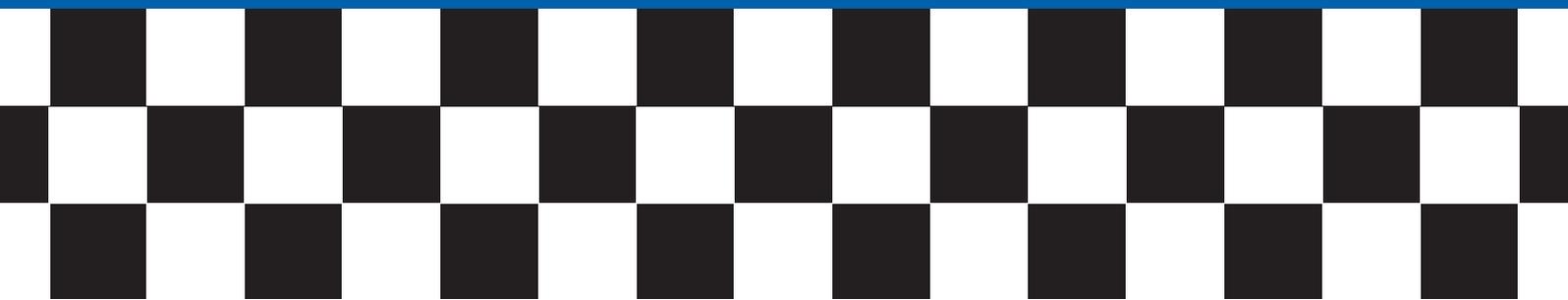


# Digest

November 2012

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



The NPIA Digest is a journal produced each month by the Legal Services Team of the Chief Executive Officer Directorate. 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 NPIA 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@npia.pnn.police.uk](mailto:digest@npia.pnn.police.uk) or telephone +44 (0)1423 876889.

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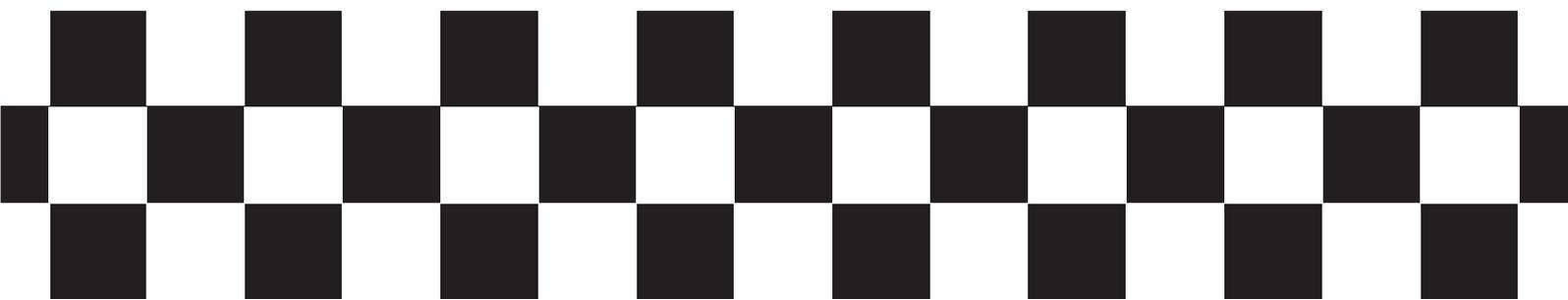
**November 2012**

# **Digest**

**Legal Services**

**Chief Executive Officer Directorate**

**[www.npia.police.uk/digest](http://www.npia.police.uk/digest)**



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## NPIA Digest November 2012

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

There is a report of a case on the legal burden placed on a defendant for an offence under section 5 of the Firearms Act 1968.

We look in detail at recently published Government and Parliamentary reports and initiatives including guidance on counter-terrorism local profiles, a report on wildlife crime, and statutory guidance from the Home Office on police collaboration.

Statistical bulletins are covered which detail crime in England and Wales, drug misuse, and anti-social behaviour orders.

Research reports covered in this edition include a thematic inspection report from Her Majesty's Inspectorate of Constabulary (HMIC) 'Taking Time for Crime: A Study of How Police Officers Prevent Crime in the Field'.

The progress of proposed new legislation through Parliament is examined and statutory instruments published this month summarised.

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## Contents

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<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 - CRIME</b> .....	<b>10</b>
The Reverse Legal Burden in Section 1(5) of the Firearms Act 1982 is a Proportionate and Necessary Derogation from the Presumption of Innocence.....	10
<b>STATUTORY INSTRUMENTS</b> .....	<b>14</b>
SI 2012/2553 The Police and Crime Commissioner Elections (Declaration of Acceptance of Office) Order 2012.....	14
SI 2012/2551 The Licensing Act 2003 (Early Morning Alcohol Restriction Orders) Regulations 2012.....	14
SI 2012/2521 The Protection of Freedoms Act 2012 (Commencement No. 4) Order 2012.....	14
SI 2012/2504 The Police and Crime Panels (Modification of Functions) Regulations 2012.....	14
SI 2012/2479 The Elected Local Policing Bodies (Specified Information) (Amendment) Order 2012.....	14
SI 2012/2466 The Equality Act 2010 (Age Exceptions) Order 2012.....	15
<b>POLICING PRACTICE</b> .....	<b>16</b>
<b>POLICE</b> .....	<b>16</b>
Statutory Guidance for Police Collaboration.....	16
Guidance on Counter-Terrorism Local Profiles.....	16
Home Office Circular 016/2012: Police Federation of England and Wales Conference 2013.....	17
Home Office Circular 017/2012.....	17
NPIA Circular on Biometric Vetting for Police Service Applicants.....	18
NPIA Circulars on Special Constables.....	18
Ministry of Justice Consults on Draft Codes of Practice.....	18
Tom Winsor Becomes Her Majesty's Chief Inspector of Constabulary.....	19
HMIC Thematic Inspection 'Taking Time for Crime'.....	19
HMIC Report on Police Authorities' Planning for Future Budgets and Governance.....	20

<b>CRIME.....</b>	<b>22</b>
Clamping and Towing Offence Comes Into Force.....	22
Crime Statistics Show 6% Fewer Crimes than Previous Year .....	22
Drug Misuse Declared: Findings from the 2011/12 Crime Survey for England and Wales .....	23
Statistics Published on ASBOs.....	24
CPS Reports on Hate Crime and Crimes Against Older People .....	25
<b>DIVERSITY.....</b>	<b>27</b>
Age Discrimination in Provision of Services and Public Functions Banned .....	27
Government Responds to Equality Act Consultations .....	27
<b>CRIMINAL JUSTICE SYSTEM .....</b>	<b>29</b>
Consultation on Draft Guidance on Charging Offences Arising from Driving Incidents.....	29
DPP Issues Guidelines on Assessing the Public Interest in Cases Affecting the Media .....	29
MoJ Circular on Increase to Victim Surcharge.....	30
Report on Wildlife Crime Published .....	30
Law Commission Consults on Wildlife Law .....	31
Quarterly Court Statistics.....	32

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## Bills Before Parliament 2012/13 - Progress Report

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

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

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

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

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

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

◆ **Crime and Courts Bill** - The Bill:

- Provides for the establishment of the National Crime Agency (NCA) to prevent and investigate serious, organised and complex crime, enhance border security, and tackle the sexual abuse and exploitation of children, and cyber crime;
- Makes provision for the appointment of a Director General as the operationally independent head of the NCA; makes provision for the governance of the NCA; and provides a framework for the NCA and other law enforcement agencies to collaborate in order to assist each other in the discharge of their functions;
- Sets out the powers of the Director General and other NCA officers, including by making provision to enable the Director General to give designated NCA officers some or all of the powers of a constable, a customs officer or

an immigration officer; and provides for a duty on the Director General to publish certain information and for the disclosure of information by and to the NCA and for the use of information by the Agency;

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

preliminary tests to determine the level of drugs in a person's blood or urine so as to allow up to three preliminary tests of saliva or sweat to be taken when testing for drugs.

The Crime and Courts Bill was introduced in the House of Lords at its first reading stage on 10 May 2012. Committee stage, the detailed line by line examination of each clause in the Bill, commenced on 18 June 2012. The sixth day of Committee stage took place on 4 July 2012. Amendments discussed covered Clauses 24 - 27 of the Bill. The seventh day of Committee stage is yet to be scheduled.

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

This Private Members' Bill had its report stage and third reading in the House of Commons on 19 October 2012. It will now move to the House of Lords.

- ◆ **Scrap Metal Dealers Bill** - A Bill to amend the law relating to scrap metal dealers; including a new offence of buying scrap metal for cash; and for connected purposes.

The Bill completed its committee stage on 12 September 2012. It is due to have its report stage and third reading in the House of Commons on 9 November 2012.

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

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## **The Reverse Legal Burden in Section 1(5) of the Firearms Act 1982 is a Proportionate and Necessary Derogation from the Presumption of Innocence**

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R v Williams [2012] EWCA Crim 2162

A hearing in the Court of Appeal (Criminal Division) before Lord Justice Davis, Mr Justice Foskett and Mr Justice Sweeney.

### **Summary**

Section 1(5) of the Firearms Act 1982 imposes a legal burden on an accused to prove they lacked knowledge or suspicion that a weapon in their possession was readily convertible to a firearm. This burden encroaches upon the presumption of innocence in Article 6 of the European Convention on Human Rights, however the encroachment is justified as it is necessary and proportionate.

### **The facts**

The appellant was charged with an offence of possession of a prohibited weapon contrary to section 5(1)(a) of the Firearms Act 1968 ('the 1968 Act'). The weapon in question was a 'Blow Crazy' imitation 9mm calibre gun capable of firing blanks. The prosecution alleged that this weapon was readily convertible to a firearm within the provisions of section 1 of the Firearms Act 1982 ('the 1982 Act').

The question which the Court of Appeal was asked to decide was 'do the provisions of s.1(5) of the 1982 Act give rise to an evidential burden or to a legal (persuasive) burden on an accused charged with an offence of possession of a readily convertible imitation firearm?'. The Court was also asked to determine the answers to questions flowing from the answer to this question, to establish whether the imposition of the burden breached the presumption of innocence in Article 6 of the European Convention on Human Rights.

At the original trial the trial judge ruled that section 1(5) of the 1982 Act gave rise to a legal burden on the appellant; the jury were directed that the appellant had to establish on the balance of probabilities that he did not know or have reason to suspect that the weapon was readily convertible to a firearm. The appellant was convicted. The appellant appealed against his conviction, arguing the judge was wrong in law.

The charge arose when the weapon was found in the appellant's possession following an armed raid. The prosecution alleged that the appellant possessed the weapon knowing or suspecting it could readily be converted, alleging he had an interest and knowledge in firearms. The prosecution called a forensic

scientist to give evidence, who had found upon disassembling the weapon that it could be converted to a firearm. His evidence was that on first inspection he had no idea or suspicion that it was readily convertible; this became apparent only after disassembly. He had conducted an internet search over three to four hours and found a website explaining how to disassemble the weapon, but found no information suggesting it could be converted to a firearm.

The appellant contended that he did not know or suspect the weapon could be converted into a firearm. It was common ground that the appellant had not disassembled the weapon in the year in which he had it.

Section 1 of the 1982 Act covers imitation firearms and is read with the 1968 Act. Section 1 reads:

“(1) This Act applies to an imitation firearm if -

- (a) it has the appearance of being a firearm to which section 1 of the 1968 Act (firearms requiring a firearm certificate) applies; and
  - (b) it is so constructed or adapted as to be readily convertible into a firearm to which that section applies...
- (5) In any proceedings brought by virtue of this section for an offence under the 1968 Act involving an imitation firearm to which this Act applies, it shall be a defence for the accused to show that he did not know and had no reason to suspect that the imitation firearm was so constructed or adapted as to be readily convertible into a firearm to which section 1 of that Act applies.”

The court noted that an offence under section 5 of the 1968 Act is one of strict liability, which does not of itself necessarily infringe Article 6 of the European Convention on Human Rights ('Article 6'). An evidential burden may infringe Article 6, and is more likely to do so if it is irrebuttable than if it is rebuttable.

The issue therefore arose which required four questions to be answered:

1. Does s.1(5) of the 1968 Act, as a matter of ordinary interpretation under the law of England and Wales, impose a legal (persuasive) burden on an accused?
2. If it imposes a legal (persuasive) burden on an accused, does that involve an encroachment on the Article 6(2) rights (the presumption of innocence) of the accused?
3. If it does represent such an encroachment, is it to be justified as a necessary and proportionate derogation from the presumption of innocence?

4. If it cannot be so justified, is s.1(5) to be read down, on an application of section 3 of the Human Rights Act 1998, so as to impose an evidential burden (only) on an accused?

The trial judge answered the first three questions in the affirmative, and having done so did not need to give an answer to the fourth.

### **The judgment**

The Court of Appeal considered the four questions as part of the appeal.

It answered question one in the affirmative. Section 1(5) of the 1968 does impose a legal burden on an accused. The court considered other firearms legislation where evidential burdens were imposed, but stated this did not mean Parliament intended all firearms legislation to be read to impose an evidential burden. Other provisions in the 1968 clearly imposed legal rather than evidential burdens on an accused and that was the case in section 1(5).

Question two was also answered in the affirmative; section 1(5) of the 1968 Act introduces a defence which partly relates to the state of mind of the accused. The reverse legal burden does 'make an inroad' into the Article 6(2) rights of an accused.

The court then considered question three, balancing what is at stake for the public with the maintenance of the rights of an accused. Case law concerning proportionality was examined and the court noted that the context of the statutory provision in question will determine whether a legal or evidential burden applies and whether the reverse burden is proportionate. In the present case a legal burden was right to be placed upon the accused as firearms offences are a serious problem and the need for protection against readily convertible firearms is no less than that required for firearms. The legal burden asks an accused to demonstrate lack of knowledge or suspicion; these are facts readily available to the accused. If the prosecution have established possession of a weapon readily convertible into a firearm, it is not unreasonable or unfair to ask the possessor to justify his possession of the item. The maximum sentence of ten years' imprisonment is consistent with the conclusion that imposing a legal burden is a necessary and proportionate derogation from the Article 6 rights. These conclusions led the court to answer question three in the affirmative; the encroachment into the Article 6 rights of the accused was justified as a necessary and proportionate derogation from the presumption of innocence.

Given the conclusions of the court on questions one to three, no answer was needed to question four as the question of reading down the legislation did not arise.

The appeal on this ground failed. The court considered other grounds of appeal raised by the appellant which were also dismissed.

At the time of publication no freely available link to the judgment is available.

**SI 2012/2553 The Police and Crime Commissioner Elections (Declaration of Acceptance of Office) Order 2012**

In force **15 November 2012**. This Order prescribes the form of the declaration of office which a police and crime commissioner must make when elected to office. The declaration is set out in English and in Welsh.

**SI 2012/2551 The Licensing Act 2003 (Early Morning Alcohol Restriction Orders) Regulations 2012**

In force **31 October 2012**. These Regulations prescribe the requirements for making an early morning alcohol restriction order ('EMRO') under section 172A of the Licensing Act 2003. The effect of an EMRO is to prohibit the supply of alcohol for a specified time between midnight and 6am, subject to prescribed exceptions. Regulation 5 sets out how and when a responsible authority can make representations about any proposed EMRO.

**SI 2012/2521 The Protection of Freedoms Act 2012 (Commencement No. 4) Order 2012**

Provisions come into force on **15 October 2012** and **1 December 2012**. This Order establishes the Disclosure and Barring Service ('DBS') on 15 October 2012, which will take over the functions of the Independent Safeguarding Authority (ISA) and the Criminal Records Bureau (CRB). It also begins DBS' obligation to produce accounts on 1 December 2012, the date on which it is anticipated DBS will take over the functions of the ISA and the CRB.

**SI 2012/2504 The Police and Crime Panels (Modification of Functions) Regulations 2012**

In force **3 October 2012**. These Regulations modify Schedule 6 to the Police Reform and Social Responsibility Act 2011 in respect of a failure by a local authority to exercise its powers to nominate and appoint members of a police and crime panel in England. The modification provides that where the local authority fails to nominate or appoint and the area is a multi-authority police area, the panel arrangements will be agreed by the other relevant local authorities.

**SI 2012/2479 The Elected Local Policing Bodies (Specified Information) (Amendment) Order 2012**

In force **22 November 2012**. This Order amends the Elected Local Policing Bodies (Specified Information) Order 2011, which sets out information that police and crime commissioners and the Mayor's Office for Policing and Crime ('elected bodies') must publish. The changes require information to be published about

arrangements that elected bodies have to make use of the staff of the chief officer of police or a local authority. Information about contracts and expenditure by the chief officer of police is included in the publication regime, and changes are made to the publication regime for tenders and contracts and to the information which must be published about custody visiting schemes.

### **SI 2012/2466 The Equality Act 2010 (Age Exceptions) Order 2012**

In force **1 October 2012**. This Order brings into force exceptions to the ban on age discrimination against adults in the provision of services and public functions. For information on the ban and a link to guidance documents please see page 27.

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## Statutory Guidance for Police Collaboration

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The Home Office has published 'Statutory Guidance for Police Collaboration', through which the Secretary of State is exercising the power under section 23F of the Police Act 1996 to provide guidance about collaboration agreements and related matters. Chief officers and policing bodies are required to take the guidance into account when considering, planning, or making collaboration agreements.

The guidance sets out the legal framework for policing, provides a decision process for collaboration, details the legal requirements for collaboration and includes guidance on accountability and design of governance by policing bodies. The powers of the Secretary of State to direct, influence and mandate collaboration and the circumstances when powers of direction are likely to be considered are explained.

The impact of revised legislation allowing collaboration agreements to remove restrictions on collaborative units' ability to authorise techniques under the Regulation of Investigatory Powers Act 2000 and Part III of the Police Act 1997 is explained. Clear examples are given of how collaborative units can authorise surveillance, property interference, the use of covert human intelligence sources and how management of covert human intelligence sources can be divided between forces.

Models of collaboration are explained, with guidance on choosing partners and models for collaboration, avoiding bureaucracy and the difference between mutual aid and collaborations. Advice is given on funding including principles to consider and common barriers. Workforce arrangements, legal duties and liability for breach, procurement, and complaints, conduct and performance are considered.

The guidance can be found at <http://www.homeoffice.gov.uk/publications/police/operational-policing/police-collaboration>

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## Guidance on Counter-Terrorism Local Profiles

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The Home Office and Association of Chief Police Officers, in partnership with the Welsh Government, have published 'Counter-Terrorism Local Profiles: An Updated Guide'. Counter-Terrorism Local Profiles (CLTPs) are a resource for closer partnership working and local action as part of the 'Prevent' element of CONTEST, the government's counter-terrorism strategy.

This guidance is primarily aimed at local Prevent partnerships and counter-terrorism leads. It gives guidance on what CLTPs are and how they should be used. Of particular relevance

for police is the guidance that police should produce two CLTPs, one for local partners marked as RESTRICTED under the Government Protective Marking Scheme, and one for police counter-terrorism practitioners with a higher marking to reflect the more sensitive material within it. A section is included on who owns the CLTP process and what the owner's responsibilities are. This notes that police should ensure their partners have a feedback mechanism to the CLTP owner, so issues on the content and requests for extended readership can be considered. The role partnership planning can play in supporting development and delivery of CLTPs is explained in the context of its benefit, given the range of places, communities, institutions and issues relevant to Prevent.

The guidance can be found at

<http://www.homeoffice.gov.uk/publications/counter-terrorism/counter-terrorism-local-profiles>

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### **Home Office Circular 016/2012: Police Federation of England and Wales Conference 2013**

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Home Office Circular 016/2012 has been published. The circular announces that the central conferences of the Police Federation of England and Wales for 2013 are to be held at the Bournemouth International Conference Centre between 14 and 16 May 2013.

The circular can be found at

<http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2012/016-2012/>

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### **Home Office Circular 017/2012**

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The Home Office has issued 'Home Office Circular 017/2012: Amendments to the constitutions for the Police Negotiating Board and the Police Advisory Board for England and Wales'. This circular gives notice of changes to the constitution of the Police Negotiating Board. With the exception of changes reflecting police and crime commissioners taking office on 22 November 2012, the changes set out in the attachments to the circular take effect immediately.

The circular can be found at

<http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2012/017-2012/>

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## **NPIA Circular on Biometric Vetting for Police Service Applicants**

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The NPIA has published 'NPIA Circular 03/2012: Biometric vetting checks for police service recruitment'. The circular is linked to Home Office Circular 23/2005 which is under revision.

The circular explains that biometric vetting checks will be undertaken on prospective police officers, special constables and relevant police staff, and applies to candidates who have been conditionally offered an appointment. The purpose of the circular is to give guidance to police forces on the speculative checks made using applicants' fingerprints and DNA profiles derived from their DNA samples against both local databases and the National Fingerprint Database (IDENT1) and the National DNA Database (NDNAD).

The circular can be found at  
<http://www.npia.police.uk/en/19535.htm>

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## **NPIA Circulars on Special Constables**

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The NPIA has issued two circulars which relate to Special Constabulary transfers and dual-force circulars.

'NPIA Circular 04/2012 - Special Constables: Dual-Force Service' provides advice to police forces on how to facilitate dual-force service for a special constable who is in a position to undertake service simultaneously in more than one police force.

'NPIA Circular 05/2012 - Special Constables: Transfers' sets out a national protocol for facilitating a transfer when a serving special constable wishes to leave their current home force and serve in another. This Circular supersedes Home Office Circular 06/1999.

The Circulars can be found at  
<http://www.npia.police.uk/en/10040.htm>

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## **Ministry of Justice Consults on Draft Codes of Practice**

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The Ministry of Justice has launched two consultations, which opened on 4 October 2012 and close on 1 November 2012. The consultations seek views on the draft Code of Practice for Youth Conditional Cautions and the draft Code of Practice for Adult Conditional Cautions. Representations are sought from criminal justice practitioners, particularly those in the police service.

Responses can be made online, by email or by post. The consultation documents and the draft Codes of Practice can be found online at the addresses below.

For the consultation on the draft Code of Practice for Youth Conditional Cautions:  
[https://consult.justice.gov.uk/digital-communications/code-youth-conditional-cautions/consult\\_view](https://consult.justice.gov.uk/digital-communications/code-youth-conditional-cautions/consult_view)

For the consultation on the draft Code of Practice for Adult Conditional Cautions:  
[https://consult.justice.gov.uk/digital-communications/code-adult-conditional-cautions/consult\\_view](https://consult.justice.gov.uk/digital-communications/code-adult-conditional-cautions/consult_view)

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## **Tom Winsor Becomes Her Majesty's Chief Inspector of Constabulary**

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On 1 October 2012 Tom Winsor joined Her Majesty's Inspectorate of Constabulary as Her Majesty's Chief Inspector of Constabulary. Mr Winsor joined HMIC from the law firm White & Case, and had previously spent five years as the UK's Rail Regulator and International Rail Regulator.

More information about Mr Winsor and Her Majesty's Inspectors of Constabulary can be found at  
<http://www.hmic.gov.uk/about-us/who-we-are/>

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## **HMIC Thematic Inspection 'Taking Time for Crime'**

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Her Majesty's Inspectorate of Constabulary (HMIC) has published a thematic inspection report 'Taking Time for Crime: A Study of How Police Officers Prevent Crime in the Field'. The report is intended to trigger discussion about development of policing in the context of austerity, and identifies opportunities to move policing from a reactive approach to a preventative approach. The report notes that a preventative approach is critical as it reduces crime, but there are barriers preventing most constables from taking time to prevent crime.

The main findings of the study are that:

- ◆ When taking account of responding where there is a risk of crime, officers spend 80% of their time on crime;
- ◆ Constable's initial training is made up of 190 modules; only one of these is on crime prevention;
- ◆ Constables require 19 basic technology operating systems to carry out frontline roles away from police stations, yet only one was consistently available and this was not always effectual.

Elements of advanced practice were discovered in each of the six forces, however no one force had all the elements which would enable efficient, proactive crime prevention. Barriers

which prevent frontline officers from fighting crime proactively were discovered consistently. The report groups these under three headings:

- ◆ Absence of clarity around a single mission for policing;
- ◆ Weakness in operational support; and
- ◆ Failures in training.

The report sets out next steps for consideration. These are:

- ◆ The role of frontline officer should be at the forefront of the task of professionalising policing;
- ◆ A core set of words setting out the mission of policing should be developed which is used by all officers and staff across all forces;
- ◆ Police intelligence infrastructure should be designed around frontline professionals, and those professionals should be given a voice in how this is achieved;
- ◆ Authorised Professional Practice should be built around evidence-based practice and should set out the intended effect of all frontline roles, in particular for the ranks of constable to superintendent;
- ◆ Police training and standards should cover law, evidence and evidence-based practice;
- ◆ Innovation should drive technology development, not procurement.

HMIC observed uniform and detective officers from six forces working over 36 shifts, covering early, late and night shifts. In-force observation of the six forces was also undertaken including reality checking of force processes and interviews and focus groups with staff. A document review took place to develop a view of strategic leadership priorities, mission statements and core values. Incident demand and resourcing data was reviewed.

The report can be found at

<http://www.hmic.gov.uk/publication/taking-time-for-crime/>

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### **HMIC Report on Police Authorities' Planning for Future Budgets and Governance**

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Her Majesty's Inspectorate of Constabulary (HMIC) has published 'Preparing for Police and Crime Commissioners: A report on police authorities' budget preparations for 2013/14 and the development of governance and accountability models'. The report highlights HMIC's findings from their visits to all

41 police authorities, examining authorities' preparations for the introduction of Police and Crime Commissioners (PCCs) in relation to:

- ◆ The budget development process and the options authorities were preparing to help PCCs make informed choices on the 2013/14 budget; and
- ◆ The proposals for governance, accountability and decision-making models that police authorities were developing for PCCs to consider as they set up their new office.

The key findings from the visits are that:

- ◆ Police authorities are preparing their budget planning for 2013/14 as far as is possible given uncertainty about their final budgets and their budget pressures;
- ◆ Senior team capacity is likely to be lacking early on in some Offices of the Police and Crime Commissioners, as some required posts may be vacant and key skills such as commissioning may be lacking. Work is being done to try and provide interim cover;
- ◆ Authorities are drawing on national guidance and are developing, or have developed, structures for accountability and decision making. They are recognising the need for structures to allow PCCs to function without constraining them.

The report can be found at

<http://www.hmic.gov.uk/publication/preparing-for-police-and-crime-commissioners-budget-preparedness/>

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## Clamping and Towing Offence Comes Into Force

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On 1 October 2012 section 54 of the Protection of Freedoms Act 2012 came into force. This section makes it an offence to, without lawful authority, immobilise a motor vehicle using an immobilising device or to move or restrict the movement of a motor vehicle by any means, intending to prevent or inhibit the removal of the vehicle by a person entitled to remove it. Express or implied consent of a person entitled to remove the vehicle is not 'lawful authority'.

The offence applies to motor vehicles, which for the purpose of the offence means 'a mechanically propelled vehicle or a vehicle designed or adapted for towing by a mechanically propelled vehicle'. The offence can be tried on indictment or summarily and is punishable on indictment by a fine, or on summary conviction by a fine not exceeding the statutory maximum.

This provision was brought into force by the Protection of Freedoms Act 2012 (Commencement No 2) Order 2012 (SI 2012/2075). The text of the offence can be found at <http://www.legislation.gov.uk/ukpga/2012/9/section/54/enacted>

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## Crime Statistics Show 6% Fewer Crimes than Previous Year

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The Office for National Statistics has issued a statistical bulletin 'Crime in England and Wales, Year Ending June 2012'. This quarterly bulletin presents crime statistics from the Crime Survey for England and Wales (CSEW) and from police recorded crime. The CSEW figures are based on interviews carried out between July 2011 and June 2012, which measure individuals' experience of crime in the 12 months prior to the interview. Police recorded crime show crimes recorded by police in the year ending June 2012.

The statistics from the CSEW show a 6% decrease in overall crime against adults compared with the previous years' survey. The change is statistically significant but does not show a downward trend. Crimes recorded by police in the year ending June 2012 showed a 6% decrease compared with the previous year; this continues a downward trend as this year's figures are a third lower than 2002/03.

Looking at police recorded crime for the year ending June 2012, the statistics show that:

- ◆ The overall level of notifiable crime dropped to 3.9 million;
- ◆ Violence against the person offences fell by 6% compared with the previous years' levels, continuing a decline from 2006/07 levels;

- ◆ Declines were recorded in some more serious crimes including homicide, attempted murder and violence against the person with injury.

The CSEW figures for the year ending June 2012:

- ◆ Indicate that 9.1 million offences were committed against households and resident adults in England and Wales;
- ◆ Indicate that 0.9 million offences were committed against children aged 10-15 in households in England and Wales;
- ◆ Estimations of violent crime show no statistically significant change from the previous year's estimate - this follows large falls between 1995 and 2004/05, with estimates being around half the level seen in 1995.

The statistical bulletin, along with information on where to direct queries and other sources of crime data, can be found at <http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-june-2012/index.html>

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### **Drug Misuse Declared: Findings from the 2011/12 Crime Survey for England and Wales**

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The Home Office has published 'Drug Misuse Declared: Findings from the 2011/12 Crime Survey for England and Wales (2nd Edition)'. This document examines the extent of and trends in illicit drug use. It replaces previous annual Home Office Statistical Bulletins on Drug Misuse Declared.

Findings from the survey results include:

- ◆ An estimated 8.9% of adults had used an illicit drug in the last year, remaining around the lowest level since measurement began in 1996;
- ◆ 3.0% of 16 to 59 year olds had used a Class A drug in the last year, with the long term trend in Class A use showing no statistically significant difference since 1996;
- ◆ Cannabis was the most commonly used drug (6.9% of adults) followed by powder cocaine (2.2% of adults);
- ◆ Cannabis use has remained at the lowest level since measurement began;
- ◆ Powder cocaine use has increased in the long term, from 0.6% of adults using it in 1996;
- ◆ 36.5% of adults are estimated to have used an illicit drug in their lifetime; and
- ◆ 15.6% of adults are estimated to have used a Class A drug in their lifetime.

The statistical release can be found at <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/drugs-misuse-dec-1112/>

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## Statistics Published on ASBOs

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The Ministry of Justice has released a statistical notice 'Anti-Social Behaviour Order (ASBO) Statistics England and Wales 2011'. This covers ASBOs issued after applications to magistrates' courts, to county courts and covers ASBOs issued by magistrates' courts and the Crown Court following conviction for a criminal offence.

The statistics outline ASBOs issued, breaches of ASBOs issued, and sentencing for ASBOs breached.

### **ASBOs issued in the period 1 April 1999 to 31 December 2011**

- ◆ 21,749 ASBOs were issued in this period;
- ◆ The highest yearly number of ASBOs issued was in 2005 when 4,122 were issued;
- ◆ Since 2005 the number of ASBOs issued has fallen each year with 1,414 issued in 2011;
- ◆ Since 1 June 2000 85.9% of all ASBOs issued were issued to men;
- ◆ Since 2004 60% of all ASBOs were issued following conviction for a criminal offence;
- ◆ The remaining 40% were issued following application to magistrates' courts or the Crown Court, with 92.3% of those applications made by police or a local government authority.

### **Breach of ASBOs in the period 1 June 2000 to 31 December 2011**

- ◆ 21,645 ASBOs were issued in this period, 57.3% of these had been breached at least once and 42.9% of these had been breached more than once;
- ◆ 991 ASBOs were breached for the first time in 2011;
- ◆ There have been 58,168 separate breaches of ASBOs;
- ◆ If an ASBO is breached, on average it is breached 4.7 times;
- ◆ On average 29.3% of ASBOs are breached within the year of issue;
- ◆ Juveniles breaching ASBOs accounted for 44.9% of ASBOs breached by the end of 2011, although juveniles accounted for 37.7% of ASBOs issued;

- ◆ By the end of 2011 just over two-thirds of juveniles had breached their ASBOs, compared to 51.5% of adults.

### **Sentencing for ASBOs breached in the period 1 June 2000 to 31 December 2011**

- ◆ 52.7% of the individuals breaching ASBOs in this period were given an immediate custodial sentence, with an average sentence length of 5.1 months in custody (6.3 months for juveniles and 4.8 months for adults, on average);
- ◆ 24.6% of the individuals breaching ASBOs in this period were given a community sentence;
- ◆ The remaining 22.7% of sentences comprised discharges; one day in police cells, disqualification from driving and other miscellaneous disposals;
- ◆ There were 58,198 breaches of ASBOs in this period of which 38.7% of breaches led to a custodial sentence, with an average sentence length of 4.1 months.

The statistical notice, along with a breakdown of the figures by court area, can be found at <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/asbo-stats-england-wales-2011/>

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## **CPS Reports on Hate Crime and Crimes Against Older People**

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The Crown Prosecution Service (CPS) has published 'Hate Crime and Crimes Against Older People Report 2011-2012'. The report provides information on the performance of the CPS in prosecuting racial and religious hate crime; homophobic and transphobic hate crime; disability hate crime; and crimes against older people. The CPS uses the definition of hate crime agreed with the Association of Chief Police Officers: "Any criminal offence which is perceived by the victim or any other person, to be motivated by a hostility or prejudice based on a person's race or perceived race; religion or perceived religion; sexual orientation or perceived sexual orientation; disability or perceived disability and any crime motivated by a hostility or prejudice against a person who is transgender or perceived to be transgender."

Key findings on hate crime in 2011/12 include:

- ◆ 14,781 cases were referred to the CPS by police, a fall of 5% from the previous year;
- ◆ 10,835 cases were charged, a fall of 3% from the previous year but an increase from the 2006/07 figure of 8,390 cases charged;

- ◆ The number of successful prosecutions was 11,843, representing 83.4% of prosecutions. This represents an increase from the 2006/07 figure of 9,621 (76.8%) but a decrease from the 2010/11 figure of 12,651 (82.8%);
- ◆ The proportion of successful outcomes due to guilty pleas was 75.1%, an increase from 69.3% in 2006/07;
- ◆ Of the failed prosecutions, 23.4% failed due to 'victim issues' such as victims unexpectedly failing to attend, an increase from 19.9% of cases in 2010/11;
- ◆ The most commonly prosecuted crimes were offences against the person and public order offences;
- ◆ 82.9% of defendants were men;
- ◆ 73.9% of defendants were identified as White British;
- ◆ 54.2% of defendants were aged 25-59 and 28.9% were aged 18-24.

The report outlines the CPS response to the Equality Act 2010 and the Equality and Human Rights Commission's report 'Hidden in Plain Sight', and explains its support for cross-government initiatives. An explanation is given of how the CPS has performed in prosecuting racial and religious hate crime; homophobic and transphobic hate crime; and disability hate crime.

Key findings on crimes against older people in 2011/12 include:

- ◆ Since 2008/09 the volume of cases referred to the CPS increased, from 1,494 to 2,987 cases;
- ◆ The volume of defendants charged has risen since 2008/09 and represents 75.1% of all pre-charge decisions;
- ◆ The number and rate of guilty pleas has increased from 2008/09, from 707 (70.4%) to 2,118 (73.9%);
- ◆ The proportion of unsuccessful prosecutions has reduced to 18.7% of cases, from 21.3% of cases in 2008/09;
- ◆ 67.7% of unsuccessful prosecutions were caused by key reasons, of which acquittal after trial and an essential legal element missing represented the greatest volume and proportion; and
- ◆ The percentage of unsuccessful prosecutions being due to 'victim issues' increased from 14.0% in 2007/08 to 16.8%.

The report can be found at [http://www.cps.gov.uk/data/hate\\_crime/hate\\_crime\\_2011\\_12\\_report.html](http://www.cps.gov.uk/data/hate_crime/hate_crime_2011_12_report.html)

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## Age Discrimination in Provision of Services and Public Functions Banned

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On 1 October 2012 the provisions of Part 3 of the Equality Act 2010 which prohibits age discrimination, harassment and victimisation against adults in the provision of services and public functions came into force. The Equality Act 2010 (Age Exceptions) Order 2012 (SI 2012/2466) was also brought into force on 1 October 2012 and makes limited exceptions to the ban on age discrimination.

Further information including a link to guidance from the Government Equalities Office and information on the exceptions to the ban can be found at <http://www.homeoffice.gov.uk/equalities/equality-act/age-discrimination/>

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## Government Responds to Equality Act Consultations

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The Government has responded to two consultations it ran on the Equality Act 2010.

The consultation 'Equality Act 2010: consultation on employer liability for harassment of employees by third parties' sought views on the proposal to repeal section 40(2)-(4) of the Equality Act 2010. This provision makes an employer liable for harassment of an employee by a third party, where the employer knows the employee has been subjected to such conduct on two previous occasions but has failed to take reasonable steps to stop the employee being subject to it again.

The Government response explains that the legislation is considered unsatisfactory by both respondents supporting and respondents opposing repeal. Repeal of the provisions will be sought using the first available appropriate legislative vehicle.

The consultation 'Equality Act 2010 Removing: (a) employment tribunals' power to make wider recommendations in discrimination cases; and (b) the procedure for obtaining information' sought views on the proposal to repeal section 124(3)(b) of the Equality Act 2010 (the power of employment tribunals to make wider recommendations) and section 138 (the provisions relating to obtaining information).

The Government response considers the views given by respondents to the consultation but notes that very few of these offered significant quantifiable evidence or specific evidence; repeal of the provisions will therefore be sought. The response sets out the Government's intention to consider whether non-legislative means of encouraging employers to

tackle management shortcomings and of allowing exploration of alleged discrimination through correspondence rather than using immediate recourse to the courts.

The consultation documents along with the Government responses to each can be found using the following links.

For the 'Equality Act 2010: consultation on employer liability for harassment of employees by third parties' consultation:  
<http://www.homeoffice.gov.uk/publications/about-us/consultations/third-party-harassment/>

For the 'Equality Act 2010 Removing: (a) employment tribunals' power to make wider recommendations in discrimination cases; and (b) the procedure for obtaining information' consultation:  
<http://www.homeoffice.gov.uk/publications/about-us/consultations/equality-act-wider-enforcement/>

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## Consultation on Draft Guidance on Charging Offences Arising from Driving Incidents

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The Crown Prosecution Service (CPS) has consolidated its documents on prosecuting driving related incidents into a single document and has launched a public consultation, seeking views on the new guidance. Responses are sought by 8 November 2012.

The new guidance covers the application of the Code for Crown Prosecutors in road traffic offences, along with guidance on particular cases including offences where the driver is an emergency service driver or driving in an emergency. Public interest considerations when charging are detailed and a section included which explains various road traffic offences and the charging practice to be applied in each.

Electronic responses are preferred and forms are provided for this purpose, although written responses are acceptable.

The consultation document 'Consultation on the draft guidance on charging offences arising from driving incidents', along with details of how to respond, can be found at [http://www.cps.gov.uk/consultations/draft\\_driving\\_2012\\_consultation\\_index.html](http://www.cps.gov.uk/consultations/draft_driving_2012_consultation_index.html)

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## DPP Issues Guidelines on Assessing the Public Interest in Cases Affecting the Media

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The Director of Public Prosecutions has issued final guidelines, replacing interim guidelines, on how prosecutors should assess the public interest in cases affecting the media. The guidelines are designed to give clear advice to prosecutors who are asked for a charging decision, or for early advice, by police investigating cases which affect the media (for example criminal offences alleged to have been committed by journalists in the course of their work).

The publication of the new guidelines follows a public consultation. The changes made following consideration of the resulting feedback include:

- ◆ Prosecutors should consider the information available to journalists at the start of their investigation in relation to the motivation of the suspect;
- ◆ More detail is given about what might constitute an 'important matter of debate' including examples of 'serious impropriety', 'significant unethical conduct' and 'significant incompetence'; and
- ◆ More detail is given in the section on privacy.

The new guidelines can be found at [http://www.cps.gov.uk/legal/d\\_to\\_g/guidance\\_for\\_prosecutors\\_on\\_assessing\\_the\\_public\\_interest\\_in\\_cases\\_affecting\\_the\\_media\\_/](http://www.cps.gov.uk/legal/d_to_g/guidance_for_prosecutors_on_assessing_the_public_interest_in_cases_affecting_the_media/)

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## **MoJ Circular on Increase to Victim Surcharge**

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The Ministry of Justice (MoJ) has published Circular 2012/05, 'Increase and extension of the Victim Surcharge'. The circular communicates changes to the Victim Surcharge which took effect on 1 October 2012. The changes were brought into force by the Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696).

The Victim Surcharge was originally implemented in April 2007 and required any offender ordered to pay a fine to pay £15 as the surcharge. The increase and extension of the Victim Surcharge follows the Government's consultation 'Getting it Right for Victims and Witnesses'.

The changes mean that courts must order a Victim Surcharge when dealing with an offender for an offence committed on or after 1 October. The surcharges apply to offenders under and over the age of 18 when the offence was committed, and to offences committed by persons who are not individuals ('legal persons'). The rate of the Victim Surcharge differs according to the penalty imposed for the offence. At present, where offenders are made subject to an immediate custodial sentence, the Victim Surcharge will only be payable for sentences imposed in the Crown court; this is pending changes to the law on sentences in the magistrates' courts which will stop the Victim Surcharge being discharged as additional days in custody. Transitional provisions are explained in the circular.

The circular can be found at <http://www.justice.gov.uk/legislation/bills-and-acts/circulars>

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## **Report on Wildlife Crime Published**

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The Environmental Audit Committee (the Committee) has published the report of its inquiry into wildlife crime.

The inquiry opened in January 2012 and began with a call for evidence. Evidence was received from a number of bodies, including oral evidence from police. The background to the inquiry was formed by the Law Commission's consultation on reform of the legal regime for wildlife management, which closes on 30 November 2012, and the Convention on International Trade in Endangered Species (CITES) Conference of the Parties which takes place in March 2013 and is a key forum for international action.

The Committee's predecessor published its report 'Environmental Crime: Wildlife Crime' in October 2004. The Committee notes in this inquiry report that a number of the recommendations its predecessor made were acted upon and improvements resulted, but action is still required. The Committee sets out developments which it says the Government needs to take:

- ◆ Consolidate the law - the Committee reports that wildlife law has been amended in response to new threats and consequently is too complex for non-specialist police and prosecutors to apply and for the public to appreciate;
- ◆ Maintain the current funding and give longer term funding certainty to the National Wildlife Crime Unit (NWCU) so it can build its capabilities;
- ◆ Introduce an Order listing which poisons it is an offence to possess to support laws already in place proscribing poisons used to kill birds of prey, and bring legislation introducing vicarious liability for raptor persecution;
- ◆ Introduce sentencing guidelines for judges to improve consistency of sentencing, and provide training on wildlife crime for magistrates and prosecutors; and
- ◆ Make funding for the NWCUs internet monitoring post secure through an external funding settlement, to make the post more attractive to suitably qualified applicants.

The report and further information can be found at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news/-announcement-of-report-publication/>

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### **Law Commission Consults on Wildlife Law**

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The Law Commission has launched a public consultation on wildlife law, which is open until 30 November 2012. The consultation paper examines the current domestic legislative regime, the external obligations placed upon the United Kingdom and sets out the case for reform. The case for reform includes a new regulatory regime and proposes that criminal sanctions for general offences are harmonised. An open question is asked about whether a vicarious liability offence should be introduced which would make people such as employers liable for the commission of wildlife offences to the same extent as their employees.

The consultation paper can be found at <http://lawcommission.justice.gov.uk/areas/wildlife.htm>

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## Quarterly Court Statistics

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The Ministry of Justice has published a statistics bulletin 'Court Statistics Quarterly: April to June 2012'. The bulletin presents statistics on activity in the county, family, magistrates and Crown courts of England and Wales.

Statistics on criminal matters include:

- ◆ 405,621 criminal proceedings were completed in magistrates' courts in the second quarter of 2012 (Q2 2012), a 4% decrease from the same period in 2011;
- ◆ 31,933 cases were received by the Crown courts from magistrates' courts in Q2 2012, an 11% decrease from the same period in 2011;
- ◆ £74 million was paid in fines in magistrates' courts in Q2 2012, an increase from £69 million in the same period in 2011.

Findings on the effectiveness of trial hearings include:

- ◆ In Q2 2012 37,776 trials were recorded in magistrates' courts. Of these trials:
  - 44% were recorded as effective;
  - 17% were ineffective, as they did not commence on the due date and require re-listing; and
  - 39% were cracked, having not commenced on a scheduled date but not requiring re-listing as they had reached a conclusion;
- ◆ In Q2 2012 9,192 trials were recorded in the Crown court. Of these trials:
  - 48% were recorded as effective;
  - 37 % were cracked; and
  - 15% were ineffective.

Statistics are included on timeliness of criminal proceedings, which show that:

- ◆ On average, the time between an offence being committed and the associated criminal case being completed was 158 days, a 4% increase on the previous year;
- ◆ Around half of the defendants' cases were completed in 137 days or less;
- ◆ The time from offence to completion differs depending on the type of offence, with average times of:

- 156 days for indictable/triable either way offences;
- 142 days for summary non-motoring cases; and
- 179 days for summary motoring cases.
- ◆ For trials heard in the Crown court, the time a defendant waits for a substantive hearing differs depending on the plea entered, with averages waits of:
  - 25 weeks for a not guilty plea; and
  - 12 weeks for a guilty plea.

A summary of the findings, along with a link to the full report, can be found at <http://www.justice.gov.uk/statistics/courts-and-sentencing/judicial-quarterly>



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