NPIA
National Policing Improvement Agency

Digest

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CASELAW Police News Diversity
LEGISLATION POLICE NEWS
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DIVERSITY Criminal Justice

The NPIA Digest is a journal produced each month by the Legal Services Department. The NPIA Digest is an 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 NPIA Digest, information is included from Governmental and quasi-governmental bodies, criminal justice organisations and research bodies. As such, the NPIA Digest should prove an invaluable guide to those responsible for strategic decision making, operational planning and police training.

This edition contains a summary of new proposals and reviews of legislation and policing practice including: a review of the first part of the new Equality Bill and the progress of other Bills; EHRC report on obstacles in pathway of justice for disabled people; racism suffered by UK Chinese community; Fawcett Society report on 'institutional sexism' within criminal justice system; IPCC publication of new guidelines for dealing with allegations of discrimination; HMIC commission to review policing of public protest in the aftermath of the London G20 summit.

There are also a number of articles outlining recently published Government and Parliamentary reports and initiatives including; publication of the updated crime strategy; consultations open on communications data, DNA database and inspection of Police Authorities; Home Affairs Committee report on human trafficking in the UK; Home Office Statistical Bulletin on use of Police Powers and procedures; and Bradley Report on Mental Health in criminal justice system.

As usual, the NPIA Digest also covers the latest Home Office Circulars, research papers, as well as sections on recent case law and Statutory Instruments.

The Case law is produced in association with lawtel From Sweet & Maxwell

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NPIA Commits to Face Equality Charter

The National Policing Improvement Agency announced on 29 April 2009 that it had signed up to the Face Equality at Work Charter. By pledging its support, the NPIA has committed itself to training many of its staff, particularly those in recruitment, HR and Examinations and Assessments, to make them aware of facial disfigurements and how best to approach situations involving people who are visibly different.

The NPIA will also develop training for all staff to increase employee awareness and improve perceptions of facial disfigurement. In addition, it will review its equality policies and strategies to ensure that they cover facial equality issues.

Chief Constable Peter Neyroud, Chief Executive of the NPIA, said: "We are delighted to be the first police organisation to sign up to the Face Equality at Work Charter. As an employer and service provider, we are committed to embedding equality and ensuring that we are accessible to everyone. We would also encourage the wider police service to undertake similar initiatives."

The NPIA joins a number of leading organisations who have all committed to treating their employees and customers with disfigurements fairly and equally. The commitment to Face Equality at Work will require employers to take steps to:

- Become aware of the causes and effects of disfiguring conditions;
- Commit to positive thinking about people with disfigurements which will be reflected in policies and procedures; and
- Embed new behaviours when meeting someone with a disfigurement especially in interviews and customer service.

In January 2008, a public attitude survey of 1000 people showed 9 out of 10 people have unconscious negative attitudes towards people who have disfigurements. The research also showed that people with facial disfigurements are likely to be marginalized because little is expected of them, both socially and professionally. Face Equality at Work was launched in May 2008 to address the discrimination and prejudice that people with disfigurements may experience both as employees and customers and to promote fair treatment and equal opportunities.

More information about Face Equality at Work is available at http://www.changingfaces.org.uk/Home

New Report Highlights Racism Suffered by UK Chinese Community

On 12 May 2009 the Monitoring Group-Min Quan Project published a new report into levels of racism experienced by members of the UK Chinese community. The report entitled 'Hidden from Public View' is part of a drive to start a national debate on how best to tackle racist incidents against Chinese people in the UK.

The report findings include:

- People of Chinese origin in the UK experience substantial racism, perhaps as much as or more than any other minority ethnic group;
- Perpetrators can be as young as 10 years old, with their behaviour often dismissed as 'a bit of fun'; and
- In particular, the report cites numerous examples of owners and workers in the Chinese catering industry facing verbal abuse and non-payment for goods on a daily basis. In some cases this behaviour escalates to physical assault including murder.

A number of initiatives are already underway to tackle racism and race hate crime wherever it occurs, including True Vision, a project established in May 2004 and funded by all 43 police forces, which provides information on hate crime in all its forms, and how victims can report it, including through the True Vision website.

The Monitoring Group-Min Quan Project report 'Hidden from Public View' (English version) can be found at http://www.racetoday.org/pages/projects/mq/bm09019-HiddenFromPublicView.pdf

A Chinese version of the report is available at http://www.racetoday.org/pages/projects/mq/bm09019-Chinese%20vers.pdf

More information about the True Vision Project can be found at http://www.report-it.org.uk/

EHRC Report Identifies Obstacles in Pathway to Justice for Disabled People

A research report published on 29 April 2009 by the Equality and Human Rights Commission (EHRC) announced a three point plan to address the safety and security of disabled people. In the report, 'Promoting Safety and Security of Disabled People', interviewees describe their experiences of targeted violence and hostility against them. They talk about how their belief that complaints will not be taken seriously leads them to suffer in fear and silence.

The research finds that disabled people are at greater risk of being victims of targeted violence and hostility and people with learning disabilities and mental health conditions face the greatest risk. The impact of such experiences is grave, leading people to move house, avoid going out at night and lead isolated lives.

The report also identified that disabled people are reluctant to report violence and hostility, believing that professionals and institutions will not respond. One interviewee stated that "There was absolutely no communication between any of them - the psychiatrist, the environmental health people, the police... I felt like they all thought I was stupid and weren't taking me seriously enough to take it forward with their managers or other people."

There is considerable material on the existence and prevalence of various forms of targeted violence and hostility experienced by disabled people. For example, it has been reported that:

- 22% of disabled respondents in 2002 suffered harassment in public due to their impairment. This was an increase from 20% in the previous year;
- 8% of disabled people suffered a violent attack compared to 4% of non-disabled people in London during 2001/2002;
- Disabled people are four times more likely to be victims of crime compared to non-disabled people;
- 47% of disabled people had either experienced physical abuse or had witnessed physical abuse of a disabled companion; and
- One in five disabled people in Scotland were found to have experienced disability-related harassment, 47% had experienced hate crimes due to their disability.

Within the disabled population, the evidence suggests that those with learning disabilities and/or mental health conditions are particularly at risk and suffer higher levels of actual victimisation:

- 71% of those with mental health issues had been a victim of crime in the past two years, 22% had experienced physical assault, 41% experienced ongoing bullying, 27% experienced sexual harassment (with 10% experiencing sexual assault), and only 19% feeling safe at all times within their own home;
- 90% of people with learning disabilities have experienced harassment and bullying, with 32% stating that bullying was taking place on a daily or weekly basis; and
- 41% of those with mental health conditions in Scotland had experienced harassment, compared with 15% of the general population.

The research identifies eight key types of incidents:

- Physical incidents;
- Verbal incidents;
- Sexual incidents;
- Targeted anti-social behaviour;
- Criminal damage to property and theft;
- School bullying;
- Incidents perpetrated by statutory agency staff; and
- The more recent phenomenon of cyber bullying.

The EHRC announced a three point plan to support and empower disabled people who are targets of violence and hostility:

- All public institutions have a statutory obligation under the Disability Equality Duty to eliminate hostile behaviour towards disabled people and to promote positive attitudes. The Commission will carry out a review of how well these various authorities are meeting their responsibilities. The EHRC will seek to ensure that the new Equality Bill provides as effective a legal framework to address these issues as existing legislation, and further research, evidence gathering and assessments will be carried out this year;
- The EHRC will support disabled people to live independently and have access to justice through the distribution of grants; and
- The EHRC will work with criminal justice agencies to remove barriers to disabled people taking legal remedies against violence, hostility and hate crimes, and use its legal powers where necessary, as with the case of R (on the application of B) v Director of Public Prosecutions (Defendant) & Equality and Human Rights Commission (Intervener) (2009) EWHC 106 (Admin). In this case a person who suffered from mental health problems had been the victim of an assault. The CPS decision to discontinue a prosecution on the basis that the victim was not a credible witness was irrational and failed to properly apply the Code for Crown Prosecutors. The action also violated the rights of the victim under the European Convention on Human Rights 1950 art.3. Despite the high prevalence of anecdotal and reported incidents, the number of prosecutions remains low. In the year to March 2008 only 183 incidents of violence against disabled people were prosecuted. Whilst the CPS advises that this has almost doubled for the year to March 2009, contrasted with evidence of prevalence this remains low.

The full report 'Promoting the safety and security of disabled people' can be found at
http://www.equalityhumanrights.com/en/publicationsandresources/Pages/Promotingsafetyandsecurity.aspx

The judgment in R (on the application of B) v Director of Public Prosecutions (Defendant) & Equality and Human Rights Commission (Intervener) (2009) EWHC 106 (Admin) can be found at
http://www.bailii.org/ew/cases/EWHC/Admin/2009/106.html

Fawcett Society Report Finds Criminal Justice System 'Institutionally Sexist'

New research published by the Fawcett Society's Commission on Women and the Criminal Justice System on 13 May 2009 found widespread discrimination in practices and attitudes towards women across the criminal justice system. The report 'Engendering Justice - from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System' places institutional sexism on the agenda.

The report found that there has been no consistent progress over five years in promoting women into senior positions and women victims and offenders continue to be marginalised in a justice system designed for men.

Institutional sexism is apparent even in the day-to-day operation of criminal justice agencies. For example, in some police forces, women are issued with the same uniform as men, measured by collar size with no allowance for the female body shape.

The report reveals that although there has been some progress since the Commission began its work in 2003, a gap remains between policy and implementation. The authors state that failure to target institutional sexism has resulted in a system which:

- Does not address the causes of women's offending with the result that too many women continue to be imprisoned on short sentences for non-violent crime;
- Fails to provide female victims of violence with support, safety and justice; and
- Creates a glass ceiling for women working within the system so that higher positions across the sector remain male dominated.

The report outlines a vision for a future criminal justice system which reflects the skills, needs and experiences of women. Its key targets to be achieved by 2020 are:

- The criminal justice system to provide women with support, safety and justice;
- The sentencing of non-violent female offenders to be responsive to the needs of these women and their families;
- Women working in the criminal justice system will be free from discrimination and harassment with equal opportunities to progress at all levels of the various criminal justice agencies;
- Policy and practice of all criminal justice agencies will be informed by gender analysis so as to meet the diverse needs of both men and women;
- The Judiciary and the senior levels of the legal profession, the police, the CPS, the prison service and the probation service are broadly representative of a society with a balance of women and men and recognition of the skills and experiences of women; and
- Society will recognise that all women have the right to live their lives free from the threat and reality of violence.

When launching the report the Fawcett Society and the Commission on Women and the Criminal Justice System called upon the Government and criminal justice agencies to review sexist practices and attitudes within the criminal justice sector to ensure that women in the future get a fair deal from the justice system.

The report highlighted the following key statistics:

Female staff

- In 2008, only 12% of police officers at Chief Inspector grade and above were women; less than a quarter of prison governors were female and less than one in four prison officers were women;
- Only 15.9% of partners in the UK's ten largest law firms were women in 2008 and there were only 42 female compared to 479 male silks. The number of female applicants for Queen's Counsel was at its lowest level for ten years; and
- In 2008, just over 10% of the 109 High Court Judges were women and just 3 out of the 37 Lord Justices of Appeal were women. There is only one female law lord. (In contrast, the Supreme Court of Canada is 44% female and the High Court of Australia is 43% female).

Female victims of crime

- An estimated 3 million women across the UK experience rape and sexual assault, domestic violence, sexual harassment, forced marriage, trafficking, or other forms of violence each year;
- Only 15% of serious sexual offences against adults are reported to the police and of the rape offences that are reported only 6.5% result in conviction:
- One in four people still believe that a woman is partially responsible for being raped if she is drunk and one in three think she is partially responsible if she flirted heavily with the man beforehand; and
- Over a quarter of local authorities across Britain have no specialised Violence against Women support services.

Female offenders

- On 3 April 2009, the female prison population stood at 4,309 compared to a mid-year female prison population of 2,672 in 1997. Population projections released by the Ministry of Justice in January, indicate at best the female prison population may decrease by 200 by 2015, at worst it will increase to 5,100;
- Too many women are being imprisoned for short sentences for non-violent crime, including the non-payment of fines and television licences. In 2007, 63.3% of women were sentenced to sentences of six months or less;
- Imprisoning mothers affects children too - almost 18,000 children are separated from their mothers each year. Between April 2005 and July 2008, 283 children were born to women in prison; and
- Prison does not address the causes of women's offending. More than one in three have histories of sexual abuse and over half have been the victims of domestic abuse.

The full report 'Engendering Justice - from Policy to Practice: Final report of the Commission on Women and the Criminal Justice System' can be found at http://www.fawcettsociety.org.uk//documents/Commission%20report%20May%2009.pdf

Progress Report on Northern Ireland Criminal Justice System's Commitment to Equality and Diversity

The Criminal Justice Inspection of Northern Ireland (CJI) published its report 'Section 75: The impact of Section 75 of the Northern Ireland Act 1998 on the criminal justice system in Northern Ireland' on 12 May 2009. The CJI report is an independent examination of performance by the criminal justice system in Northern Ireland in meeting the demands of a commitment to equality and diversity.

The Equality Commission for Northern Ireland noted that section 75 was introduced to "effect positive change in people's lives; to transform the practices of government, to reduce and ultimately remove inequalities and to promote equality of opportunity and good relations." Section 75 places additional obligations on public bodies in Northern Ireland above what is already expected of them in terms of anti-discrimination legislation. It does not simply oblige public bodies not to discriminate. It requires them to have due regard to the need to promote equality of opportunity in the carrying out of their functions, and to mainstream equality considerations into their activities.

The report has taken the focus on equality a step further. It examines whether the criminal justice agencies are meeting their obligations under section 75 of the Northern Ireland Act 1998 to promote equality of opportunity amongst different categories of persons.

A key aspect of discharging duty under section 75 is proper consultation with those likely to be affected by any policies under consideration. CJI's research within the sector showed there was wide experience of consultation under section 75. Public bodies are not just required to consult on the likely impact of the policies but are legally obliged to take the views expressed in those consultations into account. The picture painted by consultees however, was one of inconsistent practice not just across the criminal justice system, but often within individual agencies.

While much has been achieved, the inspection report shows that there remains a significant task across the criminal justice system, as elsewhere in the public sector, to meet the requirements of implementing section 75 and its intention to effect positive change in people's lives. Inspectors found there are significant pockets of good practice in relation to equity monitoring across the criminal justice system. At the same time, the report shows that greater consistency of approach and more detailed information across the sector is required to have a more fully developed picture of any improvements in equality of opportunity.

An action plan has been drawn up to meet the areas of development set out by the CJI report with a progress report due in six months time.

The full report can be found at
http://www.cjini.org/CJNI/files/37/3770d86c-d019-4199-95e9-89491e6e8e8f.pdf

The Section 75 Action Plan is available at
http://www.nio.gov.uk/section_75_report_action_plan-2.pdf

British Sikh Police Association Launched

The British Sikh Police Association (BSPA) was launched on 29 April 2009 in a ceremony at Thames Valley Police headquarters in Kidlington. The new national association aims to provide a forum and support for Sikh members of the police service. Its aims also include helping police forces in the UK to develop strategies to recruit, retain and progress Sikh officers and staff.

The aims and objectives of the BSPA are:

- To establish a national forum for Sikh members of the British police services;
- To assist the British police services in developing strategies to recruit, retain and progress Sikh members of the service, hence increasing Sikh representation in the police service at all levels;
- To provide a religious, cultural and social forum for members of the BSPA, through celebration of dates and festivals on the Sikh calendar;
- To promote an understanding of the Sikh Faith and the Sikh values of democracy, equality and justice within the police services;
- To provide support and advice to Sikh members of the police service; and
- To promote social cohesion and integration.

The full press release can be found at
http://www.thamesvalley.police.uk/newsevents-news-item.htm?id=84549

Home Office Circular 006/2009 Police Pension Scheme: New Commutation Factors and Outcome of Judicial Review

On 1 May 2009 the Home Office issued Circular 006/2009 which provides further guidance on the implementation of new actuarial factors for the commutation of pension into a lump sum in the Police Pension Scheme 1987. The new circular follows the judgment in the High Court on the Judicial Review of the decision to backdate the new factors to 1 December 2006. This circular is further to Home Office Circular 11/2008 which was issued on 21 May 2008.

The main points of the Circular are:

- Following the decision by the High Court, the revised lump sum commutation factors issued last year are now backdated to 1 December 2006 (see Sections 3 and 4);
- Police authorities must identify and write to any officer who is entitled to an additional payment as a result of this decision (see paragraphs 5.1-5.6 and Annex A);
- Payments, which will attract interest, must be made as soon as can be arranged, and wherever possible by the end of May 2009 (see paragraphs 5.7-5.15);
- Neither retired officers nor police authorities will incur unauthorised payment tax charges on the extra lump sum payments or the interest payable on them, but these charges must be calculated by police authorities in order that appropriate arrangements can be made at central Government level with Her Majesty's Revenue and Customs (see paragraphs 5.16-5.17);
- Arrears of additional pension (where this is paid instead of additional lump sum) and interest paid on additional pension are not unauthorised payments but are taxable as pension scheme payments in the normal way (see paragraphs 5.18-5.20);
- There will be no scheme sanction charges (see paragraph 5.23);
- Additional lump sum and any additional annual pension payments must be paid out of the pensions account and will be reimbursed by the Home Office under top-up arrangements (see paragraph 5.11 and Section 6); and
- The interest payable on the additional payments must be paid out of the operating account, but will also be reimbursed by the Home Office under the top-up arrangements (see paragraphs 5.11, 5.15 and Section 6).

The full details of Home Office Circular 006/2009 'Police Pension Scheme: New Commutation Factors and Outcome of Judicial Review' can be found at http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2009/006-2009/

The Equality Bill

This article is the first part of a series providing a more detailed analysis of the provisions set out in the new Equality Bill. The Equality Bill, introduced into Parliament on 24 April 2009, is a Bill to:

- Make provision to require Ministers of the Crown and others when making strategic decisions about the exercise of their functions to have regard to the desirability of reducing socio-economic inequalities;
- To reform and harmonise equality law and restate the greater part of the enactments relating to discrimination and harassment related to certain personal characteristics;
- To enable certain employers to be required to publish information about the differences in pay between male and female employees;
- To prohibit victimisation in certain circumstances; to require the exercise of certain functions to be with regard to the need to eliminate discrimination and other prohibited conduct;
- To enable duties to be imposed in relation to the exercise of public procurement functions;
- To increase equality of opportunity; and
- For connected purposes.

The Bill will form part of the law of England and Wales, and will, with the exception of clause 183 (improvements to let dwelling houses), form part of the law of Scotland. Clauses 77 (offshore work) and 100(3) and (4) (expiry of Sex Discrimination (Election Candidates) Act 2002) will form part of the law of Northern Ireland.

The Lord Privy Seal has stated that, in her opinion, the provisions of the Equality Bill are compatible with the rights in the European Convention on Human Rights, as defined by section 1 of the Human Rights Act 1998.

The Bill consists of 15 Parts and 28 Schedules. This Article will cover Part 1, concerning socio-economic equalities, and Chapter 1 of Part 2 which defines the protected characteristics.

Part 1: Socio-Economic Equalities

Clause 1 of the Bill places a duty on certain public authorities, including Ministers of the Crown, government departments (other than the Security Service, Secret Intelligence Service or the Government Communications Headquarters), county or district councils, Strategic Health Authorities, Primary Care Trusts and police authorities established for an area in England. The duty requires such an authority to, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage. Any guidance issued by a Minister of Crown must be taken account of in deciding how to fulfil the duty.

Clause 2 enables a Minister of the Crown to make regulations to add or remove a public authority from the list of authorities to which the duty applies, to restrict the duty to certain functions of an authority or to remove such a restriction. For the purposes of adding to the authorities subject to the duty, 'public authority' means an authority that has functions of a public nature.

Should an authority fail to perform the duty, there is no cause of action at private law (clause 3). As such, an individual cannot claim damages for breach of a statutory duty. They could, however, still bring judicial review proceedings.

Part 2: Equality - Key Concepts

Chapter 1: Protected Characteristics

Clause 4 of the Bill lists the 'protected characteristics' which are protected by subsequent provisions. These characteristics are the same as those currently protected by legislation:

- Age;
- Disability;
- Gender reassignment;
- Marriage and civil partnership;
- Pregnancy and maternity;
- Race;
- Religion and belief;
- Sex; and
- Sexual orientation.

Clauses 5 to 12 go on to define when a person will have one of the protected characteristics. In relation to age, a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group. A reference to people sharing a protected characteristic is a reference to those of the same age group. An age group refers to a group of persons defined by reference to age, whether by a particular age or a range of ages. So, an age group could be 'over sixties' or 'eighteen year olds'.

A person has a disability if they have a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities (clause 6). The Bill (except Part 12 and clause 183) applies in relation to a person who has had a disability as it applies to a person who has the disability. There is a power in the Bill for a Minister of the Crown to issue guidance about matters to be taken into account in deciding whether a person has a disability. Schedule 1 is given effect by clause 6, which gives supplementary provision about disability.

Schedule 1:

Schedule 1 to the Bill makes a number of supplementary provisions regarding disability, including:

- The power to make regulations to prescribe that certain conditions are, or are not, an impairment;
- Defining when the effect of an impairment is to be considered long-term;
- Providing that an impairment consisting of a severe disfigurement is to be treated as having a substantial adverse effect on a person's ability to carry out normal day-to-day activities;
- Defining when an impairment is to be treated as having a substantial adverse effect on the ability of a person to carry out their normal day-to-day activities;
- Providing that cancer, HIV infection and multiple sclerosis are each a disability;
- The power to make regulations providing for persons of prescribed descriptions to be treated as having disabilities;
- Providing that certain persons with progressive conditions may be taken to have an impairment which has a substantial adverse effect on their ability to carry out normal day-to-day activities;
- Providing that, in relation to persons who had a disability at a particular time, the question of whether they had such a disability is to be determined as if the parts of the Equality Bill in force at the time of the act complained of were in force at the time; and
- Making further provision about guidance issued under clause 6.

Clause 7 of the Bill relates to the protected characteristic of gender reassignment. A person has the protected characteristic of gender reassignment if they are proposing to undergo, are undergoing or have undergone a process (or part of a process) for the purpose of reassigning their sex by changing physiological or other attributes of sex. The definition replaces provisions in the Sex Discrimination Act 1975, but no longer requires a person to be under medical supervision to come within the definition.

Clause 8 states that a person has the protected characteristic of marriage or civil partnership if they are married or a civil partner.

In relation to race, clause 9 states that race includes colour, nationality and ethnic or national origin. A racial group is a group of persons defined by reference to race, and the fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a racial group.

The protected characteristic of religion or belief is defined in clause 10 of the Bill. Religion means any religion, and a reference to religion includes a reference to a lack of religion. Belief means any religious or philosophical belief, and a reference to belief includes reference to a lack of belief. The Explanatory Notes to the Bill explain that this definition is broad and in line

with Article 9 of the European Convention on Human Rights, the main limitation of which is that a religion or belief must have a clear structure and belief system. The Notes also highlight that political beliefs and beliefs in scientific theories will not be beliefs for the purposes of the Bill.

Clause 11 states that in relation to the protected characteristic of sex, a reference to a person with a protected characteristic is a reference to a man or to a woman, and persons who share the same sex share a protected characteristic.

Clause 12 defines the protected characteristic of sexual orientation. Sexual orientation means a person's sexual orientation towards persons of the same sex, persons of the opposite sex and persons of either sex.

More information about the progress of the Equality Bill can be found at http://services.parliament.uk/bills/2008-09/equality.html

Bills Before Parliament - Progress Report

In this session of Parliament the following Bills are progressing as follows:

Public Bills

- **Borders, Citizenship and Immigration Bill** - this Bill has completed its progress through the House of Commons and due to have its second reading in the House of Lords on 2 June 2009;
- **Coroners and Justice Bill** - this Bill has completed its progress through the House of Commons and had its second reading in the House of Lords on 18 May 2009. There are two dates planned for the committee stage of this Bill on 9-10 June 2009;
- **Equality Bill** - this Bill had its second reading in the House of Commons on 11 May 2009. The committee stage for this Bill is due on 2 June 2009; and
- **Policing and Crime Bill** - this Bill has completed its progress through the House of Commons and had its third reading on 19 May 2009. The Bill received its first reading in the House of Lords on 20 May 2009. It is due to have its second reading on 3 June 2009.

Private Bills

- **Dog Control Bill** - this Bill began in the House of Lords receiving its second reading on 24 April 2009. During second reading of the Bill, a wide-ranging discussion took place on issues including the breeds of dogs to be covered by the legislation and the problem of dangerous dogs being used by gangs. No date is yet planned for the committee stage of this Bill.

The government also publishes a number of Bills each parliamentary session in draft form, before they are introduced in Parliament as formal Bills. This enables consultation and pre-legislative scrutiny before a Bill is issued formally.

The Government has introduced the following Draft Bills in this session of Parliament:

- Draft Bribery Bill;
- Draft Communications Data Bill; and
- Draft Community Empowerment Bill.

The progress of these Bills can be found at http://services.parliament.uk/bills/

New Crime Strategy Published

The Government launched its new updated crime strategy on 12 May 2009 promising that local people will be able to choose how money from a £4 million criminal assets fund is spent in their area, alongside targeted work to tackle property-related crime and a tougher approach to dealing with prolific offenders. The crime strategy 'Cutting Crime: A New Partnership 2008/11' was first published in July 2007 (see NPIA *Digest* August 2007, pp 34-36).

The updated crime strategy 'Cutting Crime: Two Years On' sets out the Government's vision for tackling the new crime challenges the country faces.

The strategy sets out two main approaches:

- Addressing crime at all points in the cycle, from prevention and early intervention through to stopping offenders from reoffending; and
- Tackling the root causes of crime, such as drugs, alcohol and youth inactivity.

The initial Cutting Crime strategy identified seven priority areas for the period 2008/11 which were:

- Stronger focus on serious violence;
- Continued pressure on anti-social behaviour;
- Renewed focus on young people;
- New national approach to designing out crime;
- Continuing to reduce reoffending;
- Greater sense of national partnership; and
- Freeing up local partners, building public confidence.

The Government state that while all of these priorities remain important, a changed environment calls for a redefining of existing priorities. Therefore the updated crime strategy distinguishes between crime reduction objectives of:

- Tackling not tolerating anti-social behaviour;
- Securing homes and protecting property;
- Saving lives through tackling violent crime; and
- Countering organised crime.

And a crime reduction approach:

- Taking early action to prevent crime (including designing out crime and focusing on young people);
- Turning the tables on offenders (including reducing reoffending);
- Delivering responsive, visible justice (including building public confidence);

- Putting the public in the driving seat; and
- Taking action at the right level (including freeing up local partners and fostering a greater sense of national partnership).

The launch of the crime strategy also included announcements of:

- A new programme tackling serious property-related crimes such as burglary, robbery and car theft. The programme will target interventions in areas where emerging problems are identified to prevent them from becoming entrenched;
- Stronger powers to seize criminal assets and a greater public say in how these are spent; and
- The first Virtual Courts pilot to ensure a speedier and more efficient justice system for all. The pilot would enable cases to be heard at a magistrates' court via secure video link from the police station within four hours of a defendant being charged.

The updated crime strategy 'Cutting Crime: Two Years On' can be found at http://www.homeoffice.gov.uk/documents/crime-strategy-07/cutting-crime-09?view=Binary

Intelligence and Security Committee Report 'Could 7/7 Have Been Prevented?' Published

On 19 May 2009, the Intelligence and Security Committee (ISC), an independent parliamentary body, published its report 'Could 7/7 Have Been Prevented? - Review of the Intelligence on the London Terrorist Attacks on 7 July 2005'.

The Chairman of the Committee stated "When the trial of those involved in the fertiliser bomb (CREVICE) plot concluded in April 2007, it was reported that the plotters had been seen in contact with two of the men who, on 7 July 2005, detonated bombs on the London transport system in the single largest terrorist attack on these shores. The question many were therefore asking was - if these men had been seen before, why weren't they stopped?" The Intelligence and Security Committee were asked to consider this question, and related matters, and to re-examine all the evidence.

The report is an attempt to explain how the intelligence agencies work, the terms they use, and what they can and cannot do. The report therefore contains an amount of sensitive material. The Prime Minister stated in response to the report "The Committee rightly points to the need for improvements in exploiting information held by the Police and the intelligence and security agencies, and in maintaining statistics on terrorist-related convictions. These issues are being addressed, as is reflected in the Government's new CONTEST counter-terrorism strategy, published earlier this year".

In response to the central question considered by the ISC, the report concludes "Having taken everything into account, and having looked at all the evidence in considerable detail, we cannot criticise the judgements made by

MI5 and the police based on the information that they had and their priorities at the time. Even considering material that was discovered after 7/7, and that which arose from the CREVICE trial, we believe that the decisions made in 2004 and 2005 were understandable and reasonable."

The full report 'Could 7/7 Have Been Prevented? - Review of the Intelligence on the London Terrorist Attacks on 7 July 2005' is available at http://www.cabinetoffice.gov.uk/media/210852/20090519_77review.pdf

Promoters of Hate Excluded from the UK Named

On 5 May 2009 the Home Secretary announced a list of individuals banned from the UK for stirring-up hatred. The list covers people excluded from the United Kingdom for fostering extremism or hatred between October 2008 and March 2009. The listing follows the Home Secretary's introduction of new measures against such individuals last year, including creating a presumption in favour of exclusion in respect of all those who have engaged in spreading hate.

In the period from 28 October 2008 to 31 March 2009 the Home Secretary excluded a total of 22 individuals from coming to the United Kingdom. It was not considered to be in the public interest to disclose the names of six of these individuals however the details of the remaining 16 individuals were made public.

The exclusions policy follows the commitment set out in the National Security Strategy to take stronger action against those suspected of stirring up tensions and the decision to introduce a presumption in favour of exclusion for extremists promoting hatred or violence.

Under the unacceptable behaviour policy, the Home Secretary may exclude from the UK any non-British citizen, whether in the UK or abroad, who uses any means or medium including:

- Writing, producing, publishing or distributing material;
- Public speaking including preaching;
- Running a website; or
- Using a position of responsibility such as teacher, community or youth leader.

To express views which:

- Foment, justify or glorify terrorist violence in furtherance of particular beliefs;
- Seek to provoke others to terrorist acts;
- Foment other serious criminal activity or seek to provoke others to serious criminal acts; or
- Foster hatred which might lead to inter-community violence in the UK.

The full press release can be found at
http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/ho-name-promoters-of-hate-uk

Government Launches Consultation on Communications Data

The Home Secretary announced on 27 April 2009 that new measures to maintain the capability of public authorities to obtain access to communications data were required. The existing capability is declining in the face of rapid technological changes in the communications industry.

The publication of a consultation document 'Protecting the public in a changing communications environment' sets out the terms of the consultation which include:

- Collection and use of 'Communications Data', an important technical capability that is used today to protect the public. This existing capability is declining in the face of the rapidly changing communications industry and we need to make changes if it is to be maintained in future. This paper outlines ways to do so;
- Communications data is information about a communication. For a telephone call it can include the number called, from where and when, and who is the registered owner of that number. Communications data does not include the content of a call or the content of any other communications event, such as an email. This consultation does not propose changing the law to collect or store the content of any communication;
- Some public authorities, specified by law, can acquire communications data on a case-by-case basis from the communications service providers to enable them to carry out their duties to protect the public;
- The ability to lawfully access communications data held by communications service providers is a vital tool for fighting and solving crime. It enables investigators to identify and build a picture of a suspect; provides vital clues in solving life-threatening situations such as kidnapping; creates evidence for alibis and prosecutions; supports lawful interception; and it helps the emergency services to help or locate vulnerable people. It is also critical to safeguarding the UK's national security, and in particular to countering the terrorist threat;
- Communications data is used extensively as evidence in court, notably prosecutions for serious crime and terrorism. It has proved essential in convicting the guilty;
- The ability of public authorities to access specified communications data is protected by safeguards under a detailed regulatory and legal framework. This ensures that any interference with the right to privacy through the acquisition of communications data is necessary and proportionate in any given case; and

- The majority of communications data held by communications service providers is never acquired by the authorities, since there is no justifiable need or reason to do so; there is no intention to change this under any of the options set out in this consultation paper.

The consultation outlines ways to collect and retain communications data and seeks views on how to strike the right balance between privacy and security. The system the government is proposing is based on the current model where Communications Service Providers (CSPs) collect and store the data and where we have strict and effective safeguards in place to regulate access by public authorities. The consultation document explicitly rules out setting up a single store of all communications data.

The Government proposes:

- Legislating to allow all data that public authorities might need, including third party data (data generated by communications services based overseas but crossing the networks in the UK) to be collected and retained by CSPs; and
- Having CSPs process the data to enable specific requests by public authorities - such as the police and Security Service - to be processed quickly and comprehensively.

The consultation document 'Protecting the public in a changing communications environment' can be found at http://www.homeoffice.gov.uk/documents/cons-2009-communications-data?view=Binary

Home Affairs Committee Publish Report on Human Trafficking in the UK

The House of Commons Home Affairs Committee (HAC) published their sixth report 'The Trade in Human Beings: Human Trafficking in the UK' on 14 May 2009. The HAC inquiry into Human Trafficking indicates a poor understanding of the problem, patchy enforcement and little protection for victims.

The key facts about human trafficking in the UK are:

- Between 100,000 and 800,000 people are trafficked into the EU each year;
- At a conservative estimate, there are at least 5,000 trafficking victims in the UK;
- About 8,000 women work in off-street prostitution in London alone, 80% of whom are foreign nationals;
- Over 1000 women trafficked into prostitution have been referred to the Poppy Project since March 2003;
- 200-300 victims of trafficking for domestic labour register with the relevant NGO each year;

- It is estimated 330 child victims will be trafficked into the UK each year;
- About 60% of suspected child victims in local authority care go missing and are not subsequently found;
- There is long-term government funding for 35 places for victims in safe accommodation;
- 92 people were convicted of sex trafficking and four for labour trafficking between 2004 and December 2008;
- There are only 100-300 prosecutions for trafficking across the EU each year; and
- Each sex trafficker earns on average £500-£1000 per woman per week.

The Committee recognises that one of the biggest problems facing attempts to tackle human trafficking is the lack of any serious, current estimates of the scale of the 'trade in people'. The estimates of the number of people trafficked into the EU each year ranges from 100,000 to 800,000.

The Committee expresses its disappointment that the UK Human Trafficking Centre (UKHTC) has not made more progress at developing estimates of the scale of the problem, one of the main tasks for which it was established. Without reasonable estimates of the scale of the problem, it is impossible to gauge what support services are needed for victims.

The Committee identifies major gaps in awareness and training within the UK Border Agency, despite the best efforts of some staff, which must be addressed by a greater emphasis on the guidance already available.

The two-volume report 'The Trade in Human Beings: Human Trafficking in the UK' can be found at http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/23/23i.pdf (Volume 1) and at http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/23/23ii.pdf (Volume 2).

New Proposals Outlined for DNA Database

On 7 May 2009 the Home Secretary set out new proposals in the consultation paper 'Keeping the right people on the DNA database' in an attempt to reassure the public that the DNA database is properly kept and maintained.

The consultation exercise intends to promote public debate on how long fingerprints and DNA samples should be retained. The consultation paper sets out the benefits of DNA and fingerprints in detecting offenders and helping to bring them to justice. It also sets out proposals to introduce clearer and more transparent safeguards by the provision of a proportionate balance between protecting communities and protecting the rights of the individual.

The public consultation exercise which include:

- Destroying all DNA samples like mouth swabs, hair or blood as soon as they are converted into a profile;

- Automatically deleting profiles of those arrested but not convicted of serious violent or sexual crimes after 12 years;
- Automatically deleting profiles of those arrested but not convicted of all other crimes after six years;
- Retaining indefinitely all DNA profiles and fingerprints of those convicted of a recordable offence;
- Removing profiles of young people arrested but not convicted or convicted for less serious offences as a teenager when they turn 18;
- Changing the law to retrospectively add all serious violent and sexual criminals who were convicted before the DNA database was established, including those who are now back in the community;
- Changing the law to allow the police to take DNA from those who were convicted of serious violent and sexual crimes abroad upon their return to the UK; and
- Keeping fingerprints for those arrested but not convicted of serious violent or sexual crimes for 12 years, and six years for all other crimes, before automatic deletion.

The consultation exercise applies to England, Wales and Northern Ireland.

Further information and the consultation paper 'Keeping the right people on the DNA database' is available at
http://www.homeoffice.gov.uk/documents/cons-2009-dna-database/

Home Affairs Committee Publish Report on the Licensing Act 2003

On 14 May 2009 House of Commons Culture, Media and Sport Committee (CSMC) published their sixth report 'The Licensing Act 2003'. The report examines the extent to which the benefits promised by the Licensing Act 2003 have been achieved, and assesses whether the Act works well in practice.

The CSMC makes a number of recommendations to improve the legislation in areas such as the performance of live music, the licensing of sporting and not-for-profit clubs, the provision of Temporary Event Notices, licences for moveable entertainments such as circuses and the process of licensing lap dancing clubs.

On the process of licensing overall, the report notes that although the Licensing Act 2003 has simplified and improved the licensing process, there is still concern that the system is too bureaucratic, complicated and time-consuming, especially where premises are run by volunteers. It recommends that the Government should, together with local authorities, licence applicants and other stakeholders, evaluate the licensing forms with the aim of making them more user friendly.

The CSMC report 'The Licensing Act 2003' can be found at
http://www.publications.parliament.uk/pa/cm200809/cmselect/cmcumeds/492/492.pdf

BCS Captures Public Perception of Policing and Local Partners to Set Levels for Public Confidence Targets

The Home Office published its statistical bulletin 'Public perceptions of the police and local partners - results from the BCS year ending September 2008' on 28 April 2009.

The British Crime Survey (BCS) has always sought to measure people's perceptions of the police. BCS includes questions to identify respondents' ratings of their local police in terms of how good a job they do, as well as a wider range of perceptual measures which examine more specific aspects such as contact and behaviour. From October 2007 new questions were included in the BCS relating to perceptions of the police working with local agencies to tackle the anti-social behaviour and crime issues that matter in the local area. These questions were developed to reflect a greater emphasis on partnership working for use in the new 'Making Communities Safer' Public Service Agreement (PSA 23).

The aggregate figures for England and Wales relating to the first year of data collection (October 2007 to September 2008) were published in January 2009 and more recently a detailed breakdown at police force area level has been published. The police force level figures for the year to September 2008 form the baseline for new targets set by the Home Secretary for each police force to improve the level of public confidence. The figures in the survey incorporate preliminary analysis due to its relevance to the greater focus on improving levels of public confidence.

Perceptions of the police and local councils in dealing with anti-social behaviour and crime in the local area varied across socio-demographic and socio-economic groups. In general, older people, women, people on lower incomes and people who had not been a victim of crime in the last twelve months were more likely to agree that the police and local councils were dealing with the anti-social behaviour and crime issues that matter in the local area. For example:

- Women were more likely to agree than men (49% and 43% respectively). Both men and women aged 65 or over were more likely to agree than younger age groups. Whilst there is no clear trend for respondents who had no opinion, men of all ages were more likely to disagree with this question than women;
- People from Black and Minority Ethnic backgrounds were more likely to agree than those from White backgrounds (53% compared with 45%). Respondents who had been a victim of BCS crime in the last 12 months were less likely to agree that the police and local councils are dealing with anti-social behaviour and crime in the local area than those who had not been a victim (40% and 48% respectively);
- People in routine and manual occupations (48%) were more likely to agree that the police and local councils were dealing with anti-social behaviour and crime in the local area than people in managerial and professional (43%), and intermediate occupations (44%). In part, this is

due to people in managerial and professional (32%) and intermediate occupations (31%) being more likely to have no opinion than people in routine and manual occupations (27%);

- People living in poorer areas (48%) were more likely to agree that the police and local councils are dealing with anti-social behaviour and crime in the local area than those living in Urban Prosperity (44%), Moderate Means (45%) and Comfortably Off areas (46%). However, people living in poorer areas (28%) were also more likely to disagree than those living in Urban Prosperity areas (23%) and Comfortably Off (25%). This is in part because people living in poorer areas were less likely to have no opinion than those living in all other areas; and
- Similarly, social renters (49%) were more likely to agree than private renters (47%) and owner occupiers (45%). However, social renters (27%) were also more likely to disagree than private renters and owner occupiers (21% and 25% respectively). In part, this is because private renters and owner occupiers (32% and 30%) were more likely to have no opinion compared to social renters (24%).

The factors strongly associated with agreement that the police and local councils are dealing with anti-social behaviour and crime issues in the area the findings indicate the following:

- Not being a victim of crime in the last 12 months; and
- Being white, female and older.

However, it is likely that these factors are interrelated, so the author analysed the data to find the factors most strongly associated with agreement that the police and local councils are dealing with anti-social behaviour and crime:

- Perceiving that the local police can be relied on to deal with minor crimes; and
- Perceiving that the police deal with people fairly and/or with respect.

And, to a lesser degree the following factors:

- Seeing a police officer or PCSO on foot patrol;
- Age of respondent (35 and over);
- Not perceiving the crime rate in the local area to have increased a lot; and
- Not having a high level of perceived anti-social behaviour.

The full report 'Public perceptions of the police and local partners - results from the BCS year ending September 2008' is available at http://www.homeoffice.gov.uk/rds/pdfs09/hosb0109supp.pdf

Audit Commission and HMIC Launch Consultation for Inspection of Police Authorities

On 29 April 2009 the Audit Commission and Her Majesty's Inspectorate of Constabulary (HMIC) set out their proposals for joint inspection of the 43 police authorities in England and Wales. The consultation will result in a final framework, setting out how the new inspections will be carried out and reported. The final framework will be issued in July 2009, with the first on-site inspection beginning in September 2009.

All police authorities will be inspected in a phased programme lasting 18 months and the findings for each inspection will be made public within eight weeks of completion. In addition, the Audit Commission and HMIC will publish a national report in February 2010, which draws on findings from the first round of inspections. It will identify common themes and areas for improvement, as well as sharing good practice.

It is the responsibility of the police authority to ensure that police forces are efficient and effective and that they address the issues that matter to local people. The new joint inspections will measure how well police authorities achieve that as well as assessing how well they manage their money and staff, and work with their communities and partners such as schools, councils and health organisations.

The consultation paper asks respondents to comment on the main themes of inspection and how police authorities should be scored so that people have a clear understanding of how well their own authority is performing. It also asks people to comment on how external experts that have been properly accredited and trained should be involved in the inspections. The consultation ends on Wednesday 10 June 2009.

The consultation paper is available at http://inspectorates.homeoffice.gov.uk/hmic/docs/police-authority-inspection?view=Binary

IPCC Publish New Discrimination Guidelines

The Independent Police Complaints Commission (IPCC) published new guidelines on dealing with allegations of discriminatory behaviour on 19 May 2009. The new IPCC guidelines, 'Dealing with allegations of discriminatory behaviour', build upon the racial discrimination guidelines published by the Police Complaints Authority in 2003 and include age, religion and belief, disability, gender, race, and sexual orientation discrimination.

The IPCC announced its commitment to producing its own guidelines on the handling of allegations of discriminatory behaviour because of the importance it places on valuing diversity and concerns about discrimination.

The document provides guidance on the handling of such allegations and ensures a consistent approach is achieved by those responsible for investigating allegations. In particular, they outline that investigation reports

should demonstrate the concepts, principles and methodology employed in fact finding, analysis and conclusions to discrimination.

The guidelines should be used by all those responsible for handling police complaints where there is alleged discrimination, providing guidance on both the investigation of allegations and wider handling arrangements, including Local Resolution, across the main strands of diversity.

Discrimination allegations account for a small number of overall complaints. In 2006/07, 3% of total complaints related to discrimination. However, the 2007 IPCC public confidence survey found 86% of people felt that discrimination is one of the main reasons for making a complaint.

A review of the guidelines will be conducted in 12 months to monitor their implementation and use.

The new guidelines, 'Dealing with allegations of discriminatory behaviour' is available at http://www.ipcc.gov.uk/discrimination_guidelines-3.pdf

Ministerial Statement for Police Injury Benefits Announced

The Minister for Security, Counter-Terrorism, Crime and Policing announced in a ministerial written statement on 24 April 2009 that a report 'Review of Police Injury Benefits - Summary and Analysis of Consultation Responses' was available which summarised the responses to the public consultation exercise on the review of police injury benefits.

The initial consultation document 'Review of Police Injury Benefits - Government Proposals' was published in August 2008 (see NPIA *Digest* October 2008 edition, page 30). The aim of the review has been to ensure that the financial support currently given to police officers and their families for injury or death in the line of duty meets modern requirements, is properly targeted and is efficiently administered.

The consultation exercise invited comments on 51 proposals, and closed on 18 November 2008. In total, 41 responses were received, including 30 from police forces, police authorities and police staff associations. The minister stated that overall the responses demonstrated a high level of support for the majority of changes proposed.

Although the public consultation has now been completed, five proposals will be the subject of further consultation with the police staff associations and other representatives on the Police Negotiating Board. This is to ensure that their implementation would not undermine the reassurance that officers are entitled to expect when they are exposed to danger in the course of confrontational and other operational duties. It is also in order to discuss practical ways in which to improve the safety of officers while on journeys to and from their place of work.

The minister stated that it was intended that any amendments to the present Injury Benefit regulations would be in place by the end of 2009 but this timetable is subject to the further consultation with the Police Negotiating Board and agreement on a complete package of changes that meets the aim of

the review. The changes would apply to officers serving on or after the date they come into force, and would not apply retrospectively to those who have ceased to serve by that date.

The Government response report 'Review of Police Injury Benefits - Summary and Analysis of Consultation Responses' is available at http://www.homeoffice.gov.uk/documents/cons-2008-police-injury-award/injury-awards-response?view=Binary

All Complaints About Use of Tasers to be Referred to IPCC

Following the publication last year of an IPCC report into the use of Tasers (see NPIA *Digest* January 2009 edition, pp45-46) the IPCC announced on 5 May 2009 that all complaints made to police forces involving the use of Tasers should be referred to the IPCC as a matter of course. This automatic referral will take effect from 1 June 2009.

IPCC deputy chair and commissioner with national responsibility for firearms, Deborah Glass, said "For police officers dealing with violent situations, there is no such thing as a safe option, all equipment carries risks. As the independent body responsible for maintaining public confidence in the police complaints system, we are monitoring the continued roll-out of Tasers very closely."

The IPCC acknowledge that when the wider roll-out of Tasers was announced the level of public complaints about its use was low, especially when compared with the number of instances where its use has saved lives or prevented injuries. However, they are aware that the use of Tasers carries the risk of misuse and the public will rightly be concerned about this. The IPCC have therefore asked all forces to refer any complaints about the use of Tasers to them. They are also encouraging all forces to explain to the public the circumstances in which Tasers might be deployed and that people have a right to complain if they feel the use of force was excessive.

The IPCC's full report on Tasers can be found at http://www.ipcc.gov.uk/taser_report_nov_08.pdf

The full press release can be found at http://www.ipcc.gov.uk/news/pr050509_tasers.htm

Statistical Bulletin on Use of Police Powers and Procedures in England and Wales 2007/08 Published

The Home Office Statistical Bulletin on the use of 'Police Powers and Procedures in England and Wales 2007/08' was published on 30 April 2009. The main points of the statistics for 2007/08 include:

Arrests and detentions

- The number of persons arrested for recorded crime (notifiable offences) fell by 0.5% between 2006/07 and 2007/08, to 1,475,266. Recorded crime decreased by 9% over the same period;

- A 2% decrease in arrests for violence against the person offences compares with a decrease of 8% in the number of recorded violence against the person crimes;
- For only the second year, more females were arrested for offences of violence against the person (35% of all female arrests) than for theft and handling stolen goods (31%) in 2007/08; and
- In 2007/08, 4,244 persons were detained by the police for more than 24 hours and then released without charge, an increase of 111% over the 2006/07 figure of 2,013.

Stop and searches

- The police have the power to stop and search persons and vehicles under different legislation. Under these powers, the police stopped and searched 1,223,860 persons and/or vehicles in 2007/08, an increase of 17% on 2006/07;
- The total above comprises:
  - 1,045,923 searches under section 1 of the Police and Criminal Evidence Act 1984 in 2007/08, an increase of 9% on 2006/07;
  - 124,687 stops and searches in order to prevent acts of terrorism (under section 44 of the Terrorism Act 2000), a threefold increase on 2006/07;
  - 53,250 stops and searches in anticipation of violence (under section 60 of the Criminal Justice and Public Order Act 1994), a 19% increase on last year;
- Additionally, the police carried out 27 road checks, down from 38 in 2006/07; and
- 123 intimate searches, mostly for drugs, in 2007/08, 18% more than in 2006/07.

Fixed Penalty Notices

- The number of fixed penalty notices (FPNs) for motoring offences issued by the police (including traffic wardens) in 2007 was 2.6 million, down 13% on 2006;
- Speed limit offences comprised nearly 1.5 million of these fixed penalty notices, or 56% of all fixed penalty notices issued in 2007;
- From 27 February 2007, the offence of using a handheld mobile phone became an endorsable fixed penalty notice offence, meaning that a person caught is given penalty points on their licence as well as a higher penalty. In 2007, 122,000 fixed penalty notices were issued for the offence of using a handheld mobile phone while driving, a fall of 27% (around 44,800) on 2006;
- Cameras provided evidence for 86% of the 1.46 million fixed penalty notices issued for speeding offences in 2007; and

- As well as fixed penalty notices, the police issued 33,000 written warnings for motoring offences and 95,000 Vehicle Defect Reconciliation Scheme notices in 2007.

Breath tests

- There were almost 599,800 screening breath tests carried out during 2007, a 0.3% decrease compared with 2006;
- The number of positive or refused tests in 2007 declined by 6% from 103,730 in 2006 to 97,590 in 2007.
- The proportion of tests that were positive or refused in 2007 was 16%, one percentage point lower than in 2006.

Other Police Powers and Procedures

- Cautions:
  - In 2007 there were 363,000 offenders cautioned for all offences 4% more than in 2006;
  - Of the cautions issued, 127,300 (35%) were given to juveniles as a reprimand or final warning. This was a two percentage point decrease compared to 2006;
  - Of the 1,373,933 offences detected by the police in 2007/08, 358,016 were by means of a caution; and
  - Cautions accounted for 26% of all sanction detections in 2007/08. Of the other methods, charge/summons accounted for the largest proportion, at 49%.
- Police use of firearms:
  - There were 21,181 police operations in 2007/08 in which a firearm was authorised, an increase of 17.5% on 2006/07;
  - There were 6,780 authorised firearms officers in 2007/08, up 1% on 2006/07;
  - The number of operations involving armed response vehicles rose 15% to 16,712 in 2007/08; and
  - The police discharged a conventional firearm in 7 incidents in 2007/08, up from 3 in 2006/07.
- Football-related arrests:
  - Of the 37 million people attending games in 2007/08, the police arrested 3,842 for disorder connected to matches. Those relating to notifiable offences are included within the arrest totals in the section on Arrests and detentions.

- Stop and account:
  - The number of stops recorded by the police in England and Wales increased by 26% from 1,868,570 in 2006/07 to 2,353,918 in 2007/08; and
  - Increases over this period were recorded by 31 of the 43 forces.

The Home Office Statistical Bulletin on the use of 'Police Powers and Procedures in England and Wales 2007/08' is available at http://www.homeoffice.gov.uk/rds/pdfs09/hosb0709.pdf

HMIC Review of the Policing of Public Protest

On 13 May 2009 Her Majesty's Inspectorate of Constabulary (HMIC) announced that they had been commissioned to conduct a review of the public order tactics deployed in response to significant protests involving disorder or the threat of disorder. The process will examine the tactics adopted by the Metropolitan Police Service (MPS) during the G20 London Summit, one of the largest policing operations to have taken place anywhere in the United Kingdom, and other relevant experiences of policing protest both nationally and internationally.

HMIC will seek to engage in consultation and debate with key stakeholders and the public regarding the policing of protest. The aim of the HMIC report will be to test the arguments for and against the use of police public order tactics from public, legal and operational perspectives. The review will consider emerging evidence against the acknowledged principles of British policing - public consent, minimal use of force and individual accountability, and highlight any tensions between these and operational practice.

The objectives of HMIC's review are to:

- Assess the effectiveness and impact of public order tactics deployed in response to significant protests involving disorder or the threat of disorder, specifically:
  - Containment;
  - Use of force;
  - Liaison with media; and
  - Communication with public and protesters.
- Identify difficulties and barriers to the successful implementation of those tactics; and
- Examine the overall direction of public order goals, strategies and tactics in dealing with such protests and demonstrations, against the acknowledged principles of British policing.

HMIC will submit an interim report by 30 June 2009 and a final report by 30 September 2009.

More information about the review will appear on the HMIC website at http://inspectorates.homeoffice.gov.uk/hmic/special/policing-public-protest/

Joint Thematic Review of Victim and Witness Experiences in Criminal Justice System Published

A joint thematic review undertaken by Her Majesty's Crown Prosecution Service Inspectorate, Her Majesty's Inspectorate of Constabulary and Her Majesty's Inspectorate of Court Administration published its findings on 7 May 2009. The review examined the effectiveness of services provided to victims and witnesses and whether they maximised the likelihood of witnesses

attending court and improved the confidence of victims and witnesses in the criminal justice system (CJS).

The joint review found that the general level of service provided to prosecution witnesses has improved significantly. However, it also found that there is considerable scope for further improvement. A key factor in the improvement had been the establishment of over 150 dedicated Witness Care Units (WCUs) across England and Wales, jointly staffed by the police and Crown Prosecution Services (CPS).

The key findings of the report include:

- Inspectors found positive evidence of the impact of the establishment of WCUs, a major part of the 'No Witness No Justice' initiative, in that:
  - There has been a slow but steady increase of around 10% in witness attendance rates from a baseline of 77.3% (before WCUs were established) to 85.1% by August 2008;
  - The proportion of cases fixed for trial which could not go ahead on the scheduled day due to witness issues has reduced overall; and
  - A Witness and Victim Experience Survey undertaken by the Office for Criminal Justice Reform showed that the proportion of victims and witnesses who express themselves as 'completely', 'very' or 'fairly' satisfied with the contact they had had with the CJS improved from 75% in 2005/06 to 81% in the first quarter of 2008/09;
- Compliance with the Prosecutors' Pledge (which sets out the level of service victims can expect from prosecutors) by CPS Prosecutors was generally found to be good; and
- Court staff that witnesses came into contact with were generally helpful and courteous and witnesses were well supported by the Witness Service.

The review also found that despite the focus on services given to victims and witnesses in recent years, there is considerable scope for improvement including:

- The understanding and operation of the Victim Personal Statement Scheme by both front line police officers and the prosecution;
- The understanding on the part of front line police officers of which special measures are available to support vulnerable and intimidated victims and witnesses, who they apply to, and how they work in practice;
- Weaknesses in the arrangements for timely identification of the need for special measures and applications to the court by the prosecution;
- The needs of victims and witnesses are not always assessed as fully as they should be at the charging stage;
- The thought given to the effect on witnesses when scheduling trials, particularly those involving vulnerable witnesses;
- Some witnesses have concerns about their safety. This is particularly when entering the courthouse and while in public parts of the building,

where they can inadvertently come into contact with the defendant and his or her family and supporters. Much is already done to protect victims and witnesses from potential intimidation but further work is needed;

- The support and guidance given to WCUs to ensure structures, staff numbers and procedures are organised in the best possible way to enable them to meet their many responsibilities;
- The oversight by Local Criminal Justice Boards of arrangements to ensure the improvement and development of local services provided to victims and witnesses; and
- There is some way to go for all WCUs to meet all the minimum requirements set out for them and to be able to do so on a consistent basis. Many are still struggling to ensure that a full needs assessment is carried out for all witnesses which is a key requirement.

The 'Report of a Joint Thematic Review of Victim and Witness Experiences in the Criminal Justice System' can be found at http://www.hmcpsi.gov.uk/documents/services/reports/EAW/VW_thm_May09_rpt.pdf

Engaging Communities in Criminal Justice is Key to Increasing Public Confidence

The Ministry of Justice announced on 29 April 2009 the publication of a consultation document entitled 'Engaging Communities in Criminal Justice'. The period of consultation began on 29 April 2009 and ends on 31 July 2009. The report identifies effective community engagement as key to improving public confidence in the way in which crime is tackled and justice delivered.

The consultation document focuses on four primary aims which are critical components of the change sought:

- Achieving stronger, community-focused partnerships which draw together activity across criminal justice services and other relevant agencies to secure really effective, two-way, joined-up communications between the CJS and local people;
- Building on Community Justice projects and the problem-solving approach to enhance the visibility of the CJS, solve problems for the community and reform offenders and enable them to make amends;
- Increasing the intensity and visibility of Community Payback so that justice is delivered and seen to be delivered; and
- Keeping the public informed by improving the information the public receives about case outcomes: ensuring the public can see a real connection between the crime and the punishment (and reform) meted out in response.

The report which is in five chapters contains:

Chapter 1: a spotlight on the role of the CPS and the courts, with a particular emphasis on magistrates' court services as the focal point for justice in the community.

Chapter 2: looks beyond the prosecution and courts and explores the role of the Probation Service, the Prison Service and the youth justice services, with a focus on how offenders can make amends.

Chapter 3: looks at the different levels of community engagement, from providing information, consulting and feeding back outcomes to communities at one end of the spectrum, through to involving people in the delivery of crime and justice services and empowering communities at the other.

Chapter 4: contains a summary of all the consultation questions in the document.

Chapter 5: provides information about the ways people can get involved in the consultation process and feed in views over the next three months.

The full consultation document 'Engaging Communities in Criminal Justice' is available at
http://www.official-documents.gov.uk/document/cm75/7583/7583.pdf

Bradley Report on Mental Health in the Criminal Justice System Published

On 30 April 2009 'The Bradley Report: Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system' was published. This report follows an independent review which was commissioned to examine the extent to which offenders with mental health problems or learning disabilities could, in appropriate cases, be diverted from prison to other services and the barriers to such diversion.

The Bradley Report broadly recommends better assessment at the earliest possible opportunity, and improved continuity of care for people with mental health problems or learning disabilities in the criminal justice system. There are 82 recommendations in the report, the overwhelming majority of which the government either fully accepts, or accepts in principle. However, the report itself recognises many recommendations are longer term and will need further work to ensure that all implications are considered.

The government also published its response to Lord Bradley's report and a Health and Criminal Justice National Programme Board will be set up by the end of May 2009 to bring together the relevant departments covering health, social care and criminal justice for children and adults. The first priority for the board will be to consider Lord Bradley's recommendations and develop a national delivery plan by October 2009. A National Advisory Board will also be established to ensure wider involvement from interested organisations.

'The Bradley Report: Lord Bradley's review of people with mental health problems or learning disabilities in the Criminal Justice System' can be found at
http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_098694

A full version of the written ministerial statement can be found at http://www.justice.gov.uk/news/announcement300409a.htm and the Government's response to the Bradley Report at http://www.justice.gov.uk/publications/docs/bradley-mental-health-cjs-gov-response-grid.pdf

Sentences for Burglary in a Dwelling: Consultation Opens

The Sentencing Guidelines Council asked the Sentencing Advisory Panel on 12 May 2009 to produce advice on sentencing for burglary in a dwelling. Guidance on this high-volume offence will complement the recently published sentencing guidelines on Theft and Burglary (non-dwelling) and will help to ensure consistency for similar types of offending.

The new proposals issued by sentencing advisers in their paper entitled 'Burglary in a Dwelling: Consultation Paper' recognise that criminals who burgle homes are committing offences against the person - not just property - and they should face robust sentences.

The proposals include:

- In the most serious cases, such as where vulnerable victims have been targeted, or where serious harm was caused to the victim, the starting point for sentencing a first time adult offender should be 2 years custody, falling within a range of 12 months to four years;
- First time young offenders should face between 6 months and 2 years in detention for the most serious burglaries;
- Only in cases where a burglar has caused minimal loss or damage and the harm caused to the victim is shown to be low should the starting point for sentencing fall below a custodial sentence; and
- In cases where an offender is making a genuine attempt to tackle an addiction to drugs or alcohol, the court may wish to consider imposing a treatment programme as part of a community order in an attempt to break the cycle of offending.

The closing date for responses to the consultation is 5 August 2009 and the 'Burglary in a Dwelling: Consultation Paper' is available at http://www.sentencing-guidelines.gov.uk/docs/Consultation%20paper%20on%20sentencing%20for%20burglary%20in%20a%20dwelling.pdf

Drug Seizures for all Classes Rise in 2007/08

The Home Office released the annual statistical bulletin 'Seizures of Drugs in England and Wales, 2007/08 on 7 May 2009. The bulletin contains figures for seizures of drugs made in 2007/08 by local police forces and HM Revenue and Customs within England and Wales.

There are two main measures of drug seizures; number of seizures made and the quantity seized. In 2007/08 there were 216,792 drug seizures made in England and Wales by the police and HM Revenue and Customs, an increase of 17% since 2006/07 and the highest since electronic records began in 1973. There were increases in the number of seizures for all classes of drugs when compared to 2006/07:

- Class A drugs seizures increased by 8%;
  - Within Class A drugs, cocaine seizures increased by 26%, crack by 9% and heroin by 2%;
  - Cocaine was the most commonly seized Class A drug, as last year;
- Class B drugs seizures increased by 4%;
  - Within Class B drugs, amphetamine seizures increased by 5%;
- Class C seizures increased by 20%;
  - Within Class C drugs, herbal cannabis seizures increased by 26%;
  - Seizures of cannabis plants increased by 47%; and
  - Cannabis resin seizures decreased by 5%.

The following quantities of drugs were seized in 2007/08:

- 3.4 tonnes of cocaine;
- 1.0 tonnes of heroin;
- 947,000 doses of ecstasy;
- 1.8 tonnes of amphetamines;
- 19.9 tonnes of herbal cannabis;
- 16.6 tonnes of cannabis resin; and
- 508,460 cannabis plants.

The Home Office Statistical Bulletin 'Seizures of Drugs in England and Wales, 2007/08 is available at
http://www.homeoffice.gov.uk/rds/pdfs09/hosb0809.pdf

New Proposals for Control of Gamma-butyrolactone (GBL) and Others

A range of proposals for new controls for a range of substances including gamma-butyrolactone (GBL) were set out in two public consultations which were launched by the Home Secretary on 21 May 2009. The aim of the proposals is to prevent the misuse of GBL, 1,4-butanediol (1,4 BD), 1- benzylpiperazine (BZP) and a range of anabolic steroids as part of the Home Office's drug strategy.

GBL (gamma-butyrolactone) and its precursor 1,4 BD (1,4-butanediol) have wide legitimate uses as solvents but can be converted into the Class C controlled drug GHB (gamma-hydroxybutyric acid) in the body.

The consultation on GBL and 1,4-BD sets out a number of options for control:

- Full control of GBL as a class C drug prohibiting possession, supply, production and importation/exportation;
- Control of GBL as a class C drug with a licensing regime to permit industrial use; and
- Banning possession and supply where it is intended for human use only, leaving industry and commercial use unaffected.

The proposals seek to align the Government's drug policy to the changing environment of substance misuse.

The second consultation sets out the Government's intention to control 1- benzylpiperazine (BZP) as a Class C drug. It also makes clear the Home Office's aim, in line with the advice from the Advisory Council on the Misuse of Drugs, to control a group of related compounds or substituted piperazines that have the same or very similar harms to BZP. The consultation also sets out an intention to update the list of steroids currently controlled as Class C drugs by adding a further 24 anabolic steroids and two non-steroidal substances to the class.

Further information about the consultation on GBL and 1,4-BD is available at http://www.homeoffice.gov.uk/documents/cons-2009-gbl/

Further information about the consultation on BZP is available at http://www.homeoffice.gov.uk/documents/cons-2009-bzp/

First Statistical Bulletin on Terrorism Arrests and Outcomes Published

On 13 May 2009 the Home Office published the Statistical Bulletin on Terrorism Arrests and Outcomes Great Britain for the period 11 September 2001 to 31 March 2008. This is the first statistical bulletin to be published showing statistics on those arrested for terrorism in Great Britain and the outcome of these arrests. The statistics are produced from the administrative data collected by the National Co-ordinator of Terrorism Investigations, the Prison Service and the Home Office's Office of Security and Terrorism.

The main points identified in this period are:

- There were 1,471 terrorism arrests. This excludes 38 arrests made between the introduction of the Terrorism Act 2000 on 19 February 2001 and 11 September 2001 and 119 stops at Scottish ports under Schedule 7 of the Terrorism Act 2000;
- In 2007/08 there were 231 terrorism arrests compared with an annual average of 227 since 1 April 2002;
- 35% of terrorism arrests (521) resulted in a charge, of which 340 (65%) were considered terrorism related. The proportion of those arrested (35%) who were charged is similar to that for other criminal offences with 31% of those aged 18 and over arrested for indictable offences prosecuted. For a further 9% of terrorism arrests some alternative action was taken (e.g. transferred to the immigration authorities);
- The main offences for which suspects were charged under terrorism legislation were possession of an article for terrorist purposes, membership of a proscribed organisation, and fundraising, all offences under the Terrorism Act 2000;
- The main offences for which suspects were charged under non-terrorist legislation, but considered as terrorism related, were conspiracy to murder and offences under the Explosive Substances Act 1883;
- 46% of those arrested under s.41 of the Terrorism Act 2000 were held in pre-charge detention for under one day and 66% for under two days, after which they were charged, released or further alternative action was taken. Since the maximum period of pre-charge detention was increased to 28 days with effect from 25 July 2006, 6 persons have been detained for the full period, of which 3 were charged and 3 were released without charge; and
- At 31 March 2008 125 persons were in prison for terrorist-related offences and 17 persons were classified as domestic extremists or separatists. The majority (62%) of the 125 persons imprisoned were UK nationals.

The Home Office Statistical Bulletin 'Statistics on Terrorism Arrests and Outcomes Great Britain' is available at
http://www.homeoffice.gov.uk/rds/pdfs09/hosb0409.pdf

Home Security, Mobile Phone Theft and Stolen Goods Crime Statistics 2007/08 Published

The Home Office published on 20 May 2009 a Supplementary Volume 3 to Crime in England and Wales 2007/08 entitled 'Home security, mobile phone theft and stolen goods'. The statistics are taken from the findings of the 2007/08 British Crime Survey (BCS).

The statistical bulletin provides summary information and reference tables from the 2007/08 BCS (with some previously unpublished figures on being offered and buying stolen goods from the 2005/06 BCS) and is set out as follows:

- Chapter 1 - presents findings from the 2007/08 BCS on the variation in possession of home security devices and home contents insurance, as well as looking at security conscious behaviour related to domestic burglary such as use of home security devices and property marking;
- Chapter 2 - contains information on mobile phone ownership and theft from the 2007/08 BCS which includes updates to tables and figures published last year (using the 2006/07 BCS). The chapter also includes figures relating to children's ownership and their experience of theft; and
- Chapter 3 - provides information on being offered and buying stolen goods in England and Wales, including variations in the likelihood of being offered and buying stolen goods by personal, household and area characteristics.

The Home Office Statistical Bulletin 'Home security, mobile phone theft and stolen goods: Supplementary Volume 3 to Crime in England and Wales 2007/08' is available at
http://www.homeoffice.gov.uk/rds/pdfs09/hosb1009.pdf

Serious and Organised Crime Agency Annual Report 2008/09 Published

On 13 May 2009 the Serious Organised Crime Agency (SOCA) published its annual report for the year 2008/09.

The report highlights of the SOCA's work in 2008/09 including:

- £175m assets denied to UK criminals through a combination of cash seizure, cash forfeiture, civil recovery, restraint orders, and confiscation orders;
- £88m assets denied to criminals overseas;
- A conviction rate in the courts of 93%;
- 71 alerts issued to industry to enable business to protect itself more effectively against potential crime;
- Increased use of 'lifetime management' tools, including 16 new Financial Reporting Orders, 12 exclusion orders to prevent overseas criminals returning to the UK and 13 Serious Crime Prevention Orders;
- Over 85 tonnes of cocaine seized; and
- New forensic evidence on the drop in street level purity of cocaine.

The report records SOCA's progress towards each of the following five strategic imperatives in the year:

- To build knowledge and understanding of serious organised crime, the harm it causes, and of the effectiveness in tackling it;
- To tackle criminal finances and profits including through asset recovery;

- To increase the risk to serious organised criminals operating against the UK, through traditional means and by innovation within the law;
- To collaborate with partners, join up domestic and international efforts to reduce harm and provide high quality support to partners; and
- To build capability to make a difference.

The full SOCA annual report can be found at http://www.soca.gov.uk/assessPublications/downloads/SOCA_AR_2009.pdf

Annual Review of CEOP Announces Record Number of Children Safeguarded from Sexual Abuse

On 20 May 2009 the Child Exploitation and Online Protection (CEOP) Centre announced in its annual review for 2008/09 that 346 children have been safeguarded in the last three years. The CEOP Centre is the UK's national centre for tackling the sexual abuse of children.

During the last 12 months 139 were safeguarded while over 700 suspected offenders have been arrested since the organisation was launched in April 2006. In the last year alone 334 suspected offenders were arrested. As the organisation focuses on the UK's most high risk child sexual offenders, the CEOP response, in association with local and international forces, has also dismantled or disrupted 166 offender networks since 2006, 82 in the last year.

In 2008, CEOP reported that the most significant trend affecting child sexual abuse online was that of convergence such as social networking sites with instant messaging and photo and video sharing.

The key points of the CEOP Annual Review 2008/09 are that:

- Of the 5,686 reports received during the past 12 months, nearly 50% of them from children and adults reporting on behalf of a child, on average four a day still require immediate action as a result of a child being at risk;
- Grooming is still the number one offence reported to CEOP, although whereas before this was done primarily via instant messaging, a fast-growing trend is exploiting children through vast, integrated social networking sites;
- Offenders are increasingly looking to travel to avoid detection. 73% of missing and high risk offenders referred to the CEOP Centre during the past year had either travelled or were located overseas; and
- Offenders are increasingly using peer-to-peer networks and newsgroups rather than commercial pay-per-view sites in order to share images of sexual abuse.

The full CEOP Annual Review 2008/09 is available at http://www.ceop.gov.uk/downloads/documents/CEOP_Annual_Review_2008-09.pdf

Think Tank Report Challenges Government Policy on Crime Reduction

A new report 'Less Crime Lower Costs: Implementing effective early crime reduction programmes in England and Wales' was published by the Policy Exchange on 11 May 2009. The report challenges the Government's pledge to 'be tough on crime and tough on the causes of crime'. The authors state that Government spending and policy have been overwhelmingly focused on enforcement measures (such as police, courts and prisons) rather than on tackling the causes.

The authors are critical of the Government's strategy for tackling crime, in the youth crime action plan, which in their view announced unsustained ad hoc funding and did little to clarify responsibility for cutting crime and increased pressures on departmental budgets. The report suggests that there is a lack of knowledge as to what to do next which persists in the following areas:

- How to extend successful pilot trials;
- How to deliver the right interventions to the right people; and
- How to encourage and train local practitioners to use evidence-based interventions to prevent crime.

The report outlines a number of structural, financial and political barriers and provides recommendations that address these systemic shortcomings through an analysis of prevention programmes that have proved effective and cost-effective in other countries.

The full report 'Less Crime Lower Costs: Implementing effective early crime reduction programmes in England and Wales' is available at http://www.policyexchange.org.uk/images/publications/pdfs/Less_Crime_Lower_Costs.pdf

OFT Research Explains Why People Fall Victim to Scams

The Office of Fair Trading (OFT) published on 18 May 2009 their report entitled 'The psychology of scams: Provoking and committing errors of judgment' that sets out the psychological reasons why consumers may fall victim to mass marketed scams.

The key findings about victims of scams include:

- Up to 20% of the UK population could be particularly vulnerable to scams, with previous victims of a scam consistently more likely to show interest in responding again;
- A good background knowledge of the subject of a scam offer, such as experience of investments, may actually increase the risk of becoming a victim through 'over-confidence';
- Victims are not in general poor-decision makers, for example they may have successful business or professional careers, but tend to be unduly open to persuasion by others and less able to control their emotions; and

- Victims often keep their decision to respond to a scam offer private and avoid speaking about it with family or friends.

The research also found that many scams use a range of highly persuasive techniques. A common tactic is to seek to exploit basic human emotions such as excitement or fear to provoke a spontaneous 'gut reaction' to the scam offer. Such scams also abuse people's trust of authority by making a scam look like a legitimate offer from a reputable business or official institution.

The research findings will help to inform the joint OFT and Serious Organised Crime Agency's National Strategy for tackling mass marketed fraud, in particular in developing more effective consumer awareness campaigns to help consumers recognise and resist scams.

The full report 'The psychology of scams: Provoking and committing errors of judgment' can be downloaded at
http://www.oft.gov.uk/shared_oft/reports/consumer_protection/oft1070.pdf

Taskforce to Look for Early Signs of Violence against Women

The Home Secretary and the Health Secretary announced on 13 May 2009 that a new taskforce of health professionals working together to spot early signs of violence and abuse against women and girls will investigate the scale of the problem and ensure victims across the NHS get the support they need.

The consultation identified that victims may talk more freely with health professionals about their fear of violence, even when they are not ready to take the next step to reporting the crime. The initiative ensures that health professionals are prepared to give victims of violence and abuse information about local support services. The taskforce will also look at helping health workers to identify women at risk earlier and how they can offer these women support to reduce repeat victimisation.

The aim of the taskforce is to identify the role and the response of health services in preventing, identifying and supporting women and girls who are victims of violence and abuse, and to make recommendations on what more could be done to meet their needs.

The taskforce will work to:

- Estimate the prevalence and cost to the NHS of all forms violence against women and girls;
- Review the evidence on the health care needs of women and girls who are or have been victims of violence or abuse, and to assess the extent to which their needs are currently met by the NHS;
- Review the role of NHS in local strategies for reducing violence against women and girls - including participation in Multi Agency Risk Assessment Centres, Crime and Disorder Reduction Partnerships, children's trusts arrangements; and the potential for improving data sharing with other local agencies; and
- Establish the case for earlier interventions to prevent violence against women and girls and beneficial impacts on health and other public services.

The full press release can be found at http://press.homeoffice.gov.uk/press-releases/health-taskforce-violence-women

Research into Drinking Habits in the UK Published

On 6 May 2009 the Joseph Rowntree Foundation (JRF) published its report 'Drinking in the UK: An exploration of trends'. The research, carried out by a team from Oxford Brookes University for JRF, looked at existing evidence on drinking trends in the general population over the last 20 to 30 years. A key part of the Government's alcohol harm reduction strategy is to monitor changes in drinking habits over time and to identify what factors are potentially contributing to the rising levels of consumption.

The research gathered evidence to describe alcohol drinking trends in the general population in England, Northern Ireland, Scotland and Wales over the last 20 to 30 years, and to describe how they vary according to age, sex, ethnicity, socio-economic status and geographic region. The review assessed research studies and synthesised findings to evaluate trends. The research also discusses possible explanations for identified trends.

The key points of the report are:

- There has been a slight overall decline in weekly drinking by men and women in Great Britain in recent years, especially amongst adults aged 16-24. But there has been a notable increase in weekly drinking in Northern Ireland since 1986;
- Average units of alcohol consumed by men and women in Great Britain have increased since 1992. For women over 25 this increase has been marked. However, consumption by men aged 16-24 has fallen since 2000;
- Since 1998, there has been a general increase in drinking over recommended weekly limits, especially for women. Among men aged 16-24 drinking over weekly limits has decreased alongside overall consumption since 2000. In Northern Ireland, there has been a clear increase in both genders and especially in adults aged 18-24;
- Binge drinking levels (twice the recommended daily limit) have changed little between 1998 and 2006 in Great Britain. However, this masks an increase of 7% in women, especially those over 25, and a fall amongst men aged 16-24;
- There is some evidence that the proportion of drinkers under 16 has fallen slightly since 1988 in England, Northern Ireland and Scotland, though this is not consistent across boys and girls of different ages. Amongst those who do drink, average units consumed increased markedly between 1990 and 2006, with a larger increase amongst boys aged 11-13. This may have decreased in England in 2007 however future surveys will show if this trend continues; and
- Continued monitoring of women's and under-16s drinking using consistent consumption measures, and greater recruitment from underrepresented groups, such as different ethnic groups, are needed to help interpret future trends.

The full report 'Drinking in the UK: An exploration of trends' can be found at http://www.jrf.org.uk/sites/files/jrf/UK-alcohol-trends-FULL.pdf

New Powers and Mandatory Code to Tackle Irresponsible Alcohol Sales

The Home Secretary launched on 13 May 2009 a consultation paper entitled 'Safe. Sensible. Social. Selling Alcohol Responsibly: A Consultation on the new Code of Practice for Alcohol Retailers in England and Wales' which proposes a new mandatory code for alcohol sales. The proposed mandatory code of practice for pubs, clubs, off-licences and supermarkets is the latest step in attempts to tackle alcohol-related crime and disorder and harm to health which costs the UK up to £13 billion every year.

The proposals take a two-tiered approach with a small number of mandatory conditions for all alcohol retailers, which will ensure consistent good practice alongside new discretionary powers for local authorities to tackle problem premises where irresponsible drinking could put individuals at risk and lead to crime and anti-social behaviour.

Any premises that breach the mandatory code or local discretionary conditions that have been imposed will face a range of possible sanctions including losing their licence, having additional conditions imposed on their licence or, on summary conviction, a maximum £20,000 fine and/or six months imprisonment.

The proposed mandatory code of practice includes:

- Banning promotions such as 'all you can drink for £10', speed drinking competitions and 'dentist's chairs' where alcohol is dispensed directly into the mouth of any customer;
- Ensuring all bars, pubs and clubs offer alcohol in measures so customers have the choice between a single or double measure of spirits and a large or small glass of wine; and
- Requiring alcohol retailers to display information about the alcohol unit content of drinks and for supermarkets and convenience stores, the health impacts of alcohol under powers from the Food Safety Act 1990.

As well as the mandatory conditions there are also a flexible secondary set of conditions that can be imposed by licensing authorities on two or more premises in one area where they are clearly associated with alcohol-related nuisance and disorder. These conditions will enable local councils to take action in areas experiencing particularly high levels of alcohol-related disorder by imposing strict conditions to stop irresponsible promotions or practices and to ensure that premises are responsibly run.

The additional secondary conditions for alcohol crime hotspots include:

- Restricting happy hours or 'pub crawl' promotions at particular times most associated with alcohol-related crime and disorder;
- Banning irresponsible bulk buy promotions where for example a consumer must buy more than one 24 pack of lager to obtain a discount to reduce the risk of people drinking excessive amounts of alcohol at home then going out already drunk and causing crime and disorder;

- Requiring staff to operate a 'Challenge 21' policy where anyone who may look under 21 years of age must produce proof of age to buy alcohol;
- Requiring licensed door staff to conduct checks for weapons and drugs at times most associated with alcohol-related crime and disorder;
- Banning glass containers or ensuring glasses are collected at regular intervals to reduce the risk of violent incidents;
- Ensuring that CCTV is in operation at times most associated with alcohol-related crime and disorder; and
- Display information on the location of public transport links and taxi numbers to help people get home safely.

The consultation invites views from members of the public as well as businesses, industry groups and interested organisations and ends on 5 August 2009.

The consultation document 'Safe. Sensible. Social. Selling Alcohol Responsibly: A Consultation on the new Code of Practice for Alcohol Retailers in England and Wales' is available at http://www.homeoffice.gov.uk/documents/cons-2009-alcohol/cons-2009-alcohol-doc?view=Binary

More information about the proposed Code of Practice for Alcohol Retailers can be found at http://www.homeoffice.gov.uk/documents/cons-2009-alcohol/

New Report Challenges Effectiveness of Government's Policies in Fight Against Drugs

On 18 May 2009 the Centre for Policy Studies published its report 'The Phoney War on Drugs' which finds that the UK has one of the most liberal drugs policies in Europe, combined with one of the worst enforcement and drug use records.

The report argues that despite repeatedly declaring that it is fighting a War on Drugs the Government is fighting a 'Phoney War'. The report supports this assertion with the following data:

- It is currently spending £1.5 billion a year on its drugs policy. Yet enforcement of drugs laws is weak and underfunded, while treatment policy is counter-productive;
- The UK drug problem is the worst in Europe. The UK has one of the highest levels of recreational drug use. There are over ten Problem Drug Users (PDUs) per 1,000 of the adult population, compared to 4.5 in Sweden or 3.2 in the Netherlands;
- The UK has one of the most liberal drug policies in Europe. Both Sweden and the Netherlands (despite popular misconceptions) have a more rigorous approach;

- The UK faces a widening and a deepening crisis. Over the last 10 years, Class A consumption and 'problem drug use' have risen dramatically, drug use has spread to rural areas and the age of children's initiation into drugs has dropped. 41% of 15 year olds, and 11% of 11 year olds, have taken drugs;
- Drug death rates continue to rise and are far higher than the European average. The UK has 47.5 deaths per million population (aged 15 to 64) compared to 22.0 in Sweden and 9.6 in the Netherlands.

Government policy

- The Government in 1997 has developed a 'harm reduction' strategy which aimed to reduce the cost of problem drug use;
- The focus of the strategy was switched from combating all illicit drug use to the problems of PDUs. Cannabis was declassified. Drug misusing youngsters offered support by various agencies. Spending on methadone treatment increased threefold between 2003 and 2008;
- The aim of treatment for drug offenders was no longer abstinence but management of their addiction with the aim of reducing their reoffending. In practice, this meant prescribing methadone;
- Government targets were imposed on new quangos such as the National Treatment Agency in an attempt to increase the numbers of PDUs in treatment (which for most people meant methadone prescription); and
- Of the 200,000 addicts currently in treatment, 6,700 have undergone in-patient treatment (i.e. short detoxification stays), and 4,300 have had residential rehabilitation.

The report suggests that a successful UK drug policy would in contrast:

- Bear down on the illicit use of all drugs, not the harms caused by drug use;
- Abandon the harm reduction approach;
- Focus treatment on abstinence and rehabilitation; and
- Include a tougher, better-funded enforcement programme to reduce the supply of drugs.

The full report 'The Phoney War on Drugs' can be found at http://www.cps.org.uk/cps_catalog/the%20phoney%20war%20on%20drugs.pdf

Case Law

NPIA Digest will be featuring a monthly selection of Lawtel Case Reports to keep readers abreast of relevant developments in the law. Lawtel, part of Sweet & Maxwell, offers instant access to UK and EU case law, legislation and articles coverage, as well as a unique update service. For more information, or a free trial, please visit Lawtel's website at http://www.lawtel.com or call 0800 018 9797.

Defence of Doli Incapax Abolished Entirely By Section 34 Crime and Disorder Act 1998

R v JTB (2009)

HL (Lord Phillips of Worth Matravers, Lord Rodger of Earlsferry, Lord Carswell, Lord Brown of Eaton-under-Heywood, Lord Mance) 29/4/2009

Criminal Law

Causing Children To Engage In Sexual Activity: Children: Doli Incapax: Pepper V Hart Rule: Rebuttable Presumptions: Statutory Interpretation: Effect Of S.34 Crime And Disorder Act 1998 On Defence Of Doli Incapax: S.34 Crime And Disorder Act 1998

The Crime and Disorder Act 1998 s.34 abolished the defence of doli incapax altogether in the case of a child aged between 10 and 14 years.

The appellant (B) appealed against a decision ((2008) EWCA Crim 815, (2008) 3 WLR 923) that the Crime and Disorder Act 1998 s.34 had abolished the defence of doli incapax. B, who was aged 12 at the time of the offences, had been convicted on 12 counts of causing or inciting a child under 13 to engage in sexual activity. He had pleaded guilty after the trial judge ruled that the defence of doli incapax was not available to him. B's appeal against conviction on the ground that the judge's ruling was wrong was unsuccessful. The Court of Appeal determined that the concept of doli incapax as a defence was not separate from the rebuttable presumption which had been abolished under s.34, and concluded that s.34 had therefore abolished the defence of doli incapax. The issue for determination in the instant appeal was whether the effect of s.34 had been to abolish the defence of doli incapax altogether in the case of a child aged between 10 and 14 years, or merely to abolish the presumption that a child had that defence, leaving it open to that child to prove that, at the material time, he was doli incapax.

HELD

When s.34 was read in isolation, its meaning was ambiguous. It, rather unusually, used "doli incapax" in the heading and then, in the section itself, referred to the rebuttable presumption that a child aged 10 or over was "incapable of committing an offence". Consequently, the result of the instant appeal could not be deduced from the language of s.34 alone. It was a

legitimate aid to the interpretation of that section to look at the mischief it was designed to obviate, A v DPP (1992) Crim LR 34 DC and C (A Minor) v DPP (1994) 3 WLR 888 QBD considered. It was also a legitimate aid to have regard to the fact that, although they were different things, the defence of doli incapax and the rebuttable presumption had, in recent times, always coexisted. It had become customary to speak of "the presumption of doli incapax" as embracing both the presumption and the defence, C (A Minor) considered. The clause that was to become s.34 had been debated at some length in Parliament and it was therefore both legitimate and helpful to consider ministerial statements in Parliament under the principle in Pepper v Hart. They showed that an amendment, designed to reverse the presumption rather than abolish it, had twice been moved by Lord Goodhart QC. The proposed amendment was moved on the premise that the clause, as drafted, would abolish not merely the presumption, but the defence of doli incapax. Furthermore, the Consultation Paper and the White Paper that preceded the legislation had made it quite clear what was meant by the abolition of the presumption of doli incapax. Therefore, in using the language of s.34, Parliament intended to abolish both the presumption and the defence, and accordingly the trial judge and the Court of Appeal were correct to hold that s.34 abolished the defence of doli incapax.

APPEAL DISMISSED

'Lawful Object' Means More Than the Absence of a Criminal Purpose

R v DAVID RIDING (2009)

CA (Crim Div) (Hughes LJ (V-P), King J, Judge Radford) 7/4/2009

Criminal Law

Explosives Offences: Intention: Making Explosives: Meaning of "Lawful Object" In S.4 Explosive Substances Act 1883: S.4 Explosive Substances Act 1883

For a person to have a "lawful object" within the meaning of the Explosive Substances Act 1883 s.4 it was not sufficient simply that he did not have a criminal object; rather, he had to have a positive object that was lawful.

The applicant (R) sought leave to appeal against his conviction of making an explosive substance contrary to the Explosive Substances Act 1883 s.4 and, if unsuccessful, sought leave to appeal against sentence. R had made a pipe bomb and had kept it in his home along with two replica handguns, three knives and a knuckleduster. Though it was a viable explosive device he had not attempted to detonate it, and there was no suggestion that the other weapons had ever been used aggressively. His account was that he had made the bomb out of curiosity, following instructions he found on the internet, and that he did not plan to ignite it. The judge directed the jury that R's explanation was not capable of amounting to a "lawful object" within the

meaning of s.4 of the Act and so did not amount to a defence. After his conviction, R, who was 21 years old, had no previous convictions and was about to become a father, was sentenced to 12 months' imprisonment. R submitted that for the purposes of s.4, a lawful object was simply one that was not criminal.

HELD

(1) A lawful object was not simply the absence of criminal purpose. That was not what the Act said. The Act said that if a person was found in possession of, or had made, an explosive substance in circumstances where there was a reasonable suspicion that there was no lawful object, it was an offence unless there was some affirmative object that was lawful. The Act required a positive object that was lawful, Attorney General's Reference No 2 of 1983 78 Cr. App. R 183 applied.

(2) The possession of a home-made bomb required the imposition of a custodial sentence, even for a young man of previous good character. In the instant case, however, it was the fact of imprisonment that was the principal and important punishment. The sentence of 12 months' imprisonment was quashed and was replaced with one of eight months.

APPLICATION GRANTED IN PART; APPEAL ALLOWED IN PART

Where an Offender's Home Represents Proceeds of Crime, a Legitimate Mortgage Raised on it is Also Proceeds of Crime

R v TERRENCE DANIEL AGOMBAR (2009)

CA (Crim Div) (Leveson LJ, Openshaw J, Judge Gilbert QC) 1/5/2009

Criminal Procedure

Benefit From Criminal Conduct: Confiscation Orders: Criminal Lifestyle: Mortgages: Proceeds Of Crime: Matrimonial Home Representing Proceeds Of Crime: Application Of Assumption In Relation To Bank Deposits Coming From Remortgage Of Property: Remortgaging: S.6(4)(A) Proceeds Of Crime Act 2002: S.10 Proceeds Of Crime Act 2002

Where it had been concluded that an offender's matrimonial home represented the proceeds of crime, any money raised by way of mortgage against the property must itself be the proceeds of crime. The mere fact that there was legitimate and bona fide documentation backing the mortgage did not mean that the sum borrowed was any less the proceeds of crime.

The appellant (X) appealed against a confiscation order in the sum of £889,860 imposed on him following his conviction for drug trafficking. It was accepted before the recorder that the case fell within the Proceeds of Crime Act 2002 s.6(4)(a), so that the "criminal lifestyle" assumptions in s.10 applied for the purpose of deciding X's benefit from his general criminal conduct. The recorder concluded that X had failed to satisfy him that any significant part of his income or any money going through his accounts or into any capital assets during the relevant period did not come from his criminal lifestyle. X argued that (1) the burden on him to disprove the assumptions should be more readily satisfied in relation to property held for a considerable time, or traceable back into property which had been held for a considerable time, to reflect the difficulty which any appellant would have in proving the legitimate source of funding; (2) the recorder should not have made the assumptions in relation to three items of property: a sum of £108,828 which, according to a tax return, had been input into his business; his matrimonial home; and certain bank deposits which came from the remortgage of the matrimonial home.

HELD

(1) X's submission ignored the reality that modern life generated a paper trail which could usually be ascertained many years later. Employment details and tax returns would remain available, as would records of a business, however exiguous. Although there might be assets in relation to which documentary or other contemporaneous proof was not available, it was for the court to assess what was available and to reach such conclusions as it believed appropriate.

(2)

(a) There was no doubt that X had provided an accountant with information to complete his tax return, and the court was not, without evidence,

prepared to conclude that the accountant had simply invented figures. The recorder had been entitled to treat the sum of £108,828 as reflecting money that had existed. The assumption therefore applied to it, and the recorder had been entitled to conclude that the funds which passed through the business remained available in some form;

(b) there was a significant amount of material to justify the recorder's failure to accept, on the balance of probability, that the statutory assumption had been rebutted in relation to X's matrimonial home. He had been entitled to decide that the property was part of the benefit of X's crimes;

(c) since the recorder concluded that the matrimonial home had been acquired by, and thus represented, the proceeds of crime, any money raised by way of mortgage must itself be the proceeds of crime. The mere fact that there was legitimate and bona fide documentation backing the mortgage did not mean that the sum borrowed was any less the proceeds of crime. The recorder had been entitled to conclude that the bank deposits represented the benefits of crime.

APPEAL DISMISSED

Warrant to Search Quashed as Police and Magistrates Could Not be Satisfied that Computers of Discredited Expert Witness Would Not Contain Material Subject to Legal Privilege or Special Procedure Material

(1) TERENCE JAMES BATES (2) JOAN BATES v (1) CHIEF CONSTABLE OF AVON & SOMERSET (2) BRISTOL MAGISTRATES' COURT (2009)

DC (Richards LJ, Owen J) 8/5/2009

Criminal Procedure - Criminal Evidence

Expert Witnesses: Legal Professional Privilege: Reasonable Belief: Search And Seizure: Search Warrants: Special Procedure Material: Lawfulness Of Warrant To Search Expert's Premises: S.8 Police And Criminal Evidence Act 1984: S.19 Police And Criminal Evidence Act 1984: S.15(1) Police And Criminal Evidence Act 1984: S.16(8) Police And Criminal Evidence Act 1984: S.50 Criminal Justice And Police Act 2001: S.52 Criminal Justice And Police Act 2001

A warrant issued under the Police and Criminal Evidence Act 1984 s.8 to search the property of a discredited expert, suspected of having conspired to possess indecent images of children, was quashed where the police and magistrates knew that he had been an expert witness over many years and so they could not have been satisfied that there were reasonable grounds for believing that his computers would not contain material subject to legal privilege or special procedure material.

The claimant couple (B and X) claimed an order quashing a search warrant applied for by police officers under the authority of the first defendant chief

constable and granted by the second defendant magistrates' court, and a declaration that the entry and search of their premises and seizures made during the search, were unlawful. B had often given evidence as an expert witness in cases involving computer-based material. He was later convicted of making a false statement and perjury relating to untrue statements he had made about his qualifications. A defendant in criminal proceedings for possession of indecent images of children on his computer later wished to instruct B as an expert but a different expert (M) was instructed. M visited a high-tech crime unit at a police station and introduced B as his assistant who informed an officer that he was M's driver. In a report produced for those proceedings, B referred to having cloned the hard drive which contained indecent images. It was considered whether, because they had apparently been deceptive by not disclosing B's identity and as B had had no right to possession of the case material and should not have been able to examine the drive, B and M should be investigated for conspiracy to possess indecent images of children. A police officer stated that a judge had previously made it clear that B was not to act as a defence witness or have access to the material. The police applied for the warrant to search B and X's premises, apparently to obtain evidence, including the copy of the hard drive, relating to the suspected conspiracy and B's access to the unit. The magistrates granted the warrant under the Police and Criminal Evidence Act 1984 s.8. The police later authorised the extension of the search under s.19 of the 1984 Act apparently after it was reported that a large number of computers and hard discs had been found. B and X submitted that (1) the magistrates could not reasonably have believed that computers at B and X's premises would not contain legally privileged material or special procedure material and there had therefore been no jurisdiction under s.8(1)(d) to issue the warrant; (2) there had been excessive search and seizure, contrary to s.15(1) and s.16(8) of the 1984 Act.

HELD

(1) Given the officers' and magistrates' knowledge of B's role as an expert witness over many years, they could not have been satisfied that there were reasonable grounds for believing that B's computers would not contain material subject to legal privilege or special procedure material. They had not addressed that question. Had they done so, they would have come to the conclusion that B's computers might contain such material. There had been a means by which the police could have examined computers for material relevant to their investigation, namely by exercising the power of seizure in the Criminal Justice and Police Act 2001 s.50 to s.52 but they had not done so. There was therefore no jurisdiction to issue the warrant in the form it was sought and issued. The warrant was quashed and the declaration granted.

(2) If the warrant had not been lawfully issued, it could not have been extended under s.19 of the 1984 Act and so the seizure of the materials, the subject of the purported extension, was also unlawful.

(3) The police officers had proceeded on a false assumption as to B's status. It had not been open to a judge to direct that B was not to act as a defence witness and the judges to whom applications had been made had not purported to do so. The fact that a witness might or might not have

been discredited would go to the weight of the evidence, not to its admissibility.

JUDGMENT FOR CLAIMANTS

Criminal Standard of Proof Applies to Confiscation Proceedings

R v BRIGGS-PRICE (2009)

HL (Lord Phillips of Worth Matravers, Lord Rodger of Earlsferry, Lord Brown of Eaton-under-Heywood, Lord Mance, Lord Neuberger of Abbotsbury) 29/4/2009

Criminal Procedure - Human Rights

Benefit From Criminal Conduct: Confiscation Orders: Drug Trafficking: Presumption Of Innocence: Right To Fair Trial: Standard Of Proof: Consideration Of Benefit From Offence Not Charged: Standard Of Proof To Be Applied: S.4(3) Drug Trafficking Act 1994: Art.6(2) European Convention On Human Rights: S.4(2) Drug Trafficking Act 1994: Art.6(1) European Convention On Human Rights

Although the European Convention on Human Rights 1950 art.6(2) did not apply to confiscation proceedings, the presumption of innocence did. Where the judge was considering whether a convicted person had benefited from a specific drug trafficking offence with which he had not been charged, the criminal standard of proof should be applied.

The appellant (B) appealed against a decision ((2008) EWCA Crim 146) upholding a confiscation order imposed following his conviction for conspiracy to import heroin. The Crown's case was that B had been brought into the conspiracy because he had an existing network for the transportation and distribution of cannabis which could be used for the distribution of heroin, though B was not charged in relation to the distribution of cannabis. It was made clear to the jury that determination of B's guilt in respect of the heroin did not require resolution of the issue regarding cannabis. The confiscation proceedings were conducted on the agreed basis that the assumptions contained in the Drug Trafficking Act 1994 s.4(3) were not to be made. The judge held that the determination of benefit derived by B was not limited to the heroin in respect of which he was convicted, and that there was considerable evidence that B was involved in other offences, including cannabis trafficking. The Court of Appeal held that the judge's approach did not breach B's rights under the European Convention on Human Rights 1950 art.6(2). B submitted that (1) where the court was considering an alleged benefit not deriving from a conviction, the structure of the 1994 Act meant that it could proceed only on the basis of the assumptions in s.4(3) of the Act; (2) the procedure adopted by the judge had breached his rights under art.6(2).

HELD

(Lord Brown dissenting on the applicability of art.6(2) of the Convention and Lords Phillips and Mance dissenting on the standard of proof issue)

(1) Section 4 of the 1994 Act was a tool to be used presumptively but was neither mandatory nor exclusive in assessing whether, and to what extent, a defendant had benefited from drug trafficking. However, it should only be in exceptional cases that the assumptions under s.4(3) were not pressed by the Crown, at least where it was apparent that a defendant had assets. The purpose of s.4(2) and s.4(3) was to require the court to make certain assumptions against a defendant when considering his receipt or retention of proceeds from drug trafficking, and it would be absurd if a defendant could object to a confiscation order on the ground that those assumptions were not made.

(2) For the purposes of art.6(2) of the Convention, a person against whom an application for a confiscation order was made was not accused of any offence other than the trigger offence of which he had been convicted, HM Advocate v McIntosh (Robert) (No1) (2001) UKPC D 1, (2003) 1 AC 1078, Phillips v United Kingdom (41087/98) 11 BHRC 280 ECHR and Van Offeren v Netherlands (19581/04) Unreported July 5, 2005 applied. Article 6(2) was not therefore engaged when the court was determining, as part of the sentencing procedure for the trigger offence, whether B had benefited from drug trafficking, other than the drug trafficking comprising the trigger offence. That said, it was important to note that, even though art.6(2) did not apply to confiscation proceedings, the presumption of innocence did. That was because it was implied into art.6(1), which did, of course, apply to such proceedings. In this case, there was no question of the judge proceeding on a presumption that B had been involved in the cannabis network. Indeed, the judge plainly thought that B's involvement had been proved to the criminal standard, beyond a reasonable doubt. On any view, therefore, the presumption of innocence in art.6(1) was fully respected in the confiscation proceedings, Geerings v Netherlands (30810/03) (2008) 46 EHRR 49 ECHR considered.

(3) Where the judge was considering whether a convicted person had benefited from a specific drug trafficking offence with which he had not been charged, art.6 required that the criminal, rather than the civil, standard of proof should be applied. If a presumption of innocence was implied into art.6(1), then it, too, had to require that the person be proved guilty according to law. In the context of a criminal trial, the standard of proof, according to domestic law, was beyond reasonable doubt. Indeed, if that were not the position, the Crown could ask the court to make a confiscation order on the basis of an alleged benefit from a specific offence of which the defendant would have been acquitted if he had been prosecuted for it.

(4) (Per Lord Brown) On close analysis, Geerings showed that art.6(2) did apply in circumstances such as the instant. However, the requirements of art.6(2) were satisfied in this case. (5) (Per Lord Mance) The standard of proof of every aspect of benefit by drug trafficking was the civil standard, whether such benefit was established by direct or indirect evidence.

APPEAL DISMISSED

Section 22 PACE Did Not Confer a Power to Retain Property Once a Decision Not to Prosecute Had Been Taken

(1) SCOPELIGHT LTD (2) ANTON BENJAMIN VICKERMAN (3) KELLY-ANNE VICKERMAN v (1) CHIEF CONSTABLE OF NORTHUMBRIA (2) FEDERATION AGAINST COPYRIGHT THEFT LTD (2009)

QBD (Sharp J) 7/5/2009

Criminal Procedure - Police

Police Powers And Duties: Private Prosecutions: Retention: Seized Property: Decision Not To Prosecute: Police Retention Of Seized Property Pending Private Prosecution: S.22 Police And Criminal Evidence Act 1984: S.22(2)(A) Police And Criminal Evidence Act 1984

The police had no power to retain property under the Police and Criminal Evidence Act 1984 s.22 against the wishes of the person otherwise entitled to possession of it once a decision not to prosecute had been taken so that a private body could consider whether to bring a prosecution, or whilst that private prosecution was being brought.

The court was required to determine as a preliminary issue the power of the police to retain property lawfully seized once a decision had been made by the CPS not to bring charges against the owner whilst a private body considered bringing, or brought, a private prosecution. The claimants (S) were a husband and wife and the company they ran, which operated a video search engine website. The website was not a file sharing website, but provided thousands of links to third party websites which hosted videos. Following a complaint by the second defendant (F), which was a private commercial organisation representing the interests of the audio-visual industry, alleging that S's website was hosting two third party file sharing websites, the first defendant police force (P) took action against S. P was granted a warrant to enter S's premises on the basis that there were reasonable grounds for believing that offences of conspiracy to defraud and money laundering had been committed, and internet server equipment and associated documents were seized. That property was later released by P into the possession of F for the purposes of P's investigation. The CPS subsequently decided not to bring a prosecution and S requested the return of the seized property. P informed them that F was not going to release the seized property because it was considering whether to bring a private prosecution. S issued proceedings against P and F claiming delivery up of the seized property and damages for conversion. F then began a private prosecution for, inter alia, copyright offences, which was still proceeding. In S's action, the preliminary issue concerned whether P was entitled to retain the seized property under the Police and Criminal Evidence Act 1984 s.22 once the CPS had decided not to prosecute, for the purpose of

assisting a private prosecution by F. S contended that P's power to retain their property under s.22 ended when the CPS decided not to prosecute. P and F submitted that retention of the property was lawful under s.22(2)(a) because it was being retained for use as evidence at a trial and forensic investigation for an offence, namely that being prosecuted by F.

HELD

The power of the police under the Act to seize, use and retain property was conferred on them for the better performance of their public functions and for law enforcement purposes. Public law enforcement purposes did not include the seizure, use or retention by the police of private property to assist private interests. It was not within the contemplation of the legislature that private property, once seized by the police, could be used by a private body for its own purposes (including considering whether it should bring a private prosecution or bringing a private prosecution). Whilst the right of private bodies or individuals to bring a private prosecution was well established, it did not carry with it the automatic right to override private property rights in the absence of an order of the court, nor did it carry with it the powers conferred by Parliament by the police. Accordingly, the police had no power to retain property lawfully seized under the Act against the wishes of the person otherwise entitled to possession of it once a decision not to prosecute had been taken, so that a private body could consider whether to bring a prosecution, or whilst that private prosecution was being brought.

PRELIMINARY ISSUE DETERMINED IN FAVOUR OF CLAIMANTS

Taking And Retaining Photographs Interfered With Subject's Right To Private Life And Was Not Proportionate

WOOD v COMMISSIONER OF POLICE OF THE METROPOLIS (2009)

CA (Civ Div) (Laws LJ, Dyson LJ, Lord Collins) 21/5/2009

Human Rights - Police

Arms Trade: Legitimate Aim: Photographs: Police Powers And Duties: Proportionality: Retention: Right To Respect For Private And Family Life: Taking And Retention Of Photographs By Police: Interference With Right To Private Life: Justifying Interference As Proportionate: Campaign Against Arms Trade: Caat: Art.8 European Convention On Human Rights

The taking and retention of photographs by the police of a person connected with a group opposed to the arms trade as he left the annual general meeting of a company that organised a trade fair for the arms industry was an interference with that person's right to respect for his private life under the European Convention on Human Rights 1950 art.8(1) and the police failed to justify that interference as proportionate under art.8(2).

The appellant (W) appealed against a decision ((2008) EWHC 1105 (Admin), (2008) HRLR 34) that the taking and retention of photographs of him by the police was not a breach of his rights under the European Convention on Human Rights 1950 art.8. W was a media co-ordinator for an organisation known as Campaign against Arms Trade (CAAT). He had no criminal convictions and had never been arrested. W attended as a shareholder the annual general meeting of a company whose subsidiary organised a trade fair for the arms industry. W asked a question at the meeting and then left. He was photographed by the police on the street outside. He and other members of CAAT were spoken to by the police. W declined to identify himself or answer questions about the meeting. The police took the photographs in order to be able to identify offenders if offences were committed or had been committed at the meeting and/or if offences were committed later at the trade fair. The police kept a database of images for intelligence purposes but W's image was not added to it. The judge held that there was no interference with W's rights under art.8(1) by the taking and retention of the photographs, and that if there was an interference with W's rights under art.8(1) it was in accordance with the law and proportionate for the purposes of art.8(2). The police submitted that art.8(1) was not engaged by the mere taking and retention of the photographs because the circumstances did not elevate the case to the necessary level of seriousness, and because the photographs had been taken in a public street where people could take photographs at any time and there was no expectation that W would not be photographed. W submitted that art.8 was engaged and that the police action was not in accordance with the law for the purposes of art.8(2) because any legal justification for it was not sufficiently clear and precise and that the police action was disproportionate to the aim in view.

HELD

(Laws LJ dissenting on the issue of proportionality)

(1) Article 8 was engaged in the circumstances of the case. The bare act of taking a photograph in a public place was not of itself capable of engaging art.8 but the taking in the instant case had to be considered in context. On the particular facts, the police action, unexplained at the time it happened and carrying as it did the implication that the images would be kept and used, was a sufficient intrusion by the state into the individual's own space and integrity as to amount to a prima facie violation of art.8(1). It attained a sufficient level of seriousness and in the circumstances W enjoyed a reasonable expectation that his privacy would not be thus invaded, S v United Kingdom (30562/04) (2009) 48 EHRR 50 ECHR (Grand Chamber) considered.

(2) The taking and retention of photographs of W were in pursuit of a legitimate aim, namely the prevention of disorder or crime and in the interests of public safety or the protection of the rights and freedoms of others.

(3) The interference with W's art.8 right to a private life constituted by the taking and retention of the photographs was not justified pursuant to art.8(2). The police's justification for retaining the photographs for more than a few days after the meeting did not bear scrutiny. Once it had become clear that W had not committed any offence at the meeting there was no reasonable basis for fearing that, if he went to the trade fair, he might commit an offence there. It was for the police to justify as proportionate the interference with W's art.8 rights and they had failed to do so.

(4) It was not necessary to decide whether the interference was "in accordance with the law".

APPEAL ALLOWED

SI 2009/1033 The Crime and Disorder Act 1998 (Responsible Authorities) Order 2009

In force **21 May**. This Order, made under the powers conferred by section 5(1A) of the Crime and Disorder Act 1998, has the effect that three crime and disorder partnerships (those in the areas of Gedling Borough Council, Rushcliffe Borough Council and Broxtowe Borough Council) are to be combined to form the South Nottinghamshire crime and disorder partnership. This partnership will perform the functions relating to the formulation and implementation of strategies for the reduction of crime and disorder and the misuse of drugs, alcohol and other substances in the areas, as required by sections 6 and 7 of the Crime and Disorder Act 1998.

SI 2009/1256 The Counter-Terrorism Act 2008 (Commencement No 3) Order 2009

In force **18 June**. This Order brings into force the following provisions of the Counter-Terrorism Act 2008 ('the Act'):

- Section 28 (jurisdiction to try offences committed in the UK);
- Sections 30 to 33 (sentencing), together with Schedule 2 (offences where terrorist connection to be considered);
- Sections 34 to 39 (forfeiture), together with Schedule 3 (forfeiture: consequential amendments);
- Section 99, in so far as it relates to the entries in Part 3 (forfeiture) of Schedule 9 (repeals and revocations);
- Part 3 of Schedule 9.

Section 28 of the Act provides that there is UK-wide jurisdiction for specified terrorist offences; regardless of where in the UK the offence was committed, removing the need for separate trials for connected offences occurring in different jurisdictions of the UK. The offences to which section 28 applies include all those within the 2000 and 2006 Terrorism Acts, other than those with an extra-territorial element or those without UK-wide extent, the offence under section 113 of the Anti-Terrorism, Crime and Security Act 2001, and certain ancillary offences. The offences to which the section applies can be amended by order if it appears necessary to the Secretary of State to do so for the purpose of dealing with terrorism.

Sections 30 to 33 of the Act deal with sentencing offences with a terrorist connection. Section 30 applies to a court in England and Wales considering the seriousness of an offence listed in Schedule 2 for the purposes of sentencing. In considering the seriousness, the court must determine, when it appears to the court that the offence may have a terrorist connection, whether there is such a connection. If there is, the court must treat that fact as an aggravating factor, and must state in open court that the offence was so aggravated. Sections 31 and 32 make similar provision for Scotland and the armed forces. Section 33 enables the list of offences in Schedule 2 to be amended by order of the Secretary of State.

Sections 34 to 39 amend the Terrorism Act 2000 to provide for the forfeiture of property in relation to terrorist property offences, other terrorism offences

and offences with a terrorist connection, and enable the proceeds of the forfeiture to be used to compensate victims. Section 99 makes a number of repeals and revocations to other legislation.