



College of
Policing

Digest

June 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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Copyright Enquiries: Telephone +44 (0)1256 602650

Digest Editor: Telephone +44 (0)1480 334527

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Legal Services
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College of Policing Digest June 2013

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

There are reports of cases on identification evidence and police injury pension awards.

We look in detail at recently published Government and Parliamentary reports and initiatives including the Joint Committee on Human Rights Legislative Scrutiny Priorities for 2013-2014 and a consultation relating to cutting agents. Other reports covered include an Independent Public Report on the progress of Operation Pallial, the National DNA Database Annual Report and a Learning the Lessons Bulletin addressing corruption.

Statistical bulletins are summarised on the Office for National Statistics Crime Figures for 2012.

The progress of proposed new legislation through Parliament is examined and Statutory Instruments and Circulars summarised.

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Bills Before Parliament 2013/2014 - Progress Report

On 8 May 2013, the Queen's Speech unveiled the legislative programme for the 2013-2014 Parliamentary session.

◆ **Anti-Social Behaviour, Crime and Policing Bill**

The Bill is divided into 13 separate parts:

- Part 1 - Injunctions to prevent nuisance and annoyance

This is a purely civil injunction, available in the county court for adults and the youth court for 10 to 17 year olds. It will allow a wide range of agencies, including the police, local councils and social landlords to deal quickly with anti-social individuals.

- Part 2 - Criminal Behaviour Orders

This will be available following a conviction for any criminal offence and can address the underlying causes of the behaviour through new, positive requirements. Breach will be a criminal offence with a maximum penalty of up to five years in prison for adults. It will demonstrate to the offender and the community the seriousness of the breach.

- Part 3 - Dispersal Powers

This will enable officers to require a person who has committed, or is likely to commit, anti social behaviour to leave a specified area and not return for up to 48 hours.

- Part 4 - Community Protection Notices

This part is split into three Chapters covering Community Protection Notices, Public Spaces Protection Orders and Closure Orders. These new powers will be faster, more effective and available to more agencies to use to tackle a whole range of place-specific anti-social and criminal behaviour.

- Part 5 - Recovery of Possession of dwelling-houses: Anti-Social Behaviour grounds

Anti-social behaviour can have a negative impact on neighbourhoods and communities. Social landlords have a key role in tackling anti-social behaviour. Provisions in the Bill introduce a new ground for possession to speed up the process in the most serious cases of anti-social behaviour bringing faster relief to victims and communities.

- Part 6 - Local involvement and accountability

The new Community Remedy will give victims of low-level crime and anti-social behaviour a say in the punishment of the offender out of court, whilst the Community Trigger will give victims of persistent anti-social behaviour the right to demand action where they feel that their problems have not been dealt with.

- Part 7 - Dangerous dogs

The proposals in the Bill are part of a wider package of measures to reduce dog attacks and make owners more responsible for their dogs. These powers sit alongside anti-social behaviour powers in the Bill that can be used to tackle dangerous dogs and irresponsible owners.

- Part 8 - Firearms

The Bill targets those who sell or transfer prohibited weapons or ammunition through the introduction of a new offence and increased sentencing powers for the courts.

- Part 9 - Forced marriages

The Bill makes two changes to tackle forced marriage more effectively: criminalising forcing someone to marry and criminalising the breach of Forced Marriage Protection Orders.

- Part 10 - Policing

The Bill builds on Government reform of the policing landscape towards greater freedom for the police to take local decisions that fit the needs of the areas they serve. It will enhance the integrity and professionalism of the police by extending the powers and remit of the Independent Police Complaints Commission and the College of Policing. The Bill will also make changes to the body that reviews police pay by abolishing the Police Negotiating Board and replacing it with an independent Police Remuneration Review Body. The new body will make evidence based recommendations on police remuneration. In addition, Clause 124 introduces Schedule 6, which makes amendments to the port and border security powers in Schedule 7 to the Terrorism Act 2000 and the associated Schedule 8 to that Act which governs the detention of persons detained under Schedule 7.

- Part 11- Extradition

The measures on extradition proposed in the Bill are designed to improve the efficiency of the operation of the

Extradition Act 2003 and follow from a review of the UK's extradition arrangements by Rt. Hon Sir Scott Baker.

- Part 12 - Criminal Justice and Court Fees

The Bill will improve the speed and efficiency of the criminal justice system's response to low-level offending by enabling the police to prosecute uncontested minor offences of shoplifting. It will extend the scope of the statutory witness protection scheme to cover other vulnerable individuals and ensure that offenders sentenced to custody will contribute to the costs of supporting victims by removing the power of magistrates' courts to add additional days to a sentence of imprisonment instead of the victim surcharge.

- Part 13 - General

This part contains minor and consequential amendments to other enactments and general provisions including provisions in respect of the parliamentary procedure to be applied to orders and regulations made under the Bill.

The Bill had its first reading on 9 May 2013 in the House of Commons. The second reading in the House of Commons is scheduled for 10 June 2013.

Detailed information relating to the Bill can be found at <https://www.gov.uk/government/organisations/home-office/series/anti-social-behaviour-crime-and-police-bill>

The explanatory notes can be found at <http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0007/en/14007en.pdf>

◆ **Offender Rehabilitation Bill**

The Bill makes a number of changes to the release arrangements set out in the Criminal Justice Act 2003 Act for offenders serving custodial sentences of less than 12 months and those serving sentences of between 12 months and 2 years. The Bill is designed to ensure that all adult offenders serving custodial sentences can be supervised on release for a period of at least 12 months.

In particular the Bill:

- Applies arrangements for release under licence to offenders serving fixed-term custodial sentences of more than 1 day but less than 12 months;
- Introduces new supervision arrangements for offenders released from fixed-term custodial sentences of less than 2 years so that all offenders are supervised in the community for at least 12 months;

- Creates a new court process and sanctions for breach of supervision requirements for offenders serving fixed-term custodial sentences of less than 2 years;
- Introduces a requirement that offenders sentenced to an extended determinate sentence must have an extension period of supervision of at least 1 year;
- Introduces for offenders released from custody a new drug appointments condition for the licence or supervision period, and expands the existing drug testing requirement for licences to include Class B drugs and makes it available during the supervision period;
- Introduces a requirement that any juvenile who reaches his or her 18th birthday before being released from the custodial element of a Detention and Training Order (DTO) should spend at least 12 months under supervision in the community.

The Bill also makes some changes to the arrangements for community orders and suspended sentence orders. In particular it:

- Creates a new “rehabilitation activity requirement” for community orders and suspended sentence orders and in doing so abolishes the “supervision” and “activity” requirements;
- Introduces new arrangements for the designation of “responsible officers” in relation to the supervision of offenders and makes clear that the responsibility for bringing breach action lies with the public sector;
- Introduces new arrangements for offenders serving community orders or suspended sentence orders to obtain permission from the responsible officer or the court before changing their place of residence.

The Bill had its first reading on 9 May 2013 in the House of Lords. The second reading in the House of Lords took place on 20 May 2013, and the committee stage is scheduled to take place in the House of Lords on 5 June 2013.

The Bill can be found at
<http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0002/2014002.pdf>

The explanatory notes can be found at
<http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0002/en/2014002en.htm>

The progress of Bills in the 2013/2014 parliamentary session can be found at <http://services.parliament.uk/bills/>

In relation to the 2012/2013 Parliamentary session, the Crime and Courts Bill received Royal Assent on 25 April 2013 and further information in relation this piece of legislation can be found at page 38.

The Queen v Steven Edward Dossett [2013] EWCA Crim 710

A hearing in the Court of Appeal (Criminal Division) on Appeal from the Crown Court at Winchester before the Honourable Lord Justice Moore-Bick, the Honourable Mr Justice Fulford and the Honourable Mr Justice Irwin.

Summary

On 18 May 2012 the appellant was convicted of robbery at Winchester Crown Court. He was sentenced to 9 years imprisonment. The appellant appealed against conviction by leave of the judge, who referred his application for leave to appeal against sentence. The appeal was based on firstly, that the judge should have withdrawn the case from the jury because of the weakness of the identification evidence and secondly that the judge should not have allowed the prosecution to adduce evidence of the appellant's two previous convictions.

Facts

On 8 May 2011 the victims, Dee Riley and Michael Ryan, were robbed whilst walking home. They noticed two men loitering in the road ahead of them, and as they approached them the men attacked them, knocking them to the ground and punching and kicking them before making off with Dee Riley's handbag. Dee Riley suffered two fractured eye sockets and a fractured nose. Michael Ryan suffered a fractured eye socket, a significant injury to one of his eyes and a number of broken ribs.

Various items from the robbery were later found, including Miss Riley's handbag which was thrown in a hedge and numerous vouchers and receipts. The police found blood on some of the vouchers and a receipt which matched that of the co-defendant, James Ganney, who was a friend of the appellant.

The appellant took part in an identification procedure 16 days after the robbery and was picked out by Michael Ryan but not Dee Riley. The prosecution case was that both the appellant and James Ganney had committed the robbery. The appellant submitted that he was at home with his parents when the robbery had taken place and that Michael Ryan had mistaken him for one of the robbers. The co-defendant declined to answer questions put to him at interview, and did not give evidence at the trial.

Dee Riley stated at the trial that as the two men approached her and Michael Ryan, one of them pushed her left shoulder causing her to fall to the ground. He tried to take her bag. She heard Michael Ryan calling for help and saw him lying on the ground to her left. She then felt a blow to her right and a very sharp pain to her face. The blow had been struck by the same man that had tried to take

her bag. As she put her hands up to protect her face, her bag was taken from her. After the attack, she ran to a nearby house for help. Dee Riley described the two attackers as tall, in their 20s and appeared to have local accents, both white and with dark hair. Michael Ryan stated that his view of the two men was poor at the start of the attack, but at the point at which the two men had tried to seize Dee Riley's bag he had got a good view of the face of one of the men who was pinning Dee Riley's hands back whilst the other man got the bag. He stated that the man was wearing dark clothing, and stated that he was approximately 5 foot 11 inches tall. The appellant is approximately 6 foot 3 inches tall.

At the close of the prosecution case, the defence invited the judge to withdraw the case from the jury on the basis that this was a classic case of an observation based on a fleeting glance and the identification of the appellant was too weak to support a safe conviction, referring to the case of *R v Turnbull [1977] QB 224*. The judge considered the detailed facts of the case, including the fact that neither of the victims had mentioned tattoos when describing the men, despite the fact that the appellant had a tattoo on his neck. The judge concluded that it was not a case of a fleeting glance and that although the identification evidence might not have been of the highest quality, it was not so poor that she would withdraw the case from the jury. The judge then went on to say that the identification was capable of being supported by evidence of the appellant's previous conviction for an offence of robbery committed with the co-accused, which the prosecution had indicated that it would apply to adduce as evidence of bad character. This, together with the evidence that the co-accused's blood had been found on the receipt from Dee Riley's handbag was capable of supporting Michael Ryan's identification of the appellant because it made it less likely that he had by chance picked out at the identification procedure an innocent person who happened to have a history of this kind of offending.

The next day the prosecution made a formal application to adduce evidence of the appellant's conviction of robbery and also a conviction of assault occasioning actual bodily harm arising out of an unprovoked attack in much the same location. Despite opposition from the defence, the judge stated that the two previous convictions were relevant to the important issue of identification because they tended to support the other evidence of identification. The judge also stated that the convictions tended to support the conclusion that the appellant had a propensity to make attacks in that area on older people together with his co-accused. She accepted that the evidence of his convictions was highly prejudicial however did not think that admitting it would have an adverse effect on the fairness of the trial.

The jury convicted the appellant but acquitted the co-defendant.

The two grounds of appeal were:

- ◆ The judge should have withdrawn the case from the jury because of the weakness of the identification evidence;
- ◆ The judge should not have allowed the prosecution to adduce evidence of the appellant's two previous convictions.

The judgement

In relation to the identification evidence, the Court of Appeal stated that in this case, Michael Ryan and the two robbers were all in close proximity and he was able to get a good look, albeit for a short period of time, at the face of the man standing behind Miss Riley. It was therefore not the case that it was for a fleeting glance, such as in *R v Turnbull* [1977] QB 224. In relation to the tattoos of the appellant, the Court of Appeal stated that whether they were clearly visible under the prevailing conditions is uncertain. In relation to the difference in height of the appellant and that described by Michael Ryan, the Court of Appeal stated that there is a real distinction between the instinctive process of taking in a person's facial features and the conscious mental process involved in assessing a person's height in feet and inches. The Court of Appeal concluded that the quality of observation was good enough to justify the judge leaving the case to the jury.

The Court of Appeal, when referring to the identification evidence noted that the judge had referred to the support that could be given to Mr Ryan's identification of the appellant by his previous convictions. The Court of Appeal stated that in its view, it was not open for the judge to rely on that evidence when she made her ruling, because at that stage no application to adduce that evidence had been made. Despite this the Court of Appeal said that it was clear from the judge's ruling that her decision did not depend on the admission of that evidence and it stood on the quality of the identification evidence alone, which she considered was good enough to justify leaving the case to the jury.

The Court of Appeal therefore rejected the first ground of appeal.

In relation to the appeal of adducing bad character evidence, it was submitted by the defence that neither of the convictions were relevant to any important matter in issue in the proceedings, and even if they were, the admission of that evidence was likely to have such an adverse effect on the fairness of the proceedings that it should be excluded under section 101(3) of the Criminal Justice Act 2003.

The Court of Appeal referred to the case of *R v Eastlake* [2007] EWCA Crim 603 and stated that the principle of this case was that evidence of a previous conviction can be admissible for the purposes of reinforcing other relevant evidence, and for that purpose it does not need to be capable of showing a propensity to

commit offences of the kind under consideration. The question is whether the previous conviction is relevant to an important matter in issue between the prosecution and the defence and, if so, whether its admission in evidence would have an adverse effect on the fairness of the proceedings.

The Court of Appeal went on to state that evidence of one or more convictions for offences of a similar kind are clearly capable of showing that the accused has a propensity to commit offences of the kind with which he is charged and therefore of bolstering a visual identification of the defendant as the person who committed the offence. It may also reinforce other evidence tending to show that the defendant committed the offence with which he is charged. The Court of Appeal did however state that this approach must be taken with care. The court referred to the case of *R v Hanson* [2005] EWCA Crim 824 where the judge stated that a single previous conviction, even for an offence of the same description or category, will often not be evidence of propensity to commit offences of that kind. The judge went on to say that it may do so if it demonstrates a tendency towards unusual behaviour or where its circumstances demonstrate probative force in relation to the offence charged.

The Court of Appeal stated that in this case, the judge recognised that evidence of the appellant's previous convictions was highly prejudicial, but considered that it should be admitted because it was highly probative. The Court of Appeal examined this in further detail as there were common features between the previous convictions and the current offence, in addition to dissimilarities.

The Court of Appeal considered the two previous convictions together and observed that:

- ◆ They occurred in the same area of Basingstoke as the instant offence;
- ◆ On each of the two previous occasions the appellant committed the offence with at least one other man and the index offence was committed by two people;
- ◆ The previous offences were seemingly opportunistic and involved public violence inflicted on strangers;
- ◆ The robbery in the garage involved the use of violence that ceased, as in the present case once the robbers had secured the goods they wished to steal;
- ◆ The assault was carried out in broadly similar circumstances to the attack on Michael Ryan and Dee Riley, save that no property was stolen.

The Court of Appeal stated that although not every judge might necessarily have reached the same conclusion, it considered, taken

together, that it was open to the judge to conclude that the convictions could logically and properly demonstrate a propensity to behave as the appellant was said to have behaved in the robbery being tried, and whether or not they did so was for the jury to decide. The Court of Appeal stated that the judge and jury were entitled to consider the evidence all together, and as the prosecution had stated, once the link to the co-defendant was established through DNA evidence and the appellant had been identified by the witness, the previous participation by both of these men in a robbery, even if somewhat different, took on a logical, not merely prejudicial, significance.

In relation to identification evidence, the Court of Appeal stated that the identification evidence was good enough to stand on its own and in its view was strong enough to justify admitting evidence of bad character in support of it. It was satisfied that the judge was right to admit the evidence of the appellant's previous convictions for robbery and assault.

The Court of Appeal concluded by saying that in its judgment, there was no proper basis for concluding that in admitting this material the judge made a "plainly wrong" decision or that she exercised her discretion unreasonably. The appeal against conviction was dismissed. The Court of Appeal also refused an application for leave to appeal against sentence.

The full case report can be found at
<http://www.bailii.org/ew/cases/EWCA/Crim/2013/710.html>

Commissioner of Police of the Metropolis v Police Medical Appeal Board [2013] EWHC 1203

A hearing in the Queen's Bench Division Administrative Court before the Honourable Mr Justice Collins.

Summary

A case relating to a police officer who was injured in the course of his employment who sought a police injury pension and was appealing a decision by the police pension authority to refuse the award.

Facts

The interested party, W, joined the Metropolitan Police when he was 17 years old. In April 2006, W suffered an injury whilst undertaking safety training which caused immediate and continuing pain to his back. He continued to serve as a police officer but was unable to perform full police duties and was medically retired in March 2008, following a consultation with a selected medical practitioner (SMP) who concluded that W was suffering from lumbar disc degeneration which was likely to render him unfit to perform his duties. The SMP asserted that W's injury resulted in an acceleration of his pre-existing condition by approximately 18 months to 2 years. After retirement, W applied to the claimant in this case, the Metropolitan Police Commissioner, for a police injury pension. In July 2009 the claimant refused W an award. In November 2011 during a judicial review, the court quashed the Metropolitan Police Commissioner's decision and W's application was reconsidered by the SMP who maintained his conclusion that W was not entitled to an injury award. W then appealed to the Police Medical Appeal Board and succeeded on the basis that there was a considerable weight of evidence that strongly suggested that W's injury had substantially contributed to him being permanently disabled. The claimant sought judicial review of that decision contending that acceleration of W's condition by between 18 months and 2 years was insufficient to justify an award.

The judgement

The claimant's appeal was dismissed. It was an established principle that it is not the case that even if an injury had merely accelerated the onset of symptoms a casual link could not be made out. An injury which did substantially contribute to the permanent disability would give right to an award and the extent of any acceleration would not be a determining factor. Furthermore, an injury which caused disablement which was permanent was likely to be regarded as a substantial contribution to that disablement. If, however, the injury was relatively trivial and the disability was largely due to underlying degenerative problems, it could not be

said that the injury had substantially contributed at that time to the permanent disability. In this case, the judge stated that the defendant had been correct to adopt the approach that it had, and was entitled to conclude that the injury had substantially contributed to W's disablement and that any other decision would have been wrong. The approach based on aggravation or acceleration and the extent of acceleration was not appropriate.

The full case report can be found at
<http://www.bailii.org/ew/cases/EWHC/Admin/2013/1203.html>

SI 2013/1200 The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2013

In force **29 May 2013** and extends to England and Wales only. This Order amends the definition of "relevant matter" in the Police Act 1997. The definition of "relevant matter" sets out what is disclosed by the Disclosure and Barring Service in response to an application for a criminal record certificate or an enhanced criminal record certificate.

SI 2013/1196 The Protection of Freedoms Act 2012 (Consequential Amendments) No.2 Order 2013

In force **17 June 2013**. This Order amends the Police Act 1997 (Criminal Records) (Fees) Order 2004, which specifies functions which the Secretary of State may recover the costs of when setting fees for issuing criminal record certificates and enhanced criminal record certificates, to update references to provisions in the Police Act 1997. This Order also replaces references to "Secretary of State" with "Disclosure and Barring Service", following the transfer of functions relating to the provision of criminal record certificates and enhanced criminal record certificates from the Secretary of State to that body.

SI 2013/1194 The Police Act 1997 (Criminal Records) (Amendment) Regulations 2013

In force **17 June 2013**. These Regulations amend the Police Act 1997 (Criminal Records) Regulations 2002 to substitute new prescribed purposes for which an enhanced criminal record certificate may be required in accordance with a statement made by a registered person under section 113B(2)(b) of the Police Act 1997.

These Regulations also insert a new regulation 6 into the 2002 Regulations which prescribes the fees for requesting up-date information about a person's criminal conviction certificate, criminal record certificate or enhanced criminal record certificate under section 116A of the Police Act 1997. A new regulation 7 is also inserted by these Regulations which sets out certain conditions which must be satisfied before a copy of a criminal record certificate or an enhanced criminal record certificate can be provided to a registered person in response to a request for such a copy.

SI 2013/1180 The Protection of Freedoms Act 2012 (Commencement No. 6) Order 2013

This Order brings into force various sections of the Protection of Freedoms Act 2012 on **17 June 2013**. In particular, the Order brings into force provisions which repeal the general obligation

upon the Disclosure and Barring Service (DBS) to provide a copy of a criminal record certificate to the registered body who countersigned a person's application for such a certificate. This Order also brings into force provisions allowing for a copy of a criminal record certificate to be provided to a registered body in response to a request for such a copy. This Order also brings into force provisions relating to the up-dating service, which introduces a procedure for the up-dating of criminal record certificates.

SI 2013/1165 The Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2013

In force **1 July 2013**. This Order is made under section 3(1) of the Criminal Justice and Police Act 2001 and amends the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002.

Article 2 of this Order amends the 2002 Order with the effect that the penalties payable in respect of penalty offences are increased. The term "penalty offence" is defined in section 1 of the Criminal Justice and Police Act 2001. This Order raises the penalties by £10; from £80 to £90 in the case of a penalty offence falling within Part 1 of the Schedule to the 2002 Order; and from £50 to £60 in the case of a penalty offence falling within Part 2 of the Schedule to the 2002 Order.

SI 2013/1127 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 8) Order 2013

Section 148 in force on **14 May 2013**. This section amends section 76 of the Criminal Justice and Immigration Act 2008 which provides a gloss on the common law of self-defence and the defences provided by section 3(1) of the Criminal Law Act 1967 and section 3(1) of the Criminal Law Act (Northern Ireland) 1967. Section 148 of the 2012 Act amends section 76 of the 2008 Act so that the law relating to self-defence and related defences is set out clearly in one place.

SI 2013/1104 The Coroners and Justice Act 2009 (Commencement No. 13) Order 2013

This Order brings into force paragraphs 4 and 5 of Schedule 17 to the Coroners and Justice Act 2009 on **28 May 2013**.

Schedule 17 to the 2009 Act implements Framework Decision 2008/675/JHA on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings. Article 3(1) of that Framework Decision requires that, in the course of criminal proceedings against a person, previous convictions in other European Union Member States are taken into account to the same extent as previous convictions in domestic courts. The provisions that this Order brings into force achieve this

in relation to the allocation procedure contained in Schedule 3 to the Criminal Justice Act 2003. Paragraph 4 of Schedule 17 to the 2009 Act amends section 19 of the Magistrates' Courts Act 1980, that section having been substituted by paragraph 5 of Schedule 3 to the 2003 Act. The effect of this amendment is that when a magistrates' court is considering whether an either way offence appears to it more suitable for summary trial or trial on indictment and the court is informed by the prosecution of the accused's previous convictions, those convictions are to include previous convictions in another European Union Member State. Paragraph 5 of Schedule 17 to the 2009 Act amends paragraph 9 of Schedule 3 to the Crime and Disorder Act 1998, that paragraph having been amended by paragraph 20 of Schedule 3 to the 2003 Act. This amendment will apply when a case is sent to the Crown Court, but the indictment has subsequently been amended so as to remove the indictable only offence that had required the case to be sent. The effect of the amendment is that when the Crown Court is considering whether any remaining either way offences on the charge are more suitable for summary trial or trial on indictment and it is informed by the prosecution of the accused's previous convictions, those convictions are to include previous convictions in another European Union Member State.

These provisions are being brought into force on 28 May 2013 to coincide with the full commencement of most of the provisions of Schedule 3 to the 2003 Act. Those provisions in the 2003 Act implement the new procedure for deciding on the allocation of either way offences to the magistrates' court or to the Crown Court.

**SI 2013/1103 The Criminal Justice Act 2003
(Commencement No. 31 and Saving
Provisions) Order 2013**

This Order brings into force some provisions of the Criminal Justice Act 2003 ("the 2003 Act") on **28 May 2013**. Most of the paragraphs in Schedule 3 to the 2003 Act have previously been commenced in relation to specified local justice areas by the Criminal Justice Act 2003 (Commencement No. 28 and Saving Provisions) Order 2012 and the Criminal Justice Act 2003 (Commencement No. 29 and Saving Provisions) Order 2012, which was amended by the Criminal Justice Act 2003 (Commencement No. 29 and Saving Provisions) (Amendment) Order 2012. Article 2 of this Order brings into force these paragraphs in Schedule 3 to the 2003 Act on 28 May 2013 in relation to all remaining local justice areas and to the Crown Court for certain purposes. Article 3 contains saving provisions concerning the provisions brought into force by article 2. Article 4 removes the effect of the saving provisions from this Order and the two previous commencement orders that commenced provisions in Schedule 3 to the 2003 Act. This ensures that as of 31 August 2013 the provisions in Schedule 3 that are commenced by this Order will have full effect in all local

justice areas, and the committal procedure by which an either-way offence reaches the Crown Court will be fully abolished.

**SI 2013/1042 The Crime and Courts Act 2013
(Commencement No. 1 and Transitional and
Saving Provision) Order 2013**

This Order is the first commencement order made under the Crime and Courts Act 2013. Article 2 brings into force on **8 May 2013** the specified order making powers, the interpretation provisions in Part 1 and section 51 of the Crime and Courts Act 2013. Article 3 brings into force on **27 May 2013** the further specified provisions of Part 1 of the Act. These provisions include those enabling the National Crime Agency to be formed, the Director General to be appointed by the Secretary of State, the annual plan to be issued and for consultation to take place on the Framework Document. These provisions also provide for the National Crime Agency to be exempt from the Freedom of Information Act 2000.

Article 4 brings into force **25 June 2013** the further specified provisions in the Act which include sections 52, 53, and 54. Some of the provisions in section 55 and Schedule 21 of the Act are also being brought into force on this date, which provide immigration officers with powers in relation to criminal investigations and ensure that persons who are detained in Scotland on suspicion of having committed immigration or nationality offences have the right to free legal assistance.

**SI 2013/1012 The Road Safety Act 2006 (Commencement
No. 10) Order 2013**

This Order brings into force section 13 of the Road Safety Act 2006 on **1 June 2013**. Section 13 amends section 88 of the Road Traffic Act 1988 which sets out exceptions to the general requirement for anyone wishing to drive a motor vehicle on a road to have an appropriate driving licence. The amendments apply to High Risk Offenders, who have been disqualified by court order as a result of serious drink-driving related offences, as prescribed under section 94(4) of the 1998 Act by regulation 74(1) of the Motor Vehicles (Driving Licences) Regulations 1999(1). The amendments prevent a High Risk Offender, who is in the process of applying for a driving licence as a result of, or in anticipation of, the expiry of a driving disqualification, from driving before they have successfully been granted a new licence following a medical examination as required by the Secretary of State (under section 94(5) of the Act). The effect of section 13(2) of the Road Safety Act 2006 is that this only applies where the conviction in respect of which the disqualification was imposed is on or after the section is brought into force.

National DNA Database Annual Report Published

The National DNA Database (NDNAD) Annual Report for 2011-2012 has been published. The Annual Report explains what DNA is, and details the NDNAD process.

The report also provides statistics in relation to the NDNAD for example:

- ◆ A survey of Senior Investigating Officers in 35 of England and Wales' 44 police forces conducted in 2012 found that, of 391 murder cases dealt with by their forces in 2011-2012, where a search of the NDNAD had been carried out the resulting matches had contributed to the outcome of 68% of investigations;
- ◆ In 2011-2012 the volume of crime detected or taken into consideration in which there was a profile match by the NDNAD was 21,524 which represented 0.54% of all recorded crime;
- ◆ A total of 6,969,396 subject profiles, a DNA profile collected from an individual, were held on the NDNAD as of 31 March 2012. This figures included 398,845 subject profiles that were added between 1 April 2011 and 31 March 2012;
- ◆ The number of subject profiles added to the NDNAD between 1 April 2011 and 31 March 2012 represented 15% fewer new profiles added between 2010 and 2011 and this continues a pattern of the number of new profiles declining annually.

The Report provides clarification as to the two types of samples which are held on the NDNAD, namely subject profiles which are discussed above, and crime scene profiles which are DNA profiles from unidentified individuals which are collected from a crime scene or victim. The Annual Report states that as of 31 March 2013, there were 7,375,244 profiles in total from both categories on the NDNAD.

In relation to crime scene profiles, which are obtained from blood, hair, semen and saliva, the Annual Report states that in 2011-2012, 38,869 profiles were loaded to the NDNAD, which represents a 3% decrease in comparison to the number loaded in 2010-2011. The report states this could be linked to the fact that the number of crime scene examinations carried out between 2011-2012 fell by 7% and levels of recorded crime fell by 4.2%.

The report also discusses deletions from the NDNAD and explains why subject profiles are deleted from the database, namely for the following reasons:

- ◆ The law in Scotland governing the retention and removal of samples results in a higher volume of deletions;

- ◆ At the request of a Chief Officer in England and Wales following an individual claiming detention of their profile is applicable under the Exceptional Case Procedure;
- ◆ NDNAD Unit deletions of verified duplicate profiles;
- ◆ Automated deletions of DNA profile driven by the Police National Computer record being set for deletion.

The report states that 25,375 subject profiles were deleted in 2011-2012. It also confirms that 34,876 crime scene profiles were deleted in the same year, which was a noticeable increase from the previous year when 16,316 crime scene profiles were deleted. The report provides an explanation for this significant decrease, namely that there was a review of crime scene profiles obtained using the second generation multiplex profiling technique, a method which has since been succeeded due to advances in technology.

The report also covers duplicate subject profiles, unconvicted individuals, missing persons DNA database and vulnerable persons DNA database, as well as describing how DNA profiles are matched.

The report provides statistics relating to the number of crimes matching a subject profile in 2011-2012 including:

- ◆ 13,422 crimes with a match were recorded for the offence of burglary;
- ◆ 4,453 crimes with a match were recorded for the vehicle crime offences;
- ◆ 3,498 crimes with a match were recorded for the offence of criminal damage;
- ◆ 1,400 crimes with a match were recorded for drugs offences;
- ◆ 522 crimes with a match were recorded for the offence of rape;
- ◆ 195 crimes with a match were recorded for the offences of murder, manslaughter and attempted murder.

It also provides figures relating to unmatched crime scene profiles on the NDNAD at 31 March 2013. There were:

- ◆ 65,994 unmatched profiles retained relating to burglary;
- ◆ 45,549 unmatched profiles retained relating to vehicle crime;
- ◆ 10,242 unmatched profiles retained relating to criminal damage;
- ◆ 2,927 unmatched profiles retained relating to drugs offences;
- ◆ 2,755 unmatched profiles retained relating to rape;
- ◆ 3,312 unmatched profiles retained relating to murder, manslaughter and attempted murder.

In 2011-2012, the report states that there were 2,635 crime-scene-to-crime-scene matches.

The report covers the governance and operation of the NDNAD and the closure of the Forensic Science Service. It also covers the introduction of the Protection of Freedoms Act 2012, and states that the provisions of this piece of legislation are expected to lead to the deletion of a significant number of DNA profiles of unconvicted individuals. This will be achieved by way of a new Police National Computer process which is currently being developed.

The report concludes by discussing the Forensic Science Regulator, the NDNAD Ethics Group and the financial costs of the NDNAD.

The full NDNAD Annual Report can be found at <https://www.gov.uk/government/publications/ndnad-annual-report-2011-to-2012>

Independent Public Report on Progress of Operation Pallial is Released by the Director General of the National Crime Agency

An independent Public Report detailing the progress of Operation Pallial, the investigation of recent allegations of historic abuse in the care system in North Wales, has been released by the Director General of the National Crime Agency.

It details the commencement of the investigation in addition to summarising the findings of the first phase of the investigation, namely that there was significant evidence of systemic and serious sexual and physical abuse of children whilst in care, at 18 North Wales care homes between 1963 and 1992.

This progress report addresses how Operation Pallial is being managed and discusses the investigation strategy in detail. The objectives of the investigation are:

- ◆ Where necessary take appropriate action to gather cogent evidence with a view to securing convictions for those involved in offences;
- ◆ To create an environment wherein complainants are supported in order that they feel safe to co-operate with the investigation and to give evidence in court; and
- ◆ To promote the perception in the community that offences of violence against children and vulnerable people are taken seriously and investigated properly.

The progress report provides an analysis of findings, and states that to date 140 complainants have contacted Operation Pallial, and of

those 125 were male complainants and 15 were female complainants. The progress report also states:

- ◆ Interviews of 18 complainants remain pending as a result of their being unavailable or choosing not to pursue their allegations;
- ◆ Of the remaining 122 complainants, the majority have been video interviewed and 76 have provided new allegations to the police;
- ◆ Reports have been made of offences and conduct at 18 care homes in North Wales between 1963 and 1992 and the age range of the complainants at the time of the allegations was between 7 and 19 years old.

The progress report outlines how complainants have been dealt with and how interviews have been conducted.

In relation to the suspects of the investigation, the progress report states that at present there are:

- ◆ Allegations against 84 named individuals, of whom 75 are males and 9 are females;
- ◆ 32 further allegations against unidentified individuals;
- ◆ 16 alleged repeat offenders.

The progress report concludes with the next steps of the investigation, and how the investigation is now moving into the second phase.

The full public report on progress can be found at <http://www.north-wales.police.uk/pdf/PEnglishfinal.pdf>

Office for National Statistics Release Crime Figures in England and Wales for Year Ending December 2012

The Office for National Statistics has released a Statistical Bulletin setting out the crime figures relating to the year ending December 2012. The quarterly release presents the most recent crime statistics from the Crime Survey for England and Wales (CSEW) and police recorded crime.

The latest figures from the CSEW suggest that in the year ending December 2012, 8.9 million crimes against adults occurred in England and Wales, which represents a 5% decrease in comparison to the previous year. The CSEW also estimated that there were 0.9 million children aged between 10-15 years old who had experienced crimes in the year ending December 2012.

For the same year the police recorded:

- ◆ 3.7 million offences;
- ◆ 2.3 million incidents of anti-social behaviour;
- ◆ 1.0 convictions for other (non-notifiable) offences.

The statistics show that in all of the main categories of police recorded crime, crime fell in the year ending December 2012 in comparison to the previous year, although there were some increases in sub categories.

In relation to violence against the person offences, the records kept by police showed a 6% decrease in the year ending December 2012 in comparison to the previous year. The number of serious violent crimes also declined, with homicide and attempted murder decreasing by 4% in the year ending December 2012, in comparison to the previous year, and violence against the person with injury declining by 9%.

Police records show that robberies fell by 13% in the year ending December 2012 in comparison to the previous year and sexual offences that were recorded by police fell for the first time in three years.

The CSEW category of vehicle related theft showed a 10% decrease in the year ending December 2012 from the previous year, and this has diminished by 75% from 1995. The survey also indicated that overall household crime in the year ending December 2012 had decreased by 5% compared to 2011.

In relation to offences involving firearms, police figures show that there were 5,128 offences in the year ending December 2012, in

comparison to the previous year when 6,231 offences were recorded.

With regard to sexual offences, the police recorded crime figures show a 3% decrease in all sexual offences for the year ending December 2012 in comparison to the previous year. The publication discusses the impact the Jimmy Savile inquiry and Operation Yewtree has had on the crime figures, and states that the overall impact of offences covered by Operation Yewtree on the volume of sexual offences will be small as the additional 214 offences are equivalent to a 0.4% increase in police recorded sexual offences. Evidence from Her Majesty's Inspectorate of Constabulary (HMIC) review titled 'Mistakes were made' however suggests that a longer term and more substantial 'Yewtree effect' may occur as a result of increased willingness on the part of the victims to report historical sexual offences.

Detailed crime figures relating to other offences such as burglary, vandalism and criminal damage, drugs offences and fraud are also provided within the publication produced by the Office for National Statistics.

The Statistical Bulletin can be found in full at http://www.ons.gov.uk/ons/dcp171778_307458.pdf

CEOP Publishes Annual Review for 2012-2013 and Centre Plan for 2013-2014

The Child Exploitation and Online Protection Centre (CEOP) has published its Annual Review for the year 2012-2013 and Centre Plan for the next year.

The review highlights the centre's key performance indicators which are based on its priority work to Prevent, Protect and Pursue.

In relation to the prevention of child sexual abuse, CEOP states in its review that in the last year the following has been achieved:

- ◆ CEOPs network of volunteers, ambassadors and trainers have delivered important safety messages to more than 2.6 million children;
- ◆ CEOP trained almost 400 new Thinkuknow Ambassadors through training events;
- ◆ CEOP trained 417 other professionals who work in child protection related organisations and agencies overseas, in a variety of specialist areas including online safety education, covert internet investigations and interviewing techniques;
- ◆ CEOP and Thinkuknow websites received almost 3.5 million unique visitors in 2012-2013;

- ◆ Engagement through social media also increased with the launch of a new CEOP Education Twitter account;
- ◆ Through its Facebook likes, CEOP has the potential to reach approximately 200,000 people including subscribers to the CEOP page and friends receiving updates.

CEOP stated that in relation to protecting children from harm, a total of 18,887 reports were received by the Referrals Team in CEOP this year, which represents an overall increase of 14% on last year. On average 6% of all reports received into CEOP are urgent because a child is at immediate risk of harm.

The review states that the 2012 Threat Assessment of Child Sexual Exploitation and Abuse identified the most significant threats to children and CEOP focuses its efforts on these threats:

- ◆ The targeting of children online based on their heightened vulnerability;
- ◆ Those who sexually offend against children using the anonymity afforded by the hidden internet;
- ◆ The production, distribution and possession of indecent images of children;
- ◆ Those who travel overseas to sexually offend against children;
- ◆ Group and gang associated sexual exploitation of children.

CEOP states that in 2012-2013 790 children were safeguarded and protected from sexual abuse as a result of CEOP intelligence and operations.

In relation to the final priority of pursuing offenders, the review states that in 2012-2013 CEOP made 2,866 intelligence disseminations on individuals suspected of being involved in child sexual abuse to law enforcement agencies and 601 to children's services. Data received from police forces in the UK and overseas show that 192 suspects have been arrested as a result of intelligence received from CEOP.

The CEOP Centre Plan states that for 2013-2014, its Key Threat Areas are:

- ◆ The proliferation of indecent images of children, particularly the production of still, moving and the live streaming of child abuse images;
- ◆ The online sexual exploitation of children, with a focus on the systematic sexual exploitation of multiple child victims on the internet;

- ◆ UK nationals committing sexual offences against children overseas, including both transient and resident UK national and British citizens;
- ◆ Contact sexual offending against children, particularly the threat posed by organised crime-associated child sexual exploitation and the risk factor of missing children.

The plan also details how CEOP intends to deliver an effective response to the key threat areas, and this is expected to be outlined in further detail in CEOPs Threat Assessment of Child Sexual Exploitation and Abuse (TACSEA) which is due to be published shortly.

The Annual Review 2012-2013 and Centre Plan 2013-2014 can be found at
<http://www.ceop.police.uk/Documents/ceopdocs/AnnualReviewCentrePlan2013.pdf>

West Yorkshire Police Publishes Report on Operation Newgreen Concerning Jimmy Savile

West Yorkshire Police has published an extensive force review, Operation Newgreen, into the late Jimmy Savile, his crimes and it's relationship with him. This follows the review conducted by Her Majesty's Revenue and Customs (HMIC) which assessed the allegations and intelligence material concerning Savile titled 'Mistakes were made'. This was covered in April's edition of the *Digest*.

HMIC identified a number of issues concerning West Yorkshire Police (WYP) and raised them with WYP, as well as detailing them in the 'Mistakes were made' report. A response to these issues forms a significant part of this recent report produced by WYP. The points raised with WYP by HMIC were:

- ◆ Details of senior officer overview of the Savile internal enquiry;
- ◆ Terms of reference for Operation Newgreen and associated policy decisions;
- ◆ Knowledge of an intelligence report sent to WYP by the MPS in 1998;
- ◆ Absence of information and intelligence on WYP systems relating to Savile in the light of his level of offending;
- ◆ Information received that WYP officers had been directed to patrol near to Savile's home address in Leeds;
- ◆ Knowledge of an intelligence report sent to WYP from MPS in 1964;

- ◆ Savile's involvement in the Yorkshire Ripper enquiry;
- ◆ Management of media reports relating to Savile;
- ◆ Process to obtain any relevant information on Savile from current officers and police staff.

The report provides a background to the investigation of Savile and the commencement of Operation Newgreen which started on 21 January 2013 with the following objectives:

- ◆ To gain a wider understanding of the relationship between WYP and Savile;
- ◆ To identify any other allegations that may or may not have been made about Savile to WYP;
- ◆ Establish the membership and purpose of the Friday Morning Club;
- ◆ Establish the conduct of attendees at the club.

The report addresses the relationship the force had with Savile, including his involvement with campaigns and charity work. It also details the intelligence and information that was received in relation to Savile as well as communication made between WYP and other police forces.

Findings relating to the 'Friday Morning Club', which were occasions when Savile met at his home address in Leeds with a regular group of people including police officers, are also outlined alongside Savile's link to the Yorkshire Ripper enquiry.

In conclusion, the report provides actions that WYP will take in order to ensure that lessons are learnt from the Savile enquiry:

- ◆ WYP will develop its current policy to ensure that associations and relationships with high profile individuals receive the same level of scrutiny and management as relationships with other individuals to ensure effective safeguarding measures are in place to protect the public and maintain public confidence;
- ◆ WYP will continue to work with Victims of recent and non-recent sexual abuse and support organisations to gain a better understanding of why Savile's victims did not report their abuse to WYP;
- ◆ WYP will continue to ensure that it is compliant with the National Intelligence model in relation to the recording, classification and dissemination of intelligence that may relate to a high profile individual;
- ◆ WYP will develop a process to ensure that when important information or intelligence is received verbally it is assessed and a record is made on the intelligence systems;

- ◆ WYP will review current training programmes for those engaged in research and analysis to ensure that a profile of sexual violence and sexual offenders is maintained in West Yorkshire.

The full report can be found at
<http://www.westyorkshire.police.uk/sites/default/files/files/reports/savilereportfinalwyp.pdf>

Learning the Lessons: Bulletin 19

The Independent Police Complaints Commission (IPCC) has published the most recent Learning the Lessons Bulletin, which addresses the subject of corruption.

This publication fulfils a commitment made in a report published by the IPCC in May 2012. This report on the IPCC's experience of investigating corruption in the police service was requested by the Home Secretary following the phone hacking scandal.

Sale of Firearms Case

The first case summary in relation to corruption within the police force, concerns a Firearms Enquiry Officer (FEO) who, over 8 years, sold on over 100 weapons that had been handed in to the police. The majority of the weapons were previously owned by farmers or gun club members and were being disposed of directly by the owners or by the next of kin on the owner's death.

The Bulletin outlines the following key questions that should be addressed by policy makers and managers highlighted by this case:

- ◆ What mechanisms does your police force have in place to monitor the disposal of firearms, and ensure that officers handling firearms handed in by members of the public are not able to sell these on for personal gain?
- ◆ Does your police force hold meetings with the gun and shooting community to give them a forum to discuss any concerns with the police?

The Bulletin outlines the following key question that should be addressed by police officers and staff highlighted by this case:

- ◆ Are you confident that you understand the expected standard of behaviour relating to firearms handed in by members of the public?

Finally this case summary concludes with actions that were taken by the police force in question, some of which are detailed below:

- ◆ All FEOs in post have been vetted and all new FEOs will be vetted prior to taking up posts;
- ◆ Managers and supervisors will conduct regular meetings with FEOs at which standards of professional behaviour, working practices, and training will be standing items;
- ◆ FEOs have been issued with new detailed guidance, which will be subject to regular review by the firearms licensing department;

- ◆ Any FEOs requesting a transfer of a gun to their licence will be brought to the attention of a supervisor within the firearms licensing department and a full audit will be carried out in respect of the specified gun.

In relation to the outcome of the case, the FEO in the case received a 51 week prison sentence suspended for two years after being found guilty of misconduct in a public office. The investigation also identified a second officer who was also engaging in similar conduct, and they received a 40 week prison sentence suspended for one year after being found guilty of misconduct in a public office.

Inappropriate Communication case

A further case which is discussed within the Bulletin involves the use of inappropriate communication by a police officer. The case concerned a man who was arrested for the abduction and sexual touching of a female who was 14 years old. When his phone was analysed a number of messages were identified as being sent from a serving police officer. The messages were sent whilst the police officer was both on and off duty and contained inappropriate language and were derogatory towards women. The officer was suspended and when his property was searched, his laptop was seized and when examined, was found to have level one images of children. The officer was arrested but there was insufficient evidence to prosecute him. During the investigation, however, it was identified that the police officer had emailed the man that had been arrested from a police force email account and a number of the emails were found to contain inappropriate language.

The Bulletin outlines the following key questions that should be addressed by policy makers and managers highlighted by this case:

- ◆ What steps has your police force taken to ensure that all officers and staff are aware of your email policy, and fully understand the difference between appropriate and inappropriate use?
- ◆ How does your police force ensure that officers' use of the internet from police force systems is reasonable and for legitimate purposes?
- ◆ Does your police force monitor incoming and outgoing emails to help identify inappropriate use of your email system, and if so, are you confident that your system could detect offensive words (such as swear words, or other offensive or inappropriate terms)?

The case summary concludes with actions that were taken by the police force in question:

- ◆ The police force reviewed and updated its email policy following the investigation. Ownership of the revised policy now sits with the police force's Professional Standards Department. The revised version was circulated to staff by email and placed on the police force's intranet site;
- ◆ The police force is currently looking at procuring a new inception tool to allow it to identify emails that contain rude and offensive words.

The officer concerned in this case was dismissed with immediate effect following a misconduct hearing. Following a Police Appeals Tribunal the officer was reinstated into the police force with the sanction of dismissal being replaced with a final written warning. Judicial review of the decision of the tribunal in the High Court directed that the decision should be quashed and therefore the original conduct hearing decision was reinstated.

Other case summaries detailed in this Learning the Lessons Bulletin include cases involving:

- ◆ Inappropriate behaviour;
- ◆ Police staff hacking into police force systems;
- ◆ A police officer who used police intelligence systems and the internet inappropriately and did not record her leave properly;
- ◆ Theft from searches;
- ◆ Passing on Information;
- ◆ Expenditure falling within allowances.

There is also a case discussed within the bulletin concerning a police officer who used police computer systems to befriend women with a view to engaging in a sexual relationship, and a further case which concerned a member of police staff stealing over £10,000. The Learning for Lessons Bulletin provides key questions for policy makers and managers highlighted by these cases, as well as providing details of actions taken by the police force in question and the outcomes of the cases.

The Learning the Lessons Bulletin concludes by detailing the seven principles of public life, which set that standard for how public office holders should behave and provides a useful standard to which police officers should aspire. They fall under the following headings:

- ◆ Selflessness;
- ◆ Integrity;
- ◆ Objectivity;

- ◆ Accountability;
- ◆ Openness;
- ◆ Honesty;
- ◆ Leadership.

The full Learning the Lessons titled Bulletin 19: Corruption can be found at
<http://www.learningthelessons.org.uk/Pages/Bulletin19.aspx>

CPS Publishes New Guidance on Charging Offences Arising From Driving Incidents

On 9 May 2013 the Crown Prosecution Service (CPS) published new guidance on charging offences arising from driving incidents.

The two most significant changes from previous guidance concern drivers in emergencies and deaths where the victim was a close friend or relative of the driver.

In relation to cases where the driver was responding to an emergency, prosecutors will consider:

- ◆ The nature of the emergency known to or reasonably perceived by the driver;
- ◆ The level of culpability of the driver;
- ◆ Whether there is evidence the driver may be a continuing danger to others.

In relation to cases where the victim is a close friend or relative of the driver, the new guidance states that when prosecutors are reviewing the case they should balance the circumstances of the case with the consequences to the driver, who is likely to have suffered significant personal loss from bereavement. The guidance states that in some instances, although there may be sufficient evidence to prosecute, a prosecution may not be appropriate and would not be in the public interest because of the likely life-long consequences of losing a loved one and being responsible for that loss.

The guidance does state however that there must always be a balance against the need to ensure the safety of other road users and if there is evidence to suggest that an individual may present a continuing danger to other road users, then the proper course to take is prosecution of that person. It also states that if a person other than a close friend or family member is also killed as a result of the manner of an individual's driving it may be that prosecution for offences relating to all the deaths is appropriate. It concludes by stating that prosecutors will need to consider each case on its own facts and its own merits.

The guidance also covers other public interest considerations when charging offences arising from driving incidents, general issues of relevance to driving offences, and offences and charging practice.

The guidance can be found at http://www.cps.gov.uk/legal/p_to_r/road_traffic_offences_guidance_on_prosecuting_cases_of_bad_driving/index.html

Crime and Court Act 2013 Receives Royal Assent

On 25 April 2013 the Crime and Courts Act 2013 received Royal Assent. This new piece of legislation comprises of three parts:

- ◆ Part 1 establishes the National Crime Agency (“NCA”);
- ◆ Part 2 contains various provisions in respect of the modernisation of the courts and tribunals system, awards of damages and costs against publishers of news-related material, community sentencing, extradition, the proceeds of crime and other provision about the administration of justice;
- ◆ Part 3 contains provisions in relation to border control, the immigration appeal system, public order offences and drug driving as well as standard provisions in respect of, amongst other things, orders and regulations, commencement and extent.

In relation to Part 1, Sections 1-4 and 8 and Schedules 1, 2 and 4 establish the Agency, its functions, provides for the appointment of a Director General as the operationally independent head of the NCA and makes provision for the governance of the NCA.

Other key sections relating to the NCA include:

- ◆ Section 5 and Schedule 3 which 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;
- ◆ Section 6 which places a duty on the Director General to publish certain information;
- ◆ Section 7, 12 and Schedule 7 make provision for disclosure by the NCA and to the NCA for the use of information by the Agency;
- ◆ Section 9, 10 and Schedule 5 provide for operational powers of the Director General and other NCA officers;
- ◆ Section 11 and Schedule 6 provide for the NCA to be inspected by Her Majesty’s Inspectorate of Constabulary (HMIC) and for regulations to make provision for oversight by the Independent Police Complaints Commission (IPCC);
- ◆ Section 15 and Schedule 8 abolishes the Serious Organised Crime Agency and the National Policing Improvement Agency.

Part 2 of the Crime and Courts Act 2013 contains provisions to further modernise courts and tribunals. Section 17 and Schedules 9 to 11 set out a single county court and single family court in England and Wales and Section 18 and Schedule 12 provide for applications for gang-related injunctions relating to young people to

be considered by the Youth Court as opposed to the County Court of High Court.

Other key sections of Part 2 of the Act include:

- ◆ Section 43 makes further provision about the use of force in self-defence;
- ◆ Section 44 and Schedule 16 make changes to the framework governing community and other non-custodial sentences for adult offenders;
- ◆ Section 45 and Schedule 17 contain provisions relating to deferred prosecution agreements, a new tool to tackle economic crime;
- ◆ Sections 46 and 47 provide for legal aid payments to be made from restrained assets in prescribed circumstances;
- ◆ Sections 48 and 49 and Schedules 18 and 19 amend the Proceeds of Crime Act 2002 in response to the UK Supreme Court judgment in the case of *Perry v SOCA* [2012] UKSC 35;
- ◆ Section 50 and Schedule 20 make various amendments to the Extradition Act 2003.

Finally in relation to Part 3 of the Act, Section 56 and Schedule 22 create a new offence of drug driving and make a further provision for the taking of preliminary drug tests. Section 57 makes amendments to the offence under section 5 of the Public Order Act 1986. Schedules 24 and 25 make provision as to the application to Northern Ireland of the provisions in relation to the NCA and the amendments to the Proceeds of Crime Act 2002.

Commencement

The following sections of the Act came into force on 25 April 2013:

- ◆ Part 5 of Schedule 13, and section 20 so far as relating to that Part;
- ◆ Section 43;
- ◆ Section 48 (except subsection (6)(a));
- ◆ Part 2 of Schedule 18;
- ◆ Sections 58 to 60 and this section;
- ◆ Schedules 24 and 25.

Section 19 came into force on 26 April 2013.

Sections 26(2), 31 and 33 will come into force two months after the Act was passed.

Sections 34 to 39 are due to come into force one year after the Act received Royal Assent with the purpose of carrying on activities relating to the recognition of independent regulators of relevant publishers (as defined by section 41).

Further sections have also been brought into force by way of SI 2013/1042, which is detailed at page 22.

The remainder of the Act is yet to be appointed.

The full copy of the Act can be found at
<http://www.legislation.gov.uk/ukpga/2013/22/contents/enacted>

The explanatory notes can be found at
http://www.legislation.gov.uk/ukpga/2013/22/pdfs/ukpgaen_20130022_en.pdf

Joint Committee on Human Rights Release Legislative Scrutiny Priorities 2013-2014

The Joint Committee on Human Rights has released its legislative scrutiny priorities for 2013-2014. The Committee scrutinises every Government Bill and draft Bill for its compatibility with human rights law, and this includes consideration of whether the Bill presents an opportunity to enhance human rights in the UK. The Committee has provisionally identified four Bills which it considers are likely to raise significant human rights issues, namely:

- ◆ Anti-Social Behaviour, Crime and Policing Bill;
- ◆ Care Bill;
- ◆ Immigration Bill;
- ◆ Offender Rehabilitation Bill.

The Committee actively encourages input from civil society into its legislative scrutiny work, and invites submissions from interested groups and individuals on:

- ◆ The significant human rights issues likely to be raised by each Bill or draft Bill;
- ◆ Whether the Bill or draft Bill presents opportunities to enhance protection of human rights.

Submissions must be no more than 1,500 words, and must be received by the Committee by 28 June 2013.

Submissions can be sent to:

Mike Hennessy
Commons Clerk of the Joint Committee on Human Rights
Committee Office
House of Commons
7 Millbank
London
SW1P 3JA

Or emailed to:
jchr@parliament.uk

For further information can be found at
<http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/jchr-legislative-scrutiny-priorities-2013-14/>

Government launches Consultation on Cutting Agents

On 28 May 2013 the Government opened a consultation seeking views on the proposal to introduce new powers to allow law enforcement agencies to seize and detain chemical substances suspected of being used as drug cutting agents.

The consultation document states that in recent years it has become common for organised criminals to use certain chemical substances as cutting agents to increase the volume of illegal drugs after they have been imported. In the UK, benzocaine, lidocaine, and phenacetin are the most common chemicals used, as they mimic some of the effects of the drugs and look similar.

Currently Benzocaine and Lidocaine are legal to import and sell as bulk chemicals as they are used within the pharmaceutical industry, however they have limited legitimate use in the UK in the raw powder form and require laboratory processes and licensing for manufacturing into an administrative form. Lidocaine can also be used as a medicine, although the consultation document states that those patients seeking to travel abroad with legitimately prescribed medicine would not be affected by the proposals recommended in the consultation if they come into force. Phenacetin is also legal to import and sell, however is no longer used in legitimate business because of its carcinogenic properties.

The consultation highlights that the Government wishes to introduce new powers to allow law enforcement agencies to seize and detain specified chemical substances that a reasonably suspected of being intended for use in unlawful conduct. The Government suggests that these powers would be available to the Serious Organised Crime Agency (SOCA) and the future National Crime Agency (NCA), police forces and the UK Border Force (UKBF). The proposed powers would include:

- ◆ A power to enter and search premises for specified chemical substances if a law enforcement officer has reasonable grounds to suspect they are intended for use in unlawful conduct;
- ◆ A power to seize any such substances if a law enforcement officer has reasonable grounds to suspect they are intended for use in unlawful conduct; and
- ◆ A power to detain any such substances for an initial period of 30 days.

The consultation document states that the Government envisages that a hearing would be held to decide on an application for detention. It is expected that the burden of proof would be to the civil standard, and this will fall on the importer to prove the legitimacy of the import. If the importer cannot do this, a further

application could be made by law enforcement officers to forfeit the detained substances. This process has been drawn from the current cash seizure powers provided by the Proceeds of Crime Act 2002, and the Government suggests that, as with the cash seizure powers, the detailed procedures for application to a magistrates' court or the sheriff under the proposed new powers would be covered by civil procedure rules.

The Government proposes that the new powers would apply to benzocaine, lidocaine and phenacetin, although it is seeking for these to be named by an order-making power in secondary rather than primary legislation so there will be flexibility to expand the powers to cover similar substances if this is required.

The consultation document states that the aim is to provide law enforcement agencies with a range of new powers to enable the identification, seizure, detention and forfeiture of cutting agents that are suspected of being for use in drug trafficking.

The consultation document explains that expected amendments to the Human Medicines Regulations 2012 [SI 2012/1916] will require all UK manufacturers, importers and distributors of active substances for human use to register with the Medicines and Healthcare products Regulatory Agency (MHRA) and this registration process will enable UK law enforcement agencies to ensure that the new proposals will only target unregistered importers. The Consultation document states that the majority of cases in which law enforcement would seek to use the powers would be where no evidence of a legitimate end-use can be shown or where other evidence is more compelling; indicating that the chemicals are destined for use by organised criminals to cut controlled drugs.

The consultation document includes various questions relating to this proposal as well outlining the option of doing nothing, and continuing to use wider existing powers.

The consultation document can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/201065/Drug_Cutting_Consultation_2013_WEB.PDF

The consultation closes on **7 July 2013**. Responses can be provided using an online form which can be found at <http://www.homeofficesurveys.homeoffice.gov.uk/s/cutting-agents>

Responses to the consultation can also be sent to:

Frances Hardy
4th Floor Fry Building
2 Marsham Street
London
SW1P 4DF

Or email:
drugcuttingagentsconsultation@homeoffice.gsi.gov.uk

Riot Damages Act to be Reviewed

It has been announced by the Government that the Riot Damages Act 1886 is to be reviewed to ensure that it protects the vulnerable and provides value for money. The review will examine the existing criteria relating to compensation that is payable, and will also include key issues such as the definition of a riot, who should be liable and what level of compensation is suitable.

The review should conclude by September 2013 and a public consultation will follow.

The announcement by the government can be found at
<https://www.gov.uk/government/news/review-into-riot-damages-act-announced>

Notes



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