impact of the review on the morale of the police service, with the Committee stating that while this impact was inevitable, more could be done to mitigate it. It recommended setting up an interactive website to answer questions from police officers and staff and that, before any further recommendations were made, Tom Winsor should spend more time visiting officers and staff. The Government response states that Tom Winsor's review is independent and it is therefore for him to decide how it should be conducted. They did however note the importance of officers and staff understanding the proposed reforms, and stated that they will consider the best way of achieving this in light of the Committee's recommendations.

In its report, the Committee referred to the phasing out of the National Policing Improvement Agency (NPIA), stating that it

was unacceptable that more than a year after the Government announced it was phasing it out, no definite decision about the future of the vast majority of the functions had been made. The Home Office stated that it is planning a methodical and careful wind down of the NPIA in 2012 and as part of that, intends to create a new inclusive police professional body. The body will work in the public interest and will include work in the following areas: ensuring police officers and staff have the qualifications and skills to provide a high quality service to the public, maintain their professional competence, keep their skills and knowledge up to date and uphold the highest standards of conduct and ethical values.

It will be led by a board and will have responsibilities including setting standards of entry to the Service and for promotion and progression through ranks and into specialist positions. It will also be responsible for setting standards for and assuring the provision of training, ensuring officers and staff keep their skills and knowledge up to date, and for setting standards of conduct and values.

The Government stated that there were no plans to transfer any NPIA functions to Her Majesty's Inspectorate of Constabulary. In response to comments and queries made by the Committee, it set out details of the new National Crime Agency and stated that an update will be provided to Parliament in January 2012 on the progress that has been made in relation to the setting up of the police-led IT company.

In its report, the HASC recommended that the Home Office review the legislative framework in which collaboration between police forces takes place. The Home Office, in response, stated that a review had been undertaken recently and measures had been brought forward in the Police Reform and Social Responsibility Act 2011 to remove the obstacles to effective collaboration.

The Government's response to the Home Affairs Select Committee Report 'New Landscape of Policing' can be accessed in full at:

<http://www.official-documents.gov.uk/document/cm82/8223/8223.pdf>

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## Notes

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**NPIA**  
National Policing  
Improvement Agency

Legal Services  
Chief Executive Officer Directorate  
[www.npia.police.uk](http://www.npia.police.uk)

