Coroners and Justice Bill

Briefing for Second Reading
House of Lords

May 2009

For further information on Part 5 contact:
Jodie Blackstock, Senior Legal Officer (EU: Justice and Home Affairs)
E-mail: jblackstock@justice.org.uk Tel: 020 7762 6436
For further information on the rest of the Bill contact
Sally Ireland, Senior Legal Officer (Criminal Justice)
E-mail: sireland@justice.org.uk Tel: 020 7762 6414

JUSTICE, 59 Carter Lane, London EC4V 5AQ Tel: 020 7329 5100
Fax: 020 7329 5055 E-mail: admin@justice.org.uk Website: www.justice.org.uk

Introduction

1. JUSTICE is a British-based human rights and law reform organisation, whose mission is to advance justice, human rights and the rule of law. It is also the British section of the International Commission of Jurists.

2. This briefing deals with the Coroners and Justice Bill with the exception of clauses 11 and 12 (re secret inquests) which are the subject of a joint briefing with INQUEST and Liberty which has been circulated to Peers. The Coroners and Justice Bill is a large 'portmanteu' Bill and contains extremely important changes to the law in several of its Parts. This briefing is intended to highlight our main concerns about its provisions for the Second Reading stage; where we have not commented upon a certain provision in the Bill here, that should not be taken as an endorsement of its contents.

3. In summary, our concerns regarding the Bill as brought to the Lords include:

   - **the restriction of public comment by inquest jurors and coroners on matters of legitimate public concern;**
   - **the holding of inquests without juries in relation to some deaths involving public authorities;**
   - **the need for appropriate provision for legal representation of family members at inquests;**
   - **the implementation of new partial defences to murder in the absence of wholesale reform of the law of homicide;**
   - **the failure of the Bill to deal with consensual mercy killing and assisted suicide of the seriously ill who wish to end their lives but are unable to do so without assistance;**
   - **overbroad criteria for the use of anonymous witnesses in criminal trials;**
   - **the availability of special measures in cases where they would not maximise the quality of the witness's evidence;**
   - **the use of intermediaries for mentally vulnerable defendants who are in fact unable to participate effectively in their trial;**
   - **amendments to bail legislation in murder cases which are on their face incompatible with Article 5 European Convention on Human Rights (ECHR);**

- **The implementation of an EU Council Framework Decision which requires convictions from across the EU to be considered in criminal proceedings along with domestic convictions, but does not propose any mechanism by which to do so.**

Part 1: Coroners etc

Clause 5 – Matters to be ascertained; Sch 4, para 6

4. Sub-clause 5(3) would prevent a senior coroner or an inquest jury from expressing *any opinion on any matter* other than the basic details of who the person was; how, when, and where he came by his death; any registrable particulars of the death; and for inquests engaging Article 2 of the European Convention on Human Rights (ECHR), in what circumstances he came by his death. This is subject to the power of the senior coroner under paragraph 6 of Schedule 4 to make a report to a person who may have power to take action to prevent further deaths from being caused. However, we are very concerned that sub-clause 5(3) will prevent the senior coroner and the jury from making any public comment – and indeed in the jury's case any comment whatever – upon the facts which have been put before them.

5. Inquests will often raise matters of cogent public interest: a neglect of consumer or workplace safety by a well-known company; a failure in a duty of care by a public authority; actions and errors leading to a person meeting their death in custody or while serving in the armed forces or while in contact with the police. Jury inquests in particular, if restricted to the circumstances outlined in clause 7 (regarding which, see below), will by their nature concern these issues. The 'muzzling' of the jury and coroner in these circumstances will often, we believe, be contrary to the public interest and may violate Article 10 ECHR. We therefore suggest here the removal of sub-clause 5(3) from the Bill.

6. Further, we are concerned that the provision for the coroner to make reports in order to avert the risk of future deaths under paragraph 6 of Schedule 4 is considerably less stringent than the corresponding requirements in the Coroners (Amendment) Rules 2008. In particular, there is no longer provision regarding publication of the report or response, or any time limit for a response or requirements as to what it must contain. The publication of rule 43 reports by coroners – the equivalent recommendations under the current Coroners Rules – has on previous occasions provided powerful ammunition to those pressing for change in public services; for example, in relation to deaths in custody. We would therefore welcome ministerial assurance that any new coroners' rules will contain powers of publication for reports and requirements as to the timing and contents of responses similar to those in the Coroners (Amendment)

Rules 2008. The 2008 Amendment Rules also contain provision for the publication of responses, which we further recommend be considered.

Clause 7 – Whether jury required

7. As in a Crown Court criminal trial or a civil action against the police, an inquest jury is a powerful guarantee of independence, transparency and democratic input in the administration of justice. We believe that in addition to the circumstances set out in clause 7(2), an inquest should take place with a jury wherever the senior coroner has reason to suspect that the death resulted in whole or in part from the act or omission of a public authority or an entity which falls to be considered as a public authority for the purposes of the Human Rights Act 1998. We believe that this should be guaranteed in the legislation. Further, while the number of jurors may vary we believe that rules should provide that the more significant the public interest in the inquest, the larger the jury should be within the band of six to nine people. Larger juries are, we believe, an important safeguard against erroneous verdicts.

Suggested new clause – representation of family members

8. We are extremely concerned that current legal aid provision at inquests is insufficient to ensure appropriate representation of family members. We believe that at the least, family members should be represented whenever the inquest would take place with a jury under clause 7 or there is reason to suspect that the death resulted in whole or in part from the act or omission of a public authority. In inquests engaging Article 2 European Convention on Human Rights (ECHR) legal representation will help to ensure that the next of kin can participate effectively in the investigation into the death.

Part 2: Criminal Offences

9. As respondents to both the Law Commission's and the Ministry of Justice's consultations on the reform of homicide law, we have repeatedly stated our concern that the law of homicide is need of *wholesale* reform. The continued existence of the mandatory life sentence and the breadth of the offence of murder (in particular, the 'serious harm' rule) necessitate the 'partial defences' - often unsatisfactory legal gateways, existing nowhere else in our criminal law, through which defendants in sympathetic cases can escape mandatory terms.

Clauses 42 and 43 – Persons suffering from diminished responsibility

10. We are concerned that in the new formulations proposed in this Chapter there may be deserving cases where no partial defence can be made out. In particular, a consensual mercy killer will be guilty of murder unless, under the new definition of 'diminished responsibility', he can prove that he is suffering from a 'recognised medical condition' such as clinical depression. We recommend that the question of consensual mercy killing in the context of homicide law be the subject of specific consideration by Parliament; recent litigation such as the case of *Debbie Purdy*[1] has highlighted the need for Parliamentary consideration of this issue.

11. We are also extremely concerned at the impact on child defendants of the government's failure to include 'developmental immaturity' as a gateway to the partial defence of diminished responsibility. The Law Commission report *Murder, Manslaughter and Infanticide*[2] recommended that child defendants under the age of 18 should be able to plead diminished responsibility on the basis that his or her capacity to understand the nature of his or her conduct; form a rational judgment; or control him or herself, was substantially impaired by an abnormality of mental functioning arising from developmental immaturity alone, or in combination with a recognised medical condition, which provided an explanation for his or her conduct in carrying out or taking part in the killing.

12. We support the Law Commission's recommendation, which was proferred following extensive consultation and expert consideration. Without the inclusion of developmental immaturity, an adult with a medical condition (such as a learning

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[1] [2009] EWCA Civ 92

disability) that leads them to function like a 10 or 11 year old child can access the diminished responsibility defence; but a 10 or 11 year old child with the same degree of functionality cannot do so. The government have pointed out that children with recognised medical conditions such as autism will be able to take advantage of the new partial defence. However, there are many children without recognised medical conditions who will fail to appreciate the significance of their actions (in particular, the fact that they risk causing death) or maintain their self-control because of their youth and immaturity. The 'serious harm rule' means that death does not have to be intended or even foreseen for a murder conviction to result. This is particularly problematic in the case of children and mentally vulnerable adults – but while vulnerable adults can plead diminished responsibility under the government's formulation, ordinary young children cannot.

13. We remind Peers of Article 40 of the UN Convention on the Rights of the Child – the right of *'every child alleged as, or accused of, or recognised as having infringed the penal law … to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age; to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law**, taking into account his or her age'.***[3]

14. The omission of developmental immaturity from clause 42 is particularly serious in the context of the abolition of *doli incapax*,[4] which means that any child over the age of 10 is deemed to understand the significance of their actions unless they can make out a defence of insanity, or in the case of murder, a partial defence of diminished responsibility.

Clause 44 – Partial defence to murder: loss of control
Clause 45 – Meaning of "qualifying trigger"

15. In relation to 'loss of self-control', we are concerned that where a person acting in self-defence or defence of another person (including for example an armed police officer) uses a degree of force that a jury judges to be unreasonable, resulting in a person's death, he will be guilty of murder under these provisions unless he lost his self-control. This is of particular concern in the light of the maintenance of the

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[2] LC304, 29 November 2006.
[3] Emphasis added.
[4] Recently confirmed by the Law Lords in *R v JTB* [2009] UKHL 20.

‘serious harm’ rule. Further, the retention of the requirement of ‘loss of self-control’ may continue to prejudice women who kill abusive husbands or partners due to ongoing abuse and fear.

16. We are further concerned by the ‘words and conduct’ element of the loss of self-control partial defence: defendants with unpopular views or unusual lifestyles may not be found by a jury to have had a ‘justifiable sense of being seriously wronged’. Further, in the context of the retention of the serious harm rule and the mandatory life sentence, (ie since the defendant need not have intended to kill), there may be other cases which will fall outside the new statutory definition but where discretion in sentencing would be appropriate. For example, where an exhausted but usually loving parent ‘snaps’ and assaults a crying child intending to cause serious harm but with no intention to kill, a manslaughter verdict would not be available under the Bill’s provisions.[5] We emphasise that we do not seek to condone such conduct, which would rightly remain a serious criminal offence.

Clauses 49 and 50 – Encouraging or assisting suicide

17. The new clauses relating to encouraging or assisting suicide fail to deal with the situation highlighted by recent cases reported in the media: that of a seriously ill person who wishes to end his or her life but is physically unable to do so without assistance and therefore will require the aid of a partner, relative or friend to do so. We are concerned at the issues raised by these cases - in particular, while suicide itself has been decriminalised, those who due to physical incapacitation cannot end their own lives without assistance are denied the opportunity to do so.

18. The case of Daniel James and other recent cases where UK residents have travelled to Switzerland to use the Dignitas facility in order to end their lives have highlighted the need for clarification of the law in this area. While the CPS decided that it was against the public interest to prosecute Daniel James’s parents, they made clear that this decision was case-specific and not binding on future potential prosecutions. We are concerned that the lack of legal resolution in this area may lead to added distress for people considering ending their lives in these circumstances and their families, and may lead those with degenerative diseases to take their own lives sooner than they would otherwise wish to in order to avoid risking prosecution of relatives, or

[5] Cf *R v Doughty* (Stephen Clifford) (1986) 83 Cr App R 319; (1986) Crim LR 625.

feeling unable to do so at all and facing the fear and pain of dying from the unbearable effects of their illness. While aware of the need for sufficient safeguards to avoid abuse of such a defence we recommend a limited defence in circumstances where a person is physically unable to commit suicide without assistance but remains mentally competent and has made clear that he or she wishes to end his or her life.

Part 3 – Criminal Evidence, Investigations and Procedure

Clauses 62-72 – Anonymity in investigations

19. The concept of the police informant, who can be protected by public interest immunity proceedings, is well known, and therefore we question why this different procedure is necessary – in particular, since it covers only a narrow category of cases.

20. Further, we are concerned at the effect of such a formal order upon subsequent judicial proceedings; if a defendant is charged and the subject of such an order provides information or evidence that may be relevant to a bail application or to the criminal case (as evidence or unused material), what will be the procedure? We will be concerned to ensure during the passage of the Bill that proper safeguards will be in place to protect procedural rights under Articles 5 and 6 ECHR. We also seek assurances that a person made the subject of an investigative anonymity order would not be subject to the unfair use of self-incriminatory statements or material provided by them to police in any future proceedings against them.

Clauses 73-84 – Anonymity of witnesses

21. The right of a defendant to know the identity of a witness against him in criminal proceedings is both a common law principle and a constituent part of the right to a fair trial under Article 6 ECHR, which provides inter alia for the minimum right of a defendant 'to examine or have examined witnesses against him' in criminal cases. The Court of Appeal has made clear in the recent case of *R v Mayers* in relation to the Criminal Evidence (Witness Anonymity) Act 2008 (which this Bill would supplant), that:[6]

> *Notwithstanding the abolition of the common law rules, it is abundantly clear from the provisions of the Act as a whole that, save in the exceptional circumstances permitted by the Act, the ancient principle that the defendant is entitled to know the identity of witnesses who incriminate him is maintained.*

22. While it may be necessary for a witness to be anonymised in exceptional circumstances, these should be narrowly defined. In particular, we do not believe that

[6] [2008] EWCA Crim 1416, para 5.

the risk of ‘any serious damage to property’ is sufficient to displace the primary right of the accused to a fair trial and the public interest in the fair and transparent administration of justice. The only legitimate circumstances, in our view, where a witness should be even *considered* for anonymity are in order to prevent a risk of death or serious physical harm to the witness or another person, or where the witness is an undercover officer (police, security services, etc). The criterion of ‘real harm to the public interest’ in sub-clause 71(3) is in our view too broad, and should be replaced by a criterion referring to undercover officers.

Clauses 85-92 – Vulnerable and intimidated witnesses

23. Special measures for witnesses often create a difference between the way that one or more prosecution witnesses, and other witnesses (often including the defendant) give evidence in a case, affecting the principle of equality of arms; they may also, despite any directions given, prejudice a tribunal of fact against the defendant in some cases. They should therefore only be used, apart from any other appropriate criteria (such as age or vulnerability of the witness), where they are necessary and effective to maximise the quality of the witness’s evidence.

24. We are therefore strongly opposed to clause 86 which provides that in relation to listed weapons offences all witnesses – including professional witnesses such as police officers and experts - will be eligible for special measures under s17 Youth Justice and Criminal Evidence Act 1999 unless they inform the court of their wish not to be so eligible. This is in our view incompatible with Article 6 ECHR, as well as being contrary to common sense. To allow witnesses to be eligible for special measures unnecessarily may indeed compromise the quality of their evidence and will be prejudicial to the defendant. We recommend strongly that this provision be removed from the Bill. We are also disturbed by the provision in clause 86 that the list of offences to which the clause applies should be amendable by the Secretary of State via the negative resolution procedure.

25. In relation to child witnesses, the effect of clause 87 is that where a child does not wish to give evidence via video recording plus video link, the presumption will be that they should be screened. However, in our view it should always be demonstrated that the special measures concerned are necessary and effective to maximise the quality of the witness’s evidence. It is particularly important that where the defendant is also a child or young person, his trial is not prejudiced through the use of special

measures for prosecution witnesses which are not available to him when he gives evidence. This is particularly important bearing in mind that the defendant in a case could be, say, 11 years old but the witness given special measures could be 17.

26. We also have serious concerns about clause 91, which provides for 'intermediaries' to be used to assist mentally vulnerable defendants to give evidence in court. The right to participate effectively in criminal proceedings is a constituent part of the right to a fair trial under Article 6 ECHR. As the ECtHR said in *S.C. v United Kingdom*:[7]

> *… "effective participation" in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence…*

27. If the defendant is unable to do all these things then the mere presence of an intermediary when he gives his evidence cannot 'cure' this defect. We also believe that there are inherent dangers in the use of an intermediary when a defendant gives evidence; the intermediary may not be independent of the defendant or the case (for example, a parent or carer) and may, whether independent or not, misinterpret the defendant's speech and that of those asking him questions. If an individual is mentally compromised to the extent that they cannot understand and answer questions in simple language from a lawyer or judge, then we believe that they will not be able to participate effectively in their trial and should therefore be judged unfit to plead and/or diverted from the criminal justice system.

Clauses 93-97 – Live links

28. These provisions will extend the circumstances in which criminal proceedings can take place via live link (for the defendant). This is an ongoing trend in recent

[7] App No. 60958/00, judgment final 10/11/2004, para 29.

legislation, against which we counsel caution. The physical presence of the accused in court is a very important safeguard not only against physical ill treatment of persons arrested and detained, but also against police and prosecutorial oppression and misconduct in the investigation.[8] We therefore believe that live link hearings should take place only with the defendant's informed consent.

Clauses 101-102 – Bail

29. We do not believe that there should be specific rules for bail in murder cases, since although murder is a charge of the utmost seriousness, the circumstances of a murder charge can vary widely. Further, there are other offences that can be committed at an equal degree of seriousness – for example, certain terrorist offences. The seriousness of the charge, while it may be a relevant factor in relation to bail, cannot alone determine whether bail can be granted.

30. Furthermore, the right to liberty, as guaranteed under Article 5 ECHR, is not abrogated because a person has been charged with murder. There must still be 'relevant and sufficient' reasons for bail to be withheld.[9] We believe that this clause would either have to be read down under s3 Human Rights Act 1998 (like s25 of the Criminal Justice and Public Order Act 1994) or be judged incompatible with Article 5 ECHR.

31. Article 5 provides the right for a detained person to be brought before a judicial authority within a reasonable time and in our view, an extra delay of 48 hours before the detainee can be released simply because of the fact of the murder charge is not justifiable. If the Crown Court is to make the bail decision at first instance then the jurisdictional rules should be changed so that the person is brought before the Crown Court when they would otherwise have been brought before the magistrates' court. There is also no good reason why the regime in clause 102 should apply to murder but not to other equally serious cases.

[8] Cf European Committee for the Prevention of Torture report on 2007 visit to the UK, CPT/Inf (2008) 27, paras 8-10.

Part 5 – Miscellaneous Criminal Justice Provisions

Clause 128 and Schedule 15: Treatment of convictions in other member States etc

32. The Schedule amends domestic legislation pertaining to the consideration of criminal convictions pre-trial (bail), during trial (character) and post conviction (sentence) by imposing a mandatory requirement upon a tribunal to include convictions from other Member States in their deliberations.

33. The purpose of the amendments is to transpose the *Council Framework Decision of 24 July 2008 (2008/675/JHA) on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings*[10] ("the Framework Decision") into UK law. The Proposal for the Framework Decision explained[11] that currently there is no consensus between Member States as to how convictions from other Member States are considered, which is contrary to the mutual recognition principle and puts the citizens of Europe on an unequal footing.

34. The Proposal follows a White Paper[12] which sets out that the current system under Articles 13 and 22 of the 1959 *European Convention on Mutual Assistance in Criminal Matters*[13] has three problem areas: the difficulty in rapidly identifying the Member States in which individuals have already been convicted; the difficulty in obtaining information quickly and by a simple procedure; and the difficulty in understanding the information provided. To this end, two stages were proposed, the first in which recognition of convictions is established, and the second where the means by which the convictions can be obtained is created. Both have resulted in framework decisions setting out the principles to be incorporated into domestic law.

35. Council Framework Decision on the organization and content of the exchange of information extracted from the criminal record between Member States was adopted in the Justice and Home Affairs Council on the 26th February 2009[14] and must be

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[9] *Wernhoff v Germany* (1979) 1 EHRR 55.

[10] O.J. L 220, 15.8.2008, P. 32

[11] Proposal for a Council Framework Decision on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings Brussels, 17.03.2005 COM(2005)91 final, p 2.

[12] White Paper on exchanges of information on convictions and the effect of such convictions in the European Union, COM(2005) 10 final.

[13] And supplemented by Article 4 of the Additional Protocol dated 17 March 1978

[14] PRES/09/51

implement by 26th February 2012. Article 1 defines the purpose of this second framework decision as being:

(a) to define the ways in which a Member State where a conviction is handed down against a national of another Member State (the "convicting Member State") transmits the information on such a conviction to the Member State of the convicted person's nationality (the "Member State of the person's nationality");
(b) to define storage obligations for the Member State of the person's nationality and to specify the methods to be followed when replying to a request for information extracted from criminal records;
(c) to lay down the framework for a computerised system of exchange of information on convictions between Member States to be built and developed on the basis of this Framework Decision and the subsequent decision referred to in Article 11(4).

36. Without a comprehensive and regulated system in place, there is no way of *effectively* recognising convictions from other Member States. The second Framework Decision attempts to achieve this and produces a pro forma by which to understand the non-domestic conviction, but is not incorporated into the Bill.

37. We consider that the following non-exhaustive examples highlight the practical problems tribunals will face in giving effect to the amendments as they currently stand whilst continuing to fulfill their obligations to act in the interests of justice:

- Proposed section 73(2)(c) provides that a certificate, signed by the proper officer of the court where the conviction took place, giving details of the offence, conviction, and sentence will be proof of conviction. This presumes that the type of offence, conviction and sentence are equivalent to that of the UK. In the context of 27 countries with different cultural and historical premises upon which their punitive systems are based this will not be the case.

- Where a particular type of offence or repeat offending results in a particular sentence under UK law, the non-UK conviction would have a significant bearing upon the outcome.

- No mechanism is included in the Bill to indicate how a tribunal might take account of the information received to conclude a decision on bail, character, or sentence.

- There are no provisions by which explanatory information as to the penal or sentencing system(s) in the other Member State(s) may be requested by the tribunal, upon which an attempt to equate the conviction(s) with the UK counterpart can be made.

- No procedure is constructed in the Bill to deal with *obtaining* those foreign convictions. Should adjournments be granted where full convictions are not to hand or are not understood, thereby extending the period during which a Defendant is remanded in custody?

- No mechanism is proposed to consider the trial procedure that gave rise to the conviction(s) and whether that should have an effect on its application. For example, how is the tribunal to know whether the conviction was rendered in absentia, and whether that complies with UK law? Irrespective of whether the defendant was present at the trial, was evidence accepted that would be excluded in a UK case? Did the trial comply with UK standards with respect to representation and/or interpretation?

- No consideration is given as to what happens to the information once it has been provided. Is there an obligation upon the UK to retain that information and incorporate it into the PNC on that person? How does that accord with data protection considerations? If not incorporated, what measures are to be taken to explain why the domestic sentence was imposed?

- The Framework Decision requires the provision of details of convictions rendered in the UK to other Member States. No proposal deals with how this would be effected.

- Spent convictions are not protected in the Framework Decision. The Select Committee on European Scrutiny in its Second Report of 2005 whilst considering the Framework Decision raised this issue. The then Parliamentary Under-Secretary of State at the Home Office (Andrew Burnham) in his Explanatory Memorandum of 23 May 2005 explained that a spent conviction was not a concept commonly found in other Member States and whilst acting within the atmosphere of mutual recognition,

[W]e would wish to ensure that UK nationals do not receive unfair treatment on account of spent convictions. It may be that we will seek to include a reference to spent convictions not being taken into account by an overseas court, if that spent conviction would not be taken into account by a United Kingdom court.[15]

38. This was not achieved and the result is that each Member State is to take account of convictions in accordance with their national law. It follows therefore that where a conviction is spent for the purposes of criminal proceedings in the UK and would not be relied upon in a UK court, the conviction may be used in another Member State to impose more onerous conditions upon a Defendant's treatment. There is no proposal to prevent this.

39. Article 11 of the second Framework Decision states that a standardised format shall be adopted for the transmission of convictions. To this end, *Proposal for a Council Decision on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2008/XX/JHA*[16], envisages the creation of a system based on decentralised information technology, where criminal records data will be stored solely in databases operated by Member States and are transferable. A uniform format for transmission is proposed which adopts a numerical code to identify each crime and method of involvement. A Committee is envisaged to oversee the technical development of the programme. Pilot projects are underway as to the use of such a system. The Justice and Home Affairs Council adopted this Decision on 6th April 2009.

40. The European Data Protection Supervisor, Peter Hustinx, offered an opinion on the Proposal on 16th September 2008[17] in which he voiced the following concerns, with which we concur:

The processing of personal data relating to criminal convictions is of a sensitive nature, and the confidentiality and integrity of criminal records data sent to other Member States must be guaranteed. It is therefore paramount that high standards of data protection be applied to the functioning of the system, which should ensure a solid technical infrastructure, a high quality of information and an effective supervision.

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[15] Select Committee on European Scrutiny, Chap. 6, *Taking previous convictions into account in new criminal proceedings*, HC, 13.07.05 http://www.publications.parliament.uk/pa/cm200506/cmselect/cmeuleg/34-ii/3408.htm, para 6.21

[16] COM(2008) 332 final

41. We also share the EDPS' views that the use of automatic translations, as proposed in the Decisions, should be clearly defined and circumscribed, so as to favour mutual understanding of criminal offences without affecting the quality of the information transmitted. Clearly much work is needed to create a system in which convictions can be exchanged with confidence and understanding.

42. Whilst we acknowledge that there is an obligation to implement the Framework Decision within a finite period, the date by which transposition must be effected is not until 15th August 2010. Passing the obligation on to the criminal justice system by means of amendments proposed in the 15th Schedule to an already heavily burdened Bill is an inappropriate means of giving effect to the instrument's intentions and affording sufficient time to its consideration. Furthermore, now that the second Framework Decision has been adopted, it is incumbent upon Parliament to consider both Decisions together in order to give proper scrutiny to implementation measures.

43. We consider that the wide ranging effect of Schedule 15 should not be taken forward until the mechanisms for mutual recognition are included. No benefit lies in imposing a mandatory obligation upon UK criminal tribunals and practitioners to take into consideration convictions from other Member States when the implementing system by which to do so has not been provided. We therefore oppose the Schedule in its entirety and propose a re-draft which gives a prominent position to this important change to criminal procedure and to the mechanism through which the principle of mutual recognition can be achieved in practice.

44. As a minimum, an assurance from the Minister that these provisions will not be brought into force until the mechanism contained in the second Framework Decision is fully transposed must be forthcoming. Whilst this approach would be piecemeal, it would allow for scrutiny through Parliament of that mechanism before the courts are obligated to grapple with these provisions.

JUSTICE
May 2009

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[17] http://www.edps.europa.eu/EDPSWEB/webdav/shared/Documents/Consultation/Opinions/2008/08-09-16_ECRIS_EN.pdf