CENTREX
HELPING TO DEVELOP POLICING

Digest

April 2006

Legal Validation and Research

April 2006

Digest

Legal Validation and Research Department

www.centrex.police.uk/digest

The Digest is produced on a monthly basis by the Legal Validation and Research Department based at Centrex, Harrogate. The Digest is an environmental scanning publication intended to capture and consolidate topical and key issues, both current and future, impacting on police forces and the police training environment. In producing the Digest, information is included from Governmental and quasi-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.

This edition contains updates on several Acts that have recently received Royal Assent; these are the Terrorism Act 2006, Immigration, Asylum and Nationality Act 2006, Natural Environment and Rural Communities Act 2006, London Olympic Games and Paralympic Games Act 2006, Identity Cards Act 2006 and the Consumer Credit Act 2006.

Other proposed legislation covered this month are the recently published Safeguarding Vulnerable Groups Bill and the Fraud Bill.

With the local elections being held on 4 May, articles summarising a Commission for Racial Equality briefing document on promoting good race relations during an election period and an updated guidance document on the prevention and detection of election fraud issued jointly by the Association of Chief Police Officers (ACPO) and the Electoral Commission are included.

Also featured are the witness protection provisions contained within the Serious Organised Crime and Police Act 2005 and the Government consultation paper, 'Convicting Rapists and Protecting Victims – Justice for Victims of Rape'.

As usual, the Digest also covers the latest Home Office Circulars, research papers, as well as sections on recent case law and Statutory Instruments.

Case law in association with lawtel from Sweet & Maxwell

Digest Editorial Team: Telephone: +44 (0)1423 876664

CONTENTS

Positive Action Leadership Programme

The Centrex Leadership Academy for Policing has launched a Positive Action Leadership Programme (PALP). This replaces the Personal Leadership Programme. PALP, which is targeted specifically at under-represented groups in the wider policing family, has been created to help increase trust and confidence against minority communities, to help recruit and retain staff and to encourage promotion either laterally or traditionally through the ranks.

The programme runs over three days and is currently being held at Bramshill.
The programme is rolling out nationally throughout April; attendance is voluntary and is free of charge to all Home Office police forces. It is expected that around 2,500 officers and staff will attend the course in the next 18 months.

http://www.centrex.police.uk/cps/rde/xchg/SID-3E8082DF-B441D25E/centrex/root.xsl/1697.htm

Elections and Good Race Relations

The Commission for Racial Equality (CRE) has produced a briefing document which is intended to advise local councils, schools, and community organisations on how to maintain and promote good race relations during an election period. The briefing explains the relevant law and suggests some practical steps that councils and community groups might take in three particular areas:

- Challenging false or misleading information.
- Use of council premises for meetings.
- Tackling campaigns of racist harassment and abuse.

The briefing recommends that councils and community groups should:

- Plan their strategies in advance.
- Think broadly about the laws available to them, and coordinate use of different laws – civil, criminal, human rights and constitutional.
- Collect data and information, which may be used either to rebut misleading claims or as part of the evidence in support of civil or criminal proceedings.

Challenging false or misleading information

The briefing highlights that councils have a broad discretion under the Local Government Act 2000 to take action to improve the welfare of local communities, as well as duties under the Race Relations Act to promote equality of opportunity and good race relations, which they must duly consider when exercising their discretion to improve welfare. It also emphasises that the Code of Conduct on Local Government Publicity makes it acceptable for councils to respond to events during an election period, as long as their responses are factual and not party political.

Under these obligations, the briefing points out that public authorities should act quickly and effectively to refute any untrue or misleading information circulating in the area that could lead to racial hatred or damage relations between people from different racial groups. It also advises that if they have evidence that demonstrates that information being circulated is deliberately false or misleading, they should refer the information to the police, as it might be relevant evidence of an intention to incite racial hatred.

Use of council premises

The Representation of People Act 1983 provides that all candidates who may lawfully stand as candidates in local and general elections have a right to use rooms in schools or publicly-funded premises for public meetings free of charge, subject to the conditions that:

- The room is open to all members of the public, and not restricted to ticket holders or members only.
- The purpose of the meeting must be to advance the candidate's prospects of victory at the election.
- The room must be 'suitable'.
- The room must be used at reasonable times, not causing any disruption to the activities it is normally used for, and the candidate must give reasonable notice of wishing to use it.
- Candidates must pay for the costs of heating, lighting, and cleaning the room, in preparation for the meeting, and for restoring it to its usual condition after the meeting.
- Candidates must pay for any damage done to the premises.

The 'suitability' of a room is determined by the nature of the room as a place for holding public meetings and not by the person who applies to use the room. Therefore, provided the candidature is lawful and the conditions set out above are met, councils must provide a room for the use of a candidate. The note advises councils that the 'suitability' issue should be assessed when the list of rooms is being drawn up and not when a request is received to use them.

Councils and Local Education Authorities are advised to consult with the police where they have reasonable grounds for believing that the meeting could cause disruption or offence, as are members of the public or community representatives who fear for their safety should the meeting take place.

Tackling campaigns of racist harassment and abuse

The briefing note contains summaries of some the relevant civil and criminal laws that could be used to tackle racial harassment and abuse. It recommends that:

- Civil law should not be used as a substitute for criminal law where an offence has been committed.
- Whichever remedy is pursued, that evidence must be competent and reliable and that victims should be given the support they need, and alternative sources of evidence considered.
- There should be close cooperation between the council, police, the Crown Prosecution Service and community groups, suggesting this will normally be best achieved through local crime and disorder partnerships or local strategic partnerships.

The CRE has also published separate guidance for racial equality councils on what the law requires of them and how the law permits them to act during the election period. These documents can be found at **http://www.cre.gov.uk/gdpract/elections.html**

Guidance on the Definition of Disability

The Secretary of State has issued guidance on matters to be taken into account in determining questions relating to the definition of disability. This will be brought into force on 1 May by the Disability Discrimination (Guidance on the Definition of Disability) Appointed Day Order 2006 (SI 1005/2006).

It is important to remember that the guidance itself has no legal standing and only acts as an aid to adjudicating authorities, such as employment tribunals, when deciding whether there is a disability. However, the guidance can provide assistance to a range of people and organisations as an explanation on how the definition operates. In the vast majority of cases, there is unlikely to be any doubt about whether a person has a disability, but the guidance can help when this is not completely clear.

Section 1 of the Disability Discrimination Act 1995 defines a disabled person as a person with 'a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities'. The guidance looks at the meaning of each element of this definition in turn, looking at:

- Impairment – The guidance does not provide a definitive list but gives examples of the types of impairments that may be covered, e.g. sensory impairments (sight and hearing), impairments with fluctuating or recurring effects (rheumatoid arthritis, epilepsy), mental conditions (depression, schizophrenia).
- Substantial adverse effect – This reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people. Factors to consider include: time taken to carry out an activity; the way an activity is conducted; cumulative effects of the impairment; effects of behaviour; the environment; treatment; progressive conditions; severe disfigurements.
- Long-term effects – The Act defines long-term as longer than 12 months, likely to be longer than 12 months or likely to last for the rest of the life of the person (Schedule 1, Para 2). It is necessary to consider recurring and fluctuating effects as these may be included in the time period.
- Normal day-to-day activities – The Act states that an impairment will only affect the ability of a person to carry out normal day-to-day activities if it affects: mobility; manual dexterity; physical co-ordination; continence; ability to lift, carry or move everyday objects; speech, hearing or eyesight; memory or ability to concentrate, learn or understand; or perception of the risk of physical danger. The guidance does not specify a list of day-to-day activities but provides general advice on activities that could fall into this category.

The guidance can be found via the Disability Rights Commission website **http://www.drc-gb.org.**

LGBT Equality in the Workplace

The TUC has published an updated guide for trades union negotiators on lesbian, gay, bisexual and transgender issues, which takes into account recent legal changes. The guidance contains chapters on:

- LGBT employment rights.
- Workplace negotiating issues.
- Monitoring sexual orientation and gender identity.
- Good practice in challenging prejudice promoting equality.
- Resources and contacts.

The document can be found in full at **http://www.tuc.org.uk/equality/index.cfm**

Advice for Employers on Involving Workers in Health and Safety Management

The Health and Safety Executive (HSE) has launched a new 'worker involvement' website which contains resources to help employers and managers involve workers in health and safety management and encourage joint problem solving in their workplaces.

The information on this site includes:

- What 'worker involvement' means, including definitions and useful contacts for further help with consultation and information outside health and safety.
- The legal position, including the duty to consult, what to consult on and a summary of representatives' statutory roles.
- A suggested process for involving workers in health and safety management, including practical tips and examples.
- Case studies, examples from a range of organisations involving workers in health and safety.
- Assessment tools, including a quick checklist and simple tools, with examples of good practice, to see how your organisation is doing and to monitor progress.

The website can be found at **http://www.hse.gov.uk/involvement**

Terrorism Act 2006

Following our article on the Terrorism Bill in the October 2005 issue of the *Digest*, we would like to make readers aware that the Bill has now received Royal Assent and is therefore now the Terrorism Act 2006. The Act creates a variety of new offences and amends existing ones. It also increases penalties for certain terrorist offences. The criminal offences are outlined below.

Offences relating to the encouragement and glorification of terrorism

An offence is committed under Section 1 if someone publishes or causes another to publish a statement and intends (or is reckless to the fact) that members of the public will be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate acts of terrorism or Convention offences.

A statement which is likely to have the above effect will include statements which glorify the commission or preparation of such acts; and is a statement from which those members of the public could reasonably be expected to infer that what is being glorified, is being glorified as conduct that should be done by them.

In relation to the question of how a statement is likely to be understood, the court, in determining whether someone is guilty, will have regard both to the contents of the statement as a whole and also the circumstances and manner of its publication.

It is irrelevant whether anything mentioned in the publication relates to the commission, preparation or instigation of one or more particular acts of terrorism or whether any person is in fact encouraged or induced by the statement to commit, prepare or instigate any such act or offence. There are, however, a variety of defences which can be used by the defendant.

A person who is found guilty is liable for imprisonment up to seven years and also a fine.

Dissemination of terrorist publications offence

It is an offence under Section 2 if anyone:

(a) distributes or circulates a terrorist publication;

(b) gives, sells or lends a terrorist publication;

(c) offers a terrorist publication for sale or loan;

(d) provides a service to others that enables them to obtain, read, listen to or look at a terrorist publication, or to acquire it by means of a gift, sale or loan;

(e) transmits the contents of a terrorist publication electronically; or

(f) has a terrorist publication in his possession with a view to its becoming the subject of conduct falling within any of paragraphs (a)-(e)

For the offence to have been committed, the defendant must have the intention (or is reckless to the fact) that the effect of his conduct is to be a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism, or to be the provision of assistance in the commission or preparation of such acts.

A publication is classed as a terrorist publication if the matter contained in it is likely to be understood, by some of the persons to whom it may be available, as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism; or to be useful for the above.

Matter that is likely to be understood by a person as indirectly encouraging the commission or preparation of acts of terrorism is the same as that in Section 1.

The penalty for this offence is the same as for Section 1.

Internet activity

The offences in Sections 1 and 2 include publication and dissemination on the internet. Section 3 also contains other provisions which are applicable to the internet. A constable can serve a notice when they believe illegal terrorism related material is available on a website. This notice requires that terrorism related material is to be removed or modified within two working days. Separate guidance will be issued by the Home Office in relation to Section 3 and officers are advised to consult this before making notices under this Section.

Preparing for terrorism offence

An offence is committed under Section 5 if, with the intent of committing acts of terrorism (or assisting another to commit such acts), the person engages in any conduct in preparation for giving effect to his intention. It is irrelevant whether the intention and preparations relate to one or more particular acts of terrorism.

The penalty for this, on conviction on indictment, is imprisonment for life.

Training for terrorism offence

Under Section 6, this offence is committed if a person provides instruction or training in any of the following three skills:

- Making, handling or use of a noxious substance.
- Use of any method or technique for doing anything that is capable of being done for the purposes of terrorism.
- The design or adaptation for the purposes of terrorism, of any method or technique for doing anything so related.

Also, at the time he provides the instruction or training, the defendant must know that the trainee intends to use the training for or in connection with (or assisting in) the commission or preparation of acts of terrorism or Convention offences.

An offence is also committed under this Section if a person receives instruction or training in any of the skills mentioned above and, at the time of the instruction or training, he intends to use the skills in which he is being instructed or trained for or in connection with (or assisting) the commission or preparation of acts of terrorism or Convention offences.

The maximum sentence for this offence, on conviction on indictment, is imprisonment for a term not exceeding 10 years and a fine.

Attendance at a place used for terrorist training offence

An offence is committed under Section 8 if:

(a) a person attends any place (in or outside the United Kingdom);

(b) while at that place, instruction or training of the type mentioned in Section 6 of this Act (or in section 54(1) of the Terrorism Act 2000 regarding weapons training) is provided there;

(c) that instruction or training is provided there for purposes connected with the commission or preparation of acts of terrorism; and

(d) the following requirements are satisfied in relation to that person:

- if he knows or believes that training is being provided for terrorist purposes; or
- the person attending could not reasonably have failed to understand that the training was being provided for terrorism purposes.

The person does not have to receive training himself.

The maximum sentence for this offence, on conviction on indictment, is imprisonment for a term not exceeding 10 years and a fine.

Offence of making and possession of radioactive devices or materials

This offence is created under Section 9 and, if found guilty, the person is liable, on conviction on indictment, to imprisonment for life.

For the offence to have been committed, it needs to be proved that the person either makes or has in his possession a radioactive device, or has in his possession radioactive material.

It also must be proved that he had the intention of using the device or material for the purposes of terrorism, or for making it available for others to be used in this way.

Offence of misuse of radioactive devices or material and misuse and damage of nuclear facilities

A person commits an offence under Section 10 if they use a radioactive device or material for the purposes of terrorism. An offence is also committed if, for the purposes of terrorism, they use or damage a nuclear facility in a manner which causes a release of radioactive material or creates (or increases) a risk that such material will be released.

The liability of this, on conviction on indictment, is imprisonment for life.

Offences of terrorist threats relating to devices, materials or nuclear facilities

A person commits an offence under Section 11 if, for the purposes of terrorism, he:

- Makes a demand for the supply to himself or another of a radioactive device or material; for a nuclear facility to be made available to himself or another; or for access to such a facility to be given to himself or to another.
- Supports the demand with a threat that he or another will take action if the demand is not met.

And

- The circumstances and manner of the threat are such that it is reasonable for the person to whom the threat is made to assume that there is real risk that the threat will be carried out if the demand is not met.

An offence is also committed if, for the purposes of terrorism, a person makes a threat involving the use of radioactive material or devices or the use of or damage to a nuclear facility as set out above; and it is reasonable for the person to whom it is made to assume that there is real risk that the threat will be carried out, or would be carried out if demands made in association with the threat are not met.

A person guilty of an offence under this Section is liable, on conviction on indictment, to imprisonment for life.

Trespass on nuclear sites offence

Section 12 amends Sections 128 and 129 of the Serious Organised Crime and Police Act 2005 to cover trespass on nuclear sites, by classing this as included within the scope of a designated site. It is also extended to include any premises lying within the outer perimeter fence.

Increases of penalties

Section 13 amends Section 57(4)(a) of the Terrorism Act 2000; therefore the maximum penalty for possessing for terrorism purposes is increased from 10 years to 15 years imprisonment.

Section 14 increases the maximum penalty for an offence under Section 2 of the Nuclear Material (Offences) Act 1983, which covers offences involving preparatory acts and threats. The maximum penalty is increased from 14 years imprisonment to imprisonment for life.

Section 15 increases the penalty from 2 to 5 years imprisonment for contravening a notice relating to encrypted information issued under Section 53 of the Regulation of Investigatory Powers Act 2000, in relation to notices issued on grounds of national security. At present this Section has not been commenced. There is an ongoing consultation in relation to the preparation of a code of practice. The Section will be commenced after agreements have been reached in relation to this Code.

None of these amendments apply retrospectively.

Incidental provisions regarding certain offences

Sections 16 to 19 contain incidental provision regarding certain offences.

Interpretation

Section 20 provides guidelines on the interpretation of Part 1. Definitions of the following are included in this Section:

- ‘publish’.
- ‘acts of terrorism’.
- ‘glorification’.
- ‘statement’.

Proscription of terrorist organisations

Section 21 modifies Section 3 of the 2000 Act in relation to the grounds for proscription. Under this Section, being a member of the organisation is an offence. Section 21 expands the activities for which an organisation can be proscribed, from the promotion or encouragement of terrorism, to include the unlawful glorification of terrorism or association of itself with statements containing unlawful glorification of terrorism. Section 22 amends the 2000 Act to ensure that proscribed organisations cannot avoid being unlawful simply by changing their name.

Detention of terrorist suspects

One of the main changes is the extension of the period of detention of terrorist suspects, which is brought about by Section 23. The 2000 Act, Schedule 8, is amended in four ways:

- The time allowed for the detention of terrorist suspects prior to charge is increased from 14 to 28 days.

- Any application for the extension of the detention beyond the current 14 days must be made to a High Court judge (or equivalent in Northern Ireland and Scotland) not a judicial authority.
- Each extension period will be 7 days (unless a shorter time is applied for or the judge considers that 7 days is too long in the circumstances).
- The types of people who can apply for an extension of detention are expanded to now include police officers of superintendent rank or above, Crown prosecutors in England and Wales (or a Lord Advocate or procurator fiscal in Scotland or the DPP for Northern Ireland).

Section 24 amends Schedule 8 of the 2000 Act regarding the grounds for extending detention of terrorist suspects. Continued detention is going to be permitted if necessary:

- To obtain relevant evidence.
- To preserve relevant evidence.
- Pending an examination or analysis result in regards to any relevant evidence.

Please note that Sections 23 to 25 are not being brought into force at present. They will be brought into force when a Code of Practice on pre-charge detention of an arrest under Section 41 of the 2000 Act is in place.

Searches and all-premises warrants

Sections 26 and 27 provide for all-premises search warrants. Section 26 amends Schedule 5 of the 2000 Act so that a constable can apply for an all-premises warrant. A warrant can also be applied for under para 11 of Schedule 5 in the case of a search for excluded and special procedure material. For more information of the granting of warrants under paras 1 and 11 of the Schedule please see the Home Office Circular as outlined below.

Search, seizure and forfeiture of terrorist publications

Under Section 28, a constable can apply to a justice of the peace for a warrant to enter premises, search them and also to seize articles that he believes are terrorist publications. Articles which are seized may only be forfeited if a warrant has been issued. Schedule 2 sets out the procedure for this. A person exercising the power conferred by a warrant may use such force as is reasonable in the circumstances to exercise this power.

Section 29 relates to stop and search powers at ports.

Section 30 covers stop and search relating to internal waters.

Sections 31 to 33 cover other investigatory powers.

Section 34 amends the definition of terrorism in Section 1 of the 2000 Act to include acts against international government organisations.

Several of the provisions of the Act came into effect on 13 April: see SI 1013/2006 in the SI section of this edition for the full list of these provisions.

The Act can be found in full at **http://www.opsi.gov.uk/acts/acts2006.htm**

HOC 8/2006
The Terrorism Act 2006

This Circular is intended to assist understanding on provisions in the Terrorism Act 2006, and the changes that this makes to the existing legislative framework. It can be found at **http://www.circulars.homeoffice.gov.uk**

The Fraud Bill

The Fraud Bill, which was introduced to the House of Commons on 29 March 2006, includes provisions for and in connection with criminal liability for fraud and obtaining services dishonestly. The Bill is intended to abolish the existing deception offences under the Theft Acts of 1968 and 1978 with the creation of new offences; and tinkers with the existing provisions on 'going equipped' under Section 25 of the Theft Act 1968.

A detailed article on the provisions contained in the Bill will be published in next month's *Digest*.

The Bill can be found in full via **http://www.publications.parliament.uk**

Immigration, Asylum and Nationality Act 2006

Following our article on the Immigration, Asylum and Nationality Bill in the June 2005 issue of the *Digest*, we would like to inform readers that the Bill has now received Royal Assent and is now therefore the Immigration, Asylum and Nationality Act 2006 (IAN 2006).

The IAN 2006 amends legislation such as the Nationality, Immigration and Asylum Act 2002 by making amendments, insertions and repeals in relation to it. Provisions in the Act will place restrictions on appeals for those who are refused entry to the UK to work or study, deny asylum to terrorists and speed up the process in relation to national security deportation cases.

It also creates new powers for the police and also creates new criminal offences. This article will concentrate on those areas that affect the police.

New criminal offences and police powers

Section 21 creates a new criminal offence of knowingly employing an adult who:

- Has not been granted leave to remain.
- Whose leave is invalid.
- Whose leave has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise).
- Whose conditions of entry or stay prevent them from undertaking the employment in question.

The penalty for this offence is set out in Section 22 and is:

- On conviction on indictment, imprisonment for a term not exceeding two years, to a fine or both.
- On summary conviction, imprisonment for a term up to twelve months, a fine not exceeding the statutory maximum or both.

Please also note that Section 22 also defines the liability for bodies corporate in relation to the offence in Section 21.

Section 15 states that an employer could also be liable for a civil penalty. Therefore if an employer employs an illegal employee, they may be fined up to £2,000 per employee.

Section 32 creates new powers for constables of the rank of superintendent or above to request passenger, voyage or flight and crew information from an owner or agent of a ship or aircraft travelling to or from the United Kingdom. (These powers could also be extended by clause 9 of the Police and Justice Bill to include internal UK journeys, (see article in February *Digest* on the Police and Justice Bill)).

Section 33 creates a new power to enable a constable of the rank of superintendent or above to also request freight information from an owner or agent of a ship or aircraft, an owner or hirer of a vehicle, or any other person responsible for the import or export of freight. The definition of 'freight information' for the purposes of the Act will be specified by the Secretary of State in an Order.

Section 34 creates new offences whereby a person would be guilty if they fail to comply (without reasonable excuse) with a requirement imposed under Section 32 or 33. The penalty for this offence is, on summary conviction in England and Wales, imprisonment for a term not exceeding 51 weeks, a fine not exceeding level 4 or both.

Section 40 allows the Secretary of State to authorise police constables and officers of Revenue and Customs, as well other fit and proper and suitably trained persons, to search a ship, aircraft, vehicle or other thing to satisfy themselves as to the presence of illegal entrants.

If an illegal entrant is found, such authorised persons will have the power to search, detain and deliver the individual to an immigration officer. This Section allows that reasonable force can be used for this purpose.

A suspected individual may be searched for the purpose of discovering whether he has with him anything of a kind that might be used by him/her to:

- Cause physical harm to him/herself or another.
- Assist his/her escape from detention.

Or

- To establish information about his/her identity, nationality or citizenship or about his/her journey.

An individual may not be required to remove clothing other than an outer coat, jacket or glove. However they may be required to open their mouth. Items which are subject to legal privilege cannot be retained. There is also a summary offence created for an individual to obstruct or assault an authorised person while exercising these search powers, or to abscond while being detained or delivered to an immigration officer by an authorised person.

Duty to share information

Section 36 creates a requirement for the chief officer of police, Secretary of State (so far as he has functions under the Immigration Acts), and Revenue and Customs to share with each other passenger, crew, freight and service information which is obtained or held by them in the course of their functions (to the extent that the information is likely to be of use for immigration, police or Revenue and Customs purposes (defined in s.20 and 21 of the Immigration and Asylum Act 1999)).

Section 37 requires that the Secretary of State and the Treasury jointly issue a Code or Codes of Practice governing use of information shared in accordance with Section 36 and the extent to which, or form and manner in which, shared information is to be made available with those sections.

Also the chief officer of police may disclose passenger, crew and freight information acquired from owners or agents of ships and aircraft to police in Jersey, Guernsey, the Isle of Man or any other foreign law enforcement agency.

The Act also provides that the chief officer of police, the Secretary of State (so far as he has functions under the Immigration Acts) and Revenue and Customs may disclose travel or freight information (to be specified by Order) which is obtained or held by them in the course of their functions to the following Security Intelligence Services(SIAs):

- The Security Service
- The Secret Intelligence Service
- Government Communications Headquarters.

to the extent that the information is likely to be of use for the purpose of national security, economic well being of the UK or supporting in combating serious crime. Provisions for the disclosure of information from the SIAs to the police or Revenue and Customs is already provided for in other legislation.

The provisions in the Act are due to start being implemented in June 2006 and full implementation is expected by 2008.

The Act can be found in full at **http://www.opsi.gov.uk/acts/acts2006/20060013.htm**

HOC 9/2006
Witness Protection Provisions in the Serious Organised Crime and Police Act 2005

This Circular explains in detail the provisions contained in Part 2, Chapter 4 of the Serious Organised Crime and Police Act 2005 (SOCPA), which relate to the protection of witnesses.

These provisions were brought into force on 1 April 2006 by virtue of SI 1521/2005 (covered in the June 2005 *Digest*).

In summary:

Section 82 of SOCPA places on a statutory footing the previous arrangements for protecting witnesses and other persons who are involved in investigations or proceedings where the risk to their safety is so serious and life threatening that a change of identity and/or relocation is necessary.

It allows a protection provider i.e. chief officers of police, the Director General of SOCA, the Director of the Scottish Drug Enforcement Agency and Revenue and Customs Commissioners, or someone with the appropriate operational status within their organisation to whom they have delegated this function, to make appropriate arrangements to provide protection for certain persons who are listed in Schedule 5 of SOCPA, provided that they are ordinarily resident in the United Kingdom.

Those listed in Schedule 5 includes those who are, have been or in some cases those who might be:

- Witnesses.
- Those who have complied with a disclosure notice.
- Those who have been given an immunity notice (not Scotland).
- Those who have been given a restricted use undertaking if the undertaking continues to have effect in relation to them (not Scotland).
- Jurors.
- Judges and magistrates.
- Prosecutors and their staff (including secondees and employees of Civil Recovery Unit and Financial Crime Unit in Scotland).
- Law enforcement officers.
- Covert human intelligence sources.
- Family members of or those living or who have lived in the same household or have or have had a close personal relationship with the person specified.

Considerations that a protection provider must have regard to in deciding whether to provide protected status or to vary or cancel a person's protected status include:

- The nature and extent of the risk to the person's safety.
- The cost of the arrangements.
- The likelihood that the person and family will be able to adjust to any change in circumstances as a result of the arrangements.
- If the person is or might be a witness in legal proceedings, the nature of the proceedings and the importance of his testimony.

Protection arrangements set up, varied or cancelled under these provisions must be recorded; and, in accordance with existing ACPO guidelines and best practice, a protected person should be provided with notice of any changes to that protocol.

Section 83 allows several protection providers to provide protection to the same person concurrently or to agree between them who should provide protection. It also provides protection providers with the flexibility to make more ad-hoc arrangements which fall outside of any joint agreement made under these provisions.

Section 84 allows protection providers to permanently transfer full responsibility for providing protection to another protection provider, and will normally occur where it is deemed more appropriate for protection to be provided by the force or protection provider in whose area a protected person has been relocated.

Section 85 places a duty on all public authorities to take 'reasonable steps' to provide assistance to protection providers when requested to do so. 'Public authority' for the purposes of this section covers two main types of organisation, i.e. those involved in the provision of documentation, such as identity documents, and those concerned with the provision of services, such as housing, education, employment, welfare, etc. It does not include a court or tribunal, either House of Parliament, the Scottish Parliament, or those connected with Parliamentary proceedings. It is up to the agencies to which requests are made to decide what is and what is not 'reasonable'.

Section 86 creates a new offence, which is committed if a person discloses information which relates to the making of arrangements under Section 82 or to the implementation, variation or cancellation of such arrangements and he knows or suspects that the information is so related. This offence is triable either way. On conviction on indictment, an offender is liable to a maximum prison term of two years, or a fine or both. On summary conviction, he/she is liable to a maximum prison term of twelve months (six months in the case of Scotland and Northern Ireland) or a fine not exceeding the statutory maximum, or both.

Section 87 sets out defences to the offence of knowingly disclosing information about protection arrangements. It limits liability in that it exempts acts of disclosure which will not result in harm. It also provides exemptions where the circumstances are such that disclosure is necessary.

Section 88 creates two new offences, the first which may be committed by a protected person who reveals their true identity in order to cause harm to another person. An example of where this may occur could be where a protected person reveals his/her true identity to cause harm to another protected person, for example, a disgruntled ex-partner.

The second is where a person knowingly discloses information relating to a protected person's new identity. The offence only applies to disclosures, i.e. if the original identity of a protected person is already in the public domain by virtue of an earlier disclosure, subsequent references to the original identity are unlikely to be considered disclosures for the purpose of this offence.

Both these offences are triable either way. Penalty on conviction on indictment is a maximum prison term of two years, or a fine or both, or on summary conviction, a maximum prison term of twelve months (six months in the case of Scotland and Northern Ireland) or a fine not exceeding the statutory maximum, or both.

Section 89 sets out defences to the offences in Section 88. It limits liability in that it exempts acts of disclosure which are likely not to result in harm. It also provides exemptions where the circumstances are such that disclosure is necessary.

Section 90 exempts a protected person and his/her family and associates, and a protection provider or anyone else assisting in the protection arrangements, from civil or criminal proceedings if they make false or misleading statements about a protected person's identity in order to ensure that that new identity is not disclosed.

Section 91 provides for the transfer of witness protection cases existing prior to the commencement of these provisions (i.e. before 1 April 2006) so that they may be covered by the new legislation. In order to be covered by the witness protection provisions of SOCPA, three conditions must be met:

- That the person in question would have qualified for protective status if the case had been considered after the new provisions were commenced.
- That protection must have been provided immediately before the commencement of these provisions.
- That the protection provider must consider that it is appropriate for protection to be provided under the new provisions.

Transfer of witness protection cases under this provision must be completed as quickly as possible and by no later than 30 September 2006.

In relation to Section 91, Section 92 provides that the offences of disclosing information about the identity or protection arrangements of a protected person will only be committed if disclosure takes place on or after the date of the record of determination for transferring that case.

Section 93 requires protection providers to ensure that protected persons fully understand the terms and conditions and the implications of arrangements being made for them under these provisions. This is particularly important for existing cases which are transferred to come under the new provisions, because the protected person will have previously been provided protection on a non-statutory basis.

In cases where a person may have difficulty in understanding the effect of the provisions, such as a young child or a person with learning difficulties, an appropriate person acting in their interests should be given the information on their behalf.

The Circular can be found in full at **http://www.circulars.homeoffice.gov.uk**

Natural Environment and Rural Communities Act 2006

The Natural Environment and Rural Communities Bill (covered in the November 2005 *Digest*) received Royal Assent on 30 March 2006. It is now the Natural Environment and Rural Communities Act 2006. The main provisions of the Act which affect the police are identified below.

Part 3

Duty in relation to biodiversity

A statutory duty is imposed whereby every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity (see Section 40(1)).

New offence of possessing pesticides harmful to wildlife

This offence is created by Section 43(1). For this offence to have been committed, the pesticide must contain an ingredient that is prescribed for the purposes of this section by an order made by the Secretary of State (subject to certain defences). If a person is found guilty of this offence, they are liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or both) (see s.43(4)).

Enforcement powers are created by Section 44 for inspectors (people authorised in writing by either the Secretary of State or the National Assembly for Wales) in relation to the above offence. An inspector can:

- Enter any premises if he has reasonable grounds to suspect that he may find there evidence that an offence is being committed under Section 43.
- Require any person whom he reasonably believes has information about the formulation, effects or use of any substance found on the premises to give him that information.
- Seize any substance found on the premises, if he has reasonable grounds for believing that it is evidence of an offence under Section 43.

New offences aimed to protect birds and non-native species

The new offences are created through amending the Wildlife and Countryside Act 1981 (the 1981 Act). Section 47 amends the 1981 Act in that it is now an offence to intentionally or recklessly take, damage or destroy the nest of a wild bird which is included in the inserted Schedule ZA1 of the 1981 Act. The birds in question are the Golden Eagle (Aquila chrysaetos), White-tailed Eagle (Haliaetus albicilla) and the Osprey (Pandion haliaetus).

Section 50 also inserts s.14ZA into the 1981 Act, creating an offence whereby a person is guilty of an offence if he sells, offers or exposes for sale, or has in his possession or transports for the purposes of sale, an animal or plant to which this section applies, or anything from which such an animal or plant can be reproduced or propagated.

Also, it is now an offence if someone publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell either of (a) or (b) above (see s.14ZA(2)).

This part of the Act also introduces Schedules 5 and 6 which make provision in relation to enforcement powers in relation to wildlife, and also time limits for proceedings in respect of certain wildlife offences.

Schedule 5 specifically deals with police powers. Para 3 inserts into the 1981 Act, Section 19XA, which means that a constable who suspects with reasonable cause that a specimen found by him in the exercise of powers conferred by the section is one in respect of which an offence under this Part is being or has been committed, can require the taking from it a sample and may require any person to make available for the taking of a sample any specimen (other than the relevant specimen) in that person's possession or control which is alleged to be, or the constable suspects with reasonable cause to be, a specimen a sample from which will tend to establish the identity or ancestry of the relevant specimen.

It also inserts into the 1981 Act, Section 19XB which creates other offences in connection with enforcement powers.

Part 4

New offences relating to sites of special scientific interest (SSSIs)

A new offence is created under Section 28G of the 1981 Act, whereby if certain authorities (including public bodies and their employees) permit the carrying out of an operation which is damaging to an SSSI without reasonable excuse, the authority will be liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine (see s.55(1) and (2)).

Another offence is created with a penalty on summary conviction to a fine not exceeding level 4 on the standard scale, of intentionally or recklessly destroying or damaging (without reasonable excuse) an SSSI's flora, fauna, or geographical or physiographical features (see s.55(3)).

This Part also contains sections in relation to the effects of failure to serve notices on all the correct persons when authorities notify or denotify an SSSI. An offence is created to (without reasonable excuse) intentionally or recklessly, damage, destroy or obscure those notices or signs put up by Natural England and the Countryside Council for Wales (see s.57 and 58).

Part 6

The law on rights of way

The law as it was before the introduction of the 2006 Act was introduced is explained in our earlier article. This Part means that new public rights of way for mechanically propelled vehicles on illegal routes cannot be created. This Part also makes it illegal to use public rights of way for mechanically propelled vehicles, where the rights to use it are not already recorded on the definitive map and statement (subject to certain exceptions). Part 6, however, makes provision for cases where the public right of way for mechanically propelled rights is extinguished due to the 2006 Act, so that property owners and others with an interest in land who relied on unrecorded public vehicular rights of way for access to that land, are provided with a private right of way to access the land by a mechanically

propelled vehicle. This Part also amends the Highways Act 1980, making it clear that use by non-mechanically propelled vehicles can still give rise to a new public right of way for non-mechanically propelled vehicles. The date on which a public right to use a way is regarded as brought into question is also clarified.

Part 6 also enables National Park authorities to make traffic regulation orders etc, in relation to recorded byways, footpaths and bridleways and unsealed carriageways in National Parks.

The provisions outlined above are not yet in force, but will be brought into force in accordance with provision made by Order by the Secretary of State. The Act can be found in full at **http://www.opsi.gov.uk/acts/acts2006/20060016.htm**

Safeguarding Vulnerable Groups Bill

The Safeguarding Vulnerable Groups Bill (as mentioned in the January *Digest*) has been published, following its introduction in the House of Lords on 28 February 2006. The primary purpose of the Bill is to provide a new independent vetting and barring scheme for people who work with children and vulnerable adults. The aim of the scheme is to minimise the risk of children and vulnerable adults suffering harm at the hands of those employed to work with them.

Barring

Clause 1 and Schedule 1 establish a new statutory body known as the Independent Barring Board (IBB). Schedule 1 provides detailed requirements concerning:

- The Board's membership.
- Tenure of office.
- Remuneration, pensions, etc of members.
- Staffing.
- Remuneration, pensions, etc of staff.
- Delegation of functions.
- Reporting to the Secretary of State.
- Keeping of accounts.
- Independence from the Crown.

Clause 2 provides that IBB must establish and maintain two new barred lists, one for children and the other for adults. Clause 2 also introduces Schedule 2 which sets out how someone may be included in the lists. For both lists there will be four types of cases:

- Automatic inclusion. Individuals who satisfy certain criteria, which will be prescribed in regulations made under the Act, must be referred from the Secretary of State to IBB. On referral, the person will be included in the barred list.
- Inclusion subject to consideration of representations. Individuals who satisfy certain criteria, as prescribed in regulations applying to this category, must be referred from the Secretary of State to IBB. On referral, the person will be included on the barred list. IBB must then give the person the opportunity to make representations as to why he should be removed from the barred list.

- Behaviour. If it appears to IBB that a person has (at any time) engaged in relevant conduct and IBB proposes to include him on the barred list, it must give the person the opportunity to make representations as to why he should not be included in the barred list. If it appears to IBB that it is appropriate to do so, it must include the person in the barred list.
- Risk of harm. If it appears to IBB that a person has engaged in relevant conduct that consists only of an offence committed against a child, and the court, having considered whether to make a disqualification order, decided not to, and they propose that he be put on the barred list, the person must be given the opportunity to make representations as to why he should not be included in the barred list. If it appears to IBB that it is appropriate to do so, it must include the person in the barred list.

For the purpose of cases concerning behaviour, relevant conduct is defined as:

- Conduct which endangers a child/vulnerable adult or is likely to endanger a child/ vulnerable adult.
- Conduct which, if repeated against or in relation to a child/ vulnerable adult, would endanger that child/adult or would be likely to endanger him.
- Conduct involving child pornography/adult pornography, if it appears to IBB that the conduct is inappropriate.
- Conduct of a sexual nature involving a child, if it appears to IBB that the conduct is inappropriate.
- Sexual behaviour with or towards a vulnerable adult which appears to IBB to be inappropriate.

Schedule 2 also states that a person's conduct endangers a child/vulnerable adult if he:

- Harms a child/vulnerable adult.
- Causes a child/vulnerable adult to be harmed.
- Puts a child/vulnerable adult at risk of harm.
- Attempts to harm a child/vulnerable adult.
- Incites another to harm a child/vulnerable adult.

The Bill enables the Secretary of State to specify the procedure IBB must use to take decisions under Schedule 2, using regulations. When a person is allowed to make representations, they must have the opportunity to make representations in relation to all the information on which IBB intends to rely in taking a decision under Schedule 2. A person will not be able to make representations if IBB does not know or cannot reasonably ascertain their whereabouts. When making representations, the person cannot make representations that findings of fact made by a competent body were wrongly made. The competent bodies are listed in Schedule 2.

A person included on the barred list can only apply to IBB for a review of his inclusion with the leave of IBB. They can only apply for leave at the end of the minimum barred period. To grant leave, IBB must be satisfied that the person's circumstances have changed since he was included on the list or last applied for leave and that the change is such that leave should be granted. On review, if IBB is satisfied that it is no longer appropriate for the person to be on the list, it must remove him from it or otherwise dismiss the application. The Schedule also sets out the possible criteria for establishing the minimum amount of time that must elapse before a review can take place.

A person who was included on the barred list only as a result of a conviction for an offence against a child must be removed from the list if a court has considered making a disqualification order under the Criminal Justice and Court Services Act 2000 in respect of that conviction and has decided not to.

IBB has the power to obtain relevant police information in relation to individuals within the scheme, including records of convictions and cautions.

Schedule 2 also provides the power to prescribe criteria for the purposes of automatic barring and barring subject to representations. Criteria which may be prescribed include:

- That a person has been convicted of, or cautioned in relation to, an offence of a specified description.
- That an order of a specified description requiring the person to do or not do anything has been made against him.

Clause 3 contains the definition of what constitutes a barred person. A person is barred from regulated activity relating to children/vulnerable adults if he is:

- Included in the barred list.
- Included in a list maintained under the law of Scotland or Northern Ireland which the Secretary of State specifies by order as corresponding to the barred list.

Clause 4 provides for an appeal to the Care Standards Tribunal on a point of law against a decision by IBB to include or keep someone on the list. It provides for regulations specifying Tribunal procedure. The Court of Appeal will hear appeals on a point of law against a Tribunal decision.

Regulated activities

Clause 5 introduces Schedule 3, which defines regulated activities as follows:

- Certain types of activity either carried out frequently (e.g. teaching, caring for children, training vulnerable adults) or carried out other than frequently in an establishment such as a school or a children's home.
- Any activity carried out frequently in a specified establishment which gives a person the opportunity to have contact with children in pursuance of his duties there (e.g. school secretary).
- Activities carried out in care homes which are exclusively or mainly for vulnerable adults.
- The day-to-day management or supervision on a regular basis of any person carrying out the above.
- The inspection of specified establishments on behalf of specified organisations (e.g. inspection of schools by HM Inspector of Schools in England, inspection of care homes by the Commission for Healthcare Audit and Inspection).
- The exercise of specific functions, (e.g. school governor, children's commissioner or trustee of a children's charity).
- The exercise of functions of the director of social services of a local authority relating to vulnerable adults.

Regulated activity providers

Clause 6 defines the term 'regulated activity provider', on whom a number of obligations are imposed. A regulated activity provider is an individual or organisation responsible for the management or control of regulated activity (as defined in Clause 5) who makes arrangements for a person to engage in that activity. Those who employ others to engage in a regulated activity are covered, but there is no requirement for a contract to exist, so voluntary work is covered. A person who simply uses services provided by another (e.g. a mother who places her child in a supermarket crèche) is not a regulated activity provider, as she has no responsibility for the management or control of the regulated activity provider.

A person who makes arrangements for another to engage in regulated activity for his benefit, or for a child or vulnerable adult who is part of the family or is a friend, does not fall within the definition of regulated activity provider, e.g. a parent who employs a nanny.

Restrictions on participating in regulated activities

Clause 7 creates offences and penalties covering barred persons participating in regulated activity. An individual commits an offence if he:

- Seeks to engage in regulated activities from which he is barred.
- Offers to engage in regulated activities from which he is barred.
- Engages in regulated activity from which he is barred.

The penalties for the above offences are:

- On conviction on indictment, imprisonment for a term not exceeding five years, a fine or both.
- On summary conviction, imprisonment for a term not exceeding 12 months, a fine or both.

The Clause provides a defence if the person can prove he didn't know, and could not reasonably be expected to know, that he was barred. This could be the case where IBB could not contact the person while they were considering whether to include him in the list or once it had made its barring decision.

Clause 21 enables a person to apply to be subject to monitoring in relation to a regulated activity relating to children or vulnerable adults or both. Persons permitted to engage in regulated activity must be subject to monitoring.

Clause 8 makes it an offence for a person to engage in regulated activity with the permission of a regulated activity provider unless he is subject to monitoring. No offence is committed if a person engages in a regulated activity on an occasional basis while not being subject to monitoring in respect of a regulated activity relating to children. This means that parents can help out at school without having to be subject to monitoring if they do so on an occasional basis.

Clause 8 also makes provisions allowing those who were engaged in regulated activity before the commencement of the clause to continue the activity without monitoring, until such time as the Secretary of State specifies by Order. This is intended to allow the new regime to be phased in in relation to those currently engaged in activities that the Bill categorises as regulated activity.

Clause 9 makes it an offence for a regulated activity provider to permit a person to engage in regulated activity if he knows or has reason to believe that the person is barred from the activity.

Clause 10 makes it an offence for a regulated activity provider to permit a person to engage in regulated activity if he knows or has reason to believe he is not subject to monitoring in relation to that activity. Similar offences are created in relation to a personnel supplier who supplies a person in these circumstances. Penalties are as for Clause 7 offences above.

Clause 11 makes it an offence for a regulated activity provider to permit a person to engage in regulated activity without first making an 'appropriate check'. Schedule 4 defines an appropriate check as one made with the Secretary of State to obtain 'relevant information', which includes information as to whether or not the person is barred from the relevant regulated activity or is subject to monitoring in relation to it. The information can be obtained by applying to the Secretary of State under Schedule 4 or by obtaining an Enhanced Disclosure from the Criminal Records Bureau. Regulated activity providers can rely on written confirmation obtained from other regulated activity providers that have previously carried out an appropriate check and have no reason to believe that the person has either become barred or is no longer subject to monitoring. Similar provisions to those in Clause 8 are made governing persons working on an occasional basis, and those who were engaged in regulated activity before the commencement of the clauses, concerning exemptions from making appropriate checks.

Clause 12 requires checks to be made in relation to governors of educational institutions.

Clause 13 allows regulated activity providers to rely on written confirmation from personnel suppliers concerning whether an individual supplied is on the barred list or subject to monitoring. This may occur, e.g. where a supply teacher is supplied by an agency to a school. A personnel supplier commits an offence if it provides written information but have made no check or, having made a check, subsequently learns that the person is barred or is not subject to monitoring.

Clause 14 lists regulated activity providers (in relation to vulnerable adults) exempted from the obligation to make appropriate checks under Clause 11. Exemptions apply to:

- Providers of complementary or alternative therapies.
- Those responsible for the management of a prison or a probation service.
- Organisations providing recreational, social, sporting or educational activities.
- Those who provide, wholly or mainly to vulnerable adults, a course of education or instruction which is of a prescribed description.
- Those responsible for the control or management of the provision of housing (including sheltered housing).
- Providers of qualifying welfare services.
- Those who are appointed to make decisions on behalf of those who lack the capacity to make decisions.

Clause 15 also lists certain regulated activity providers exempted from the obligation to make appropriate checks under Clause 11. This relates to NHS employers that use staff supplied by agencies in certain NHS employment, where the member of staff is already engaged in other NHS employment and so will have been checked for the purposes of that employment.

Clauses 16 and 17 make directors of companies and employees personally liable for committing offences under clauses 9, 10 and 11.

Controlled activity

Controlled activities are not regulated activities. Clause 18 defines controlled activity relating to children. Broadly, this is activity in the further education and health sectors which is carried out frequently and involves the opportunity for contact with children or access to children's medical records. This will include ancillary work in such sectors such as cleaning, administrative work, etc. Clause 19 has similar provisions regarding controlled activity relating to vulnerable adults.

Clause 20 provides that the Secretary of State (or National Assembly of Wales) can issue guidance to certain bodies, such as NHS associates, further education institutions and local authorities, as to the steps they should take when employing individuals to undertake controlled activities.

Monitoring

As stated before, Clause 21 enables a person to apply to be subject to monitoring in relation to a regulated activity relating to children or vulnerable adults or both. This will enable them to engage in regulated activities. Where a person is subject to monitoring, the Secretary of State must make enquiries to obtain relevant information. This is defined as:

- The prescribed details of criminal record certificates.
- Information which the chief officer of a relevant police force thinks might be relevant in relation to the regulated activity concerned.
- Such other information as may be prescribed.

Clause 22 enables the Secretary of State to cease monitoring a person who satisfies them that he is not engaged in the regulated activity concerned or the corresponding controlled activity and the person requests the Secretary of State to cease monitoring.

Clause 23 inserts new Section 119B into the Police Act 1997. This provides for a statutory Information Monitor reporting to the Home Secretary on the performance of police forces in exercising their functions under Part 5 of the Police Act 1997 (Certificates of criminal records etc). His function relates to the review of information processed by local police forces as part of the Criminal Records Bureau Enhanced Disclosure process, with the objective of ensuring compliance with Article 8 of the European Convention on Human Rights. The Information Monitor must make a report to the Secretary of State each year about the performance of police forces in exercising their functions under Part 5. The chief officer of a police force must provide the Information Monitor with such information as the Monitor reasonably requires in connection with the exercise of his functions under this section.

Clause 24 extends the scope of the Code of Practice issued under Part 5 of the Police Act 1997, which governs the use of information provided to registered persons by the Criminal Records Bureau (CRB). The Code will include provisions relating to the carrying out of any function by a body or person registered with the CRB for the purpose of accessing the Standard or Enhanced Disclosure service. The current scope of the Code is limited to the use of information provided to registered persons. Sanctions for failure to comply with the code may be:

- Refusal to issue the certificate.
- Suspension of the registration of the person.
- Cancellation of the registration of the person.

Notices and information

Clause 25 introduces Schedule 4 which makes provision for applications to be made to the Secretary of State for 'relevant information' in relation to a person by certain applicants. Relevant information includes:

- Whether a person is barred from regulated activity.
- Whether a person is subject to monitoring in relation to regulated activity.
- Whether, at the time the information is provided, IBB is considering whether to include them in the barred list.
- Whether a person is subject to a children's direction and, if he is subject to such a direction, such details as may be prescribed of the circumstances in which the direction was given.

Obtaining relevant information by making an application under these provisions is one way in which a regulated activity provider can comply with his obligations to make an appropriate check under Clause 11. These provisions also enable someone who is not under any obligation to check whether a person is barred or subject to monitoring before engaging him in a regulated activity to do so. So, for example, a parent can check whether a potential babysitter is barred or subject to monitoring. Applications must be made in the prescribed form and with the person's consent.

Clause 26 provides that if the Secretary of State knows or has reason to believe a person is permitting an individual to engage in a regulated or controlled activity, he must notify him if that individual becomes barred in relation to that particular activity or ceases being subject to monitoring in relation to that activity.

Under Clause 27, regulated activity providers and persons responsible for the management and control of controlled activities have a duty to provide prescribed information to IBB. This includes if they withdraw permission for an individual to engage in a regulated or controlled activity because they think there may be grounds for barring the individual from regulated activity. This also extends to situations where the person would have withdrawn permission if the individual had not otherwise stopped being engaged in the regulated activity. These duties extend to employment agencies and businesses.

Clause 28 provides that where the Secretary of State is considering whether to include a person on the barred list, it may require regulated activity providers, managers/controllers of controlled activity, employment agencies or businesses to provide it with certain information about that individual. Clause 29 makes it an offence not to comply with Clauses 27 and 28.

Clauses 30 and 31 relate to local authority information and referrals. Clauses 32 to 34 make provisions regarding the professional regulatory bodies and the relevant registers that they keep. Examples of bodies include the General Teaching Council of England and Wales and General Medical Council. Clauses 35 to 37 make provisions concerning the duty of supervisory bodies to refer and provide information.

Clause 42 excludes activity carried out during the course of family and personal relationships from the scope of the Bill.

Clause 43 defines a vulnerable adult as a person who has attained the age of 18 and is:

- In residential accommodation.
- In sheltered housing.
- Receiving domiciliary care.

- Receiving any form of health care.
- Detained in lawful custody.
- Under the supervision of the National Probation Service.
- Receiving any service or participating in any activity provided specifically for the elderly, persons with a disability, persons with a prescribed physical or mental problem or expectant/nursing mothers.
- Receiving payments pursuance of arrangements under Section 57 of the Health and Social Care Act 2001.
- Requiring assistance in the conduct of his own affairs.

Amendments to Police Act 1997

The Bill makes several proposed amendments to the Police Act 1997. Section 113A is amended so that the Secretary of State can amend the existing definitions of 'central records' and 'relevant matter', which comprises the information routinely disclosed on criminal record certificates and enhanced criminal record certificates. This will enable the Secretary of State to provide for the routine disclosure of various additional types of information that have become available to prosecuting and judicial authorities since the original definitions in the Police Act were set down.

Section 113B is amended to make clear that an enhanced criminal record certificate can only be applied for if, in addition to meeting other qualifying criteria as may be prescribed, the position, employment or licensing application in question is included within those listed in the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975.

The Act is also amended so that enhanced criminal record certificates must include relevant information (as defined in Schedule 4) in relation to an applicant in prescribed cases. This includes information as to whether a person is barred or subject to monitoring. Obtaining an enhanced criminal record certificate is another way in which a regulated activity provider can comply with his obligations to make an appropriate check under Clause 11.

Section 119 is amended to require those who hold records of convictions and cautions to make these available to the Secretary of State, and to require chief officers of police to supply him with relevant information relating to regulated activity in response to enquiries made under their functions in Clause 21 about those who are subject to monitoring. Information received by the Secretary of State can then be passed on to IBB.

The Bill can be found in full via **http://www.publications.parliament.uk/pa/pabills.htm#s**

London Olympic Games and Paralympic Games Act 2006

The London Olympic Games and Paralympic Games Act 2006 received Royal Assent on 30 March 2006. The main provisions of the Act affecting the police relate to new offences which have been created principally in relation to advertising, trading and touting. Powers of entry are also provided in certain circumstances.

Advertising offences

Section 19 imposes a duty on the Secretary of State to make regulations about advertising in the vicinity of Olympic venues. A lot of the detail of the regulations is left to secondary legislation, so that a proper assessment of what is needed can be made closer to the Olympics.

Section 21 creates a criminal offence of contravening the regulations made under Sections 19, punishable by a fine; the maximum fine in the magistrates' courts will be £20,000 (see s.21). The offender may also be required to pay the expenses of the Olympic Delivery Authority (ODA) or police authority which has undertaken enforcement action described in Section 22.

Trading offences

The Secretary of State also has a duty to make regulations to control trading in the vicinity of Olympic venues under Section 25. A contravention of a regulation made under Section 25 will be an offence, punishable by a fine (see s.27). Again, in the magistrates' courts the maximum fine will be £20,000.

Power of entry

Section 28 gives a constable, or enforcement officer designated by the ODA, the power to enter premises if they reasonably believe a contravention of the regulations is occurring. The officers can remove and retain any articles (either something containing items for sale or being sold) if the removal is justified due to a need to:

- Prevent future contravention of the regulations.
- End a contravention of regulations made under Section 25.
- Use the article as evidence in proceedings for an offence under Section 27.

Or

- So that the article can be forfeited where it has been used for the purpose of committing offences.

Ticket touting offences

Section 31 creates a criminal offence of touting tickets for the 2012 Olympics. The offence is committed if someone sells a ticket (or anything which they purport to be a ticket) for an event held as part of the Olympics in a public place or in the course of a business without the written authorisation of London Organising Committee for the Olympic Games (LOCOG). A person found guilty is liable to a fine up to £5,000.

There is quite a wide definition of 'selling a ticket'. It includes:

- Offering to sell a ticket.
- Exposing a ticket for sale.
- Advertising that a ticket is available for purchase.
- Giving a ticket to someone who is paying for other goods and services.
- Offering to give a ticket to someone who is paying for other goods and services.

An offence is also committed if the advertiser advertises that a ticket is available for purchase and if the person making the ticket so available is acting in the course of a business (subject to certain exceptions).

Traffic regulation orders

Under Section 14(1) the new body, the ODA, can make traffic regulation orders over roads that are part of the Olympic Route Network (ORN); however, the consent of the Secretary of State is needed.

Section15 provides for the enforcement of these traffic regulation orders. People who do not comply with them can be punished with fine of £5,000. The Traffic Management Act 2004 will probably have been implemented before the 2012 Olympics and s.15(2) allows for the application of the civil enforcement regime to all Olympic traffic regulation orders. The Secretary of State is given a power under s.15(4), to have direction over enforcement authorities for Olympic purposes, though directions may not be given to Transport for London without the consent of the Mayor of London (see s.15(5)). If an enforcement authority does not comply with a direction by the Secretary of State, the relevant enforcement powers with the Secretary of States consent can be exercised by the ODA. The provisions relating to special events orders are amended under Section 16 for Olympic purposes. Roads therefore may be restricted or closed.

The Act can be found in full at **http://www.opsi.gov.uk/acts/acts2006/20060012.htm**

Identity Cards Act 2006

The Identity Cards Bill received Royal Assent on the 30 March 2006 and has now therefore become the Identity Cards Act 2006. Provisions in the Act have not yet been brought into force except for Sections 36 and 38 which will come into on 30 May 2006.

Section 36 relates to amendments to the Consular Fees Act 1980. Section 38 relates to the verification of information provided with passport applications etc.

Details of offences created by the Act will be covered in an article in next months *Digest*.

The Act can be found in full at **http://www.opsi.gov.uk/acts/acts2006.htm**

Consumer Credit Act 2006

The Consumer Credit Bill received Royal Assent on 30 March 2006 and therefore has now become the Consumer Credit Act 2006. This Act brings about major changes to consumer credit legislation.

Under the Act, consumers will be able to take complaints about lenders to the Financial Ombudsman Service. They will also be able to challenge unfair credit agreements in court and receive more information about their account, to help them to identify problem areas in relation to their borrowing early on so that consumers can tackle these problems more effectively. In relation to lenders, there will be a more flexible licensing system, a new indefinite licence and also a reformed appeals system.

The Act can be found in full at **http://www.opsi.gov.uk/acts/acts2006/20060014.htm**

Recommendations to Improve the Management, Quality and Scrutiny of Secondary Legislation

The House of Lords Merits of Statutory Instruments Committee has published a report criticising the Government for the poor quality of some secondary legislation, after studying over 2,000 recent statutory instruments.

In total, the report contains 20 recommendations for action to be taken by Government departments to improve the management, quality and scrutiny of secondary legislation. The list of recommendations includes:

- Planning regulation programmes more rigorously and publishing plans annually.
- Strictly observing the rule that regulations should be laid before Parliament at least 21 days before coming into force.
- Clearly identifying the impact of regulations which derive from EU legislation and consulting with those affected before agreeing to such obligations.
- Ensuring that consultation with those affected by new regulations, including where appropriate the general public, is timely and more thorough.
- Making regulations and their explanatory memoranda simpler and easier to understand.
- Reviewing all regulations after a period of time to see whether they are working as intended.
- Engaging top management more closely in overseeing the process.

The report can be found in full at
http://www.parliament.uk/parliamentary_committees/merits.cfm

Consultation Paper on Improving the Outcome of Rape Cases

The Government has published a consultation paper, 'Convicting Rapists and Protecting Victims – Justice for Victims of Rape', which sets out four proposals which are aimed at improving the outcome of rape cases.

The proposals relate to:

- 'Capacity' in relation to consent.
- Expert evidence.
- First complaint.
- Special measures: use of pre-recorded video evidence.

'Capacity' in relation to consent

Section 74 of the Sexual Offences Act 2003 defines consent by stating that:

'a person consents if he agrees by choice, and has the freedom and capacity to make that choice'.

The Sexual Offences Act 2003 does not define what is meant by 'capacity'.

Circumstances are set out, in Section 75, in which it is to be presumed that a complainant did not consent; these include:

- Where the victim was asleep or unconscious at the time of the act.
- Where the victim, because of their physical disability, would not have been able to communicate their consent at the time of the act to the defendant.
- Where the victim had been given a substance without their consent that was capable of causing them to be overpowered at the time the alleged rape took place.

These circumstances do not include, however, where the victim was voluntarily intoxicated.

Using the case of R v Dougal (2005) as an example, the consultation paper seeks views on whether the law on capacity needs to be changed and if there should be a statutory definition of capacity, to assist the courts and juries in cases where drink or drugs may have impacted upon the complainant's ability to choose.

The case of R v Dougal (2005) concerned an allegation of rape by a female student at Aberystwyth University. During the trial, the judge directed the jury to enter a 'not guilty' verdict when the prosecution informed the judge that it did not propose to proceed further because it was unable to prove that the complainant had not given consent because of her level of voluntary intoxication.

Expert evidence

The paper sets out the arguments both for and against amending the law to allow prosecutors to present expert evidence concerning certain characteristics of behaviour and psychological reactions that victims may experience and demonstrate after a violent, sexual crime.

If such expert evidence is to be allowed, it is proposed that the expert would give evidence that is limited to alerting the court to certain information about which they may not have been previously aware. This evidence would be based on empirically validated behaviours or reactions of victims and witnesses. The expert would not comment on the behaviour or evidence of the victim or witness in the particular case, and would not have examined the person.

It is suggested that introduced legislation could contain the following information:

- The defendant must be facing either a trial or hearing after a guilty plea before a judge or magistrate in order to determine a factual dispute between the prosecution and defence (known as a 'Newton' hearing).
- The expert will provide evidence as the effects of physical and/or mental and/or emotional abuse upon a notional victim; and/or the expert will provide evidence of the varied reactions of such a notional victim and behaviours that might be expected.

The paper sets out a non-exhaustive list of issues that the expert may give general evidence upon:

- The common misconception that if the rape occurred against a domestic abusive background, then the victim would leave.
- The common misconception that a victim would willingly come to court to give evidence against his/her abuser.
- Why victims delay reporting.
- Why victims blame themselves.
- Why victims minimize the events and their injuries.
- Why victims have incomplete, discrepant or inconsistent memories of the incident.
- Why victims do not always physically resist or escape.

First complaint

The paper seeks views on whether Section 120(7)(d) of the Criminal Justice Act 2003 should be repealed, in order to ensure that all relevant evidence of complaints made by victims in rape cases are admissible as evidence in a trial, irrespective of how much time has passed since the alleged conduct.

It sets out four proposed options:

- Option 1 - No change.
- Option 2 - Clarify the law by requiring the phrase "as soon as could reasonably be expected after the alleged conduct" to be considered subjectively by the judge. This would apply to all offences. Legislation could clarify that a complaint need not be recent if it is made at the first reasonable opportunity, depending on the circumstances including the character of the complainant, the relationship between the complainant and the person to whom he complained and the person to whom he might have complained.
- Option 3 - as option 2 in relation to offences generally and additionally, in relation to sexual offences only, remove the requirement that a complaint needs to be made "as soon as could reasonably be expected after the alleged conduct" but limiting admissibility to the first complaint whenever it is made.
- Option 4 - as option 3 – but for all complaints to be admissible in relation to sexual offences only.

Special measures: use of pre-recorded video evidence

The paper seeks views on the following proposals for serious sexual offence cases:

- Subject to the witness agreeing that they wish to give evidence in this manner, and the court agreeing to admit the evidence, that the video-recorded statement of the complainant should be automatically admissible as evidence-in-chief.
- Relaxing the current restrictions on the prosecution asking the witness questions in addition to the showing of the video-recorded statement.

The consultation paper can be found in full at
http://www.homeoffice.gov.uk/documents/consultation_rape_290306.pdf

Or via

www.cjsonline.gov.uk

Interim Report on the Fraud Review

The Attorney General, Lord Goldsmith, has published the interim report in respect of the Government's review of fraud which commenced in late October 2005 (see December 05 *Digest*).

The interim report finds that a great deal of valuable work is being done by government departments, agencies, industry associations and companies, but comments that there is some duplication and overlapping of certain activities and functions and, due to the lack of a national strategy, some problems are not being addressed.

As a result the next phase of the review will examine issues including:

- The benefits of establishing a national fraud strategy for the whole economy, better to co-ordinate work carried out across a number of government departments and agencies, and the private sector.
- The possibility of giving a single body the responsibility for overseeing the strategy.
- Improving the reporting and recording of economic crime, potentially through a National Fraud Reporting Centre, so that a better estimate for the scale of fraud can be gained (a study by ACPO into this area has been commissioned).
- The allocation of greater police resources being devoted to fraud investigations, either through a National Fraud Squad or a National Lead Force or Regional Fraud Squads.
- The possibility of an increase in the numbers of civilian fraud investigators, and more partnerships in which police, public and private sectors collaborate to investigate and finance the investigation of fraud.
- Simplifying the disclosure procedure in relation to fraud trials and the introduction of specialised fraud courts.
- Whether any corrective action is necessary in relation to the popular perception that fraud is dealt with relatively leniently by courts.
- Whether the potential scope for further data-sharing and data-matching could yield anti-fraud benefits.

In respect of the development of a design for a national fraud strategy, the report states that this will be based upon a model that has already been implemented successfully in the National Health Service, and done in collaboration with key public and private sector stakeholders.

A final report is expected to be presented to the Attorney General and to the Chief Secretary to the Treasury in the late spring.

The interim report can be found in full via **http://www.lslo.gov.uk/fraud_review.htm**

Advice to the Scottish Executive on Mandatory Blood Testing

In 2002, the Scottish Police Federation petitioned the Scottish Parliament for legislation to make it compulsory for assailants and others who have caused police officers to be exposed, or potentially exposed, to the risk of blood-borne viral infection, to submit to a blood test, so that the officer concerned could be informed as soon as possible of the results of tests for hepatitis B, hepatitis C and HIV.

In 2005, the Scottish Executive published a consultation document on this subject. The consultation produced a number of arguments for and against the proposal. A Working Group was then established to consider these arguments and other aspects of the issue.

The Working Group has now published a report in which it presents its conclusions on the question of mandatory blood testing. Some of its main findings are:

- At the current time there is a lack of hard evidence on whether a system of mandatory blood testing, as proposed in the consultation, would bring significant benefits for those potentially exposed to blood-borne viruses.
- The care given to police officers and others who have potentially been exposed to body fluids is not currently satisfactory.
- The psychological trauma experienced by police officers should largely be avoidable; however, there is no agreed standard for care and there appears to be a wide disparity in the care being given.

The Working Group has unanimously agreed that the next steps should be:

- To focus on improving pre-and post-incident care provided by occupational health services and the NHS.
- To commission a project to evaluate how incidents are managed, including the issues of whether compulsory testing would bring significant benefits for those potentially exposed to blood-borne viruses and whether the psychological trauma suffered by some in this position can be minimised by other methods.
- Legislation for mandatory testing should not be pursued at the present time, but should be reviewed in 2 years' time in the light of improved standards of care which should have been put in place.

The Working Group is expected to publish a further report in the near future which will identify existing best practice in protecting front-line workers and victims of crime from blood-borne viral infections and from anxiety about them, and also advise what additional guidance should be issued to groups who may face risks of blood-borne viral infection in occupational settings.

The initial Working Group report can be found in full at **http://www.scotland.gov.uk/Publications/2006/03/Bloodbornevirus**

Diabetes Research and Possible Implication on Driving Licence Entitlement

The Department for Transport (DfT) has published the results of research into the possible effects of certain types of diabetes on road safety. The report suggests that insulin-treated Type II diabetes may not present as serious a risk to drivers as has previously been assumed.

Further work is now to be undertaken to verify these findings, which if found to be correct could have implications for people with Type II diabetes who use insulin over the short-term and who are currently not entitled to hold lorry or bus licences.

A European Commission Medical Expert Working Group, which has been considering the minimum medical standards for diabetes and driving, is also due to report shortly. It is expected that before advising on whether there should be changes to driver licensing arrangements in the UK the DfT will await the EC report and take into account any recommendations it makes.

The full report can be found via
http://www.dft.gov.uk/stellent/groups/dft_rdsafety/documents/divisionhomepage/030264.hcsp

Speed Camera Cases 'inadmissible'?

There has been some debate as to whether speed camera partnerships are in breach of the Criminal Justice Act 1967 by not providing evidence of an offence within a specified time period. The *Digest* looks briefly at the 1967 Act to ascertain if any such breaches could occur.

In relation to criminal proceedings and where it is not wished to call to court the person who made a witness statement, any party to the proceedings who wishes to produce a written statement as evidence may do so under the provisions of Section 9 of the Criminal Justice Act 1967 (the 1967 Act). However there are certain conditions that must be satisfied, as outlined in s.9(2) of the 1967 Act:

a) The statement purports to be signed by the person who made it;

b) The statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

c) Before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and

d) None of the other parties or their solicitors, within seven days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section.

S.9(3)(c) states:

> If it refers to any other document as an exhibit, the copy served on any party to the proceedings under paragraph (c) of the last foregoing subsection shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof.

S.9(7) states:

> Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

This means that a copy of the statement, including any documentary exhibits referred to in the statement (this will include items such as photographs or video footage if mentioned in the statement) must be served on each of the other parties before the date of the hearing (92(c) above). Upon receiving the service, the parties then have seven days in which to serve a counter notice outlining any objections to the statement. S.92(d) states that if objections are raised, the statement cannot be tendered in evidence. Thus witnesses are called to give evidence.

If the speed camera partnerships are not disclosing the material as required under the 1967 Act they will be in breach of that Act.

Report on Changes to Criminal Justice System

The Department for Constitutional Affairs (DCA) has published a paper by the Secretary of State for Constitutional Affairs and Lord Chancellor, Lord Falconer.

Entitled, 'Doing Law Differently', the paper charts constitutional changes introduced by the DCA, including changes coming into effect over the next week, changes involving the role of the Lord Chancellor as well as plans and proposals for the future.

The document also gives outline details of a cross-Government review of the operation of the criminal justice system and, especially, the courts, with the aim of making the operation of the courts simpler, speedier and with a more extensive use of summary justice.

The paper can be found via **http://www.dca.gov.uk**

Guidance for the Code of Practice on the Management of Police Information

Supporting operational guidance for the Code of Practice on the Management of Police Information, developed on behalf of the Home Office and the Association of Chief Police Officers by the National Centre for Policing Excellence Directorate of Centrex, has been published.

The document, entitled 'Guidance on the Management of Police Information 2006', sets out in detail agreed procedures for managing police information, including the collection, recording, evaluation, sharing, review, retention and disposal of police information, which underpin the high level principles enshrined in the Code of Practice.

The guidance document can be found in full at **http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/Bichard_-_MoPI_Guidance_INT2.pdf**

HOC 5/2006
The £50M Basic Command Unit (BCU) Fund 2006/07

Home Office Circular 5/2006 provides guidance on Year 4 (2006/07) of the Basic Command Unit (BCU) Fund to assist BCUs to agree spending plans with Crime and Disorder Reduction Partnerships.

The Circular covers the Fund's outcomes and objectives and the allocation of funds to BCUs as well as administrative guidance, including on technical and accounting issues, in an Appendix to the Circular.

The Circular can be found in full at **http://www.circulars.homeoffice.gov.uk**

HOC 6/2006
The Notifiable Occupations Scheme: Revised Guidance for Police Forces

The Circular provides guidance about the disclosure of conviction and other information in relation to the Notifiable Occupations Scheme. Conviction and other information includes:

- Convictions for recordable offences.
- Convictions for minor offences.
- Cautions, reprimands and final warnings.
- Fixed penalty notices.
- Other relevant information from local police record.

The Notifiable Occupations Scheme relates to professions or occupations that carry special trust or responsibility, in which the public interest in the disclosure of convictions and other information by the police generally outweighs the normal duty of confidentiality owed to the individual.

Attached to the Circular are two annex documents both of which contain details of:

- The types of positions requiring notification of convictions or other information.
- Details of the organisations to which the police should send notifications.
- Details of the current type of pre-employment check.
- Additional instruction notes for police in relation to specific roles and positions.

The first document lists Category 1 professions or occupations. These include numerous professions or occupations bearing special trust and responsibility where substantial public interest considerations arise specifically in relation to:

- The protection of the vulnerable, including children.
- National security.
- Probity in the administration of justice.

Examples of the types of occupations listed under this category include:

- Persons who provide education at any school or further education institution.
- Persons employed in the care of children.
- Persons employed in the care of adults.
- Registered medical practitioners and medical students.
- Probation officers.
- People working in the legal profession.
- Civil servants.
- Armed forces personnel.
- Pilots, aircraft engineers, air traffic controllers.
- Pharmacists
- Magistrates.
- Taxi drivers
- Police officers and staff.

Where an occupation falls into any one of these three categories, there is a presumption to notify in relation to all recordable convictions, cautions, reprimands and final warnings; unless there are exceptional reasons which make it inappropriate to do so.

The other annex document lists Category 2 professions or occupations. This list includes less sensitive professions or occupations where probity and integrity may nevertheless be an important factor in preventing crime. For example, this applies to those with particular financial responsibilities. In these cases, a test of relevance should be applied before the decision to share conviction or other information is made. The test of relevance should be under the same legal framework as that described in Home Office Circular 5/2005 in relation to disclosure under Section 115 of the Police Act 1997.

Examples of the types of occupations listed under this category include:

- Casino, Bingo, National Lottery and gaming machine staff.
- Royal Mail employees.
- Psychologists.
- Staff working within the private security industry.
- Passenger Carrying Vehicle (PCV) Drivers.
- BT employees.

People who work as volunteers in the areas of employment or activity that fall under Category 1 or 2 should be treated in the same way as paid employees.

The Circular states that the decision on whether information should be disclosed or not will, in the majority of cases, particularly in relation to those listed in the Category 1 annex list, be straightforward. Although it states that it will be for a chief officer to decide who will make decisions on whether information should be disclosed or not, it recommends that decisions on the disclosure of soft information are likely to require closer attention and should probably be made at ACPO level. It also recommends that, in pursuit of good practice, the chief officer should make such arrangements clear to all officers who may need to know. The Circular contains examples of when convictions for minor offences, cautions, reprimands and final warnings, fixed penalty notices or other relevant information from local police records should be disclosed.

The Circular is consistent with the Code of Practice on the Management of Police Information and also the Guidance on the Management of Police Information 2006 (see previous article).

The Circular can be found in full at **http://www.circulars.homeoffice.gov.uk**

HOC 7/2006
Police Pensions: 'A-Day' and Changes to Police Pensions Regulations 1987

Many of the issues covered in Home Office Circular 7/2006 have been already covered in recent editions of the *Digest*. The Circular:

- Explains the changes which are being made to the Police Pensions Regulations 1987 and the Police Pensions (AVC) Regulations 1991, including those consequential following the changes to tax legislation on 6 April 2006 and upon the new financing arrangements for police pensions.
- Gives advance notice of a number of other minor corrections or changes to the Police Pensions Regulations 1987 that will be included in forthcoming Statutory Instruments (see below).
- Instructs police pension administrators on the action that was required to have been taken before 6 April to comply with the changes to tax legislation which come into force on that day.
- Provides consolidated information about the effect of the 6 April changes to tax legislation on high earners.

- Gives notification that the provisions for injury awards has been moved to a separate SI, the Police (Injury Benefit) Regulations 2006, with effect from 6 April 2006.

The Circular does not cover the New Police Pension Scheme (NPPS), which came into effect on the same date (6 April 2006).

The changes to the Police Pensions Regulations 1987 to be included in future SIs which are expected to be introduced from 1 June 2006 are:

- **Survivor Benefits** - The inequity between pre- and post-retirement marriage widowers (and latterly civil partners) will be removed. This means that all widowers' and surviving civil partners' awards will be based on the proportion of the officer's total service which counts for such an award and not just the actual service which counts. It is intended to back-date this provision to 5 December 2005.
- **Salary Sacrifice** - Pensionable pay will be defined as the full salary (without salary sacrifice deducted). Pension arrangements will remain unchanged, so that officers who choose to take part in the flexible benefits scheme will continue to pay their contributions and receive benefits based on the substantive salary. The officer's final pensionable salary will also comprise the substantive salary (that is the salary without the sacrifice).
- **Pensionability of adoption leave** - The Police Pensions Regulations will be amended so that unpaid adoption leave will be able to be bought back on the same lines as parental leave; this is pending a firm definition being put into the Police Regulations 2003.
- Pensionable pay and average pensionable pay - In regulation G1(1), the words "in a rank below that of superintendent" will be deleted, to make it clear that part-time service is applicable to any rank.
- **Appeals on eligibility for pension awards payable on the ground of permanent disablement** - Regulation G8(3) will be amended to bring it into line with regulation 71 of the draft NPPS Regulations (Appeals against decisions on eligibility for pension awards payable on the ground of permanent disablement). This means changing the wording and the order of events so that they are in line with that in the NPPS regulations.
- **Appeal by a member of a home police force** - Regulation H5 will be amended bringing it into line with regulation 67 of the draft NPPS Regulations. This involves making a list of the issues that can be appealed.
- **Forfeiture of pension** - Regulation K5 will be amended to bring it into line with regulation 56 of the draft NPPS Regulations (Forfeiture of pension), specifically to include the discretion for the police authority to review a forfeiture.

Consideration is also being given as to whether to amend the Police Pensions (Purchase of Increased Benefits) Regulations 1987 to specify that the further years of service available to an officer before they reach the Compulsory Retirement Age must always be calculated on the basis of full-time service.

The Circular can be found in full at **http://www.circulars.homeoffice.gov.uk**

ACPO-Electoral Commission Guidance to Police Forces

An updated guidance document on the prevention and detection of election fraud has been issued jointly by the Association of Chief Police Officers (ACPO) and the Electoral Commission, for the purposes of the local elections to be held on 4 May 2006. The document is designed to alert police forces to issues that might arise in the period up to and including polling day. It includes:

- An outline of election procedures with recommended actions in relation to preventing and responding to election fraud.
- Guidance to police on producing a police force threat assessment and control strategy including a checklist of actions.
- A list of electoral offences, penalties and mode of trial details.
- An explanation of which election documents are open to public inspection, those that require a court order and those on which the law is silent.

Forming part of the guidance, but also available as separate documents, are:

- Code of conduct for political parties, candidates and canvassers on the handling of postal vote applications and postal ballot papers.
- Pocket guide for police officers.

The document can be found in full via
http://www.electoralcommission.gov.uk/templates/search/document.cfm/14905

Several new measures intended to assist in tackling election fraud were introduced in the Representation of the People (England and Wales) (Amendment) Regulations 2006 (see SI 752/2006, mentioned in March *Digest*). These measures which came into force on 24 March include:

- A requirement that an application by a person for their ballot paper to be sent to an address different from that shown in the record, for the purposes of a particular election, must set out why his circumstances are such that he will require his ballot paper to be sent to that address.
- Electoral administrators will write to everyone who has applied for a postal vote acknowledging receipt of their application and confirming the outcome, thus alerting people to false applications for postal votes on their behalf.
- Applications for postal votes have to be received 11 working days before the close of poll (rather than six days at present), thereby allowing administrators more time to check postal vote applications.
- A new power for electoral administrators to check the signatures on postal vote applications against any other signatures the council holds.

It should be noted that provisions in the Electoral Administration Bill (covered in the October 2005 *Digest*), which is presently going through the parliamentary process, could possibly impact on the May elections if enacted prior to this date.

Provisions in the Bill include:

- A new offence of falsely applying for a postal or proxy vote.
- A new criminal offence of supplying false information or failing to supply information to the electoral registration officer at any time.
- A new, strengthened offence of undue influence which will make it easier to prosecute, even if the undue influence does not affect the way someone votes.
- New secrecy warnings on postal and proxy voting papers, to deter any attempt unlawfully to influence another person's vote.
- Security marking and bar-coding ballot papers to enable quick security checks for stolen postal votes.
- Publication, after an election, of a list of all those who voted by post, to enable individuals to check that their vote was counted and assist police in investigations.
- Extending the time limit allowed in magistrates' courts for bringing prosecutions from 12 to 24 months.
- Requiring voters to sign for their ballot paper at the polling station to deter fraudsters and allow signatures to be checked if there is suspicion of fraud.
- Giving electoral administrators new powers to cross check applications to register to vote against other information the council holds, thereby enabling them to check whether the person trying to register does actually exist and live at that address.
- Introducing a pilot programme to try out a new system of making people sign and give their date of birth before they get on the electoral register.

The Bill can be found at
http://www.publications.parliament.uk/pa/ld200506/ldbills/093/2006093.htm

Progress Following ACPO/Home Office Review of RIPA and Part III of the Police Act 1997

In May 2005, a report containing a number of recommendations was submitted to the Home Office from a joint ACPO and Home Office review team, who had looked into certain provisions in the Regulation of Investigatory Powers Act 2000 (RIPA) and Part III of the Police Act 1997.

Many of the recommendations made in the report have been accepted by the Home Office and it has been agreed that these will now be progressed in three distinct pieces of work, which are:

- The development by NCPE of 'RIPA Doctrine' for all future training and advice in the key covert law enforcement disciplines, i.e. CHIS (Informant), CHIS (Undercover), Data Communications, Directed Surveillance and Intrusive Surveillance.
- The creation of a RIPA Steering Group within ACPO Crime Business Area, which will work closely with relevant Working Groups to monitor practice, advice, training and case-law in the key covert law enforcement disciplines. This group will be supported by a Peer Review Group made up of current practitioners in these areas.
- The implementation of necessary changes to primary and secondary legislation (including Codes of Practice), which will be seen through by the Home Office as and when Parliamentary time is available.

HMIC Baseline Assessment of Professional Standards 2004/05

Her Majesty's Inspectorate of Constabulary for England and Wales (HMIC) has published its baseline reports on police forces' professional standards units.

The key elements under which forces were judged were:

- Intelligence - what a force knows about the health of professional standards.
- Prevention - how the force tries to improve and prevent the abuse of standards.
- Enforcement - its effectiveness in dealing with emerging problems.
- Capacity and Capability – having the resources and skills to address reactive and proactive challenges (including timely and proportionate response to lapses in professional standards).

Each of these elements was then given a qualitative grading, these being excellent, good, fair or poor.

The findings from these reports will inform the preparation of a thematic report on professional standards to be published in late spring 2006.

The reports can be found in full at
http://inspectorates.homeoffice.gov.uk/hmic/inspect_reports1/baseline-assessments-psd-0405/

Think Tank Report on Police Reform

The think tank Demos has published a report on police reform entitled, 'A Force for Change: Policing 2020'. The report is based on interviews with over 150 senior police officers, carried out over a two-year period; the officers were taken through a 'futures thinking' exercise, using four scenarios designed to help them think about the strategic context for policing in 2020.

The four scenarios were:

- Fortress UK- Terror and other threats to national security remain at a high level, and the incoming government creates a 'homeland security agency' encompassing border control, immigration, customs, coast guard, disaster response, counter-terrorism and the security services. The focus of all police work is now exclusively on law enforcement and bringing offenders to justice. A single national 'director of the police service' is accountable to the 'ministry of justice'.
- Metropolis policing- Britain joins the Euro and ratifies a radical new European Constitution. Serious threats from international terrorism, illegal migration and drug trafficking provide a further incentive for cooperation. More powers of direction, accountability and funding are granted to local communities through a new layer of city-region governance. City-region police forces are held to account by elected mayors who have the power to hire and fire chief constables.
- Policing plc- Following success in the education, health, transport and prison sectors, British and multinational companies enter the UK market providing 'policing services'. Growing numbers of UK senior police officers are attracted to work for private companies by the competitive pay and conditions. With the growth of neighbourhood

governance, local communities now have the power to choose from a range of providers of neighbourhood foot and car patrols, including local community groups and small businesses.

- Policing in partnership– A series of high-profile threats related to terrorism, migration and public health produce a renewed demand from the public that the police help to protect them from the local consequences of global insecurity. Partnership structures put in place to encourage 'joint working' between police forces, local authorities and other agencies evolve into formally integrated services, with merged decision-making, coterminous boundaries, pooled budgets and common accountability structures. The police provide a one-stop mobile shop for a wide range of local services, from addiction and mental health services to education and employment opportunities.

The report stresses the need to ensure that any reform of the police force must be 'future proof'. It recommends that:

- The 43 police forces in England and Wales should be scrapped and replaced with no more than a dozen regional forces.
- Police authorities should be abolished and replaced by more democratic forms of control, modelled on the management structures used for SureStart and Foundation Hospitals.
- Crime and Disorder Reduction Partnerships should be democratised.
- The police should work with other agencies to invest in restorative and other community-based justice programmes.
- Government should encourage the development of a market in policing services.
- The police should invest in networking and collaboration.
- New ways should be found to communicate the public value of policing.
- Futures thinking capacity be put at the heart of a renewed 'activist profession'.

The report can be found in full at **http://www.demos.co.uk/catalogue/aforceforchange**

Child Rescue Alert

As from 27 March 2006, all police forces in England and Wales have agreed they will implement Child Rescue Alert (CRA) as included in the ACPO Guidance on the Management Recording and Investigation of Missing Persons 2005.

In cases of suspected child abduction, if:

- The child is apparently under 18 years old;
- There is a reasonable belief that the child has been kidnapped or abducted;
- There is reasonable belief that the child is in imminent danger of serious harm or death; and
- There is sufficient information available to enable the public to assist police in locating the child,

force press officers will contact their local and national media outlets and provide an alert text message which can then be broadcast at short intervals via media channels. Prompt circulation of the details will hopefully lead to the public being alerted quickly and accurately in the very early stages of the investigation and enable them to act as the eyes and ears of the police to assist in the safe recovery of the child.

ACPO Guidance on the Management Recording and Investigation of Missing Persons 2005 is available from the ACPO web site at **http://www.acpo.police.uk**

HOC 10/2006
Removal Allowance - Disposal or Rental of an Officer's Former Home

This Circular publicises the Home Secretary's approval, for England and Wales, of a new removal allowance, as agreed at the meeting of the Police Negotiating Board on 27 March 2006.

With effect from 1 April 2006, in circumstances where an officer is entitled to expenses reasonably incurred in connection with the disposal of his or her former home, the Sides have agreed that Annex V 2) a) ii) under the Police Regulations 2003 and the Police (Scotland) Regulations 2004, should be amended to include provision at the chief constable's discretion to reimburse expenses reasonably incurred where the officer rents the former home to tenants.

The Circular can be found in full at **http://www.circulars.homeoffice.gov.uk**

HOC 11/2006
Flexible Benefit Salary Sacrifice Scheme for Police Officers

This Circular publicises the Home Secretary's approval of a new flexible benefit salary sacrifice for all police officers including probationers.

The Police Negotiating Board has agreed that Police Regulations and Determinations and the Police Pensions Regulations should be amended to provide forces with the ability to introduce a flexible benefits salary sacrifice scheme, to allow an officer to exchange part of their substantive salary for a form of non-cash benefit to cover:

- Childcare vouchers.
- Home computing initiative.
- Loans to purchase bicycles to travel to work.

Other points of note highlighted in the PNB memorandum attached to the HOC include:

- Occupational sick pay, and Statutory and occupational Maternity Pay, will be calculated on the revised salary i.e. after the sacrifice has been made.
- All allowances calculated by reference to pay (e.g. overtime, public holiday, rest day and free day working allowances) and sums in lieu of untaken annual leave will continue to be calculated by reference to the substantive salary.
- Pension arrangements should remain unchanged, as officers who choose to take part in the flexible benefits scheme will continue to pay their contributions and receive benefits based on the substantive salary.

- An officer's final pensionable salary will also comprise the substantive salary (that is the salary without the sacrifice). An amendment to the Police Pension Regulations will be needed to effect this.
- Officers need to ensure they have carefully considered their circumstances before entering into the flexible benefits salary sacrifice scheme.
- Force management should be able to advise of the impact to salary, but it is the individual officer's responsibility to ensure he is not adversely affected in other areas (i.e. there may be implications where an officer may be in receipt of tax credits of a particular level).
- Once entered into, only in exceptional circumstances can an officer withdraw from the sacrifice before the expiry of the time for which it applies.

The memorandum states that police officers taking part in the flexible benefit scheme would be able to take advantage of lower tax and National Insurance Contributions (NICs) and that police authorities could also make savings generated through reduced employer NICs. However, it does then go on to state that, as salary sacrifice schemes are subject to special legislation, any advantages to the officer in respect of lower levels of national insurance or income tax cannot be guaranteed. It recommends that force management teams should keep officers informed of the impact of any changes. It advises that further advice can be obtained on the HM Revenue and Customs website **http://www.hmrc.gov.uk/specialist/salary_sacrifice.pdf**

The Circular can be found in full at **http://www.circulars.homeoffice.gov.uk**

National Cheque and Plastic Card Intelligence Database

Operation Halo, a National Cheque and Plastic Card Intelligence Database, has been launched by the City of London Police Economic Crime Department. The database is intended to assist police forces and the financial service industry by acting as a one-stop shop for cheque and plastic card intelligence and analysing intelligence in quick time to allow prompt action to be taken against offenders.

Advice on How the Data Protection Act 1998 Applies to Professional Opinions

The Information Commissioner's Office has published a good practice advice note for professionals, including teachers, social workers, doctors and nurses, about how they record professional opinions and what to do when these are challenged under the Data Protection Act 1998.

The note advises that when an opinion is recorded, it is good practice to:

- Make it clear that it is an opinion.
- Include in the record who gave the opinion and when.
- If possible, provide contact details.
- Structure the record so that if someone objects to its accuracy, their view or challenge can be included in such a way that it is given proper weight.
- Have a records policy that lays down the criteria that should be considered for continuing to keep the information or, where appropriate, specific retention periods for certain categories of information.

The note also stresses the need to make sure that when an opinion is disclosed it is not presented as fact.

The note can be found in full at
http://www.ico.gov.uk/eventual.aspx?id=7496

IPCC to Oversee HMRC Serious Complaints Procedure

HM Revenue & Customs (HMRC) has announced that it has agreed an external scrutiny arrangement with the Independent Police Complaints Authority (IPCC).

As from 1 April 2006 the IPCC has been given authority to investigate the most serious allegations of misconduct made against all HMRC staff in England and Wales. It will also have a guardianship role over all conduct-related complaints and allegations against HMRC officers.

The IPCC role will not replace that of the existing HMRC complaints systems for dealing with tax or customs matters or the role of the Revenue Adjudicator and Parliamentary Ombudsman in dealing with complains about HMRC matters.

Identity and Passport Service

The Identity and Passport Service (IPS) was established as an Executive Agency of the Home Office on 1 April 2006. It incorporates the United Kingdom Passport Service (UKPS). It is responsible for:

- Issuing passports and providing passport services.
- Issuing ID cards and providing the means of verifying the identity of individuals for accredited organisations.

- Delivering the National Identity Scheme including the establishment of the National Identity Register.
- Promoting the use of the National Identity Scheme across the public and private sectors to improve identity management and ensure full realisation of the benefits of the scheme.

The provisions in the Identity Cards Act 2006 when brought into force will impact heavily on the IPS. (See article on page 31.)

Further information on the IPS can be found at their website
http://www.passport.gov.uk/

Case Law

Centrex Digest will be featuring a monthly selection of Lawtel Case Reports to keep readers abreast of relevant developments in the law. Lawtel, part of Sweet & Maxwell, offers instant access to UK and EU case law, legislation and articles coverage, as well as a unique update service. For more information, or a free trial, please visit Lawtel's website at http://www.lawtel.com or call 0800 018 9797.

Use of Lethal Force

R (on the application of ERNEST BENNETT) (Claimant) v HM CORONER FOR INNER SOUTH LONDON (Defendant) & (1) OFFICERS A (2) OFFICERS B (3) COMMISSIONER OF POLICE OF THE METROPOLIS (Interested Parties) (2006)

QBD (Admin) (Collins J) 3/2/2006

ADMINISTRATION OF JUSTICE - HUMAN RIGHTS

Coroners Courts: Inquests: Lawful Killing: Reasonable Force: Self Defence: Use Of Reasonable Force: Use Of Necessary Force: State Agents: Police Officers: Lethal Force: Art.2 European Convention On Human Rights

A coroner's direction to a jury requiring it to decide whether a police officer's use of lethal force was reasonably necessary in all the circumstances was correct in law. There was no real difference between the common law reasonableness test and the test under the European Convention on Human Rights 1950 Art.2.

The claimant (B) applied for judicial review of a verdict reached by the respondent coroner's court. B's son (S) had been shot dead by the first interested party, a police officer. According to the officer, he believed that S was about to shoot him. It later transpired that what was believed to be a gun was in fact a cigarette lighter shaped like a gun. The Crown Prosecution Service decided not to prosecute the officer. An inquest was held into S's death. The coroner refused to leave to the jury the possibility of returning a verdict of unlawful killing but left to the jury the possibility of returning a verdict of lawful killing or an open verdict. The coroner's direction identified two stages, namely whether the individual in question believed, or might have honestly believed, that it was necessary to defend himself, having regard to the circumstances, and whether the force used was reasonable. The jury returned a verdict of lawful killing. B contended that, pursuant to the European Convention on Human Rights 1950 Art.2, the test for self-defence when applied to state agents should be whether the force used was no more than absolutely necessary.

HELD

(1) The European Court of Human Rights had considered what English law required for self-defence, and had not suggested that there was any incompatibility with Art.2. If any officer reasonably decided that he had to use lethal force, it would inevitably be because it was absolutely necessary to do so. To kill when it was not absolutely necessary to do so would amount to an unreasonable act. As such there was no real difference between the reasonableness test and the test under Art.2, McCann v United Kingdom (1995) 21 EHRR 97 considered. Furthermore, to apply a different test to the actions of state agents would inappropriately fetter their actions to the detriment of their own safety and that of the public.

(2) The coroner was not wrong to refuse to leave the verdict of unlawful killing. The evidence was tenuous and a verdict of unlawful killing could properly be regarded as one that would be unsafe. In any event, the jury were persuaded, on the balance of probabilities, that the killing was lawful.

APPLICATION REFUSED

No Requirement under PACE Code C to Give a Caution to Persons Questioned as Non-Suspects

R v MARC JAMES SHILLIBIER (2006)

CA (Crim Div) (Richards LJ, Collins J, Judge Goddard) 6/4/2006

CRIMINAL EVIDENCE

Cautions: Expert Evidence: Forensic Evidence: Fresh Evidence: Police Questioning: Suspects: No Requirement For Caution When Questioning Volunteer As Opposed To Suspect: S.78 Police And Criminal Evidence Act 1984: S.23 Criminal Appeal Act 1968: Police And Criminal Evidence Act 1984

A conviction for murder based on evidence taken from statements made by the accused under a partial caution before he was considered a suspect was safe as there was no requirement under the Police and Criminal Evidence Act 1984 Code C to give a caution to those questioned as non-suspects.

The appellant (S) appealed against his conviction for murder and applied to add a further ground of appeal based on fresh evidence. S was questioned and a witness statement taken from him under a partial caution following the murder of a girl whose body had been found in a river. Later that day S was arrested and questioned again under full caution. The prosecution relied at trial on lies told by S in the course of the initial questioning. That led to an application to the trial judge under the Police and Criminal Evidence Act 1984 s.78 to exclude from evidence the entirety of the questioning of S prior to his arrest. The judge rejected the application on the basis that it was right that S was not treated as a suspect when he was first questioned as there were no reasonable grounds at that time to suspect S of murder; that the decision of the police to use a partial caution did not involve a breach of Code C of the 1984 Act; that even if it had done that breach would not have been serious and substantial and that even if the full caution had been used S would have given the same answers. The only scientific evidence to link S with the murder was two mud stains found on the detachable seat covers of S's car. The prosecution's expert (P) gave evidence as to similarities between those traces of mud and samples of mud from the riverbank but the expert for the defence (J) disagreed. S submitted that

(1) it was not reasonably open to the judge to conclude as he did that there did not exist reasonable grounds at the time to suspect S of the murder;

(2) the safety of the conviction was undermined because P's evidence was unreliable and his conclusion incorrect and the court should admit fresh evidence under the Criminal Appeal Act 1968 s.23 in the form of witness statements from J and an expert geologist who was not involved in the trial.

HELD

(1) The essential distinction under Code C as to the circumstances in which a caution was required to be given was between those who were questioned as suspects and those who were questioned as non-suspects. A caution was required in the case of the former and not the latter. The policy applied to S by the police, who had adopted a number of categorisations in respect of those they wished to question, did not cut

across or undermine that essential distinction. The crucial question was whether there existed grounds to suspect S of the murder at the time when he was initially questioned. The judge had addressed that question unimpeachably, directing himself correctly, examining the evidence before him and reaching a conclusion on it that was reasonably open to him. There was no requirement under the Code to caution S at all.

(2) There was nothing in J's statement that could not have been said by him at trial and indeed the substance of it was said at trial. The nature and extent of his disagreement with P must have been clear to the jury and were adequately summarised in the summing up. The expert geologist could have been a witness at the trial. What S was really seeking to do was to deploy a second expert to reinforce the evidence given by the expert instructed at trial. That was not a legitimate use of the appeal process. The instant case was not one in which recent scientific developments or insights threw new light on the issues at trial and was, in large measure an attempt to fight the same battles as at trial, but with reinforcements. The scientific evidence did not form an essential part of the prosecution case and was very much a subsidiary issue that could not have been a decisive factor in the jury's deliberations. The further evidence did not cause the instant court to doubt the nature of the conviction and did not afford a ground for allowing the appeal.

APPEAL DISMISSED

Relevance of Information Disclosed in Enhanced Criminal Record Certificates Pursuant to Section 115 of the Police Act 1997

R (on the application of L) v COMMISSIONER OF POLICE OF THE METROPOLIS: R (on the application of G) v CHIEF CONSTABLE OF STAFFORDSHIRE (2006)

QBD (Admin) (Munby J) 19/3/2006

Police Access To Information: Criminal Record Certificates: Relevant Information For Purpose Of S.115(7) Police Act 1997: Evidence Of Neglect Or Negligence Not Amounting To Criminal Offence: Enhanced Criminal Record Certificates: S.115 Police Act 1997

There was no distinction for the purposes of the Police Act 1997 s.115(7) between conduct that, if proved, would amount to a criminal offence and conduct that, even if proved, would not amount to a criminal offence. Consequently, where an enhanced criminal record certificate was required by an employer in the course of considering an applicant's suitability for a position involving the custody of children under s.115(3), the chief police officer was entitled to disclose any information that might in his opinion be relevant even if it related to activity that was not criminal.

The applicants (L and G) applied for judicial review of a decision of the defendant commissioner of police and defendant chief constable (D) to issue enhanced criminal record certificates pursuant to the Police Act 1997 s.115. L had been employed as a midday assistant at a school supervising children. L's employment was terminated after her employer applied for an enhanced criminal record certificate that recorded that L had no criminal convictions but that her son had been put on the child protection register under the category of neglect. It was alleged that L had failed to exercise the required degree of care and supervision as her son had regularly failed to attend school and had shoplifted

regularly. G was a head teacher at a special needs school who had been acquitted of gross negligence manslaughter of a pupil who had wandered out of the school premises unsupervised onto a main road with fatal consequences. The enhanced criminal record certificate stated that G had been charged with manslaughter through negligence but that she had been acquitted of the charge. In both cases, D's decision to disclose the information was made on the basis that the information might be relevant and ought to have been brought to the attention of a registered body. L and G submitted that there was a distinction for the purposes of s.115(7) between conduct of the type that, if proved, would amount to a criminal offence and conduct that, even if proved, would not amount to a criminal offence, and since the disclosure in both cases had not related to criminal offences such disclosure was irrelevant and irrational.

HELD

There was no distinction for the purposes of s.115(7) between conduct that, if proved, would amount to a criminal offence and conduct that, even if proved, would not amount to a criminal offence. The information referred to in s.115(7) was not confined to information relating to criminal offences or potentially criminal activity. Section 115(7) extended in principle to any information that in the chief officer's opinion might be relevant for the purpose of a question asked by a prospective employer in the course of considering the applicant's suitability for a position that involved regularly caring for, training or supervising children. If the chief officer considered that the information might be relevant he was entitled to disclose that information whether or not the relevant activity was criminal, whether or not there had been a criminal prosecution and whether or not the defendant, if prosecuted, had been acquitted, R (on the application of X) v Chief Constable of West Midlands Police (2004) EWCA Civ 1068 , (2005) 1 WLR 65 considered. In both cases, D had been entitled to conclude that the information was highly relevant to a potential employer. L's alleged lack of control and supervision of her son was directly relevant to the post, as her duties would have involved ensuring that the children in her charge would not hurt themselves or absent themselves from the school premises. In G's case, D had acknowledged that G's conduct was not criminal and that she was entitled to be treated as wholly innocent of the charge. D had also provided compelling reasons to justify his decision to disclose the information, including the fact that the child in G's care had died from a risk of which she had been aware and which she had not managed successfully. D had also been careful to point out that it was for the employer or professional body to decide whether or not the information was relevant to G's suitability for the position.

APPLICATIONS REFUSED

Video Surveillance Carried out by Neighbour of Defendant Did Not Amount to a Breach of the Regulation of Investigatory Powers Act 2000

R v LINDA ROSENBERG (2006)

CA (Crim Div) (Pill LJ, Newman J, Lloyd Jones J) 20/1/2006

CRIMINAL EVIDENCE - CRIMINAL LAW

Possession Of Drugs: Possession With Intent To Supply: Surveillance: Video Evidence: Admissibility Of Surveillance Footage: Video Surveillance Evidence: Covert Surveillance: Police Interviews: Extent Of Evidence: Police Involvement: Regulation Of Investigatory Powers Act 2000: S.26 Regulation Of Investigatory Powers Act 2000

Where video surveillance carried out by the neighbour of the defendant was known to the police but had neither been encouraged nor initiated by them, the evidence did not amount to a breach of the Regulation of Investigatory Powers Act 2000 because it could not be regarded for the purposes of the 2000 Act as police surveillance.

The appellant (R) appealed against convictions for possession of class A drugs with intent to supply and possession of a class A drug. R's home was searched and a quantity of heroin, cocaine and crack cocaine was seized as well as cash. The prosecution had relied in part on CCTV footage taken from a camera of R's neighbours (B). The camera had been directed towards R's house and the footage appeared to show R engaged in unwrapping packets of drugs in the house, handing objects, possibly drugs, to others and being shown how to use a "crack bottle". The police had been aware that B had been filming R, and had warned B that the filming might amount to a violation of R's right to privacy. R was interviewed and informed of the allegation against her based on what was found during the search of her house. Two interviews were held before R was informed of the video footage. She was subsequently re-interviewed and maintained a denial of the allegations. At trial R had sought to exclude the video evidence on the basis that there had been a breach of the Regulation of Investigatory Powers Act 2000. R also argued that the initial interviews carried out should have been excluded, since the police should have informed her of the video evidence. The trial judge held that the police had not evaded the provisions of the 2000 Act, since they had not encouraged any breach by B of R's human rights. He held further that the police did not have to disclose their full hand to a defendant from the outset. R argued that

(1) the video evidence ought to have been excluded, since there had been encouragement by the police of the surveillance and B's conduct should have been treated as that of the police. Since no authorisation had been given for such intrusive surveillance, the police had circumvented the 2000 Act;

(2) the police ought to have disclosed to R from the outset the existence of the video footage to be relied upon and accordingly the interviews should have been excluded.

HELD

(1) While the police were complicit in the surveillance to the extent that they knew of it and were prepared to use it in a criminal prosecution, it could not be regarded for the purposes of the 2000 Act as police surveillance. The police neither initiated it nor encouraged it. Nor did the warning given by the police to B convert it into police surveillance or a breach of the 2000 Act or R's human rights. Moreover, R's evidence

at trial was that she was aware of B carrying out surveillance, and accordingly it was not covert within the meaning of s.26 of the Act. The judge was entitled to admit the evidence and its admission had not rendered the trial unfair.

(2) R's house had been searched and incriminating material had been found. Before interview R was told of the nature of the case against her. The police were not obliged at that stage to disclose the extent of the evidence against her. Accordingly, the judge was entitled to find that the prosecution did not have to disclose its full cases from the outset.

APPEAL DISMISSED

Need for European Arrest Warrants to Comply with Extradition Act 2003

HALL v GERMANY (2006)

DC (Richards LJ, Clarke J) 23/2/2006

EXTRADITION

European Arrest Warrants: Extradition Proceedings: Specificity Of Warrant Information: Need To Specify Nature And Legal Classification Of Offence: S.21(3) Extradition Act 2003: S.2(4) Extradition Act 2003

Where a European arrest warrant had failed to identify the provision of German law under which the appellant's conduct was alleged to constitute an offence, the warrant did not conform to the requirements of the Extradition Act 2003 s.2 and had to be quashed.

The appellant (H) appealed against a decision ordering his extradition to Germany on a European arrest warrant for an offence relating to drugs importation. A district judge had ordered H's extradition to Germany pursuant to the Extradition Act 2003 s.21(3). The warrant stated that H had commissioned another individual to collect drugs and smuggle them into Germany. H contended that the warrant did not comply with s.2(4) of the Act as it did not contain information as to the provision of German law under which the conduct was alleged to constitute an offence. The respondent state contended that s.2(4) should be given a broad and generous construction in order to facilitate extradition.

HELD

Section 2(4) gave effect to the mandatory requirement of the Framework Decision 2002/584/JHA Art.8.1(d) which stated that a warrant should provide the nature and legal classification of the offence. In the instant case, the warrant did not give particulars of the provision of German law that rendered the conduct an offence under German law. The provision was required by s.2(4)(c) to be identified so that it could be seen that the alleged conduct constituted an offence under German law. Accordingly, as it did not conform to the requirements set out in s.2, the warrant was not a Part 1 warrant and it had to be quashed, Brussels v Armas (2005) UKHL 67 , (2005) 3 WLR 1079 considered and Hunt v Belgium (2006) EWHC 165 (Admin) applied.

APPEAL ALLOWED

Evidence Incapable Of Belief

R v GABRIEL SOLOMONS (2006)

CA (Crim Div) (Scott Baker LJ, Owen J, Common Serjeant) 7/3/2006

CRIMINAL EVIDENCE

Credibility: Drug Offences: Drugs: Drug Trafficking: Fresh Evidence: Witnesses: Evidence Incapable Of Belief: Circumstantial Evidence: S.23 Criminal Appeal Act 1968

A conviction for importing Class A drugs was safe where fresh evidence, which suggested that the offender was not aware of the drugs that had been concealed in his luggage, was not capable of belief and therefore could not be admitted.

The appellant (S) appealed against his conviction for importing Class A drugs. The drugs had been hidden inside dried fish and found in S's luggage during a search by custom officers. S's case was that he was a victim of conspiracy between his personal assistant (K) and another person (M) to put the drugs in his luggage without any knowledge on his part. K had confessed to placing the packages in S's luggage and gave evidence that S had not been aware of the drugs. In the instant proceedings, M gave fresh evidence that he had given the packaged fish to K to place in S's luggage without S's knowledge, and that S's luggage would have been snatched at gunpoint had he cleared customs. S submitted that it was impossible to dismiss the evidence of M as incapable of belief.

HELD

M was not a credible witness. His evidence raised many unanswered questions and there were a number of instances in which his evidence was demonstrably untrue. Accordingly, his evidence was not capable of belief and could not be admitted under the Criminal Appeal Act 1968 s.23(2)(a). There was a very strong case at the trial, based on a great deal of circumstantial evidence, that S was regularly importing large quantities of drugs into the United Kingdom. The jury had disbelieved the evidence of K at the trial and concluded that S was well aware of the contents of his luggage. There was nothing that could be added to the story the jury heard and nothing that threatened the safety of S's conviction.

APPEAL DISMISSED

Storage Charges in Relation to Police (Property) Act 1897

PRICE v DOBSON (2006)

DC (Newman J, Stanley Burnton J) 29/3/2006

POLICE - CRIMINAL PROCEDURE

Contempt Of Court: Return Of Property: Storage Levies: Storage Of Vehicles: Return Of Vehicles Subject To Levies: Third Party Charges: Police (Property) Act 1897

A chief constable's refusal to pay certain charges incurred on a vehicle kept in storage pending a police investigation and delivery of which was ordered to the vehicle owner under the Police (Property) Act 1897 was not in the circumstances of the case a contempt of court.

The appellant chief constable (P) appealed against a decision of a district judge sitting in the magistrates' court that he was in contempt of court. The respondent (D) had contacted the police with his concerns that a vehicle that he had purchased might have been stolen. The police removed the vehicle pending their investigations and stored it at a third party garage premises. The investigations disclosed that the vehicle was a cloned stolen vehicle but that the original owner of the vehicle had settled his claim for the vehicle with his insurers. Consequently there were two possible claimants as to the ownership of the vehicle, D and the vehicle's insurers. The police initiated proceedings under the Police (Property) Act 1897 for the court to determine to whom the vehicle should be returned. The insurers withdrew any claim that they had on the vehicle and an order was made under the Act that there should be "delivery of the property" to D. The police wrote a letter to the garage stating that the vehicle was to be released to D. The garage refused to release the vehicle until certain storage costs were met. D made a complaint to the magistrates' court that P had failed to comply with the order and was in contempt of court. P contended that he was under no obligation to discharge third party costs on the vehicle. The maigistrates' court held that P had failed to comply with the order made and was in contempt of court.

HELD

The decision of the district judge as to why P was in contempt of court did not withstand scrutiny. P had acted in good faith in respect of the order made and could not be said to have been in contempt of court. (Obiter) Underlying the instant case was a very important point as to who was responsible for third party charges on vehicles kept in "police" storage. However, on the facts of the instant case and in particular where only one party was represented it was not appropriate for the court to determine the issue.

APPEAL ALLOWED

Expert Witnesses' Immunity from Disciplinary Proceedings

MEADOW v GENERAL MEDICAL COUNCIL (2006)

QBD (Admin) (Collins J) 17/2/2006

CIVIL EVIDENCE - HEALTH

Disciplinary Procedures: Doctors: Expert Witnesses: Fitness To Practise: Health Professionals: Immunities: Medical Evidence: Misconduct: Expert Witnesses' Immunity From Disciplinary Proceedings: Flawed Medical Evidence Given By Doctor In Murder Trial

The principle of immunity from suit was extended to provide immunity from disciplinary proceedings to expert witnesses who gave evidence before the court. The immunity covered proceedings based on a complaint made by a party or any other person who might have been affected by the evidence given.

The appellant doctor (M) appealed against a decision of the GMC's Fitness to Practise Panel finding serious professional misconduct and ordering the erasure of his name from the register of medical practitioners. M was an eminent paediatrician who had been asked by the police to provide a medical opinion on the deaths of two brothers, who had both died when they were a few weeks old. M had concluded in his report that the deaths were not natural. M's report and subsequent evidence given in the murder trial against the babies' mother was based on statistics of the likelihood of two sudden infant deaths in the same family. The mother was convicted of murder. Her conviction was later quashed by the Court of Appeal and her father complained to the GMC that the evidence given by M had been badly flawed and he had misused statistics on infant mortality. The issues for determination were whether (i) immunity from suit should be extended to provide immunity from disciplinary proceedings and whether, therefore, the panel should have declined to consider the complaint, and (ii) the panel's finding of serious professional misconduct was irrational.

HELD

(1) There was no reason why immunity from suit should not apply to disciplinary proceedings brought against an expert witness. There was no doubt that the administration of justice had been seriously damaged by the decision of the panel and that the damage would continue unless it was made clear that such proceedings need not be feared by expert witnesses. However, there was a need to ensure that public confidence in the profession was maintained and that no practitioners who fell below the standards required should be able to practise uncontrolled. Immunity from suit, in respect of which the law had granted an absolute immunity, should be confined as narrowly as possible. That and the need to balance the countervailing public interest meant that blanket immunity was not necessary. The immunity had to cover proceedings based on a complaint made by a party or any other person who might have been upset by the evidence given. However, there was no reason why a judge could not refer the expert's conduct to the relevant disciplinary body if he was satisfied that his conduct had fallen below what was expected of him such as to merit some disciplinary action, Stanton v Callaghan (1998) CILL 1409 and Docker v Chief Constable of the West Midlands Police (2000) 3 WLR 747 applied. Such a referral would not be justified unless the witness's shortcomings were sufficiently serious for the judge to believe that he might need to be removed from practice or be subjected to conditions regulating his practice. Evidence given honestly and in good faith would not merit a referral. In the instant case, the complaint against M should not have been pursued as it was based upon evidence that he had given in court and the evidence

had been given honestly and in good faith. If a complaint related to evidence or the preparation of evidence then the GMC had to bring it to an end. The panel should not have considered the complaint.

(2) Had the panel been entitled to consider the complaint, its conclusion was still not justified by the evidence before it. M's only mistake had been to misunderstand and misinterpret the statistics. It was a mistake that was easily and widely made. It was proper to criticise him for not disclosing his lack of expertise in statistics but that did not justify a finding of serious professional misconduct. The panel's conduct, in saying that M's conduct was "fundamentally incompatible" with what was expected by the public from a registered medical practitioner, approached the irrational.

APPEAL ALLOWED

SI 887/2006 The Disability Discrimination (Premises) Regulations 2006

In force **4 December**. The Regulations support the implementation of the new duty contained within Sections 24A to 24L of the Disability Discrimination Act 1995. These sections place landlords and those who manage rented premises under a duty, in certain circumstances, to make adjustments for disabled people who are either tenants or occupiers of rented premises. Among other things, the Regulations prescribe things which are, and are not, to be treated as physical features for the purposes of alteration or removal.

SI 927/2006 The Children Act 2004 (Commencement No 8) Order 2006

In force **1 April**. This Order brings fully into force Sections 13 to 16 of the Children Act 2004. These sections are concerned with the establishment of Local Safeguarding Children Boards (LSCBs) by each children's services authority in England, and also deal with their functions, procedures and funding. The Order also brings Section 56 into force, which adds functions relating to LSCBs to the list of functions that are social services functions in the Local Authority Social Services Act 1970.

SI 932/2006 The Police (Injury Benefit) Regulations 2006

In force **20 April**. These Regulations make provision for payments to police officers who are permanently disabled as a result of an injury received without their own default in the execution of their duty as a police officer. Provisions are also made for when death results from such an injury, for payments to be made to spouses or civil partners, children or other dependent relatives of the deceased officer.

The Regulations revoke and re-enact provisions for the purpose of making payments within the Police Pensions Regulations 1987 and the Police (Injury Benefit) Regulations 1987. They establish a scheme which is distinct from the provisions of the Police Pensions Regulations 1987, and those Regulations continue in force in relation to contributory pensions payable to police officers or to others in relation to deceased police officers.

The Regulations contain definitions of 'injury received in the execution of duty' and 'disablement'. The Regulations also have retrospective effect to 6 April 2006, the date on which a new tax regime for registered pension schemes came into effect.

Part 2 and Schedules 3 to 5 make provision for the awards payable on injury or death, including how awards are calculated. Part 5 governs the circumstances where an award may be revised, withdrawn or forfeited. Part 4 and Schedule 6 provide procedures for the determination of medical questions which arise. Part 6 contains provisions regarding the payment of awards.

SI 934/2006 The Environment Act 1995 (Commencement No 23) (England and Wales) Order 2006

In force **15 May**. This Order brings into force Sections 120(1) and 120(3) of the Environment Act 1995. The effect of this is that the presumption that anything discarded is waste unless the contrary is proved, ceases to have effect. This presumption is contained within Section 30(1) of the Control of Pollution Act 1974 and Section 75(3) of the Environmental Protection Act 1990, and will no longer remain in force from 15 May.

A new definition of waste is inserted into Section 75(2,) which is the same as that in EC Directive 75/442/EEC on waste. The new definition of waste for the purposes of the Environmental Protection Act 1990 is:

> "Any substance or object in the categories set out in Schedule 2B to this Act which the holder discards or intends or is required to discard; and for the purposes of this definition—
>
> 'holder' means the producer of the waste or the person who is in possession of it; and
>
> 'producer' means any person whose activities produce waste or any person who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste."

Schedule 2B to the Environmental Protection Act 1990 contains a list of categories of waste.

SI 986/2006 The Misuse of Drugs (Amendment) Regulations 2006

In force **1 May**. The Regulations amend Regulations 2, 6B and 7 to 10 of the Misuse of Drugs Regulations 2001. They replace references to 'extended formulary nurse prescribers' in the 2001 Regulations with 'nurse independent prescribers'. The effect of the Regulations is to enable nurse independent prescribers to prescribe, supply, possess, administer and give directions for the administration of specified controlled drugs in those circumstances where extended formulary nurse prescribers were previously able to. Nurse independent prescribers can prescribe and supply diazepam, lorazepam and midazolam for the treatment of tonic-clonic seizures, in addition to their previous role as extended formulary nurse prescribers.

SI 987/2006 The Serious Organised Crime and Police Act 2005 (Application and Modification of Certain Enactments to Designated Staff of SOCA) Order 2006

In force **1 April**. Under Section 43 of the Serious Organised Crime and Police Act 2005, a member of staff of the Serious Organised Crime Agency (SOCA) can be designated as having the powers of a constable, the customs powers of an officer of HM Revenue and Customs, and the powers of an immigration officer. This Order modifies certain Acts which confer powers on the police and immigration officers, to enable these powers to be exercised by an officer of SOCA designated as having such powers.

The Acts modified by the Order are:

- Police and Criminal Evidence Act 1984 (concerning powers of constables).
- Anti-social Behaviour Act 2003 (concerning powers of constables).
- Immigration Act 1971 (concerning powers of immigration officers).
- Asylum and Immigration Act 1999 (concerning powers of immigration officers).

SI 988/2006 The Football Spectators (2006 World Cup Control Period) Order 2006

In force **24 April**. The Order describes the control period, under the Football Spectators Act 1989, for the 2006 FIFA World Cup in Germany. The control period begins on 30 May (10 days before the start of the tournament) and ends when the last match has been played (due to be 9 July).

During the control period, certain powers contained in the 1989 Act can be exercised. These are:

- Section 19 – Requirements for those subject to banning orders to report to a police station and surrender passports.
- Sections 21A and 21B – Summary powers to detain and refer to a court with a view to making a banning order.

SI 1005/2006 The Disability Discrimination (Guidance on the Definition of Disability) Appointed Day Order 2006

In force **1 May**. The Order appoints 1 May as the day for the coming into force of the Guidance on matters to be taken into account in determining questions relating to the definition of disability issued by the Secretary of State on 29 March 2006 under Section 3(8) of the Disability Discrimination Act 1995. The Guidance provides practical advice on matters to be taken into account when considering whether a person is a disabled person for the purposes of the Act and replaces a previous version of the guidance issued in 1996. The Guidance reflects changes made by the Disability Discrimination Act 2005 governing who is a disabled person, which came into force on 1 December 2005.

The Guidance is primarily designed for adjudicating bodies, e.g. employment tribunals, which determine cases under the Act. However, it is likely to be of value to a range of people as an explanation on how the definition operates. Further information on the Guidance can be seen in the Diversity section of this edition. The Guidance does not have legal standing.

SI 1007/2006 The Disability Discrimination (Guidance on the Definition of Disability) Revocation Order 2006

In force **1 May**. The Order revokes, with effect from 1 May, the Guidance on matters to be taken into account in determining questions relating to the definition of disability issued by the Secretary of State on 25 July 1996 under Section 3 of Disability Discrimination Act 1995. This Guidance has been replaced by a new version which will come into force on 1 May (see SI 1005/2006 above).

SI 1013/2006 The Terrorism Act 2006 (Commencement No. 1) Order 2006

In force **13 April**. The Order brings into force the following provisions of the Terrorism Act 2006:

- Part 1 (Sections 1 to 20) (offences). Offences include encouragement of terrorism, dissemination of terrorist publications, preparation of terrorist acts and training for terrorism.
- Sections 21 and 22 (proscribed terrorist organisations).
- Sections 26 to 30 (powers of stop and search).
- Sections 31 to 33 (other investigatory powers).
- Section 34 (definition of terrorism).
- Section 35 (applications for extended detention of seized cash).
- Section 36 (review of terrorism legislation).

- Section 37 (amendments to the Terrorism Act 2000).
- Section 38 (expenses).
- Schedule 1 (convention offences).
- Schedule 2 (seizure and forfeiture of terrorist publications).
- Schedule 3 (repeals) (except those relating to Paragraph 36(1) of Schedule 8 to the Terrorism Act 2000 and Section 306(2) and (3) of the Criminal Justice Act 2003.

An article on the Terrorism Act 2006 is featured in this edition of the *Digest* for further information on these provisions, as is HOC 8/2006, the Terrorism Act 2006, which also provides detailed guidance on the Act.

SI 1032/2006 The Communications Act 2003 (Maximum Penalty for Persistent Misuse of Network or Service) Order 2006

In force **6 April**. The Order amends Section 130(4) of the Communications Act 2003 so as to raise the maximum penalty that the Office of Communications can impose under Section 130 of the Act (Conditions regulating premium rate services). Penalties are in respect of persistent misuse of electronic communications networks or electronic communications services. The maximum penalty has been increased from £5,000 to £50,000.

A person misuses an electronic communications network or service if the effect or likely effect of his use is to cause another unnecessarily to suffer annoyance, inconvenience or anxiety, or he uses the network or service to engage in conduct which has or is likely to have the effect of causing another person such annoyance, inconvenience or anxiety.

SI 1050/2006 The Criminal Justice and Public Order Act 1994 (Suspension of Custody Officer Certificate) (Amendment) Regulations 2006

In force **2 May**. These Regulations amend Regulation 2(a)(i) of the Criminal Justice and Public Order Act 1994 (Suspension of Custody Officer Certificate) Regulations 1998. The amendment concerns the circumstances in which the escort monitor or person in charge of a contracted-out secure training centre may suspend a custody officer's certificate insofar, as it authorises the performance of escort functions or custodial duties, pending a decision of the Secretary of State under Paragraph 4 of Schedule 2 to the Criminal Justice and Public Order Act 1994 (revocation of a custody officer certificate).

The amendment clarifies the type of allegation that must be made before a custody officer's certificate may be withdrawn as one of misconduct.

SI 1059/2006 The Dog Control Orders (Prescribed Offences and Penalties, etc.) Regulations 2006

In force **6 April**. The Regulations prescribe the five offences capable of being provided for in dog control orders, and supply model forms for each type of order. Dog control orders can be made by certain authorities under Section 55 of the Clean Neighbourhoods and Environment Act 2005. The offences (contained within the Schedules to the Regulations) are:

- Failing to remove faeces deposited by a dog on land in respect of which a Fouling of Land by Dogs Order applies.
- Failing to keep a dog on a lead on land in respect of which a Dogs on Leads Order applies.
- Failing to put, and to keep, a dog on a lead, when directed to do so by an authorised officer, on land in respect of which a Dogs on Leads by Direction Order applies.
- Permitting a dog to enter land in respect of which a Dogs Exclusion Order applies.
- Taking more than the maximum number of dogs onto land in respect of which a Dogs (Specified Maximum) Order applies.

Each offence is only committed where there is no reasonable excuse or consent has not been granted by the owner, occupier or other person or authority who has control of the land.

The offences of failing to remove dog faeces and permitting a dog to enter land from which dogs are excluded do not apply to registered blind people or persons with a disability who rely on the assistance of a dog trained by a specified charity.

The Regulations also specify the maximum penalty which may be provided for in a dog control order, i.e. in respect of each type of offence, a fine not exceeding level 3 on the standard scale (currently £1,000).

SI 1070/2006 The Proceeds of Crime Act 2002 (Money Laundering: Exceptions to Overseas Conduct Defence) Order 2006

In force **15 May**. Under amendments made to Sections 327 (Concealing), 328 (Arrangements) and 329 (Acquisition, use and possession) of the Proceeds of Crime Act 2002 by the Serious Organised Crime and Police Act 2005, there will be a new defence to the money laundering offences in that Act. The defence will apply where a person knows or believes on reasonable grounds that the acts which produced the proceeds took place in a particular country overseas and the acts were lawful in that country.

Under the Order, the defence applies only if the act generating the proceeds would not be punishable in the UK by a maximum sentence of more than 12 months imprisonment. Article 2(2) of the Order sets out a few exceptions to this rule:

- Offences under the Gaming Act 1968.
- Offences under the Lotteries and Amusements Act 1976.
- Offences under Section 23 or 25 of the Financial Services and Markets Act 2000.

SI 1082/2006 The Equality Act 2006 (Commencement No 1) Order 2006

The Order brings into force several provisions of the Equality Act 2006.

On **18 April**

- Sections 1 to 5 – Concerning the Commission for Equality and Human Rights.
- Sections 33 to 35 – Interpretation provisions.
- Sections 36 to 38 – Concerning the dissolution of the existing commissions.

- Section 39 – Conditions under which the Secretary of State can make orders and regulations.
- Section 40 – For the purpose of bringing into force Paragraph 35(b) of Schedule 3 (amendment of the Part II of Schedule 1A to the Race Relations Act 1976).
- Various provisions in Part 2 concerning proceedings in discrimination on grounds of religion or belief cases.
- Part 3 – Discrimination on the grounds of sexual orientation.
- Various provisions in Part 4 concerning public functions.
- Section 92 – Crown application.
- Schedule 1 - Commission for Equality and Human Rights constitutions, etc.

On **6 April 2007**

- Section 83 – Making it unlawful for a public authority to discriminate or commit acts of harassment on grounds of sex when carrying out its functions (this includes the police).
- Section 84 – General duty of public authorities to promote equality, etc.
- Section 85 – Amendments to the Sex Discrimination Act 1975 concerning public authorities.

SI 1085/2006 The Serious Organised Crime and Police Act 2005 (Commencement No 6 and Appointed Day) Order 2006

The Order brings into force several provisions of the Serious Organised Crime and Police Act 2005.

On **8 May**

- Section 161(1) and (5) (Abolition of the Royal Parks Constabulary).
- Section 175(2) as it relates to amendments in Schedule 17 to Paragraph 27D in Schedule 1 of the Regulation of Investigatory Powers Act 2000 and Section 82(1)(f) and (5) of the Police Reform Act 2002.

On **15 May**

- Section 102 (money laundering: defence where overseas conduct is legal under local law).

SI 1116/2006 The Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006

In force **16 May**. This Order sets out descriptions of cases to which Part IV of the Criminal Justice Act 1988 is to apply. Part IV of the Criminal Justice Act 1988 empowers the Attorney General to refer certain criminal cases to the Court of Appeal, with the leave of that Court, where he considers that the sentences imposed were unduly lenient.

Notes

CENTREX

HELPING TO DEVELOP POLICING

Legal Validation and Research

Yew Tree Lane, Pannal Ash, Harrogate
North Yorkshire, HG2 9JZ
Telephone 01423 876664
www.centrex.police.uk/digest