



College of  
Policing

# Digest

January 2013

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

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

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Digest Editor: Telephone +44 (0)1423 876889

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## College of Policing Digest January 2013

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

There is a report of a case on police surveillance and Articles 6 and 8 of the European Convention on Human Rights. The Police (Complaints and Conduct) Bill and the Draft Anti-Social Behaviour Bill are examined.

We look in detail at recently published Government and Parliamentary reports and initiatives including the Home Affairs Committee Drugs Inquiry Report, the Home Office report 'Ending Gang and Youth Violence: One Year On' and the Leveson Inquiry Report.

Statistical bulletins are summarised on topics including public perceptions of policing, the operation of Multi-Agency Public Protection Arrangements and the operation of the Terrorism Act 2000 in relation to arrests and stops and searches.

Consultations covered in this edition include a Home Office consultation on alcohol, a Law Commission consultation on contempt and Department for Transport consultations on speed limit exemptions and drink-drive enforcement.

The progress of proposed new legislation through Parliament is examined, with articles on the Police (Complaints and Conduct) Bill and the Draft Anti-Social Behaviour Bill. Recent Statutory instruments and Circulars are summarised.

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## Bills Before Parliament 2012/13 - Progress Report

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On 9 May 2012, the Queen's Speech unveiled the legislative programme for the 2012-2013 Parliamentary session.

- ◆ **Arbitration and Mediation Services (Equality) Bill** - A Bill to make further provision about arbitration and mediation services and the application of equality legislation to such services; to make provision about the protection of victims of domestic abuse; and for connected purposes.

The Bill includes provision for a new offence of falsely claiming legal jurisdiction. This offence, if enacted, would become section 118A of the Courts and Legal Services Act 1990 and would be committed where a person purports to determine in arbitration proceedings a matter excluded by section 80A of the Arbitration Act 1996, or falsely purports to exercise any of the powers or duties of a court to make legally binding rulings.

Second reading of the Bill took place in the House of Lords on 19 October 2012. Committee stage is yet to be scheduled.

- ◆ **Coroners and Justice (Amendment) Bill** - A Bill to amend section 62 of the Coroners and Justice Act 2009 (possession of prohibited images of children) to apply additionally to the possession of prohibited written material about children; to make consequential amendments to the Act; and for connected purposes.

The second reading of the Coroners and Justice (Amendment) Bill took place in the House of Commons on 19 October 2012. The date of committee stage is yet to be announced.

- ◆ **Crime and Courts Bill** - The Bill:
  - Provides for the establishment of the National Crime Agency (NCA) to prevent and investigate serious, organised and complex crime, enhance border security, and tackle the sexual abuse and exploitation of children, and cyber crime;
  - Makes provision for the appointment of a Director General as the operationally independent head of the NCA; makes provision for the governance of the NCA; and provides a framework for the NCA and other law enforcement agencies to collaborate in order to assist each other in the discharge of their functions;

- Sets out the powers of the Director General and other NCA officers, including by making provision to enable the Director General to give designated NCA officers some or all of the powers of a constable, a customs officer or an immigration officer; and provides for a duty on the Director General to publish certain information and for the disclosure of information by and to the NCA and for the use of information by the Agency;
- Provides for the NCA to be inspected by Her Majesty's Inspectors of Constabulary, and for regulations to make provision for oversight by the Independent Police Complaints Commission. The Bill places restrictions on certain NCA officers taking industrial action and makes provision for the determination of such NCA officers' pay and allowances;
- Provides for the abolition of the Serious Organised Crime Agency (SOCA) and the National Policing Improvement Agency (NPIA). The Bill includes provision for the Secretary of State to make, and lay before Parliament, staff and/or property transfer schemes. A staff transfer scheme may provide for a designated member of staff of SOCA or the NPIA, a designated constable or member of civilian staff in an England and Wales police force and a designated member of personnel or staff in any other body to become NCA officers, and employed in the civil service of the state. A property transfer scheme may provide for the transfer to the NCA of designated property, rights or liabilities from SOCA, NPIA, the chief officer of, or the policing body for an England & Wales police force or any other person;
- Contains provisions to modernise the courts and tribunals including establishment of a Single County Court system and Single Family Court to allow greater flexibility for the handling of cases to increase efficiency of the civil and family court systems in England and Wales;
- Increases the efficiency of fines collection by providing incentives for early payment and compliance, so that, in the event of a default, the offender will be charged the cost incurred for collecting their fine not the taxpayer;
- Makes provisions to reform the judicial appointments process to introduce greater transparency in the judicial appointments process and improve judicial diversity; and provides for the filming and broadcasting of judicial proceedings in specified circumstances;
- Makes provisions about border control and the powers of immigration officers;



- Creates a new offence of driving or being in charge of a motor vehicle with a specified controlled drug in the blood or urine in excess of the specified limit for that drug. Makes further provision for the taking of preliminary tests to determine the level of drugs in a person's blood or urine so as to allow up to three preliminary tests of saliva or sweat to be taken when testing for drugs.

The Crime and Courts Bill was introduced in the House of Lords. Report stage in the House of Lords finished on 12 December 2012. During Report stage an amendment to the Bill was made, which will amend section 76 of the Criminal Justice and Immigration Act 2008 (use of reasonable force for purposes of self-defence etc.). This amendment inserts a provision dealing with householders using force, for example in defending themselves against an intruder. They would be able to use defences such as self-defence, provided their actions were not grossly disproportionate. Third reading, a final chance for the House of Lords to amend the Bill, is to take place on 18 December 2012.

- ◆ **Police (Complaints and Conduct) Bill** - A Bill to make provision about interviews held during certain investigations under Schedule 3 to the Police Reform Act 2002; and about the application of Part 2 of that Act to matters occurring before 1 April 2004.

This Bill was introduced into the House of Commons on 22 November 2012 using a fast-track procedure. It has completed its progress through the House of Commons and the House of Lords, and now goes to the House of Commons for its consideration. Please see the article below for more detail on the contents of this Bill.

- ◆ **Prisons (Interference with Wireless Telegraphy) Bill** - A Bill to make provision about interference with wireless telegraphy in prisons and similar institutions.

This Private Members' Bill has moved to the House of Lords where its third reading took place on 4 December 2012. The Bill now returns to the House of Commons for its consideration; this is the final stage required before a Bill can receive Royal Assent.

- ◆ **Scrap Metal Dealers Bill** - A Bill to amend the law relating to scrap metal dealers; and for connected purposes.

The Bill has moved to the House of Lords where it received its second reading on 30 November 2012. Committee stage, where the Bill is examined line by line, is scheduled to take place on 18 January 2013.

The progress of Bills in the 2012/13 parliamentary session can be found at <http://services.parliament.uk/bills/>

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## **Police (Complaints and Conduct) Bill**

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The Police (Complaints and Conduct) Bill is now before Parliament. This Government Bill, prepared by the Home Office, makes provision about interviews held during certain investigations under Schedule 3 to the Police Reform Act 2002. It also covers the application of Part 2 of that Act to matters occurring before 1 April 2004.

The Bill started in the House of Commons and has progressed through the House of Lords. It now goes to the House of Commons for its consideration; this is the final stage of the Bill before it receives Royal Assent.

The Bill has been brought through Parliament using a fast-track procedure. The background to this is the Government's commitment to ensuring the Independent Police Complaints Commission (IPCC) has all the necessary powers to investigate potential criminality and misconduct of serving and retired officers, as identified in the report of the Hillsborough Independent Panel which examined the Hillsborough disaster on 15 April 1989. The IPCC identified gaps in its powers which are relevant to the investigations; the Police (Complaints and Conduct) Bill addresses these gaps.

The text of the Bill as it was brought from the House of Commons contains three sections. Section 1 relates to investigations carried out or managed by the IPCC. It will amend the Police Reform Act 2002 to require a serving police officer who has witnessed an event subject to such an investigation to attend an interview. At present only officers whose conduct is the subject of the investigation can be required to attend an interview. The Secretary of State is empowered by section 1 to make regulations about the procedure in relation to interviews of serving police officers. These Regulations would be similar to those under paragraph 19D of the Police Reform Act 2002. Section 1(3) amends the Police Reform Act 2002 to clarify that paragraph 19D of the Police Reform Act 2002 also confers a power to make regulations requiring attendance at interview.

Section 2 relates to the power of the IPCC to investigate old cases. It will insert a new section 28A into the Police Reform Act 2002, which will empower the IPCC to investigate complaint, conduct and death or serious injury matters which occurred before 1 April 2004. This would otherwise be prohibited. The power only applies where there the IPCC considers that there are 'exceptional circumstances'.

Section 3 of the Bill covers the extent and commencement of the Bill. It sets out that sections 1 and 3 (excluding section 1(3)) apply to England, Wales, Scotland and Northern Ireland. Section 1(3) and Clause 2 extend to England and Wales only.

Information about the Bill can be found at  
<http://services.parliament.uk/bills/2012-13/policecomplaintsandconduct.html>

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## **Draft Anti-Social Behaviour Bill Publication, Call for Evidence and Consultation**

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The Home Office has presented to Parliament its draft Anti-Social Behaviour Bill. The draft Bill will give effect to the policies set out in the Government's Anti-social behaviour White Paper, Putting Victims First (Cm 8367). This White Paper can be found at

<http://www.official-documents.gov.uk/document/cm83/8367/8367.pdf>

The Bill is made up of seven Parts:

- ◆ Part 1 which provides a power to grant injunctions to prevent nuisance and annoyance;
- ◆ Part 2 which allows a criminal behaviour order to be imposed on an offender, to help prevent them engaging in anti-social behaviour;
- ◆ Part 3 which provides dispersal powers for police where the presence or behaviour of a person in the locality has contributed, or is likely to contribute to, anti-social behaviour, crime or disorder;
- ◆ Part 4 which provides measures for community protection including community protection notices, public spaces protection orders and the closure of premises associated with nuisance or disorder;
- ◆ Part 5 which gives the power to recover possession of dwelling-houses from tenants under secured or assured tenancies on anti-social behaviour grounds;
- ◆ Part 6 which relates to local involvement and accountability, including requiring local policing bodies to prepare community remedy documents; and
- ◆ Part 7 which contains general information about the Act including that it extends only to England and Wales.

The draft Bill can be found at  
<http://www.official-documents.gov.uk/document/cm84/8495/8495.pdf>

Following the publication of the draft Bill, the Home Affairs Committee (HAC) has issued a call for written evidence from interested parties about the draft Bill. The call for evidence is issued as part of the inquiry by the HAC into:

- ◆ Whether the draft Bill would introduce more effective measures to tackle antisocial behaviour;
- ◆ How the proposals will benefit victims of antisocial behaviour;
- ◆ If the Bill provides individuals, communities and businesses affected by antisocial behaviour with a more effective long-term solution;
- ◆ Whether the Community Remedy is a proportionate response to antisocial behaviour; and
- ◆ How the new measures would affect young people in particular.

Submissions to the HAC inquiry must be made by 9 January 2012.

Information on the call for evidence and the terms of the HAC inquiry can be found at

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news/121214-asb-bill-inquiry/>

The Home Office has launched a consultation on the Community Remedy proposal in Part 6 of the Bill. The Bill will require local policing bodies (mainly police and crime commissioners) to prepare a community remedy document which will list the actions deemed appropriate for dealing with those who have engaged in anti-social behaviour or have committed an offence. This will not apply to dealing with those behaviours or offences through court proceedings. In preparing a community remedy local policing bodies must consult with, and take account of the views of the chief officer of police for the local area and appropriate community representatives. They must also undertake whatever other public consultation they deem appropriate, and take account of the views received in response.

Part 6 of the Bill will also require the views of the victim to be taken into account when dealing with anti-social behaviour or an offence using an out-of-court disposal and when issuing a conditional caution or a youth conditional caution for an offence. For example when using an out-of court disposal for anti-social behaviour, police must take reasonable steps to seek the views of any victim, particularly their views on whether an option listed in the community remedy document is appropriate. If the victim wishes the person committing the offence or anti-social

behaviour to carry out a particular action, police will be obliged to invite them to do so unless this would be inappropriate.

The consultation is open until 7 March 2013. Information about the consultation can be found at <http://www.homeoffice.gov.uk/publications/about-us/consultations/community-remedy-consultation/>

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## Supreme Court Considers Police Surveillance and Articles 6 and 8 ECHR: Scotland

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Kinloch (AP) (Appellant) v Her Majesty's Advocate (Respondent) (Scotland) [2012] UKSC 62

A hearing in the Supreme Court before Lord Hope, Lady Hale, Lord Mance, Lord Kerr and Lord Reid.

### Summary

In a Scottish case, the Supreme Court considered the use of police surveillance in public places, which took place without an authorisation which would have made all action under it lawful. It examined whether such surveillance could breach an individual's right to respect for their private life under Article 8 of the European Convention on Human Rights (Article 8).

The Court observed that each case is fact specific. Considering previous cases the Court noted that, without more, measures effected in public could not breach Article 8. In this case the appellant had no reasonable expectation of privacy; he had acted in public and took the risk that his actions would be seen and recorded. Any criminal aspect of his action was not a part of his private life that he was entitled to keep private. No breach of Article 8 occurred in this case; consequently leading the evidence at trial did not breach the right to a fair trial under Article 6 of the European Convention on Human Rights.

### The facts

The appellant was convicted of money laundering offences following a planned surveillance operation. He was seen leaving his car and entering his block of flats. He was then observed leaving the block of flats with a bag, entering a car and driving away. Surveillance identified him entering and leaving other cars and locations, and then entering a taxi carrying what appeared to be a heavy bag. He was later detained and searches led to the recovery of large sums of money.

No authorisation was sought for the surveillance under the Regulation of Investigatory Powers (Scotland) Act 2000. This Act is similar to the Regulation of Investigatory Powers Act 2000, in that authorisation can be sought for directed surveillance. Surveillance carried out under a valid authorisation renders it lawful.

### The appeal

The appellant appealed against his conviction arguing that the failure to obtain authorisation for surveillance meant the police had acted unlawfully. Leave to raise a devolution issue challenging the conviction was refused; part of the refusal

was based on the case of *Gilchrist v HM Advocate* (1) JC 34 (*Gilchrist*).

In *Gilchrist* the court held that there was no violation of a person's right to respect for their private life under Article 8, where two appellants challenged surveillance where one had been seen passing a bag to the other in a public street. They were detained and the bag was found to contain drugs. There was no breach of Article 8, despite the surveillance having been carried out under an invalid authorisation. This was because the act was in a public place, there to be seen by anyone in the vicinity. This did not involve any obtaining of private information, nor any lack of respect for private life. Because Article 8 was not violated in obtaining the evidence, leading the evidence at trial did not breach the right to a fair trial under Article 6.

The appellant appealed to the Supreme Court against his conviction on a devolution issue. He sought to argue that *Gilchrist* was wrongly decided in respect of Article 8; the approach taken in his case was incorrect as a result. He argued that the way the evidence him was obtained breached his Article 8 rights and consequently the use of this evidence against him at trial breached Article 6.

### **The judgment**

The Court examined the Article 8 and Article 6 argument, noting that:

- ◆ The fact that the evidence was obtained irregularly because no authorisation for surveillance was sought did not of itself make the evidence inadmissible at common law;
- ◆ Even if the evidence was obtained in a manner which breached the appellant's Article 8 rights, this did not automatically mean that using the evidence at trial breached his right to a fair trial under Article 6;
- ◆ There should be a distinction between a breach of Article 8 and a breach of Article 6. The tests for each are different, as are the remedies;
- ◆ In this case, to establish a breach of Article 6, Article 8 must be examined because the appellant argued it was the use of evidence obtained in breach of Article 8 which caused the breach of his right to a fair trial.

### **Article 8**

The Court noted that there is a zone of interaction with people in a public context, which may fall within the scope of private life. Despite this "measures effected in a public place outside the person's home or private premises will not, without more, be

regarded as interfering with his right to respect for his private life.”

Where a person has no reasonable expectation of privacy, yet deliberately involves himself in acts which may be recorded or reported in public, there will be no violation of his Article 8 rights. Similarly there is no breach of Article 8 where he can expect to be monitored on CCTV in public areas, as this is a familiar feature in public areas.

A police officer who sees a crime in public and records their observations in their notebook is not interfering with the person’s Article 8 rights. The question in this case was whether similar observation and record of the appellant’s actions in public, over a number of hours as part of a planned operation, was an interference with Article 8.

To answer this the Court asked if the appellant had a reasonable expectation of privacy when he was in public view moving between his car and his flat and going about his business in public. The Court held that *Gilchrist v HM Advocate* was decided correctly. The appellant had no reasonable expectation of privacy. His actions were in full view of the public and he took the risk that he would be seen. Any criminal aspect of those actions were not a part of his private life that he was entitled to keep private. The actions of the police did not infringe his Article 8 right to respect for his private life.

Article 6

The appellant had argued his right to a fair trial under Article 6(1) had been breached because the evidence at trial had been obtained in a manner incompatible with his Article 8 rights. As the Court held that the evidence did not infringe his Article 8 rights, there was no breach of Article 6.

The appeal was dismissed.

The judgment can be found at  
[http://www.supremecourt.gov.uk/decided-cases/docs/UKSC\\_2011\\_0251\\_Judgment.pdf](http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2011_0251_Judgment.pdf)



### **SI 2012/3089 The Criminal Procedure (Amendment) Rules 2012**

In force **1 April 2013**. These Rules amend the Criminal Procedure Rules 2012, including amendments to clarify who may initiate proceedings on a prosecutor's behalf and the addition of a requirement for the court to take every reasonable step to facilitate the participation at trial of all involved (including the defendant).

### **SI 2012/3058 The Police (Amendment No. 5) Regulations 2012**

In force **1 January 2013**. These Regulations add a new regulation 14A into the Police Regulations 2003. This allows the Secretary of State to determine the circumstances in which a member of a police force may receive a compensation lump sum on voluntary retirement, and to determine the amount of such a payment. Functions in relation to these determinations may be conferred upon the police pension authority and the pension supervising authority (as within the meaning of section 11(2) of the Police Pensions Act 1976). This change partly implements recommendation 58 of the Independent Review of Police Officer and Staff Remuneration and Conditions: Part 1 Report. This recommendation suggested that "as quickly as possible, police forces should be provided with the ability to offer voluntary exit terms to police officers, substantially on the terms contained in the Civil Service Compensation Scheme 2010".

### **SI 2012/3057 The Police Pensions (Amendment No. 3) Regulations 2012**

In force **1 January 2013**. These Regulations amend the Police Pensions Regulations 1987 (the 1987 Regulations) and the Police Pensions Regulations 2006 (the 2006 Regulations). The amendments implement in part recommendation 58 of the Independent Review of Police Officer and Staff Remuneration and Conditions: Part 1 Report, to allow voluntary exit schemes. The 1987 Regulations are amended to allow a police officer to elect to receive a deferred pension from age 55. The 2006 Regulations do not require a similar amendment. The 2006 Regulations are further amended to ensure they comply with requirements in the Pensions Act 2008 and comply with regulations requiring automatic enrolment of certain job-holders into pension schemes.

### **SI 2012/3016 The Police Act 1997 (Criminal Records) (Amendment No. 4) Regulations 2012**

In force **31 December 2012**. These Regulations amend the Police Act 1997 (Criminal Records) Regulations 2002 to allow enhanced criminal records certificates to be sought for the purpose of considering an individual's suitability to have in their

possession, to acquire or to transfer, prohibited weapons or ammunition to which section 5 of the Firearms Act 1968 applies.

**SI 2012/3006 The Protection of Freedoms Act 2012 (Disclosure and Barring Service Transfer of Functions) Order 2012**

In force **1 December 2012**. This Order transfers the functions of the Independent Safeguarding Authority to the Disclosure and Barring Service (the DBS). With the exception of the obligation to establish the children's barred list and the adult's barred lists, all functions under the following Acts and Orders are transferred:

- ◆ The Safeguarding Vulnerable Groups Act 2006;
- ◆ The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007; and
- ◆ The Safeguarding Vulnerable Groups (Transitional Provisions) Order (Northern Ireland) 2008.

The Order also transfers the functions of the Secretary of State exercised by the Criminal Records Bureau under Part 5 of the Police Act 1997 to the DBS. The functions of Access Northern Ireland which operates under Part 5 of the Police Act 1997 on behalf of the Northern Ireland Department of Justice are not being transferred to the DBS. The Order makes the amendments to other enactments to enable these changes, and makes transitional provision in relation to the transfer of functions.

**SI 2012/2954 The Police (Descriptions of Service) Order 2012**

In force **21 December 2012**. This Order relates to the appointment of senior staff at the National Crime Agency and the College of Policing. It provides that senior staff will have membership of a police pension scheme during their service, if immediately beforehand they were a member, or were eligible to be a member, or a police pension scheme. Provision is also made for such staff to retain the office of constable during their service, and for police disciplinary procedures to apply after the service ends in relation to acts done during service.

**SI 2012/2939 The Rehabilitation Courses (Relevant Drink Offences) Regulations 2012**

In force **21 December 2012 and 24 June 2013**. These Regulations are made under the Road Traffic Offenders Act 1988 and relate to rehabilitation courses for drink-drive offenders. Sections 34A to 34C of the Road Traffic Offenders Act 1988 provide that where a disqualification order is made drink-drive offenders can have their period of disqualification reduced on successful completion of an approved rehabilitation course.

The Regulations coming into force on 21 December 2012 relate to the approval of rehabilitation courses; this allows courses to be approved as suitable prior to 24 June 2013 when changes to sections 34A to 34C of the Road Traffic Offenders Act 1988 come into force.

**SI 2012/2938 The Road Safety Act 2006  
(Commencement No.9 and Transitional  
Provisions) Order 2012**

In force **21 December 2012 and 24 June 2013**. This Order brings into force section 35 of the Road Safety Act 2006, which substitutes new sections for the current text of sections 34A to 34C of the Road Traffic Offenders Act 1988. These provisions allow drink-drive offenders who are disqualified from driving to have the period of disqualification reduced if they complete a drink-drive rehabilitation course. The Order is brought into force in stages, to allow the approval of courses from 21 December 2012 before the provisions allowing courts to make orders relating to the courses from 24 June 2013. Transitional provisions are included in the Order which allow courses approved before 21 December 2012 to be treated as approved until 18 August 2013.

**SI 2012/2937 The Terrorism Act 2000 (Proscribed  
Organisations) (Amendment) (No.2)  
Order 2012**

In force **23 November 2012**. This Order amends Schedule 2 to the Terrorism Act 2000 by adding an organisation to the list of proscribed organisations: "Ansarul Muslimina Fi Biladis Sudan (Vanguard for the protection of Muslims in Black Africa) (Ansaru)".

**SI 2012/2932 The Welfare of Wild Animals in Travelling  
Circuses (England) Regulations 2012**

In force **20 January 2013**. These Regulations define a travelling circus as an activity for the purposes of section 13(1) of the Animal Welfare Act 2006. The effect of this is that travelling circuses may not operate without a licence issued by the Secretary of State; operating one except under the authority of such a licence is an offence contrary to section 13(6) of the Animal Welfare Act 2006.

The Regulations define 'travelling circus' as:

"(a) a circus -

- (i) which travels from place to place for the purpose of giving performances, displays or exhibitions, and
- (ii) as part of which wild animals are kept or introduced (whether for the purpose of performance, display or otherwise); and

- (b) any place where a wild animal associated with such a circus is kept”.

The Regulations set out the requirements for the grant, suspension and reinstatement of a licence, and specify licensing conditions which apply to all licences.

**SI 2012/2906 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 4 and Saving Provisions) Order 2012**

In force **3 December 2012**. This Order brings into force the following provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012:

- ◆ Chapter 1 of Part 3 (sentencing) except:
  - section 67(2)(a) and (5)(a) (court’s powers in relation to an offender following a finding that the offender has breached a community order);
  - sections 76 and 77 (alcohol abstinence and monitoring requirement etc.);
  - section 78(3) so far as it relates to alcohol abstinence and monitoring requirements; and
  - sections 85 to 88 (fines);
- ◆ Chapter 2 of Part 3 (bail);
- ◆ Chapter 3 of Part 3 (remands of children otherwise than on bail);
- ◆ Chapter 4 of Part 3 (release on licence etc.) except section 119;
- ◆ Chapter 5 of Part 3 (dangerous offenders);
- ◆ Chapter 6 of Part 3 (prisoners etc.) except section 129;
- ◆ Schedule 9 (changes to powers to make suspended sentence orders: consequential and transitory provision);
- ◆ Schedule 10 (repeal of sections 181 to 188 of Criminal Justice Act 2003: consequential amendments);
- ◆ Schedule 11 (amendments of enactments relating to bail);
- ◆ Schedule 12 (remands of children otherwise than on bail: minor and consequential amendments);
- ◆ Schedule 13 (crediting of time in custody);
- ◆ Schedule 14 (prisoners serving less than 12 months: consequential amendments);

- ◆ Schedule 15 (application of sections 108 to 119 and transitional and transitory provision);
- ◆ Schedule 16 (amendments of Criminal Justice Act 2003: transitional and consequential provision);
- ◆ Schedule 17 (Criminal Justice Act 2003: restatement of transitional provision);
- ◆ Schedule 18 (life sentence for second listed offence etc: new Schedule 15B to Criminal Justice Act 2003);
- ◆ Schedule 19 (life sentence for second listed offence: consequential and transitory provision);
- ◆ Schedule 20 (release of new extended sentence prisoners: consequential amendments of Chapter 6 of Part 12 of the Criminal Justice Act 2003);
- ◆ Schedule 21 (abolition of certain sentences for dangerous offenders and new extended sentences: consequential and transitory provision); and
- ◆ Schedule 22 (dangerous offenders subject to service law etc.).

Saving provisions are included in the Order to ensure certain provisions do not have effect in relation to acts before 3 December 2012.

**SI 2012/2905 The Criminal Justice Act 2003  
(Commencement No. 30 and  
Consequential Amendment) Order 2012**

In force **3 December 2012 and 1 May 2013**. This Order commences provisions of the Criminal Justice Act 2003 as a consequence of sentencing changes in the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Included in the changes are the repeal of the power in section 65(1) of the Criminal Justice Act 1988 which allowed supervision of young offenders after release, and repeal of section 85 of the Powers of Criminal Courts (Sentencing) Act 2000 which allowed the extension of custodial sentences for licence purposes in relation to sexual and violent offenders.

**SI 2012/2900 The Official Secrets Act 1989  
(Prescription) (Amendment) Order 2012**

In force **22 November 2012**. This Order prescribes the following office holders as Crown servants subject to the Official Secrets Act 1989:

- ◆ A Police and crime commissioner;
- ◆ A Deputy police and crime commissioner;

- ◆ Mayor's Office for Policing and Crime;
- ◆ Deputy Mayor for Policing and Crime;
- ◆ The Lord Mayor of the City of London; and
- ◆ The representative of the Court of Common Council acting in its capacity as the Police Authority for the City of London.

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## **Home Office Circular 24/2012 - Amendments to the Determinations under Police Regulations 2003 - References to Police Authorities and Implementation of Winsor Part 1 Recommendation 8 on Changes to Public Holiday Arrangements**

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The Home Office has published 'Home Office Circular 024/2012: Amendments to the Determinations under Police Regulations 2003 - References to Police Authorities and Implementation of Winsor Part 1 Recommendation 8 on Changes to Public Holiday Arrangements'. The Circular came into effect on 26 November 2012 and is addressed to chief officers of police and police and crime commissioners.

The Circular publicises amendments to the Home Secretary's determinations under the Police Regulations 2003. These amendments are changes reflecting the abolition of police authorities, changes to the application of acting up allowances, and the insertion of paragraphs relating to removal expenses.

The determination under regulation 22 is also amended, giving detail of how officers may nominate days to be treated as public holidays; this allows implementation of recommendation 8 from Part 1 of Tom Winsor's Independent Review of Police Officer and Staff Remuneration and Conditions. Recommendation 8 states that "Determination Annex H, made under Regulation 26 of the Police Regulations 2003, should be amended to allow the payment of overtime at double time for 25 December and seven other days chosen for the next financial year by the officer before 31 January. Cancellation with fewer than 15 days' notice should require the authority of an Assistant Chief Constable."

The Circular can be found at <http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2012/024-2012/>

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### **Police Arbitration Tribunal Decision**

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The Police Arbitration Tribunal delivered its decision on a number of recommendations from Part Two of the Independent Review of Police Officer and Staff Remuneration and Conditions. The decision was required following a failure to reach agreement on some of the recommendations between the two Sides of the Police Negotiating Board (PNB) and the Federated Ranks Standing Committee.

The disputed recommendations and the Tribunal's award are set out below.

### **Recommendation 46**

The Police Regulations 2003 should be amended to create a system of compulsory severance for police officers with less than full pensionable service from April 2013.

Tribunal decision - No decision has been made; negotiations are to continue on this with a deadline of July 2013.

### **Recommendation 47**

The Police Regulations 2003 should be amended to provide for the payment of financial compensation to police officers with less than full pensionable service who leave the police service by reason of compulsory severance. Forces should be empowered to offer financial compensation on the same terms as are available under the Civil Service Compensation Scheme.

Tribunal decision - No decision has been made, pending the outcome of negotiations on recommendation 46.

### **Recommendation 48**

Officers who have been subject to compulsory severance should have access to employment tribunals if they wish to allege that their severance has been unfair.

Tribunal decision - No decision has been made, pending the outcome of negotiations on recommendation 46.

### **Recommendation 54**

A new, shorter pay scale for constables should be introduced for new entrants from April 2013. It should have a lower starting salary than the current scale, but should allow constables to move to the maximum more quickly.

Tribunal decision - The Official Side's proposed payscale for new entrant constables is accepted. The payscale provides a minimum payment for new constables of £19,000 per year, up to £22,000 per year. The payscale would allow constables to reach the top of the constables' pay scale in seven years.

### **Recommendation 74**

Chief Constables should be given discretion to pay regional allowances up to the current maximum level, as set out in Determination Annex U made under Regulation 34 of the Police Regulations 2003, and the discretion to apply eligibility criteria based on location and performance.

Tribunal decision - The recommendation has been modified. Chief constables, and the Commissioner of the Metropolitan Police Service, will have discretion to vary levels of payment up to the maximum but with no performance linkage.



### **Recommendation 83**

Competence Related Threshold Payments (CRTPs) should be abolished by April 2013 at the latest, and all accrued CRTP payments up to that date should be made on a pro-rated basis.

Tribunal decision - The recommendation has been modified. CRTPs are to be phased out over three years, from April 2013 to April 2016.

### **Recommendation 94**

An interim Expertise and Professional Accreditation Allowance (EPAA) should be introduced from April 2013. It should reward qualifying officers for the skills they use in the four stated priority functions: neighbourhood policing; public order; investigation; and firearms. The EPAA should be £600 per annum, and should be paid monthly. It should be removed when an officer leaves the qualifying role. The EPAA should be abolished when the Specialist Skills Threshold is introduced.

Tribunal decision - The recommendation to introduce an interim EPAA allowance is rejected.

### **Recommendation 112**

A national on-call allowance for the Federated ranks should be introduced from April 2013. The amount of the allowance should be £15 for each daily occasion of on-call after the officer in question has undertaken 12 on-call sessions in the year beginning on 1 April.

Tribunal decision - The recommendation has been modified. A national on-call allowance of £15 per session is to be introduced, with no requirement for qualifying sessions.

The decision of the Police Arbitration Tribunal can be found at [http://www.local.gov.uk/web/guest/police/-/journal\\_content/56/10171/3628409/ARTICLE-TEMPLATE](http://www.local.gov.uk/web/guest/police/-/journal_content/56/10171/3628409/ARTICLE-TEMPLATE)

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## **Arrests, Outcomes and Stops and Searches Under the Terrorism Act 2000**

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The Home Office has published a statistical news release 'Operation of Police Powers under the Terrorism Act 2000 and Subsequent Legislation - Arrests, Outcomes, Stops and Searches: Great Britain, Quarterly Update to June 2012'.

The statistical release shows that:

- ◆ In the twelve months to June 2012 there were 228 terrorism arrests, an increase on the previous year's figure of 140 arrests;

- ◆ 49 of those arrested were charged with a terrorism-related offence;
- ◆ On 30 June 2012 there were 130 prisoners classified as terrorists or domestic extremists.

Information on stops and searches is included in the bulletin. There have not been any uses of the new stop and search provisions in section 47A of the Terrorism Act 2000 since March 2011 when they were brought into force. In the year ending 30 June 2012, 679 stops and searches were conducted by the Metropolitan Police Service under section 43 of the Terrorism Act 2000. This is a decrease of 47% over the previous year.

The statistical bulletin can be found at <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/counter-terrorism-statistics/police-powers-terror-act-q2-2012/>

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## Public Perceptions of Policing

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The Office for National Statistics has published a statistical bulletin 'Focus on: Public Perceptions of Policing, Findings from the 2011/12 Crime Survey for England and Wales'. This bulletin presents the findings of the 2011/12 Crime Survey for England and Wales, a face-to-face victimisation survey which asks about people's experiences of crime in the last twelve months and asks questions to measure public perceptions of the police.

The findings include:

- ◆ 62% of adults thought the police in their local area were doing a good or excellent job;
- ◆ Adults were asked how often they saw the police or police community support officers on foot patrol in their local area:
  - 55% reported seeing them at least every month;
  - 19% reported seeing them less than once a month; and
  - 26% reported never seeing them;
- ◆ Levels of police visibility have remained stable over the past two years, following an increase between the 2006/07 and the 2009/10 surveys;
- ◆ 43% of adults were aware of Neighbourhood Policing teams;
- ◆ 3% of adults reported attending a local police beet meeting in the last year;
- ◆ 32% of adults knew of local online crime percent and 11% reported looking at them or using them in the last year; and

- ◆ 14% of households reported being members of a Neighbourhood Watch Scheme.

The statistical bulletin can be found at <http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/focus-on-public-perceptions-of-policing--findings-from-the-2011-12-crime-survey-for-england-and-wales/index.html>

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## **Department for Transport Consultation on Enforcement Procedures against Drink Drivers and Other Offenders**

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The Department for Transport has published 'Enforcement Procedures against Drink Drivers and Other Offenders - A Consultation Document'.

The consultation seeks views on proposed legislative changes which would:

- ◆ Withdraw the right for a person to replace their breath alcohol specimens with either a specimen of blood or specimens of urine in cases where the lower of the two breath readings provided does not exceed 50 microgrammes (mcg) of alcohol per 100 millilitres (ml) of breath;
- ◆ Remove the requirement for preliminary testing where evidential testing is undertaken away from a police station;
- ◆ Streamline the procedure for testing drink drivers and drug impaired drivers in hospital, by allowing a wider range of registered healthcare professionals to take evidential blood specimens;
- ◆ Allow registered healthcare professionals to form an opinion of whether someone is under the influence of a drug prior to evidential testing; and
- ◆ Apply the legislative changes above to the regimes for railways, shipping and aviation.

The consultation period runs until 2 January 2013.

The consultation documents and details of how to respond can be found at <https://consultation.dft.gov.uk/dft/enforcement-procedures/>

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## **Consultation on Draft Code of Practice for Independent Custody Visitors**

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The Home Office has launched a consultation on a revised draft Code of Practice which will govern Independent Custody Visiting (ICV) in England and Wales. The consultation is taking place to enable consideration of the enhanced safeguards for terrorist

suspects in police detention, which will be required if section 117 of the Coroners and Justice Act 2009 (section 117) is brought into force.

The safeguards included in section 117 include the extension of the Independent Custody Visiting Scheme so it applies to terrorism detainees, and allowing Independent Custody Visitors (ICVs) to report on the treatment of terrorist detainees held pre-charge. Subject to the outcome of the consultation the Government will seek to commence section 117 in Spring 2013.

The draft Code of Practice includes new guidance on:

- ◆ The training and selection for ICVs visiting suspected terrorist detainees;
- ◆ The arrangements for ICVs visiting terrorist suspects in detention;
- ◆ The procedures allowing ICVs to request access to audio and video recording of interviews with suspected terrorist detainees; and
- ◆ A requirement for ICVs who visit terrorist detainees to submit a report of their visit to both the Independent Reviewer of Terrorism Legislation and the relevant Police and Crime Commissioner.

The consultation is open until 28 January 2013.

The draft Code of Practice, along with details of how to respond to the consultation, can be found at <http://www.homeoffice.gov.uk/publications/about-us/consultations/icv-consultation/>

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## **Forensic Science Regulator Consultation**

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The Forensic Science Regulator has launched a consultation on three draft appendices to its Code of Practice and Conduct, in order to gain the feedback necessary to finalise each appendix. The appendices consulted on cover DNA analysis, digital forensics services, and video analysis.

The consultation draft on the appendix 'Digital Forensics Services: Video Analysis' covers forensic digital video analysis laboratory activity from receipt of video material through to preparation for court. It applies to all providers undertaking this material, including those operated by police.

The consultation is open until 10 March 2013.

The draft appendices to the Code of Practice and Conduct and details of how to respond to the consultation can be found at <http://www.homeoffice.gov.uk/publications/about-us/consultations/forensic-science-regulator/>

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## Home Office Alcohol Consultation

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The Home Office has published a consultation paper 'A Consultation on Delivering the Government's Policies to cut Alcohol Fuelled Crime and Anti-Social Behaviour'. Aimed at those affected by the proposals including police, the consultation invites views on five proposals set out in the Government's Alcohol Strategy:

- ◆ Introducing a minimum unit price of 45 pence for alcohol;
- ◆ Banning multi-buy promotions in shops and off-licences;
- ◆ A review of the mandatory licensing conditions including consideration of whether they adequately target problems of irresponsible alcohol promotions in pubs and clubs;
- ◆ Introducing alcohol-related health harm as a licensing objective which authorities can consider when deciding whether to introduce and the extent of a cumulative impact policy; and
- ◆ Developing a more targeted, proportionate and flexible licensing regime to free up responsible businesses.

The consultation is open for responses until 6 February 2013.

The consultation paper, impact assessments and details of how to respond can be found at <http://www.homeoffice.gov.uk/publications/about-us/consultations/alcohol-consultation/>

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## Law Commission Consultation on Contempt of Court

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The Law Commission has published 'Contempt of Court: A Consultation Paper', which considers whether the law of contempt and the procedure for dealing with it is adequate. It proposes reform to make the law fair, understandable, practical and 'future-proof'. The consultation is open until 28 February 2013. The Law Commission intends to produce a report by spring 2014.

The consultation applies to the law of England and Wales, and considers the following aspects of the law of contempt:

- ◆ Contempt by publication;
- ◆ The impact of the new media;
- ◆ Contempts committed by jurors; and
- ◆ Contempt in the face of court.

The consultation outlines the need for reform. Chapter 2 of the paper explains contempt by publication, both at common law and under section 2 of the Contempt of Court Act 1981 (the section 2 offence). It then considers how to balance a defendant's right to a fair trial with a publisher's right to freedom of expression.

Of particular relevance to policing is the examination in Chapter 2 of the trigger points for proceedings becoming active for the purposes of the section 2 offence. These trigger points include arrest and issue of an arrest warrant. Difficulties faced by the media in establishing whether the trigger point has been met are explained, including that police forces do not have a consistent approach to releasing the names of those arrested. The effect is a risk of committing contempt where a publisher doesn't know whether a person has been arrested, or doesn't know who has been arrested. The paper explains that the Law Commission does not consider there is a compelling case for moving the trigger points for an offence to a later stage in proceedings, such as at the point of charge. The paper proposes that police forces should be given guidance encouraging a consistent approach to releasing information about arrestees; this should presume information will be given but incorporate safeguards to prevent information being given when it is unlawful or otherwise inappropriate. The paper asks consultees to consider whether:

- ◆ The current trigger points should be retained;
- ◆ Police forces should adopt a consistent policy to the release of information which includes appropriate safeguards.

The chapter also considers the benefits of changing the way in which contempt by publication is prosecuted; treating it as a criminal offence and requiring proceedings to be brought by the Attorney General. This change would enable police powers to be used and would provide more procedural safeguards to the defendant. Consultees are asked whether contempt by publication should be tried subject to the procedural safeguards associated with a trial on indictment.

Chapter 3 questions how to amend the law so it can cater for new technology in its definition of publications and publishers.

Contempts committed by jurors are considered in Chapter 4, which examines the problems posed when jurors seek evidence beyond that given in court, or disclose information about jury deliberations. Of relevance to policing are proposals for a new offence, and proposals to amend an existing offence.

Consideration is given to creating a new offence, where a juror intentionally seeks information related to the case they are trying. Consultees are asked whether they think such an

offence should be introduced and are also asked to consider the appropriate mode of trial, maximum sentence and types of penalty if it were introduced.

Chapter 4 explains the offence of disclosing, or soliciting the disclosure of, information about jury deliberations, contrary to section 8 of the Contempt of Court Act 1981. The offence prevents disclosure even where necessary to uncover a miscarriage of justice, and can prevent research into jury deliberations. The paper asks:

- ◆ Whether a defence to section 8 should be enacted which would apply when a juror makes a disclosure to court officials, the police or the Criminal Cases Review Commission in the genuine belief that this is necessary to uncover a miscarriage of justice;
- ◆ Whether section 8 unnecessarily inhibits research into jury deliberations and should be reformed (and if so, how); and
- ◆ What maximum sentence is appropriate, whether community penalties should be available, and what mode of trial is appropriate for the section 8 offence.

Criminal contempts in the face of court are dealt with in Chapter 5, making proposals aimed at resolving uncertainty over court procedures. Relevant to policing is the provisional proposal for a statutory power to deal with intentional threats or insults to people in the court or its immediate precincts, and misconduct in the court or its immediate precincts, committed with the intention that proceedings will or might be disrupted. It proposes the Crown Court be able to deal with a contempt at court by requiring an officer of the court or a constable to take the person into custody for the purposes of immediate temporary detention. If temporarily detained, the person must be returned to the court by the end of the court day for consideration of whether to grant bail.

Chapter 6 explains all of the provisional proposals made by the Law Commission, and sets out the questions for consultees.

The consultation paper and details of how to respond to the consultation can be found at <http://lawcommission.justice.gov.uk/consultations/contempt.htm>

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## Home Office Report on Ending Gang and Youth Violence

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The Home Office has published a follow-up report marking one year since the cross-government Ending Gang and Youth Violence report was published. The report 'Ending Gang and Youth Violence: One Year On' reflects national and local achievements in tackling gang and youth violence, and explains the Government's commitments for the future.

The paper explains that the Ending Gang and Youth Violence programme was designed to help local partnerships respond to the problems in their areas. In the last year the programme has supported initiatives through measures including:

- ◆ Giving funding and support to the areas facing the biggest challenges from gang and youth violence;
- ◆ Forming the Ending Gang and Youth Violence frontline team using independent advisers from backgrounds including policing to offer peer support to 29 areas;
- ◆ Introducing the Innovation Fund, investing £30 million over three years into social investment projects focussed on those involved in or at risk of gang and youth violence; and
- ◆ Used local barriers and challenges needing national reform to inform the development of the programme and develop actions for the future.

Local interventions are reported upon in the paper, which highlights the need to sustain and build on progress and to encompass broader social outcomes such as education within the programme. The report states that police and crime commissioners will have a central role in shaping the future.

Partnership working is identified as key to success; with the strengthening of existing local relationships vital. Progress in partnership working and information sharing over the previous year is outlined, including:

- ◆ The work done by the Association of Chief Police Officers (ACPO) to map gangs across the country;
- ◆ The establishment by the Youth Justice Board of youth and gang violence forums attended by police and other agencies to facilitate cross-agency working; and
- ◆ The establishment of a live website <http://www.informationsharing.co.uk> providing an Improving Information Sharing and Management (IISaM) toolkit to help resolve information sharing issues.



Over the rest of the year the programme will develop and refine the IISaM toolkit, will continue to identify and share good data sharing practice, and will work with ACPO and others to improve understanding of local models for information sharing on safeguarding such as Multi-Agency Safeguarding Hubs. An evidence based tool will be developed for all agencies to use to identify young people most at risk of violence.

Measures undertaken in the last year to tackle youth violence and health are set out in the report. Included in these is work to produce resources to support police and crime commissioners and health and wellbeing boards in building local relationships. A national conference focussed on the role of health in youth violence prevention brought senior health and criminal justice practitioners and leading experts together. Work for the next year includes the Home Office and Department of Health supporting a sector-led publication on violence prevention in the health and care system and continuing facilitating practice sharing in the 29 priority areas facing the biggest challenge from gang and youth violence.

The programmes work in supporting the criminal justice report over the last year is explained, highlighting the following support:

- ◆ Making gang injunctions available for 14 to 17 year olds;
- ◆ Introducing an offence of threatening another with a knife or offensive weapon in public or on school premises;
- ◆ Announcing the Government's intention to strengthen firearms laws by introducing an offence of possession with intent to supply and increasing the maximum sentence for illegal importation of a firearm to life imprisonment; and
- ◆ Announcing the Government's intention for a mandatory life sentence following conviction for a second serious violent or sexual offence.

Local work in the criminal justice sector is also explained in the report, including ACPO and the National Offender Management Service (NOMS) work to strengthen information sharing, and NOMS' work with the Metropolitan Police Service to share data on gang nominals with prisons.

Actions identified for the programme over the next year are to:

- ◆ Work with ACPO and particular police forces to increase understanding of the links between urban street gangs and organised crime groups;
- ◆ Clarify how charging decisions will be made, and publicise the use of joint enterprise in cases of gang violence;
- ◆ Promote the use of Community Impact Statements;

- ◆ Ensure that intelligence and information about gang associations (and involvement in organised crime) is shared regularly and effectively between the police and the secure estate, underpinned by work with ACPO and NOMS to improve the use of prison intelligence; and
- ◆ Ensure that prison governors are able to commission programmes tailored to the needs of their prisoners, based on understanding what works.

In relation to women, girls and gangs the report explains the need to increase reporting, improve the targeting and quality of interventions for gang-associated girls and women, and reduce victimisation. Work over the next year includes:

- ◆ Working with ACPO to define and map gang-associated women and girls against identified gang nominals to enable appropriate risk assessment and case management;
- ◆ Ensuring actions pertaining to young women and girls affected by gangs is included in the March 2013 update to the Violence Against Women and Girls Action Plan;
- ◆ Updating the Safeguarding Guidance on Children and Young People at risk of Gang Activity so it addresses the needs and issues of women and girls affected by gangs;
- ◆ Continuing Crown Prosecution Service (CPS) work with the Home Office to influence policy and delivery to prevent and reduce the impact of gang violence on girls and young women; and
- ◆ Using the CPS Violence against Women and Girls Strategy to provide a framework to improve co-ordination and performance in cases of sexual violence.

The report addresses the importance of understanding what works, by identifying and sharing best practice. One action identified in the report for the next year is to look for ways to work with police and crime commissioners and the College of Policing to promote knowledge-sharing and understanding of what works in relation to the enforcement and prevention of youth violence.

The report can be found at  
<http://www.homeoffice.gov.uk/crime/knife-gun-gang-youth-violence/>

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## **Report on the Operation of the Terrorist Asset-Freezing etc. Act 2010**

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David Anderson QC, the Independent Reviewer of Terrorism Legislation, has presented to Parliament his 'Second Report on the Operation of the Terrorist Asset-Freezing Etc. Act 2010 (Review Period: Year To 16 September 2012)'.

The Terrorist Asset-Freezing etc. Act 2010 (the Act) includes, as part of the safeguards against unlawful use of the powers, provision for independent review of the operation of the Act. The report covers persons designated as those to whom the asset freezing powers apply, the making and review of designations, licences, the operation of the prohibitions under the Act, and legal proceedings. A summary of the use of the Act over the previous year is included in Chapter 7 of the report, which also reports on progress in implementing the recommendations made in the previous year's report and makes one further recommendation for the Treasury.

The report can be found at <http://terrorismlegislationreviewer.independent.gov.uk/publications/2012-report-tafa>

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## **Changes to Referral Orders: Guidance and Circular**

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The Ministry of Justice has published updated guidance and a circular explaining recent change to the referral order regime.

The Ministry of Justice has updated its statutory guidance document 'Referral Order Guidance'. This provides Youth Offending Teams, Youth Offender Panels and the courts with guidance on referral orders. The update reflects the changes the Legal Aid, Sentencing and Punishment of Offenders Act 2012 makes to referral orders.

In addition to the revised guidance, the Ministry of Justice has also issued Ministry of Justice Circular No. 2012/07 'Referral Orders; Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Provisions Commencing On December 3 2012)'. This explains the effect of section 79 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. This provision was brought into force on 3 December 2012 by Statutory Instrument 2012/2906.

The Circular explains the law relating to referral orders for young offenders prior to the changes. It explains the effect of the change in relation to conditional discharge; courts now have wider powers to deal with a young offender by way of conditional discharge where previously they may have had

to issue a referral order or give an absolute discharge. The removal of the restriction on repeated use of referral orders is also explained.

The revised guidance and Circular No. 2012/07 can be found at <http://www.justice.gov.uk/youth-justice/courts-and-orders/disposals/referral-order>

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## **Statistics on Multi-Agency Public Protection Arrangements**

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The Ministry of Justice has published a statistics bulletin 'Multi-Agency Public Protection Arrangements Annual Report 2011/12'. This bulletin outlines the use of the Multi-Agency Public Protection Arrangements (MAPPA), statutory arrangements made under sections 325 to 327 of the Criminal Justice Act 2003 which bring groups including police together to assess and manage the risk posed by certain sexual and violent offenders.

The bulletin examines the number of offenders managed under MAPPA (MAPPA offenders), at each of the three levels of management. It also sets out the imposition of Sexual Offences Prevention Orders (SOPOs) and provides information on the number of MAPPA offenders returned to custody due to breach of a licence or SOPO and the number charged with a serious further offence.

Key points from the bulletin include:

- ◆ There were 55,002 MAPPA offenders on 31 March 2012, 96% of whom were managed at Level 1, Ordinary Agency Management;
- ◆ There are 81 registered sex offenders per 100,000 head of the population;
- ◆ Throughout 2011/12:
  - 6,939 MAPPA offenders were managed at Level 2, Active Multi-Agency Management;
  - 664 MAPPA offenders were managed at Level 3, Active Multi-Agency Management with senior staff involvement;
  - 2,658 SOPOs were imposed by courts;
  - 877 Level 2 and 3 MAPPA offenders were returned to custody for a breach of their licence;
  - 80 Level 2 and 3 MAPPA offenders were returned to custody for a breach of their SOPO; and
  - 145 MAPPA offenders were charged with a serious further offence (116 Level 1 MAPPA offenders, 22 Level 2 MAPPA offenders, and 7 Level 3 MAPPA offenders).

The statistics bulletin can be found at  
<http://www.justice.gov.uk/statistics/prisons-and-probation/mappa>

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## Department for Transport Consultation on Speed Limit Exemptions

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The Department for Transport has published 'Speed Limit Exemptions: A Consultation Document'. This document sets out the Government's proposal to implement section 19 of the Road Safety Act 2006, and the proposed approach to implementing regulations under it.

Section 19 of the Road Safety Act 2006 will, if implemented, replace section 87 of the Road Traffic Regulation Act 1984 in relation to the speed limits for certain vehicles. The implementation would make the following major changes:

- ◆ Allowing certain other vehicle purposes to be included in speed limit exemption regulations, such as for vehicles transporting human tissue for transplant purposes, Security Service purposes and Royal Air Force Mountain Rescue;
- ◆ Prescribing a high speed training course which drivers must undertake or be in the process of undertaking before they may exceed speed limits; and
- ◆ Incorporating military purposes into new regulations, thereby superseding Statutory Instrument No. 953 of 2011 which currently covers military exemptions to road traffic law.

The consultation seeks views and information about the proposed implementation, to inform four issues:

- ◆ The possibility of extending speed limit exemptions;
- ◆ The regulation of Speed Limit Exemption driver training courses;
- ◆ Changes to other exemptions from road traffic law such as passing red traffic signals at danger and using motorway hard shoulders, and exemptions to seat belt requirements for those providing emergency treatment in ambulances; and
- ◆ Whether the Road Safety Act 2006 provisions should be implemented.

The consultation period runs until 27 February 2013.

The consultation document and details of how to respond can be found at  
<https://www.gov.uk/government/consultations/speed-limit-exemptions>

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## Consultation on Sentences for Sexual Offences

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The Sentencing Council has launched a consultation seeking views from interested parties including criminal justice professionals on a new guideline for sentencing sexual offences. Views are sought on:

- ◆ The main factors that reflect the harm caused to the victim by an offence;
- ◆ The culpability of the offender;
- ◆ The additional factors that should influence the sentence; and
- ◆ The approach and structure of the guidance and how this should be tailored to different offences.

The consultation has been split into seven subject areas, allowing responses to cover all areas or to specific areas. These seven areas are:

- ◆ Rape and assault offences;
- ◆ Sexual offences where the victim is a child;
- ◆ Indecent images of children;
- ◆ Exploitation offences;
- ◆ Offences against those with a mental disorder;
- ◆ Other sexual offences; and
- ◆ Sex offences committed by offenders under the age of 18.

The consultation is open until 14 March 2013. The consultation documents can be found at <http://sentencingcouncil.judiciary.gov.uk/consultations-current.htm>

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## Leveson Inquiry Reports

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The Leveson Inquiry, chaired by Lord Justice Leveson, has published its report 'An Inquiry into the Culture, Practices and Ethics of the Press'. The Leveson Inquiry was established under the Inquiries Act 2005 to examine the role of the press and police in the phone-hacking scandal.

The report sets out recommendations on:

- ◆ Regulation of the press, recommending the creation of an independent self-regulatory regime;
- ◆ The press and data protection, recommending:
  - Amendment of the Data Protection Act 1998 to narrow the exemption for journalism in section 32; and
  - Publication by the Information Commissioner's Office of policy, good practice guidelines and advice to ensure press compliance with the data protection regime;
- ◆ The use of the criminal law including;
  - Inviting the Sentencing Council to prepare sentencing guidelines on data protection offences;
  - Inviting the Home Office to consider whether the Police and Criminal Evidence Act 1984 needs amendment to refine the definition of journalistic material, narrow the meaning of excluded material and change the procedure for accessing special procedure material by removing the requirement to have tried to gain access to material in other ways unless those ways were bound to fail;
- ◆ Amendment of the civil law to ensure proportionate compensation by way of damages;
- ◆ The press and police;
- ◆ The press and politicians; and
- ◆ Plurality and media ownership.

Recommendations on the relationship between the press and police are summarised below.

### **Off-the-record briefings**

The term 'off-the-record briefing' should be discontinued; 'non-reportable briefing' or 'embargoed briefing' should be used as they more accurately describe legitimate police and media interactions.

Officers of Association of Chief Police Officer (ACPO) rank should be required to record their contact with the media, and good

practice would require a press officer to be present if policy or organisation matters are likely topics of discussion.

The 'Interim ACPO Guidance for Relationships with the Media' statement should be adopted as good practice:

"Police officers and staff should ask: 'am I the person responsible for communicating about this issue and is there a policing purpose for doing so?' If the answer to both parts of this question is 'yes', they should go ahead."

### **Leaks of information**

The rigour and frequency of audits in relation to access to the Police National Computer should be examined, and consideration given to the number allowed access to it and the rules governing such access.

### **Gifts, hospitality and entertainment**

ACPO guidance should spell out the dangers of consuming alcohol in a setting of casual hospitality. It may not be necessary to specify a blanket ban.

### **Media employment**

Terms of appointment of ACPO rank officers should be considered, with particular reference to whether limitations should be placed on employment by the media within twelve months of cessation of appointment.

### **Corruption, whistleblowing and related matters**

An enhanced system should be provided to protect whistleblowers and advise on ethics. This must comprise at least:

- ◆ Greater prominence for the Independent Police Complaints Commission (IPCC) Public Interest Disclosure Act telephone line;
- ◆ Provision of an IPCC telephone line to give all officers guidance on ethics;
- ◆ Provision by Her Majesty's Inspectorate of Constabulary (HMIC) of a designated point of contact for chief constables seeking confidential ethics guidance. This point of contact must be a member of HMIC and a former chief constable. Chief constables must be able to refer to the advice if a subsequent complaint or investigation relates to the issue, and the advice should be taken into account in determining such complaint or investigation;
- ◆ The IPCC should implement a filter system to ensure complaints amounting to whistleblowing are identified



and investigated at the right level while maintaining confidentiality. This should differentiate between whistleblowing and personal grievances;

- ◆ The HMIC point of contact for ethics guidance should be responsible for receiving complaints about chief constables made to the IPCC. If they have advised the chief constable on the matter they may deputise this to a substitute Her Majesty's Inspector; and
- ◆ HMIC should regularly scrutinise chief officers, including through unannounced inspections.

The Inquiry Report can be found on the website of the Leveson Inquiry, at <http://www.levesoninquiry.org.uk/>

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## Home Affairs Committee Inquiry Report on Drugs

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The House of Commons Home Affairs Committee (HAC) has published its inquiry report 'Drugs: Breaking the Cycle'. The report examines drug policy as a whole, considering the following areas:

- ◆ Recommendations from the previous HAC report on drugs policy in 2002;
- ◆ Global drugs policy;
- ◆ Education and prevention;
- ◆ Treatment;
- ◆ The legislative framework and law enforcement relating to drugs;
- ◆ Drugs in prisons; and
- ◆ Alternatives to prohibition.

The report states that "the principal aim of Government drugs policy should be first and foremost to minimise the damage caused to the victims of drug-related crime, drug users and others."

A series of recommendations are made which could affect policing, including:

- ◆ The maximum permissible level of concentration of a drug in a person's blood or urine, for the purposes of the offence of driving with concentrations of drugs in excess of specified levels, should be 0.08 mg/ml, the equivalent to the safe limit for alcohol;

- ◆ The Government should work with EU countries and other key international partners to ensure more effective drug interdiction (seizure of drugs in source countries);
- ◆ The Home Secretary and the Secretary of State for Health should be given joint overall responsibility for co-ordinating drug policy;
- ◆ The police and public should be aware of the growing problem of dependence on prescription drugs, so they and the medical profession can be vigilant in seeking to prevent it;
- ◆ A Royal Commission should be established, reporting in 2015, to consider how best to reduce harm caused by drugs in an international context;
- ◆ The Government should find a way to retain the Serious and Organised Crime Agency brand within the National Crime Agency, to reflect the praise and respect it has earned;
- ◆ The Government should bring forward new legislation to extend personal, criminal liability to senior persons in banks found to have been involved in money laundering;
- ◆ To reduce the risk of local variation causing displacement of the drugs trade within the UK, the National Crime Agency should provide an annual confidential briefing to police and crime commissioners and chief constables setting out measures which would help disrupt the drugs trade;
- ◆ Police and crime commissioners should consider how best to target drug crime in their area, should ensure they are fully informed about the relative effectiveness of policing methods including diversion, and should consider how best to prioritise police time between different types of drug-related offences;
- ◆ Drug-dependent offenders may also be prolific offenders; their prevalence as offenders should be identified to allow Government and local authorities to make targeted interventions in the community; and
- ◆ The law should be amended to allow liability for harm caused by psychoactive substances, by preventing retailers from use disclaimers such as 'not fit for human consumption' as a defence when it is clear the substance is being sold for its psychoactive properties.

Information about the HAC inquiry and the report can be found at

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2010/drugs/>

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## Notes

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