



College of  
Policing

# Digest

March 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.

The College of Policing aims to provide fair access to learning and development for all. To support this commitment, the Digest is available in alternative formats upon request. Please email [digest@college.pnn.police.uk](mailto:digest@college.pnn.police.uk) or telephone +44 (0)1423 876889.

#### Disclaimer and Copyright details

This document is intended as a guide to inform organisations and individuals of current and forthcoming issues in the policing environment and the College of Policing cannot guarantee its suitability for any other purpose. Whilst every effort has been made to ensure that the information is accurate, the College of Policing cannot accept responsibility for the complete accuracy of the material. As such, organisations and individuals should not base strategic and operational decisions solely on the basis of the information supplied.

© - College of Policing Limited (the College) 2013

All rights reserved. No part of this publication may be reproduced, modified, amended, stored in any retrieval system or transmitted, in any form or by any means, without the prior written permission of the College or its representative. **The above restrictions do not apply to police forces, which are authorised to use this material for official, non-profit-making purposes only.**

Copyright Enquiries: Telephone +44 (0)1256 602650

Digest Editor: Telephone +44 (0)1423 876889

**NOT PROTECTIVELY MARKED**

**March 2013**

# **Digest**

**Legal Services**  
**[www.college.police.uk/digest](http://www.college.police.uk/digest)**

---

## College of Policing Digest March 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 entrapment and the necessity criteria for arrest without warrant.

We look in detail at recently published Government and Parliamentary reports and initiatives including the Home Affairs Committee report on the Independent Police Complaints Commission and the Home Affairs Committee report on the draft Anti-social Behaviour Bill. Other reports covered include the Learning the Lessons committee bulletin on handling historic DNA samples and the Mid Staffordshire NHS Foundation Trust Public Inquiry Report (the Francis Report).

Consultations covered in this edition include the Home Office consultation on direct entry into the Police Service and the Home Office consultation on its draft surveillance camera Code of Practice. Statistical bulletins are summarised on police service strength, crime in England and Wales, road traffic casualties and youth justice in England and Wales.

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

---

## Contents

---

<b>LEGAL.....</b>	<b>7</b>
<b>LEGISLATION.....</b>	<b>7</b>
Bills Before Parliament 2012/13 - Progress Report.....	7
<b>CASE LAW .....</b>	<b>10</b>
<b>CASE LAW - GENERAL POLICE DUTIES.....</b>	<b>10</b>
Search Without Warrant Was Unlawful as Not Objectively Necessary.....	10
Entrapment Rules Considered and Applied.....	12
<b>STATUTORY INSTRUMENTS.....</b>	<b>16</b>
SI 2013/300 The Sexual Offences Act 2003 (Prescribed Police Stations) Regulations 2013 .....	16
SI 2013/296 The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2013.....	16
SI 2013/281 The Police (Complaints and Conduct) Regulations 2013.....	16
SI 2013/258 The Motor Vehicles (Driving Licences) (Amendment) Regulations 2013.....	17
SI 2013/250 The Coroners and Justice Act 2009 (Commencement No. 11) Order 2013 .....	17
SI 2013/239 The Misuse of Drugs Act 1971 (Amendment) Order 2013 .....	17
SI 2013/177 The Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Order 2013 .....	17
SI 2013/176 The Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2013 .....	17
SI 2013/22 The Driving Licences (Exchangeable Licences) (Amendment) Order 2013.....	17
SI 2013/9 The Criminal Legal Aid (General) Regulations 2013.....	18
<b>POLICING PRACTICE .....</b>	<b>19</b>
<b>POLICE.....</b>	<b>19</b>
College of Policing Design: Call for Your Views .....	19
Home Secretary's Statement on Police Integrity .....	19
Police Grant Report 2013/14: England and Wales .....	20
Consultation on Direct Entry in the Police .....	21

Home Affairs Committee Report on the Independent Police Complaints Commission.....	23
IPCC Statutory Guidance Revised.....	26
Learning the Lessons: Bulletin 18.....	26
DVLA System Introduced to Deal with Roadside Eyesight Test Failures.....	27
Police Service Strength: England and Wales .....	27
<b>CRIME .....</b>	<b>29</b>
Home Office Circular 3/2013: New Government Domestic Violence and Abuse Definition.....	29
New Measures on Tackling Irresponsible Dog Ownership .....	30
Mid Staffordshire NHS Foundation Trust Public Inquiry Report .....	31
Crime in England and Wales.....	34
<b>DIVERSITY .....</b>	<b>37</b>
Revised Guidance on Public Sector Equality Duty Released by the Equality and Human Rights Commission .....	37
<b>CRIMINAL JUSTICE SYSTEM .....</b>	<b>39</b>
Revised Code for Crown Prosecutors.....	39
Home Office Consultation on Surveillance Camera Code of Practice.....	39
Home Office Consultation on Powers of Entry Draft Code of Practice.....	40
Welsh Government Consults on Criminal Justice Liaison Services .....	42
Statistics on Youth Justice in England and Wales .....	42
Road Traffic Casualties: Provisional Estimates.....	44
<b>PARLIAMENTARY ISSUES .....</b>	<b>46</b>
Home Affairs Committee Report on Draft Anti-Social Behaviour Bill .....	46

## **Bills Before Parliament 2012/13 - Progress Report**

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 Bill completed its committee stage on 12 February and received its second reading debate before the House of Lords on 14 February. The date for its report stage and third reading has yet to be announced.

- ◆ **Justice and Security Bill** - A bill to provide for oversight of the Security Service, the Secret Intelligence Service, the Government Communications Headquarters and other activities relating to intelligence or security matters; to provide for closed material procedure in relation to certain civil proceedings; to prevent the making of certain court orders for the disclosure of sensitive information; and for connected purposes.

The Bill has completed its committee stage in the House of Commons on 7 February. The date for its report stage and third reading is yet to be announced.

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

The Bill received its third reading before the House of Lords on 12 February. Both Houses have agreed to the text of the Bill; it awaits Royal Assent.

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

---

## **Search Without Warrant Was Unlawful as Not Objectively Necessary**

---

Lord Hanningfield of Chelmsford v Chief Constable of Essex Police [2013] EWHC 243 (QB)

A hearing in the High Court of Justice (Queen's Bench Division) before the Honourable Mr Justice Eady.

### **Summary**

An arrest was made without warrant, following a policy decision that it was most appropriate to use section 32 of the Police and Criminal Evidence Act 1984 to search property after the arrest. It was claimed that the arrest was unlawful.

To answer the question of whether an arrest was lawful, it was necessary to establish whether the arresting officer believed it was necessary on a statutory ground, and that it was objectively necessary. In this case, the first test was satisfied where the arresting officer believed the arrest was necessary to allow the prompt and effective investigation of the offence. However the arrest was not objectively necessary. Summary arrest would not have had any impact on the prompt and effective investigation of the offence and there were no solid reasons for believing the claimant would hide or destroy evidence or make contact with co-suspects. There was no justification for bypassing the safeguards involved in obtaining a warrant.

### **The facts**

Lord Hanningfield claimed damages from Essex Police for what he alleged was an unlawful arrest and a subsequent unlawful search of his premises.

At 6:45 am on 14 September 2011 five officers attended his house, awoke him and arrested him and searched his bungalow. The arrest and search was carried out as part of an investigation into allegations of fraud by abuse of position by him relating to expenses claimed when he led Essex County Council. Prior to the arrest he had been convicted, sentenced and released from imprisonment subject to tagging and curfew requirements, following offences of false accounting relating to his duties in the House of Lords.

The arrest and search was not authorised by a search warrant. The Senior Investigating Officer had taken a policy decision as part of a planned strategy involving no urgency. It was not suggested that this was done in bad faith. The policy decision was that it was most appropriate to use the statutory powers of search following arrest under section 32 of the Police and Criminal Evidence Act 1984.

Explanations were given as to why it was considered necessary to use section 32 search powers. Arguments were raised that Lord Hanningfield may seek to destroy or conceal evidence, as the police were under the mistaken belief that he was in possession of a Council computer. Although he had known of the ongoing enquiries for some time, it was suggested that he may try to make contact with 'co-suspects'.

It was alleged by Lord Hanningfield that it was not necessary to arrest him; the arrest was unlawful and consequently the search was unlawful too.

### **The judgement**

The judge considered that in order to establish whether the search under section 32 of the Police and Criminal Evidence Act 1984 was lawful, it was necessary to establish whether the arrest was lawful.

The arrest was made under section 24 of the Police and Criminal Evidence Act 1984, which requires the arresting officer to believe the arrest is necessary for one of the reasons in section 24(4). The reason relied upon was "to allow the prompt and effective investigation of the offence or of the conduct of the person in question".

The test to be applied in examining whether the arrest was necessary was:

- ◆ That the constable actually believed that the arrest was necessary, for one of the reasons in section 24(5) of the Police and Criminal Evidence Act 1984; and
- ◆ That objectively that belief was reasonable.

The judge had no reason to doubt that the officer concerned believed, by the time of the arrest, that the arrest was necessary to allow the prompt and effective investigation of the offence.

The judge considered whether that belief was objectively reasonable in the light of what the officer knew at the time, giving room for the officer's individual judgement. He concluded that the requirement of necessity had not been met on an objective assessment. Summary arrest was not going to have an effect on the prompt and effective investigation of the offence. There were no solid grounds for believing that Lord Hanningfield would suddenly start to hide or destroy evidence, or make inappropriate contacts; there was only a theoretical prospect that he might do. The judge could see no justification for by-passing the usual statutory safeguards involved in obtaining a warrant. The arrest was not lawful.

Action by the custody officer to determine detention at a police station could not 'cure' the defect in the original arrest.

Compensation was therefore ordered for the arrest and subsequent detention and search.

The judgment can be found at  
<http://www.bailii.org/ew/cases/EWHC/QB/2013/243.html>

---

## **Entrapment Rules Considered and Applied**

---

R v Moore and Another [2013] EWCA Crim 85

A case in the Court of Appeal (Criminal Division), before Lord Justice Rix, Mr Justice Mackay and Mr Justice Underhill

### **Summary**

A technical breach of the Code of Practice on the use of covert human intelligence sources occurred where an authorisation for undercover police officers to engage in drug dealing did not include their actions to 'build the legend' by engaging in handling stolen goods. On this occasion that breach was not so serious as to warrant a stay of a prosecution.

Entrapment was considered on appeal from conviction; the court noted that each case turned on its own facts. Considering previous cases the standard to apply was whether the appellant was offered no more than an unexceptional opportunity to commit crime. An appeal court is entitled to exercise its own judgment but will only interfere with a trial judge's assessment if there is a serious error. In this case the appellant was offered an unexceptional opportunity which she took immediately and resolutely.

### **The facts**

The two appellants in this case alleged that they were entrapped by undercover police officers into supplying cocaine. The first appellant, Mia Moore, was charged with six counts of supplying cocaine, two counts of being concerned in the supply of cocaine, 2 counts of handling stolen goods, and one count of delivering counterfeit £10 notes, between 8 September 2010 and 11 February 2011.

Undercover officers had been authorised under the Regulation of Investigatory Powers Act 2000 (RIPA) as covert human intelligence sources, in order to investigate known serious criminality in the area. The authorisation allowed them to engage in criminality including drug dealing. It did not specifically authorise them to engage in handling stolen goods, however a pretence of this was maintained to 'build the legend' and this was supervised and monitored as part of the authorisation.

Mia Moore had been introduced to the undercover officers (one of whom was known as 'Jason') by her step-father, a local criminal who asked them to help her make some money from the goods

they were selling. They supplied her with cigarettes, and on the second occasion of supply Jason said to her "You might be able to help me. Does anyone round here got any [cocaine]." Mia responded "Yeah I can get it, in big bits for ya", stating that she could get it at a day's notice. She then passed Jason a contact number so he could negotiate with the supplier, offered to collect the drugs and did so, supplying them to Jason's colleague 'Nat'.

She made further supplies of cocaine via different suppliers, meanwhile receiving items from them including cigarettes, handbags and cosmetics to sell, some of which were given on credit. At various points in the supply Mia was asked if she was willing to supply the drugs and was given chance to allow Jason and Nat to deal directly with the suppliers. She offered to sell Jason some clothes, and involved herself in further supply of clothes (the two handling stolen goods charges). At a meeting at her flat Jason met a man called Dan who offered to supply counterfeit ten pound notes. Despite Jason asking to deal directly with Dan, Dan requested the supply take place through Mia. This led to the count of delivering counterfeit £10 notes.

The second appellant, Ben Burrows, was charged with supply of cocaine, following one occasion where he was with Mia Moore, went with her to fetch the drugs and handed the drugs over himself. This occasion accounted for one of the charges against Mia Moore of being concerned in the supply of drugs.

Before the first instance trials, the appellants had applied to stay the proceedings against them on the understanding that if their applications failed, they would plead guilty. The applications were related to:

- ◆ Inadequate disclosure;
- ◆ The undercover operation was unauthorised and unlawful; and
- ◆ Entrapment.

Their applications failed. On disclosure, the judge ruled that there was a legitimate public interest immunity preventing full disclosure. On the lawfulness of the authorisation the judge ruled that although the authorisation had not specifically authorised the officer's 'building the legend' by involving themselves in the handling and supply of stolen goods, this had been properly supervised and monitored. Although regrettable that it was not authorised, constituting a breach of the RIPA Code of Practice on the use of covert human intelligence sources, in this instance the breach was not so significant as to require the stay of proceedings. On the entrapment point the judge held there was no abuse; Mia Moore freely took advantage of the opportunity offered and there was no later incitement.

Following their guilty pleas the two appellants appealed on three grounds:

- ◆ Discovery;
- ◆ Illegality of the operation; and
- ◆ Entrapment.

Leave to appeal was granted only on the entrapment ground.

### **The judgment**

Although leave to appeal was only granted on the entrapment ground, the appellants submitted that this had to be considered in light of the question of illegality. The Court noted that this had to be on the basis of the trial judge's earlier findings; the appellants were bound by the finding that the breaches of the RIPA Code of Practice in failing specifically to authorise the handling and supply of stolen goods was 'merely technical'.

The appeal on behalf of Mia Moore centred on the initial question asked by Jason, "Does anyone round here got any [cocaine]?". She contended that this question was illegitimate; it was a request for a favour in the context of the two supply deals Jason had passed her, described as 'grooming'. It was also contended that there was a symbiotic relationship between the supply of the cocaine and the desire to obtain cheap items from the undercover officers.

The Court considered *R v. Looseley, Attorney-General's Reference (No 3 of 2000)* [2000] UKHL 53, [2001] 1 WLR 2060. In *Looseley* it was found that by offering inducements which weren't ordinarily associated with the commission of an offence, police officers had done more than offer an unexceptional opportunity to commit an offence. The decision of whether an allegation of abuse of process warrants a stay of proceedings was noted to be fact sensitive, and a matter for the trial judge. While an appeal court is entitled to exercise its own judgment, it will only interfere with a trial judge's assessment if there is a serious error.

The Court also considered analysis of subsequent authority in article by Professor David Ormerod, *Recent Developments in Entrapment*, [2006] *Covert Policing Review* 65, which identified five factors of relevance:

- ◆ Reasonable suspicion of criminal activity as a legitimate trigger for the police operation;
- ◆ Authorisation and supervision of the operation as a legitimate control mechanism;
- ◆ Necessity and proportionality of the means employed to police particular types of offence;

- ◆ The concepts of the “unexceptional opportunity” and causation; and
- ◆ Authentication of the evidence.

These factors were considered in relation to the facts of Mia Moore’s case, deciding that:

- ◆ There was plainly reasonable suspicion of drug dealing and other criminality in the local area. Although Mia Moore was not a named target, suspicion of a particular person is not always essential;
- ◆ There was plainly authorisation and supervision of the police operation, although the authorisation “was not immaculate”;
- ◆ By voluntarily joining drug dealing without inducement a person will find it difficult to show they had been “unjustifiably, disproportionately, or unfairly lured”, further in this case it was justifiable and proportionate to use the supply of drugs by persons as ‘stepping stones’ in investigating the criminal conspiracies the operation was intended to detect;
- ◆ The trial judge was entitled to conclude that Mia Moore was offered an ‘unexceptional opportunity’; her step-father had introduced her to the officers, she was asked an open-ended question and immediately volunteered to supply drugs herself, despite repeated questions to establish that she was content to do so. She also initiated the supply of counterfeit notes;
- ◆ Most of the conversations given in evidence were recorded, a prime safeguard against disputes over what was said and the danger of entrapment or oppression.

Finally the Court recalled that the burden of proving entrapment fell upon Mia Moore, on the balance of probabilities; it was for her to initiate the necessary evidence and cross-examination.

On the basis of these findings, the Court could say that the trial judge had been wrong to conclude that a stay of proceedings was not warranted. Mia Moore was offered an opportunity which she seized “immediately and resolutely” despite the officers seeking to distance her from it. Her appeal could not succeed; as such Ben Burrow’s appeal could not succeed either.

Both appeals were dismissed.

The judgement can be found at <http://www.bailii.org/ew/cases/EWCA/Crim/2013/85.html>



### **SI 2013/300 The Sexual Offences Act 2003 (Prescribed Police Stations) Regulations 2013**

In force **12 March 2013**. Offenders convicted of certain sex offences are subject to notification requirements under the Sexual Offences Act 2003, and must periodically provide information to police. To do this they must attend a police station in their local area which is prescribed in Regulations. These Regulations prescribe those police stations. The Sexual Offences Act 2003 (Prescribed Police Stations) Regulations 2011 are repealed; these previously prescribed police stations for the purposes of notification requirements under the Sexual Offences Act 2003.

### **SI 2013/296 The Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (England, Wales and Northern Ireland) Order 2013**

In force **15 February 2013**. This Order designates the Republic of Armenia, the Republic of Chile and Ukraine as designated countries for the purposes of the Crime (International Co-operation) Act 2003. This provides statutory powers to seek and provide mutual legal assistance in criminal matters, including facilitating witnesses to give evidence in overseas proceedings by telephone and facilitating the transfer of prisoners to assist investigations.

### **SI 2013/281 The Police (Complaints and Conduct) Regulations 2013**

In force **7 March 2013**. These Regulations are made under the Police Reform Act 2002 and provide that the Independent Police Complaints Commission, in relation to investigations carried out or managed by it, can require serving officers to attend for interview. Regulation 2 provides the circumstances in which an officer may be required to attend for interview and how the date and time of an interview is to be agreed or decided. It also allows the officer to be accompanied. The power to require attendance does not apply to interviews of a person:

- ◆ In relation to an investigation of a complaint, in respect of whom it appears to the investigator that there is a relevant indication (an indication that they may have committed an offence or behaved in a manner which would justify bringing disciplinary proceedings); or
- ◆ In relation to an investigation of a recordable conduct matter, in respect of whose conduct the investigation relates.

The power to require attendance at interview is also available in respect of additional policing bodies, these bodies are specified in Regulation 3.



**SI 2013/258 The Motor Vehicles (Driving Licences) (Amendment) Regulations 2013**

In force **8 March 2013**. These Regulations amend the Motor Vehicles (Driving Licences) Regulations 1999 (SI 1999/2864) to amend the minimum standards of medical fitness for epilepsy and eyesight which apply when licensing drivers.

**SI 2013/250 The Coroners and Justice Act 2009 (Commencement No. 11) Order 2013**

In force **12 February 2013**. This Order brings into force a provision in the Coroners and Justice Act 2009 which repeals section 5(2) of the Coroners Act 1988. Section 5(2) of the Coroners Act 1988 requires a coroner to hold an inquest only within their own district.

**SI 2013/239 The Misuse of Drugs Act 1971 (Amendment) Order 2013**

In force **26 February 2013**. This Order amends Part 2 of Schedule 2 to the Misuse of Drugs Act 1971, which specifies drugs subject to control as Class B drugs. One drug is added to the list (2-((Dimethylamino)methyl)-1-(3-hydroxyphenyl)cyclohexanol) and a range of drugs and compounds including nabilone are substituted for previously specified drugs.

**SI 2013/177 The Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Order 2013**

In force **26 February 2013**. This Order adds to and amends the list of drugs in Part 1 of the Schedule to the Misuse of Drugs (Designation) Order 2001 (SI 2001/3997), which specifies controlled drugs to which section 7(4) of the Misuse of Drugs Act 1971 applies.

**SI 2013/176 The Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2013**

In force **26 February 2013**. These Regulations amend Schedule 1 to the Misuse of Drugs Regulations 2001 (SI 2001/3998) (the 2001 Regulations), by adding drugs to it. The effect of this is to make those drugs subject to the 2001 Regulations which prescribe the situations in which the drugs may be supplied, for example through supply on prescription.

**SI 2013/22 The Driving Licences (Exchangeable Licences) (Amendment) Order 2013**

In force from two dates depending on the provision; **11 and 19 January 2013**. This Order designates countries and territories for

the purpose of allowing driving licences issued in them to be exchanged for a driving licence issued in Great Britain.

**SI 2013/9            The Criminal Legal Aid (General)  
Regulations 2013**

In force **1 April 2013**. These Regulations make provision for determining whether an individual qualifies for criminal legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

---

## College of Policing Design: Call for Your Views

---

The official launch of the College of Policing took place on 4 February 2013.

The College will be the first national body to focus solely on strengthening professionalism in the service. The College will be an inclusive organisation and its membership will include all police officers, staff, specials and volunteers.

Its work will be based on a strong and rigorous evidence base of "what works", which will be embedded in the professional development of all officers, staff, specials and volunteers at all stages of their careers.

Chief Constable Alex Marshall, the chief executive of the College, said at the launch:

"We are now starting a transformation programme which will be driven by our members to ensure that our work can best serve the needs of the public and all in the policing service."

As part of this programme to design a world-class policing professional body, the College of Policing Design Team would like to know the views of the Digest readership; what do you think makes a world class policing professional body?

Please email your views to the College of Policing Design Team at [transform@college.pnn.police.uk](mailto:transform@college.pnn.police.uk)

---

## Home Secretary's Statement on Police Integrity

---

Theresa May, the Home Secretary, made a statement before the House of Commons on 12 February 2013 outlining further measures proposed on police integrity. The Home Secretary outlined that further specific measures were required to root out corruption and misconduct from the police. She then outlined her intention to bring forward the following reforms:

- ◆ In line with the recommendations made by Lord Justice Leveson, to create national online registers of chief officers' pay and perks packages, gifts and hospitality, outside interests, including second jobs, and their contact with the media;
- ◆ The College of Policing will publish a new Code of Ethics which will be distributed to officers of all ranks, and will work with chief officers to create a set of professional standards on which officers will be trained and tested throughout their careers;
- ◆ A national register of officers struck off from the police will be created, managed and published by the College of Policing;

- ◆ To avoid officers resigning or retiring to avoid dismissal, hearings will be continued to their conclusion notwithstanding an officer's departure from the force; where misconduct is proven the officer will be struck off by the College of Policing;
- ◆ The College of Policing will create a stronger system of vetting; every candidate for chief officer ranks will have to be successfully vetted before acceptance on the police national assessment centre;
- ◆ The Government will place in the Library of the House of Commons its response to each of the recommendations made by Lord Justice Leveson, and the College of Policing, Association of Chief Police Officers and others have agreed to take on the relevant work; and
- ◆ To consider any further legislative changes needed to give the Independent Police Complaints Commission the powers it needs, and to:
  - Transfer to it responsibility for dealing with all serious and sensitive allegations; and
  - Transfer to it resources from police force's professional standards departments and other relevant areas.

The Home Secretary's statement can be found at column 713 of the Hansard record of the daily debate, at <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130212/debtext/130212-0001.htm#13021255001484>

---

### **Police Grant Report 2013/14: England and Wales**

---

The Home Secretary has laid the Police Grant Report (England and Wales) 2013/14 before the House of Commons. This Report sets out the Home Secretary's determination for 2013/14, made under section 46(2) of the Police Act 1996, of the aggregate amount of grants for police purposes that she proposes to pay under section 46 and the amount of grant she proposes to pay each local policing body under the same section. The Report also states the considerations which the Home Secretary took into account in making her determination.

The Minister of State for Policing and Criminal Justice, Damian Green, has also made a written ministerial statement which details the other funding streams which the Home Office, the Department of Communities and Local Government and the Welsh Government intend to provide to the Police in 2013/14.

The Police Grant Report can be found at <http://www.official-documents.gov.uk/document/hc1213/hc08/0876/0876.pdf>

The written ministerial statement can be found at <http://www.homeoffice.gov.uk/publications/about-us/parliamentary-business/written-ministerial-statement/police-grant-report-201314-wms/>

---

## **Consultation on Direct Entry in the Police**

---

The Home Office has published a consultation document 'Consultation on the Implementation of Direct Entry in the Police'. The consultation runs until 28 March 2013 and responses can be sent by post, email or online. The consultation explains and asks for views on the proposals to implement the following three recommendations from the Final Report of the Independent Review of Police Officer and Staff Remuneration and Conditions.

### **Recommendation 8**

"A national Direct Entry scheme to the rank of inspector should be established from August 2013, offering rapid training and promotion to individuals of high ability and capacity. It should be run by the police professional body with the co-operation of police forces. The intake should be set annually, with at least 80 participants in each intake. Around half of the scheme members should be external graduates and half in-service officers and police staff members. The scheme should be rigorous and highly selective."

### **Recommendation 19**

"A national scheme for recruitment directly to the rank of superintendent should be established and brought into operation from September 2013. Participants on the scheme should be persons of exceptional achievement and ability who have been assessed as having the potential to be senior police officers."

### **Recommendation 23**

"From September 2013, the eligible experience for a chief constable set out in Determination Annex B, made under Regulation 11 of the Police Regulations 2003, should be amended to include service in a chief officer equivalent role overseas in a common law jurisdiction which practises policing by consent."

The consultation outlines the plans to implement these proposals and asks for views on each proposed scheme.

### **Fast tracking to inspector rank**

The focus of the scheme to fast track candidates to inspector rank is on recruiting and nurturing candidates with potential to reach the senior leadership ranks of the police. The scheme will enable new entrants to progress from constable to inspector in three years, with a progression period of two years for serving officers.

New entrants will be required to undergo vetting checks and fitness and other medical assessment. The proposals envisage a yearly intake onto the scheme of 80 candidates, with half of those drawn from existing police officers and staff using an internal selection process. It is proposed that the remaining half would be drawn using a graduate selection process, possibly targeted at established and prestigious universities. A rigorous assessment centre is proposed as a method for assessing candidates, which would observe performance across a variety of exercises and assess potential to perform in the role. A pre-joining qualification may be required of candidates which would cost around £800 and be completed in the candidate's own time.

Candidates on the scheme would spend a year as a constable and then promoted to sergeant if they show potential. An intensive two year training course split between classroom and in force training would follow, focusing on leadership, management and operational knowledge and skills. It is proposed that six months of this course would be undertaken at a residential centre, and that candidates should sit two examinations a year and be exempt from the sergeant and inspector promotion exams. On successful completion a candidate would be promoted to inspector.

#### **Direct entry to superintendent rank**

The focus of this scheme is to recruit professionals with a high level of proven leadership competencies who have the potential to quickly become competent senior leaders of the police. Candidates must have proven integrity so will be subject to vetting checks. They will also have to pass a fitness test.

A yearly intake of 40 candidates is proposed for the scheme. As with the fast track to inspector scheme, a pre-joining qualification may be required of candidates which would cost around £800 and be completed in the candidate's own time. A rigorous assessment centre is proposed as the method for assessing candidates.

The proposed training on the scheme would last for 15 months consisting of four blocks: 20 weeks of training on becoming a police officer; 18 weeks of training on becoming a superintendent; 26 weeks of in-force training; and a final selection board lasting one or two days.

#### **Direct entry to Chief Constable rank**

This scheme would enable officers with overseas experience to join at chief constable rank. The pool is likely to be drawn from countries with a common law jurisdiction and a tradition of policing by consent; these are likely to be Australia, New Zealand, Canada and the United States of America. To be eligible candidates must have significant experience of policing at chief officer level rank.

They must have proven integrity and will be required to undergo vetting checks.

The training programme proposed for this scheme would be tailored to meet the individual's needs and would include broad areas of knowledge including:

- ◆ The political and criminal justice context of policing in England and Wales;
- ◆ Operational command in England and Wales;
- ◆ The legal responsibilities of chief constable;
- ◆ Managing in the police; and
- ◆ Working with other agencies.

A newly appointed chief constable would be offered contact with a chief constable as a trusted advisor during their first few weeks.

The consultation is open until 28 March 2013. The consultation document along with details on how to respond can be found at <http://www.homeoffice.gov.uk/publications/about-us/consultations/police-direct-entry-consultation/>

---

### **Home Affairs Committee Report on the Independent Police Complaints Commission**

---

23

The Home Affairs Committee (HAC) has published the report of its inquiry into the Independent Police Complaints Commission (IPCC). The inquiry is the first of two inquiries into police integrity; the inquiry report into leadership and standards in the police is to follow in the spring.

The report makes a series of conclusions and recommendations. Considering the necessity of public confidence that police powers are not abused, it concludes that the IPCC is not yet capable of providing the powerful objective scrutiny required to secure that confidence. The IPCC does not have the powers or resources to get to the truth of questions on police integrity. The report concludes that the IPCC must bring the police complaints system up to scratch; the Government must give it the powers needed to do so.

The public do not trust the IPCC; this trust is necessary to restore public opinion of the police. The report states that the day to day work of Commissioners in the IPCC is frequently far removed from the cases being investigated. Commissioners in the IPCC should have a more active role in overseeing major cases, with personal responsibility for ensuring clear processes and timetables are laid out for complaints and appeals.

The IPCC's ability to get to the truth is considered. More cases should be investigated independently by the IPCC; supervised investigations do not offer rigorous oversight or provide public reassurance that investigations will be objective. Investigations into death and serious injury matters can come too late and take too long; investigators must be able to take control of potential crime scenes immediately.

Funding levels are examined and the HAC considers it deeply worrying that the IPCC feels its resourcing levels are below a level which allows it to discharge its statutory functions. A backlog of cases is building up and it is recommended that the Home Office and IPCC identify innovative ways to clear this backlog, such as using temporary secondments from public authorities with relevant expertise. The procedures at the permission stage of appeals should be made more robust so more minor cases are filtered out. The Home Office should provide the IPCC with a specific budget for a serious cases response team, as investigations can be hindered by lack of access to independent specialists. A system should be put in place to transfer funding from police forces to the IPCC to cover investigation of the most serious cases. IPCC commissioners, investigators and case workers should be trained in discrimination awareness and the relevant equality law. IPCC commissioners should lead in applying non-discriminatory practices.

The HAC has considered recent events which have shaken public confidence in the police and cast doubt on police integrity and competence: Operation Yewtree; Operation Alice; the Hillsborough Inquiry; Operation Elveden; and Operation Pallial. The IPCC ought to have a more prominent role in the investigations. The report outlines that some cases are not appropriate for investigation by Police Complaints Departments; serious corruption should be automatically referred to the IPCC for independent investigation. Once the IPCC investigation into the Hillsborough Disaster is complete, the funding should be maintained and devoted to anti-corruption investigations.

The HAC notes that the allegation of fabrication of eyewitness accounts following the altercation between Rt Hon Andrew Mitchell MP and police officers raises the question of how often this may be happening elsewhere. The IPCC should conduct an independent investigation into the Operation Alice case; the Government should provide additional funds if necessary.

Best practice protocols should be established by the IPCC for the use of mediation and restorative justice. Informal and local resolution systems should be independently monitored to ensure appropriate use.

Police complaint statistics show that 38% of appeals against Police Standards Department decisions were upheld; the HAC considers this unacceptable. More effort should be made at force level to



make the right decision in the first instance; police and crime commissioners (PCCs) must take decisive action where a police force is shown to be failing. Where 25% of appeals are upheld the IPCC must demand a written explanation from chief constables and PCCs and a six month probation period must be introduced. If the proportion of upheld appeals is not suitably reduced in this time a 'complaints competency investigation' must be held. This would be a joint investigation by the IPCC, Her Majesty's Inspectorate of Constabulary and the local PCC; proposals in the investigation report would be binding on the chief constable.

The IPCC should be given more authority, the report states. It should have statutory powers to require police forces to respond to its findings and should instigate 'year on reviews' of the most serious cases to discover whether the original recommendations have been implemented. Where recommendations have not been adopted an investigation by HMIC and the PCC should result, as a professional conduct matter against the chief constable.

The IPCC should reduce the number of its investigators who are former police officers to 20% or fewer, to rectify the impression that the police are investigating the police. HMIC should be involved in investigating the most serious cases, for example by allowing one of Her Majesty's Inspectors to review IPCC findings and take responsibility for ensuring the recommendations are implemented.

The report highlights that police officers interviewed in death and serious injury cases are treated differently from members of the public. In the most serious cases police officers should routinely be interviewed under caution as a member of the public would be. The legislative definition of the threshold for death and serious injury cases should be revised, for example by treating these cases as conduct matters with special requirements; interview under caution would be required unless it is beyond reasonable doubt that no misconduct or criminal offence has been committed.

Adequate communications are required to retain confidence in the complaints process. The IPCC should set timetables for dealing with complaints; the timetable and any deviation from these should be explained in writing to complainants. Where reinvestigation by police forces is ordered, a timetable should be set out and explained to the complainant. Any deviation should be explained to the IPCC and the complainant. Sanctions should be available for a failure to follow timetables and processes. Positive outcomes, as well as prosecutions, misconduct findings and recommendations, should be communicated more widely to demonstrate that the police are being scrutinised.

IPCC procedures should apply to the National Crime Agency (NCA), as they do to the Serious Organised Crime Agency. The jurisdiction of the IPCC should be extended so it covers private sector

contractors who deliver policing services, funding should be available as appropriate to reflect this extension. The broader remit and functions should be reflected in a new name as the IPCC would cover police, the UK Border Agency, Her Majesty's Revenue and Customs and the NCA. The report offers a possible name, 'The Independent Policing Standards Agency'.

The report can be found at  
<http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news/130201-ipcc-report-published/>

---

## **IPCC Statutory Guidance Revised**

---

The Independent Police Complaints Commission (IPCC) has revised its Statutory Guidance and this has been approved by the Policing Minister. The revision was required following changes to the police complaints system introduced by the Police Reform and Social Responsibility Act 2011, these came into effect on 22 November 2012. The Statutory Guidance should now be used to inform police forces and local policing bodies in their handling of complaints, appeals and referrals.

The Statutory Guidance, along with a signposting document and guidance on recording complaints, can be found at  
<http://www.ipcc.gov.uk/en/Pages/statutoryguidance.aspx>

---

## **Learning the Lessons: Bulletin 18**

---

The Learning the Lessons Committee has published its eighteenth bulletin 'Handling Historic DNA Samples'. The bulletin was developed to help disseminate the learning from an Independent Police Complaints Commission (IPCC) independent investigation.

The investigation related to the treatment of historic DNA samples. In the case examined, a rape in 1989, a DNA profile was obtained from the victim's clothing, analysed using the Single Locus Profiling (SLP) technique in use at the time, and stored in the archives of the Forensic Science Service (FSS). When the National DNA Database (NDNAD) came into use, SLP profiles had to be re-analysed before they could be loaded onto it; this was not done as a matter of course and did not happen in relation to the 1989 rape profile.

When a new line of enquiry was identified in 2010, the FSS advised the force that the DNA profile from the 1989 rape had not been loaded onto the NDNAD. When this was done, a DNA match was identified with a man who had been charged with drink driving. He was later charged and convicted of the 1989 rape and a further rape he committed in 1994.

The bulletin sets out the findings and national recommendations in relation to reviewing historic DNA samples, developing a searchable database on historic crime, and review of police forces' destruction and retention policies. It asks policy makers and managers from police forces to consider the following questions:

- ◆ What is your police force's approach to reviewing undetected cold cases involving serious crime?
- ◆ How does your police force ensure that SLP DNA samples have been added to the NDNAD where applicable?
- ◆ How has your police force dealt with problems associated with the identification and progression of historic cases (for example making information searchable)?
- ◆ Has your police force reviewed its policies on retention and storage of case files and exhibits in relation to serious crime to ensure that materials useful for future investigations are not destroyed?

The bulletin, which includes a link to the full investigation report, can be found at  
<http://www.learningthelessons.org.uk/Pages/Bulletin18.aspx>

---

## **DVLA System Introduced to Deal with Roadside Eyesight Test Failures**

---

The Driver and Vehicle Licensing Agency (DVLA) has introduced a new system to deal with roadside eyesight test failures more quickly. Police are able to notify the DVLA electronically when someone has failed a roadside eyesight test, revocation of the licence can then be completed in hours. Previously police had to notify the DVLA in writing or by fax. The new procedure came into effect on 7 February 2013; the DVLA service is available between 8am and 9pm.

The DVLA press release can be found at  
<http://www.dft.gov.uk/dvla/pressoffice/pressreleases/07022013.aspx>

---

## **Police Service Strength: England and Wales**

---

Home Office Statistical Bulletin 01/13 'Police Service Strength: England and Wales, 30 September 2012' has been published.

The statistical bulletin examines the numbers of police officers, police staff, police community support officers (PCSOs) and designated officers across England and Wales on 30 September 2012. The statistics show that on 30 September 2012:

- ◆ There were 132,235 police officers (full time equivalents) in England and Wales, a decrease of 2.9% from September 2011 and the lowest number since 2002;
- ◆ Of these, 131,873 were in the 43 police forces in England and Wales and 398 were seconded to central services;
- ◆ There were 2,650 officers in the British Transport Police;
- ◆ There were 65,992 police staff (full-time equivalents), a decrease of 4.9% from September 2011;
- ◆ There were 14,411 PCSOs, a decrease of 6.9% from September 2011;
- ◆ There were 4,099 people with designations under sections 38 and 30 of the Police Reform Act 2002 (designated officers), excluding PCSOs, an increase of 1.7% from September 2011;
- ◆ There were 30 full-time equivalent traffic wardens, 153 fewer than in September 2011; and
- ◆ The headcount of special constables was 19,159 which was 1.3% less than in September 2011.

The statistical bulletin can be found at <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/police-research/hosb0113/?view=Standard&pubID=1149405>

---

## Home Office Circular 3/2013: New Government Domestic Violence and Abuse Definition

---

The Home Office has published Home Office Circular 3/2013 'New government domestic violence and abuse definition'. The Circular advises readers that from 31 March 2013 a new definition of domestic violence and abuse will be implemented.

The amendments mean young people aged 16 and 17 and coercive control will be included in the definition. Readers of the Circular are encouraged to review guidance and policies to reflect the new definition. The amended definition will be:

"Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to the following types of abuse:

- ◆ Psychological;
- ◆ Physical;
- ◆ Sexual;
- ◆ Financial;
- ◆ Emotional.

Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour is: an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim."

The Circular notes that the definition includes so called 'honour' based violence, female genital mutilation (FGM) and forced marriage. Victims are not confined to one gender or ethnic group.

The Circular can be found at  
<http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2013/003-2013/>

---

## New Measures on Tackling Irresponsible Dog Ownership

---

The Department for Environment, Food and Rural Affairs (Defra) has announced a package of measures to encourage responsible behaviour and deal with the consequences of irresponsible dog ownership. The measures follow a public consultation which took place in April 2012.

It will be compulsory to microchip dogs; all dogs will need to be microchipped by 6 April 2016. This requirement will be introduced through regulations under the Animal Welfare Act 2006. Dog owners will be required to microchip and register their dogs and keep their details up to date. Before selling or giving a dog away, dog owners must register the details of the new owner.

The criminal offence of allowing a dog to be dangerously out of control in a public place will be extended, so it applies to all places including the dog owner's home. This will bring protection to children in their homes and those who have to visit private properties. The protection will not cover a trespasser in a private property whom the householder believes has unlawful intentions. Defra intends to bring forward these amendments to the Dangerous Dogs Act 1991 as soon as Parliamentary time allows.

Defra are also working with the Home Office and other authorities to introduce new powers to help police and local authorities tackle anti-social behaviour involving dogs. These powers are proposed in the draft Anti-Social Behaviour Bill published on 13 December 2012.

The measures also include allowing police discretion over whether to seize a suspected prohibited type dog. This discretion will be available where police do not consider the dog to pose a risk to the public, and are completely satisfied that it is in the care of a responsible owner. Police may place restrictions on the owner when doing so, such as requiring the dog to be muzzled in public. These changes will be achieved using secondary legislation to change the exemption scheme.

The fee to place a dog on the Index of Exempted Dogs is to increase to reflect the administrative costs involved.

Further information including a summary of responses to the April 2012 consultation can be found at <http://www.defra.gov.uk/wildlife-pets/pets/dog-ownership/>

---

## Mid Staffordshire NHS Foundation Trust Public Inquiry Report

---

The Mid Staffordshire National Health Service (NHS) Foundation Trust Public Inquiry, chaired by Robert Francis QC, has published its final report 'Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry' (the Francis Report). The Inquiry was established under the Inquiries Act 2005 and looked at the role of the commissioning, supervisory and regulatory bodies in the monitoring of Mid Staffordshire Foundation NHS Trust.

The report follows the discovery of 'conditions of appalling care' in the main hospital serving the people of Stafford between 2005 and 2008. A previous non-statutory inquiry listened to those who had suffered and considered what had gone wrong and where. Its terms of reference did not allow it to examine the wider system. The Francis Report examines the operation of the commissioning, supervisory and regulatory organisations and other agencies and looked at why problems were not identified and action taken sooner. It identifies the lessons to be learned and makes recommendations; a number of these recommendations have implications for the criminal law and the criminal justice system.

The recommendations which relate to or would affect the criminal law or criminal justice system are reproduced below.

### **A common culture made real throughout the system - an integrated hierarchy of standards of service**

Recommendation 13: the nature of standards

"Standards should be divided into:

- ◆ Fundamental standards of minimum safety and quality - in respect of which non-compliance should not be tolerated. Failures leading to death or serious harm should remain offences for which prosecutions can be brought against organisations. There should be a defined set of duties to maintain and operate an effective system to ensure compliance;
- ◆ Enhanced quality standards - such standards could set requirements higher than the fundamental standards but be discretionary matters for commissioning and subject to availability of resources;
- ◆ Developmental standards which set out longer term goals for providers - these would focus on improvements in effectiveness and are more likely to be the focus of commissioners and progressive provider leadership than the regulator.

All such standards would require regular review and modification."



## **Responsibility for, and effectiveness of, healthcare standards**

Recommendation 28: Sanctions and interventions for non-compliance

“Zero tolerance: A service incapable of meeting fundamental standards should not be permitted to continue. Breach should result in regulatory consequences attributable to an organisation in the case of a system failure and to individual accountability where individual professionals are responsible. Where serious harm or death has resulted to a patient as a result of a breach of the fundamental standards, criminal liability should follow and failure to disclose breaches of these standards to the affected patient (or concerned relative) and a regulator should also attract regulatory consequences. Breaches not resulting in actual harm but which have exposed patients to a continuing risk of harm to which they would not otherwise have been exposed should also be regarded as unacceptable.”

Recommendation 29

“It should be an offence for death or serious injury to be caused to a patient by a breach of these regulatory requirements, or, in any other case of breach, where a warning notice in respect of the breach has been served and the notice has not been complied with. It should be a defence for the provider to prove that all reasonably practicable steps have been taken to prevent a breach, including having in place a prescribed system to prevent such a breach.”

Recommendation 37: Use of information about compliance by regulator from quality accounts

“Trust Boards should provide, through quality accounts, and in a nationally consistent format, full and accurate information about their compliance with each standard which applies to them. To the extent that it is not practical in a written report to set out detail, this should be made available via each trust’s website. Reports should no longer be confined to reports on achievements as opposed to a fair representation of areas where compliance has not been achieved. A full account should be given as to the methods used to produce the information.

To make or be party to a wilfully or recklessly false statement as to compliance with safety or essential standards in the required quality account should be made a criminal offence.”

## **Responsibility for, and effectiveness of, regulating healthcare systems governance - Health and Safety Executive functions in healthcare settings**

Recommendation 87: Ensuring the utility of a health and safety function in a clinical setting



“The Health and Safety Executive is clearly not the right organisation to be focusing on healthcare. Either the Care Quality Commission should be given power to prosecute 1974 Act offences or a new offence containing comparable provisions should be created under which the Care Quality Commission has power to launch a prosecution.”

Recommendation 90: Assistance in deciding on prosecutions

“In order to determine whether a case is so serious, either in terms of the breach of safety requirements or the consequences for any victims, that the public interest requires individuals or organisations to be brought to account for their failings, the Health and Safety Executive should obtain expert advice, as is done in the field of healthcare litigation and fitness to practise proceedings.”

### **Openness, transparency and candour**

Recommendations in this section include that those working in healthcare should be subject to duties of openness, transparency and candour. The following recommendations relate to the substance and enforcement of those duties.

Recommendation 181: Statutory duties of candour in relation to harm to patients

“A statutory obligation should be imposed to observe a duty of candour:

- ◆ On healthcare providers who believe or suspect that treatment or care provided by it to a patient has caused death or serious injury to a patient to inform that patient or other duly authorised person as soon as is practicable of that fact and thereafter to provide such information and explanation as the patient reasonably may request;
- ◆ On registered medical practitioners and registered nurses and other registered professionals who believe or suspect that treatment or care provided to a patient by or on behalf of any healthcare provider by which they are employed has caused death or serious injury to the patient to report their belief or suspicion to their employer as soon as is reasonably practicable.

The provision of information in compliance with this requirement should not of itself be evidence or an admission of any civil or criminal liability, but non-compliance with the statutory duty should entitle the patient to a remedy.”

Recommendation 182: Statutory duty of openness and transparency

“There should be a statutory duty on all directors of healthcare organisations to be truthful in any information given to a healthcare regulator or commissioner, either personally or on behalf of the

organisation, where given in compliance with a statutory obligation on the organisation to provide it.”

#### Recommendation 183: Criminal liability

“It should be made a criminal offence for any registered medical practitioner, or nurse, or allied health professional or director of an authorised or registered healthcare organisation:

- ◆ Knowingly to obstruct another in the performance of these statutory duties;
- ◆ To provide information to a patient or nearest relative intending to mislead them about such an incident;
- ◆ Dishonestly to make an untruthful statement to a commissioner or regulator knowing or believing that they are likely to rely on the statement in the performance of their duties.”

#### Recommendation 184: Enforcement by the Care Quality Commission

“Observance of the duty should be policed by the Care Quality Commission, which should have powers in the last resort to prosecute in cases of serial non-compliance or serious and wilful deception. The Care Quality Commission should be supported by monitoring undertaken by commissioners and others.”

#### **Information**

#### Recommendation 250

“It should be a criminal offence for a director to sign a declaration of belief that the contents of a quality account are true if it contains a misstatement of fact concerning an item of prescribed information which he/she does not have reason to believe is true at the time of making the declaration.”

The Francis Report can be found at  
<http://www.midstaffspublicinquiry.com/>

---

### **Crime in England and Wales**

---

The Office for National Statistics has released a statistical bulletin, ‘Crime in England and Wales, year ending September 2012’. The statistical bulletin is a quarterly release, which presents the most recent statistics from the Crime Survey for England and Wales (CSEW) and police recorded crime along with data from other sources.

The CSEW is based on interviews of respondent’s experience of crime in the twelve months prior to the interview. Interviews were undertaken between October 2011 and September 2012. Police

recorded crime figures show crimes recorded by police in the year ending September 2012.

The CSEW findings for the year ending September 2012 show:

- ◆ There were an estimated 8.9 million incidents of crime against households and residents aged 16 and over, this is a statistically significant decrease of 8% compared with the previous year's estimates;
- ◆ There were an estimated 0.8 million crimes against children aged 10 to 15, just over half of these were violent crimes and most of the remainder were theft of personal property;
- ◆ Estimated levels of violent crime showed no statistically significant change, except for the sub-category of assault without injury which decreased by 11%; and
- ◆ Statistically significant decreases were seen in the estimated levels of vehicle-related theft (11% lower than for the previous year) and household crime (7% lower than for the previous year); and
- ◆ 4.5% of plastic card owners are estimated to have been victims of card fraud in the last year, a decrease from the September 2011 estimate of 5.1%.

Police recorded crime figures show that in the year ending September 2012:

- ◆ 3.8 million crimes were recorded, 7% fewer than the previous year, and around one third fewer than in 2002/03;
- ◆ All headline offences decreased in number from the previous year, with a 10% reduction in homicide cases, an 8% reduction in cases of violence against the person with injury, and an 8% reduction in offences against vehicles; and
- ◆ 2.4 million incidents of anti-social behaviour were recorded, this figure cannot be compared with previous years due to changes in the classifications used.

Other sources of data included in the bulletin include the 2012 Commercial Victimization Survey, which estimates that there were 9.2 million incidents of crime against businesses in England and Wales in the previous twelve months. Data covering non-notifiable offences is available for the year ending June 2012 and shows there were 1 million convictions and 43,000 PNDs for non-notifiable offences. The National Fraud Intelligence Bureau reported more than 430,000 offences of fraud in the UK in the year ending September 2012, over three quarters of which involve cheque, plastic card and online banking.

The statistical bulletin and further information on the statistics can be found at  
<http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-sept-2012/index.html>

---

## Revised Guidance on Public Sector Equality Duty Released by the Equality and Human Rights Commission

---

The Equality and Human Rights Commission has recently published revised guidance on the public sector equality duty within the Equality Act 2010. This piece of legislation (under section 149) has imposed a legal responsibility on public authorities to have regard to the need to:

- ◆ Eliminate unlawful discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- ◆ Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (which are defined within the Equality Act 2010); and
- ◆ Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The revised guidance is aimed to provide a straightforward explanation to public authorities on how they should comply with the duty and practical ways in which they are able to do so. The guidance explains who is subject to the general equality duty in addition to the exemptions detailed within the legislation. It also reiterates what the protected characteristics are (such as race, age and disability) and why such a duty is important within the business of public authorities.

By way of regulations that have been introduced since the Equality Act 2010 came into force, specific duties have been imposed on public authorities in relation to the requirement to publish certain data relating to equality. These vary for England, Wales and Scotland and this guidance discusses these, in addition to how to meet the general equality duty and the principles which have been established in case law. Please note that different versions of this guidance exist for England, Wales and Scotland.

In relation to the general equality duty, this guidance is particularly useful with its explanation on how to meet this duty in practice by detailing key areas in ensuring compliance. The key areas identified within this guidance are:

- ◆ Establishing the relevance of the duty to your functions;
- ◆ Collecting and using equality information;
- ◆ Meeting the equality duty in policy and decision making;
- ◆ Engagement; and
- ◆ Procurement.

The guidance also assists in integrating the equality duty within an organisation with specific reference to internal governance and training.

Finally the guidance details what role the Equality and Human Rights Commission has to assist with compliance, such as how they promote awareness of the duty, in addition to how they monitor and enforce compliance.

These sets of guidance can be found in their entirety at <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

On 15 January 2013 the Equality and Human Rights Commission also published Technical Guidance on the Public Sector Equality duty which can be found at <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

Further guidance on the public sector equality duty and the Equality Act 2010 as a whole can be found at the Equality and Human Rights Commission website at <http://www.equalityhumanrights.com/>

---

## Revised Code for Crown Prosecutors

---

The Crown Prosecution Service (CPS) has published a new edition of 'The Code for Crown Prosecutors' (the Code). The Code is issued by the Director of Public Prosecutions under the Prosecution of Offences Act 1985. It gives guidance to CPS and other prosecutors on the general principles to apply when making decisions about prosecutions.

The new edition is a shorter version of previous editions. Additional changes include clarification on the question of whether there is sufficient evidence to prosecute, more detail on the effect a prosecution on the health of a victim, and the inclusion of proportionality in consideration of whether a prosecution is required in the public interest.

The Code can be found at

[http://www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/index.html](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/index.html)

---

## Home Office Consultation on Surveillance Camera Code of Practice

---

The Home Office has launched a consultation on the scope, clarity and likely impact of its draft 'Surveillance Camera Code of Practice' (the Code). The closing date for the consultation is 21 March 2013.

The introduction of a Code of Practice on surveillance camera systems is required by section 29 of the Protection of Freedoms Act 2012 (the Act); this section also requires statutory consultation of groups including the Association of Police Officers. This consultation is intended to fulfil the requirement for statutory consultation. When in force, the Code will have the effects specified in section 33 of the Act:

- ◆ Relevant authorities (including police and crime commissioners and any chief officer of a police force in England and Wales) must have regard to it when exercising functions to which the Code relates;
- ◆ The Code will be admissible in evidence;
- ◆ Courts and tribunals may take into account a failure of a relevant authority to have regard to the Code, when determining a question in proceedings.

Views are sought on whether the Secretary of State should seek to make the following bodies 'relevant authorities', to whom the effects of section 33 of the Act will apply:

- ◆ The British Transport Police;

- ◆ The Civil Nuclear Constabulary;
- ◆ The Ministry of Defence Police; and
- ◆ The Serious Organised Crime Agency.

The consultation asks for views on the clarity and likely impact of the Code. An impact assessment has been produced, which will be finalised once responses to the consultation have been analysed.

The purpose of the Code is to ensure that individuals and wider communities have confidence that surveillance cameras are deployed to protect and support them, rather than spy on them. It will apply to the use of surveillance camera systems that operate in public places in England and Wales, regardless of whether or not there is any live viewing, or recording of images or information or associated data. Covert surveillance by public authorities is not covered by the code. The Code sets out 12 'guiding principles' which system operators should adopt, with further guidance on:

- ◆ The development or use of surveillance camera systems;
- ◆ The use or processing of images or other information obtained by virtue of surveillance camera systems; and
- ◆ The role of the Surveillance Camera Commissioner.

Responses can be sent by post or via the online form, the closing date is 21 March 2013. The consultation documents along with details of how to respond can be found at <http://www.homeoffice.gov.uk/publications/about-us/consultations/surveillance-camera-consultation/>

---

### **Home Office Consultation on Powers of Entry Draft Code of Practice**

---

The Home Office have launched a consultation on a draft Code of Practice relating to Power of Entry. The consultation is open until 5 March 2013.

The draft Code was published with the aim to provide guidance to those with powers of entry where no code of practice currently exists and to create a consistent approach in the exercise of powers of entry. The draft code determines that authorised persons should comply with requirements in any legislation that is relevant; it will also apply where any relevant statute does not address certain circumstances or where the stance of the existing legislation is less severe than provided within the draft Code.

Provisions included in the draft Code include:

- ◆ When there is no authorisation process detailed in legislation or in pre-existing guidance, authority should be sought from an



appropriate person who is authorised to exercise a power of entry;

- ◆ When a power of entry is exercised the landowner or occupier should receive a written notice detailing their rights and the powers of entry;
- ◆ Reasonable steps should be taken to gain consent of the landowner or occupier so the need to use statutory powers of entry is eliminated, unless gaining consent would not be appropriate in the circumstances;
- ◆ If entry to premises is being sought using a power of entry without consent and without a warrant, the conditions within the legislation outlining that power should be followed and it should be considered if there is another way to achieve the aim of the entry which is less intrusive;
- ◆ Where entry to a premise is being sought by a warrant, the authorised person will need to consider any existing intelligence and ensure that it is accurate;
- ◆ When an authorised person wishes to seize items this should only be done if relevant legislation allows it; where items have been seized, unless there are provisions within legislation for it to be retained or destroyed they should be returned as soon as possible;
- ◆ In all circumstances, the authorised person must ensure that when exercising powers it is done in a way that is reasonable and respectful and that reasonable force is used only when legislation allows it, and is done so in a way that is necessary and proportionate;
- ◆ The authorised person must also adhere to the requirements under the relevant legislation and be aware of the associated powers that are available and exercise those legally and fairly; and
- ◆ When reasonable force is lawfully permitted, it can only be used when the occupier is not co-operating or any co-operation would be insufficient for the purpose, and using reasonable force is necessary.
- ◆ In any case where the use of force is authorised by a power, only the minimum force necessary can be used to achieve the purposes of the power.

The consultation closes on 5 March 2013. The draft Code, along with details of how to respond, can be found at <http://www.homeoffice.gov.uk/publications/about-us/consultations/powers-of-entry/>

---

## Welsh Government Consults on Criminal Justice Liaison Services

---

The Welsh Government has published a consultation document 'Criminal Justice Liaison Services in Wales: Policy Implementation Guidance'. Responses are sought by March 12 2013 and can be sent by post or email.

The consultation is to seek views on draft national Policy Implementation Guidance on the required functions of a Criminal Justice Liaison Service (CJLS) in Wales. The primary purpose of a CJLS is to provide for the identification and assessment of a mental disorder and/or learning disability need as early as possible in the criminal justice pathway, such as in the police station or at court. The primary function of a CJLS is to ensure the most appropriate decision on service needs is routinely made through liaison and consultation between health, social care and criminal justice services. This allows decision making to be informed by an individual's need, while having due regard to public safety, the individual's safety and punishment of the offence.

The draft guidance explains principles which underpin the delivery of a CJLS and sets out the purpose and functions required. Guidance is also given on minimum levels of service provision, the suggested measures for evaluating service outcome, and governance arrangements.

Responses are required by 12 March 2013. The consultation document and details of how to respond can be found at <http://wales.gov.uk/consultations/healthsocialcare/criminal-justice/;jsessionid=1CE38A030BC956373D0DC85D18C68BEF?status=closed&lang=en>

---

## Statistics on Youth Justice in England and Wales

---

The Youth Justice Board and the Ministry of Justice have published 'Youth Justice Statistics 2011/12: England and Wales'. The statistics bulletin examines the youth justice system (YJS), considering the number of young people in the system, their offences and the outcomes. 'Young people' means people aged under 18. Most of the statistics relate to the year 2011/12; this runs from 1 April 2011 to 31 March 2012.

The statistics show reductions, since 2008/09 there are 54% fewer young people entering the YJS, 32% fewer young people in custody and 14% fewer re-offences by young people.

The latest period for which data on arrests is available is 2010/11, in which there were 210,660 arrests of people aged 10-17. This was 15.5% of all arrests, with people aged 10/17 making up 10.7%

of the population of England and Wales of offending age. In 2011/12:

- ◆ 40,757 reprimands, final warnings and cautions were given to young people, a decrease of 18% from the 2010/11 figure and 57% from the 2001/02 figure;
- ◆ 5,571 penalty notices for disorder were given to people aged 16 and 17;
- ◆ The number of offences proven against young people has reduced to 137,335, a decrease of 22% from 2010/11;
- ◆ There were 36,677 first time entrants to the YJS, down 20% from 2010/11 and down 59% from 2001/02;
- ◆ 66,430 young people received a substantive outcome in 2011/12, meaning an outcome requiring them to engage with the Youth Offending Team (YOT);
- ◆ 59,335 court disposals were given to young people, a decrease of 18% from 2010/11;
- ◆ Custodial sentences were given in 3,925 cases, a fall of 6% from the previous year, 6.6% of all sentences given were custodial sentences;
- ◆ Three young people died in custody; since 2000/01 there have been 16 deaths in the youth secure estate.

Statistics based on other periods show that:

- ◆ In 2011 there were 20 deaths of young people under YOT supervision; it should be noted that YOT supervision is not 24 hours;
- ◆ In 2011 YOTs reported 119 young people under their supervision attempted suicide and reported 25 incidents where the young person was a victim of an offence;
- ◆ In 2010/11 the re-offending rate for young people was 35.8%, a rise on the two previous years; the number of young people re-offending decreased from 139,732 in 2008/09 to 88,357 in 2010/11.

Statistics available from the 2011/12 Crime Survey for England and Wales show that of those surveyed:

- ◆ 48% felt the main aim of the YJS should be `rehabilitation through help and support;
- ◆ 65% felt police and the courts deal with young offenders too leniently; and
- ◆ 57% expressed confidence that youth crime and anti-social behaviour is tackled effectively in their local area.

The statistics bulletin can be found at  
<http://www.justice.gov.uk/statistics/youth-justice/statistics>

---

## Road Traffic Casualties: Provisional Estimates

---

The Department for Transport has published 'Reported Road Casualties in Great Britain: Quarterly Provisional Estimates 2012 Q3'. The statistical release gives estimates of personal-injury road accidents and their casualties, which were known to police within 30 days. Figures relate to the year ending September 2012. The quarter 3 results (July to September 2012) are formed from information given by 50 police authorities; the statistics are estimates as it is possible records will be received, amended or deleted in the future. The statistical release acknowledges that not all road casualties and accidents are reported to the police, and provides links to information on how the estimates were derived.

The estimates compare years by road user type and road type. In the year ending September 2012 it is estimated that:

- ◆ 1,760 people were killed in road accidents (7% fewer than in the previous year);
- ◆ 24,860 people were killed or seriously injured in road accidents (2% more than in the previous year);
- ◆ There were increases in the number of vulnerable road users (pedestrians, pedal and motor cyclists) killed or seriously injured;
- ◆ Pedestrian and car user casualties fell from the previous year's figures, while pedal cyclist and motorcyclist casualties increased;
- ◆ The figures for pedestrians and road user children killed or seriously injured declined by 1% from the previous year's figure;
- ◆ 2,360 children were killed or seriously injured, 1,590 of these children were pedestrians;
- ◆ The number of fatal or serious accidents fell on major roads and rose on minor roads from the year ending September 2011 to the year ending September 2012;
- ◆ There were 197,730 casualties from 146,980 accidents, a 3% fall from the year ending September 2011.

The quarter 3 2012 (Q3 2012) data were compared with the information on quarter 3 in 2011 (Q3 2011). Estimates show that:

- ◆ 470 people were killed in reported road accidents in Q3 2012, 5% fewer than in Q3 2011;

- ◆ The total estimated casualties in Q3 2012 was 3% less than in Q3 2011;
- ◆ The estimated casualties leading to death or serious injury remained at a similar level to Q3 2011, although there were differences depending on road user type - pedestrian and cycle user casualties of this type rose while motorcycle and car user casualties fell;
- ◆ There were 9% fewer child road casualties in Q3 2012 than in Q3 2011, although the number of child pedestrians killed or seriously injured rose by 8%;
- ◆ Falls were seen in the number of fatal accidents, fatal or serious accidents, and total number of accidents.

The statistical release can be found at  
<https://www.gov.uk/government/publications/reported-road-casualties-great-britain-provisional-estimates-q3-2012>

---

## Home Affairs Committee Report on Draft Anti-Social Behaviour Bill

---

The Home Affairs Committee (HAC) has published its report 'The draft Anti-social Behaviour Bill: pre-legislative scrutiny'. The report outlines the HACs consideration of the draft Bill, and makes conclusions and recommendations.

The report notes that the Bill will reduce the numbers of interventions for anti-social behaviour, while broadening their application. The interventions the Bill will allow include:

- ◆ Injunction to Prevent Nuisance and Annoyance (IPNA);
- ◆ Criminal Behaviour Order (CBO);
- ◆ Public Spaces Protection Orders (PSPO); and
- ◆ Dispersal powers.

IPNA use a weaker threshold than Anti-social behaviour orders (ASBOs) currently available. IPNAs are available to a wider range of authorities than ASBOs, and can be granted on the civil standard of proof where a person has engaged or threatened to engage in conduct capable of causing nuisance or annoyance to any person. Breach of an IPNA is not a criminal offence, but can be punished through contempt of court proceedings, with a maximum sanction of two year's imprisonment or an unlimited fine.

The HAC welcomes that breach of an IPNA is not a criminal offence, but expresses concern that breach could lead to imprisonment. This concern arises because it is likely to be easier to obtain an IPNA than it was to obtain an ASBO. The HAC advises that the threshold of 'conduct capable of causing nuisance and annoyance' is too broad. A proportionality test, a necessity test, and a requirement to show intent or recklessness should be attached. Prohibitions and requirements added to an IPNA should be necessary and proportionate for the purposes of addressing the behaviour which led to the IPNA.

CBOs are available following conviction for an offence, where the offender engaged in behaviour that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the offender. The order can be made where the court considers it will help prevent the offender from engaging in such behaviour. The HAC notes that offenders over 16 can seek to shorten the length of the CBO if they complete an approved course; the HAC could see no reason why younger offenders are debarred from this option.

Dispersal powers would allow constables to direct people to leave an area, without the prior authorisation needed under current law.

It applies where a person's presence or behaviour in the locality has contributed to or is likely to contribute to harassment, alarm or distress or the occurrence of crime or disorder. PSPOs would allow local authorities to place conditions on the use of areas, for example prohibiting the drinking of alcohol or restricting public rights of way. Evidence presented to the HAC suggested that this may lead to situations where under 16s are banned from a town centre at night; they would not for example be able to walk between a train and a bus station. The HAC consider that the exemption from dispersal powers for peaceful picketing should be extended to all forms of peaceful protest. Dispersal powers should include an exemption where there is a genuine need for travel. Where a dispersal power is applied for longer than six hours it recommends there should be a duty to consult local authorities. The HAC also recommends that PSPOs include six monthly interim approval as they can be granted for up to three years.

The impact of the draft Bill on young people is considered and the HAC conclude that measures should be a short nudge to young people, not a 'millstone that will weigh around their necks'. The Bill must be changed to require an annual review of all formal anti-social behaviour interventions imposed on under-18s, to ensure their necessity. INPAs should only be available for 12 months for under-18s, and then only after informal support and acceptable behaviour agreements have failed. The HAC consider that the 'naming and shaming' of those subject to ASBOs can undermine the effectiveness of orders, noting reporting restrictions will not apply in IPNA or CBO applications. The committee are happy to allow provision allowing judges discretion over naming offenders in proceedings for a breach of a CBO.

Community remedies are included in the draft Bill. The HAC says this is a welcome response but concern is expressed that the remedy should not become 'the modern pillory or stocks'. Extra assurances are needed, to give officers discretion to choose alternative disposals, and to ensure victims are involved with full consent and understanding.

The provision for a community trigger, allowing the community to demand a response to anti-social behaviour, is considered. The HAC makes a number of recommendations for the operation of the trigger:

- ◆ A national maximum of five complaints should trigger action, with local areas being allowed to set lower numbers;
- ◆ The action should be defined and agencies should commit to a timetable;
- ◆ Police and crime commissioners should be informed whenever a community trigger is activated (or at five complaints, if fewer is

set as the trigger locally), they should audit the case review meetings; and

- ◆ Local councils should be required to publish the number of times the community trigger has been activated every six months.

The HAC has also considered what is missing from the draft Bill. It considers that jurisdiction for IPNAs should be extended to magistrates' courts, and courts should have a 28 day timescale for dealing with a breach of conditions. The draft Bill does not include provision for strengthening multi-agency working. Agencies are encouraged to find new and effective ways to work in partnership and the HAC recommends the Government establish a National Anti-social Behaviour Forum. This should be led by a chief constable, a housing association chief executive and a local council leader for two years; it should identify 'what works' considering cost-benefit evidence and local best practice.

The HAC report can be found at  
<http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/Publications/>



---

## Notes

---



**College of  
Policing**

**Legal Services**  
[www.college.police.uk](http://www.college.police.uk)