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Digest



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The Digest is produced monthly by the Legal Services Department of the NPIA. The Digest is an environmental scanning publication intended to capture and consolidate topical and key issues, both current and future, impacting on all areas of policing. 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 month's issue contains notification of the publication of the second edition of the ACPO Practice Advice on Evidence of Bad Character which is produced by NPIA and available on the police genesis extranet site.

This edition also contains the recommendations made as a result of a report by the IPCC into near misses in police custody, details of an Allegation of Rape Protocol between the Police and the CPS designed to improve investigation and prosecution in rape cases and an overview of an evaluation by DCMS of the impact of the Licensing Act 2003.

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



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| | |
|---|-----------|
| DIVERSITY | 5 |
| Disability Toolkit Website | 5 |
| Police Help for Deaf People | 5 |
| Temporary 50:50 Police Recruitment Provisions | 6 |
| Helpline to Assist Male Victims of Domestic Violence | 6 |
| TRAINING AND DEVELOPMENT | 7 |
| Promoting Inter-Agency Training in Relation to Safeguarding Children's Welfare | 7 |
| National Safety Training Guidelines | 7 |
| LEGISLATION | 8 |
| Statute Law (Repeals) Bill | 8 |
| Animals Act 1971 (Amendment) Bill | 8 |
| Evaluation of the Impact of the Licensing Act 2003 | 9 |
| Criminal Justice (Raves) Bill | 10 |
| Drugs (Roadside Testing) Bill | 10 |
| Drugs (Reclassification) Bill | 11 |
| Fireworks Act 2003 (Amendment) Bill | 11 |
| HOC 5/2008 Regulations to Implement Council Regulation (EC) 273/2004 on the Intra-Community Trade in Drug Precursors and Regulation (EC) 111/2005 on the Community External Trade in Drug Precursors | 11 |
| GOVERNMENT AND PARLIAMENTARY NEWS | 13 |
| Government Publishes First National Security Strategy | 13 |
| Conservative Party Green Paper on Prison Reform | 14 |
| White Paper Launch document - Unlocking the Talent of Our Communities | 14 |
| Department for Transport Issues Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions | 15 |
| Guidance to Help Landlords to Tackle Anti-Social Behaviour | 15 |
| Drug Strategy | 16 |
| New Measures to Tackle Drugs in Prison | 17 |
| Review of the Prison Service's Measures to Disrupt the Supply of Illicit Drugs into Prisons | 18 |
| Probation Service Funding | 19 |
| Funding to Tackle Antisocial Behaviour Announced | 19 |
| Department for Transport Plans to Tackle Motorways and Urban Congestion | 19 |
| Consultation on the Draft Code of Practice about the Sanctions for Non-compliance with the Biometric Registration Regulations | 20 |
| Plan for Implementation of ID Cards Announced | 20 |
| Neighbourhood Policing Scheme Plans Announced | 21 |
| Have Your Say on Tackling Crime | 22 |
| Tackling Retail Crime | 23 |
| Government Plans for Policing at the UK Border | 23 |
| Increased Risk of Money Laundering and Terrorist Financing ... | 24 |
| CRIMINAL JUSTICE SYSTEM | 25 |
| Criminal Justice System Business Plan | 25 |
| Specialist Domestic Violence Courts Review | 25 |
| Deciding the Age and Identity of Unaccompanied Minors | 26 |
| National Ballistics Intelligence Service Launched | 27 |
| Improved CPS Performance | 27 |

| | |
|---|-----------|
| CPS Policy on Sexual Transmission of Infection | 28 |
| Sentencing Guidelines for Violent Offenders | 28 |
| Sentencing Guidelines for Assaults on Children | 29 |
| Consultation Guideline for Theft and Burglary (Non-Dwelling) Offences | 30 |
| Rape Medical Examinations by the NHS | 30 |
| European Court on Human Rights to Decide on the Destruction of DNA and Fingerprint Evidence | 31 |
| Review of Criminality Information - Part 2 | 32 |
| Review of the Forum for Preventing Deaths in Custody | 33 |
| POLICE NEWS..... | 34 |
| National Fraud Lead Force | 34 |
| ACPO (2008) Practice Advice on Evidence of Bad Character | 34 |
| ACPO Strategy on the Prevention of Terrorism and Violent Extremism | 34 |
| IPCC Report of Near Misses in Police Custody | 35 |
| Guidance for Police on Tackling Mortgage Fraud | 37 |
| Guidance on the Police Strategic Management of CBRN Events | 38 |
| Police Federation Poll on Police Officers Industrial Rights | 39 |
| Allegations of Rape Protocol Between the Police and Crown Prosecution Service | 39 |
| Police Overtime May be a Thing of the Past | 41 |
| Impact of Legal Aid Reforms on Custody Suite Procedures - Update | 41 |
| NEWS IN BRIEF | 42 |
| Increased Speed Limit during Hard Shoulder Running on M42 Goes Ahead | 42 |
| Regulation of Bailiffs | 42 |
| Study into Profile of Internet Sex Offenders | 43 |
| Two Road Safety Reports Show Black Children More Likely to be Injured on Roads | 43 |
| Calls for Changes to Press Reporting of Rape Cases | 44 |
| CASE LAW | 45 |
| EVIDENCE AND PROCEDURE..... | 45 |
| Confiscation Orders - Power to Fix Time for Payment | 45 |
| Legitimate Expectation of Final Warning Rather Than Prosecution | 46 |
| GENERAL POLICE DUTIES | 49 |
| Police and Prison Officers Serving on Juries | 49 |
| CRIME..... | 51 |
| Football Banning Orders - No Time Limit on Relevant Offences Relating to Football Matches | 51 |
| TRAFFIC..... | 53 |
| Effect of Breath Analysis Machine Error on Requirement to Provide Breath Specimens | 53 |
| Section 7 Road Traffic Act 1988 - Declaration of Medical Condition | 54 |
| Former Transport Police Officer Could be an Expert Witness in Trial for Speeding Offence | 55 |
| STATUTORY INSTRUMENTS | 57 |

Disability Toolkit Website

A new website to help professionals improve their working practice with disabled children and young people has been developed by The Children's Society Disability Advocacy Project. The 'Disability Toolkit Website' has been developed following a call from professionals for an easy to use resource to provide information to support their work in decision making and participation activities for disabled children.

The website, which was launched on 21 February, aims to:

- ◆ Keep professionals up to date with a new database of resources, practical examples, research and policy.
- ◆ Provide solutions to barriers professionals encounter when trying to help disabled children and young people express their opinions and feelings.
- ◆ Bring together information in one place.
- ◆ Be an interactive and easy to use resource.
- ◆ Encourage the sharing of resources through use of the upload facility allowing users to upload information about their own resources and practice examples.
- ◆ Allow practitioners to keep in touch by signing up for e-updates and practice news.

It will be funded by the Department for Children, Schools and Families and The Children's Society.

The website can be accessed at <http://www.disabilitytoolkit.org.uk>

Police Help for Deaf People

Two new DVDs have been produced to provide information to Deaf people who use British Sign Language (BSL) as their first or preferred language.

The DVDs have been pioneered by Lancashire Constabulary to help Deaf people who are brought into custody or who are stopped and searched on the streets.

The custody DVD is presented by a qualified BSL interpreter and is played to Deaf people who have been arrested in order to explain their rights whilst in custody. It also contains information such as the cell environment, food, drink, exercise, notification of arrest and breath test procedure if necessary.

The stop and search DVD is aimed at providing reassurance to those who are stopped and searched under Section 44 of the Terrorist Act 2000. The information is presented in BSL with visual background footage.

It is hoped that the DVD will be able to be transferred onto a memory stick to then be played on a hand held computer and organiser otherwise known as a Personal Digital Assistant (PDA).

Other forces are now able to purchase the DVDs which have been put together as a package from Lancashire Police at <http://www.lancashire.police.uk>

Temporary 50:50 Police Recruitment Provisions

In a written ministerial statement on 5 March the Minister of State, Northern Ireland Office, Paul Goggins informed Parliament that since the introduction of the temporary police recruitment provisions in 2001, tremendous progress had been made towards a more representative police service in Northern Ireland.

Figures show that:

- ◆ The Catholic composition of police officers has increased from 8.3% at the time of the Patten report to 23.71% as of mid-February 2008.
- ◆ The number of Catholic applications to the PSNI has also been encouraging, with 44.4% of applicants in the last campaign being from the Catholic community.
- ◆ In the first 13 competitions over 80,000 applications have been received from across the whole community.
- ◆ Female composition within PSNI has increased from 12% in 2001 to 22.1% today.
- ◆ There are currently 28 officers from ethnic minority backgrounds including Pakistani, Black Caribbean, Chinese and Indian.
- ◆ The PSNI ethnic minority background workforce composition is currently 0.43%, broadly equating to the overall level (0.48%) of the working age ethnic minority population in Northern Ireland.
- ◆ Catholic representation among civilian staff has also continued to rise. The percentage of Catholic police support staff has increased from 12% at the time of the Patten report to 17.32 % on 1 February 2008.
- ◆ The composition among direct recruits is now at 22.36%.

Mr Goggins stated that the Government is on target to reach its target of 30% catholic officers by 2010-11.

Helpline to Assist Male Victims of Domestic Violence

A helpline funded by the Welsh Assembly Government which has been running as a pilot initiative since February 2006 has now been launched throughout Wales.

The Dyn Cymru helpline (Tel: 0808 801 0321) provides basic support and information to heterosexual, gay, bisexual, and transgender men all around Wales who experience domestic abuse.

Promoting Inter-Agency Training in Relation to Safeguarding Children's Welfare

The NSPCC in partnership with Nottingham University and Sheffield University have formed 'Piat' (Promoting inter-agency training). Their aim is provide tools for developing and assuring quality in inter-agency relationships and training in relation to safeguarding and promoting children's welfare.

They have recently produced a CD called 'Make a Difference' which contains two tools:

- ◆ The first provides a framework for reviewing the content and context of Local Safeguarding Children Board (LSCB) inter-agency training programmes and identifying areas for further development. The tool is designed to be used by those with strategic or operational responsibility for training in relation safeguarding and promoting children's welfare.
- ◆ The second tool is designed to assist in the evaluation of effective inter-agency working relationships. It is aimed to be used within a training or practice environment and is suitable for anyone responsible for evaluating the development of effective working relationships.

'Make a Difference' can be obtained from NSPCC publications at <http://www.nspcc.org.uk/learnignresources>

National Safety Training Guidelines

Police Minister Tony McNulty has reportedly announced at a meeting with the Police Federation that National Safety Training Guidelines may be introduced under primary legislation unless forces can agree on one between each other.

The Guidelines would create one national set of safety training standards which would cover areas such as uniforms, personal protective equipment, procurement strategies and the qualifications of trainers delivering safety training.

National training standards have come into the spotlight since an HM Inspectorate of Constabulary report last year stated that forces were not delivering enough safety training. ACPO guidelines state that officers should receive at least 12 hours safety training a year but this is not always being delivered in some forces and therefore needs to be standardised.

Statute Law (Repeals) Bill

The Ministry of Justice has announced a major clean-up of meaningless and defunct laws from the statute book. Upon joint recommendation of the Law Commission and the Scottish Law Commission, the Statute Law (Repeals) Bill proposes to remove all or part of 328 Acts of Parliament which are currently live laws but which are never used.

Lord Chancellor and Secretary of State for Justice Jack Straw has said that the obsolete laws can 'invite costly and pointless legal activity' due to raising people's expectations. The clean-up therefore aims to simplify and modernise the law.

Examples of pieces of legislation set to be repealed are:

- ◆ Obsolete laws on the police including an 1839 law requiring the police to remove street musicians if requested to do so by irritated householders.
- ◆ Obsolete laws on turnpikes dating back to times when the roads were maintained locally with travellers having to pay tolls.
- ◆ Obsolete criminal law including an Act of 1819 passed following the Peterloo Massacre of that year when 11 people were killed in Manchester.

The Bill itself can be found at <http://services.parliament.uk/bills/>

Animals Act 1971 (Amendment) Bill

The Animals Act 1971 (Amendment) Bill has been published to limit strict liability for damage done by animals. The Bill makes amendments to section 2 of the Animals Act 1971, which deals with the imposition of strict liability for damage caused by certain animals.

Currently, the 1971 Act creates strict liability for the keeper of an animal in the following circumstances:

- ◆ Section 2(1) - the keeper of an animal that is of a 'dangerous species' is strictly liable for damage caused by it.
- ◆ Section 2(2) provides for strict liability in certain circumstances for damage caused by an animal that is not of a dangerous species.

However, since the Act was passed there has been some confusion about certain aspects of section 2(2) of the Act. The Bill therefore intends to clarify the circumstances in which strict liability should apply by making certain amendments to section 2(2). The proposed changes are based on the policy that it is desirable that the keepers of animals that do not belong to an inherently dangerous species should be strictly liable for damage or harm caused by that animal when they know that the animal in question may be dangerous at the time the damage is caused, either because of its temperament, or because of the particular circumstances applying at the time, such as when it has young to protect.

The Bill has just undergone its second reading in the House of Commons and can be found at <http://services.parliament.uk/bills/2007-08/animalsact1971amendment.html>

Evaluation of the Impact of the Licensing Act 2003

The Department for Culture, Media and Sport has issued a report evaluating the impact of the Licensing Act 2003. The report reviews the extent to which the aims and objectives of the legislation have been met by looking at the outcome of various evaluation projects.

The report states that since the Act's introduction, there have not been the widespread problems some feared. Overall, crime and alcohol consumption are down. However, alcohol-related violence has increased in the early hours of the morning and some communities have seen a rise in disorder.

There is clear evidence from a number of evaluation projects and official statistics indicating that the negative forecasts about the impact of the new legislation have not materialised:

- ◆ There is no evidence of 24 hour drinking, with only a minority of premises securing 24 hour licenses and very few actually utilising those hours. There have been only limited changes to actual opening hours.
- ◆ The overall volume of incidents of crime and disorder has remained stable and not risen.
- ◆ There is no evidence of increases in overall alcohol consumption.
- ◆ There has been no serious adverse impact on the provision of live music.

However, the overall reduction in alcohol related disorder that was desired across the country has not materialised in all areas and there is a need to rebalance action towards enforcement and crack down on irresponsible behaviour. On this basis the Culture Minister Andy Burnham has outlined a number of actions which will be undertaken by the Government to address the issues:

- ◆ The utilisation of existing powers to identify problem premises and making it easier to review premises where local intelligence suggests there is a problem.
- ◆ Encouraging the use of tougher sanctions on those found to be breaching their licensing conditions, including more instant closures of pubs and clubs in an area where disorder has occurred.
- ◆ Changing the offence of 'persistently selling alcohol to a person under 18' from 'three strikes' to 'two strikes' in a three month period.
- ◆ Ranking of geographical areas and concentration of premises on the basis of the risks they present to crime and disorder, public nuisance and children. This will give licensing authorities the ability to exercise; more caution and conditions when issuing licenses, call for wholesale withdrawal of licences in these areas, and permit local authorities and police to target enforcement resources more effectively at problem hotspots.

- ◆ A new 'Yellow card' and 'Red Card' alert system will be created for licensing breaches. A 'Yellow Card' puts problem premises on immediate probation, together with sanctions. A 'Red Card' could lead to the withdrawal of a license.

The Home Secretary also intends to increase the maximum fine for anyone not obeying an instruction to stop drinking, or to give up their drink in a designated public place from £500 to £2,500. Other proposals include:

- ◆ Making it easier for the police to disperse anti-social drinker from any location.
- ◆ Extending the use of Acceptable Behaviour Contracts for young people caught drinking in public, to require them and their parents to attend a session with a trained worker.
- ◆ Extending the alcohol arrest pilots so that under 18's may also benefit from a brief intervention from a trained worker.

The evaluation report can be found in full at:

http://www.culture.gov.uk/Reference_library/Publications/archive_2008/evaluation_licensing_act_impact.htm

Criminal Justice (Raves) Bill

A Private Members Bill has been presented to the House of Commons to strengthen police powers in relation to raves, by amending the Criminal Justice and Public Order Act 1994. The Bill will amend the definition of a 'gathering' for the purposes of the Act, and will introduce two new offences:

- ◆ Organising a rave.
- ◆ Transporting sound equipment for a rave.

The Bill has undergone its first reading in the House of Commons, details of which can be found at

<http://services.parliament.uk/bills/2007-08/criminaljusticeraves.html>

Drugs (Roadside Testing) Bill

A Private Members Bill has been presented to the House of Commons to make provision for roadside testing for illegal drugs and connected purposes.

The Bill has undergone its first reading in the House of Commons, details of which can be found at

<http://services.parliament.uk/bills/2007-08/drugsroadsidetesting.html>

Drugs (Reclassification) Bill

A Private Members Bill presented to the House of Commons to reclassify cannabis as a Class B drug. The Bill amends the Misuse of Drugs Act 1971, by removing cannabinal, cannabinal derivatives, cannabis and cannabis resin from Part 3 of Schedule 2 (Class C drugs) and inserting them into Part 2 of Schedule 2 (Class B drugs).

The text of the Bill can be found at

<http://www.publications.parliament.uk/pa/cm200708/cmbills/037/08037.1-i.html>

Fireworks Act 2003 (Amendment) Bill

A Private Members Bill to make provision about the limit of noise levels of fireworks supplied in the United Kingdom. The Bill will amend the Fireworks Act 2003, by reducing the legal noise limit from 120 dB to 95 dB. The Bill will also introduce a requirement that fireworks have a clear label specifying the decibel level emitted.

The Bill has undergone its first reading in the House of Commons and been ordered to be brought. Details of the first reading can be found at

<http://services.parliament.uk/bills/2007-08/fireworksact2003amendment.html>

HOC 5/2008

Regulations to Implement Council Regulation (EC) 273/2004 on the Intra-Community Trade in Drug Precursors and Regulation (EC) 111/2005 on the Community External Trade in Drug Precursors

This circular draws attention to the contents of SI 2008/295 and SI 2008/296 which came into force on 7 March 2008 to implement the above titled EC regulations.

Various chemicals are used in the manufacture of various illicit drugs and these are known as precursor chemicals. These chemicals have mostly legitimate uses and are traded legally. However, small amounts are diverted to illicit drug manufacture either by purchase or theft. Drug law enforcement authorities need to prevent such diversion of these chemicals and therefore a legal framework is required to support the cooperation needed between the producers and traders of the chemicals and the authorities.

The UK, other members of the EU and most other countries in the world accordingly became party to the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Article 12 of the Convention relates to precursors and requires parties to monitor the manufacture and distribution of these substances and specifies how this should be done.

The basic requirements of the Convention passed into UK law through Section 12 of the Criminal Justice (International Co-operation) Act 1990 which makes it an offence to manufacture and/or supply certain specified substances to another person, knowing or suspecting that the substance is to be used to produce an unlawful drug.

As precursors have many legitimate uses and are traded legally, the UK implementation of the two EU regulations complies with the UN Convention to enable a controlled trade in the substances.

The UK regulations stipulated in SI 2008/295 and SI 2008/296 provide the powers and penalties required by the EU regulations which came into force in August 2005. The implementation of the UK regulations however has been delayed until now by various administrative and operational issues.

Both sets of regulations will:

- ◆ Specify which UK authorities will perform the role of competent authorities referred to in the EU regulations.
- ◆ Set penalties for non-compliance.
- ◆ Revoke the previous secondary legislation.

In addition the UK internal regulations will:

- ◆ Explain who will be entitled to special licenses as allowed by the EU internal regulations (i.e. a list of those who are likely to have to possess controlled substances but unlikely to trade them).
- ◆ Require operators to ensure that they have valid export and import authorisations.
- ◆ Set limits on the validity of licenses to 3 years.

The changes to the European law mainly reinforce processes that were already happening under previous legislation. They will continue to help to detect the production of illicit drugs and protect the public and the environment from the harms that can be caused by the unskilled and uncontrolled use of precursor chemicals.

The circular can be found in full at <http://www.circulars.homeoffice.gov.uk>

Government Publishes First National Security Strategy

On 19 March the Prime Minister announced the publication of the first National Security Strategy for the UK. The strategy highlights how the nature of threats and risks we face have changed to present new security challenges and address how we are responding.

The strategy makes it clear that the new threats and risks demand a radically updated and much more co-ordinated response from all the resources available to us. This includes the power of our military, police and security services, our diplomatic services and global institutions.

Lessons learned over recent years including experiences of terrorism and civil emergencies at home but also overseas have been drawn on in the strategy and show a need for longer term plans.

It argues that globalisation and an increasingly interdependent world bring massive opportunities but that we must recognise and address the vulnerabilities associated with it. Travel, modern communications, the internet, increased trade etc. can also present more opportunities for terrorism, transnational crime and increase the risk of pandemics.

The strategy therefore proposes many plans at national and international level to help tackle these new challenges including:

- ◆ Building bilateral and multilateral cooperation on terrorism, for example with a new agreement signed with the United Arab Emirates on freezing terrorist assets.
- ◆ Creating a new Civil Protection network, replacing the old idea of civil defence, which will build and strengthen local capacity to respond to a range of circumstances from floods to terrorism.
- ◆ Creating a new National Risk Register so that the public can see the risks we face and plan accordingly.
- ◆ Giving an update on work to help local communities resist violent extremism (to be published shortly).
- ◆ Expand the interdepartmental Joint Terrorism Analysis Centre and work further to strengthen protection at our borders and for crowded places.
- ◆ Increasing spending to effectively double the size of the security service and increasing Special Branch and counter-terrorist police by 2011.

Copies of the strategy are available at

http://www.cabinetoffice.gov.uk/reports/national_security_strategy.aspx

Conservative Party Green Paper on Prison Reform

The Conservative Party have launched a Green Paper on Prison Reform. The Paper, entitled 'Prisons with a Purpose' proposes:

- ◆ Creating 5,000 additional prison places, taking capacity to over 100,000.
- ◆ Minimum and maximum sentence periods, with no parole until the minimum term has been served.
- ◆ An end to automatic release for all determinate sentences.
- ◆ The decentralisation of public sector prisons.
- ◆ Offenders to compensate their victims through a Victims' Fund.

For a full list of the proposals, see the Green Paper in full at http://www.conservatives.com/tile.do?def=news.story.page&obj_id=142687

White Paper Launch document - Unlocking the Talent of Our Communities

A White Paper launch document entitled 'Unlocking the Talent of our Communities' has been published by the Department for Communities and Local Government. Views are sought on the issues in the launch document, which will be used to form the content of a White Paper on empowerment in England which is due to be published in the Summer.

The launch document lays down the Government's commitment to unlocking the talent of all people and giving people locally more influence, control and ownership of local services such as employment, health, education and transport. This commitment is based on research that suggests that:

- ◆ Six in ten people do not feel they have enough say on how local services are run.
- ◆ Nine in ten people believe local accountability could be improved.
- ◆ Nearly four in ten people do not feel that counsellors are representative of their communities.

To reverse these feelings the White Paper will focus on:

- ◆ Regeneration and promoting work and enterprise.
- ◆ Encouraging active citizenship, and reviving civic society and local democracy.
- ◆ Improving local public services.
- ◆ Strengthening local accountability.

The document can be found in full at <http://www.communities.gov.uk/documents/communities/doc/716251>

Views can be sent to unlockingtalent@communities.gsi.gov.uk

Department for Transport Issues Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions

The Department for Transport has, under the Transport Management Act 2004, published statutory guidance for local authorities on the civil enforcement of parking contraventions.

The Guidance contains a new framework, which comes into force on 31 March, and is designed to make parking enforcement more motorist friendly. The framework states that Local Authorities should:

- ◆ Not use parking enforcement as a way to raise revenue and should not set targets for the number of tickets issued.
- ◆ Allow officers to use more discretion over when a ticket is issued.
- ◆ Only use wheel clamping against those who persistently evade their penalty charges.
- ◆ Publish and promote their parking enforcement policies, including penalty charge levels, openly and clearly.
- ◆ Regularly appraise their parking policies and consult drivers and businesses to ensure the system is working.
- ◆ Ensure that parking attendants have clear evidence that a vehicle was parked in contravention before issuing a penalty charge notice.
- ◆ Make sure that parking attendant and back office staff have the proper skills, training and resources to give the public a fair, consistent and professional service.
- ◆ Only use CCTV to enforce parking rules (which will be allowed for the first time outside London from 31 March) where it is impractical or dangerous for a parking attendant to operate.

For a full copy of the Guidance please see

<http://www.dft.gov.uk/pgr/roads/tpm/tmaportal/tmafeatures/tmapart6/betterprkstatutoryguid.pdf>

Guidance to Help Landlords to Tackle Anti-Social Behaviour

The Department for Communities and Local Government has issued a guidance document, 'Registered Social Landlords and Crime and Disorder Reduction Partnerships: Improving Engagement'. The guidance focuses on the greater role played by Registered Social Landlords (RSLs) in Crime and Disorder Reduction Partnerships (CDRPs) since 31 July 2007, when they changed status from invitees to co-operating bodies. It highlights the need for RSLs to:

- ◆ Co-operate fully in the development of the strategic assessment and partnership plan.

- ◆ Assist in the development and delivery of objectives set out in the partnership plan.

The guidance suggests that RSLs form consortia and partnerships to ensure they all participate fully, and sets out case studies demonstrating the progress already made by some RSLs.

The guidance can be found at

<http://www.communities.gov.uk/documents/housing/pdf/rslimprovingengagement>

Drug Strategy

The Home Office has published its ten year drug strategy (2008-2018) which aims to restrict the supply of illegal drugs and reduce the demand for them thereby protecting families and strengthening communities.

The strategy focuses on four main areas of work:

- ◆ Protecting communities through tackling drug supply, drug related crime and anti-social behaviour.
- ◆ Preventing harm to children, young people and families affected by drug misuse.
- ◆ Delivering new approaches to drug treatment and social re-integration.
- ◆ Public information campaigns, communications and community engagement.

The strategy proposes many measures to be delivered over the ten year period to realise the above aims. The measures range from increased provision to tackle crime, and changes to benefits, support for families and drug treatment services.

Crime

- ◆ Police powers to seize cash and assets belonging to suspected drug dealers on arrest rather than on conviction to avoid dispersing goods.
- ◆ A greater range of goods will be subject to the asset recovery programme and the 12 year time limit currently affecting asset recovery will cease to exist.
- ◆ Extend international agreements to intercept drugs being trafficked to the UK and negotiate asset seizure agreements with other countries so dealers cannot channel proceeds abroad. This will start with the United Arab Emirates in April 2008.
- ◆ Anti-social behaviour orders to be imposed on drug dealers after conviction which could ban them from entering certain areas or engaging in behaviour linked with drug dealing.
- ◆ Increase drug screening at airports.
- ◆ Encouraging the use of the police powers to close crack houses.

Benefits

- ◆ Cutting benefits for drug users who refuse to participate in drug treatment programmes.
- ◆ Increasing support available to drug users to help them get housing and work.

Drug Treatment Services

- ◆ New and innovative treatment approaches such as 'positive reinforcement techniques' to be investigated and piloted.
- ◆ Prison drug treatment programmes to be improved.
- ◆ Wider use of drug intervention programmes where offenders have to take treatment programmes.

Support for Families

- ◆ More support for parents with drug problems so that children do not fall into excessive or inappropriate caring roles.
- ◆ Family members such as grandparents who take on caring responsibilities in the place of drug-using parents to get additional financial support.

The key documents 'Drugs: Protecting Families and Communities' 2008-2018 Strategy, the Action Plan 2008-2011 and the Public Information Leaflet, can be downloaded at <http://www.homeoffice.gov.uk/drugs/drugs-misuse>

New Measures to Tackle Drugs in Prison

The Justice Minister has announced that testing for the opiate substitute buprenorphine is to take place universally in all prisons in England and Wales from 1 April. The move comes in response to a survey entitled 'A Survey of Buprenorphine Misuse in Prisons: July 2007' which assesses the scale of the illegal use of the drug in prisons following its increased usage in the treatment of opioid dependence in the community. As well as testing for the drug, prisoners will be warned of the dangers involved in its misuse and will be offered drug treatment options available in prison.

The introduction of this testing complements other measures published in the Prison Policy Update, aimed at tackling re-offending by getting prisoners off drugs and into work. These include:

- ◆ Drug treatment programmes in prisons and a review of the supply of drugs in prisons.
- ◆ By April, 29 prisons will have introduced the Integrated Drug Treatment System to help offenders kick their drug habit.
- ◆ Building on the drug court pilots in West London and Leeds.
- ◆ Involving more employers to train offenders and offer them employment.

Extra funding has also been announced to raise the standard of clinical drug treatment in prisons. The funding:

- ◆ £24 million for 2008/09
- ◆ £39 million for 2009/10
- ◆ £43 million for 2010/11

will be used to further develop the integrated drug treatment systems in prison.

A new National Prison Drug Treatment Review Group will also be created to oversee the development of prison drug treatment.

Drug use in prisons is currently measured by random Mandatory Drugs Tests. Recent figures show that the positive rate has fallen by 64% over the last 10 years.

More information can be found at

<http://www.justice.gov.uk/news/newsrelease170308a.htm>

Copies of the survey can be found at

<http://www.justice.gov.uk/docs/survey-buprenorphine.pdf>

Review of the Prison Service's Measures to Disrupt the Supply of Illicit Drugs into Prisons

The Ministry of Justice have announced that David Blakey CBE QPM, will lead a review of the Prison Service's measures to disrupt the supply of illicit drugs into prisons. The review has been commissioned by the Director General of the Prison Service and its remit is:

- ◆ To review the effectiveness of HM Prison Service's measures for disrupting the supply of illicit drugs in prisons.
- ◆ To make recommendations to improve the effectiveness of HM Prison Service's measures for disrupting the supply of illicit drugs in prisons. Recommendations should take account of legal, financial and practical limitations appertaining to HM Prison Service's operating environment.
- ◆ To make recommendations regarding what additional measures might be possible, and at what cost, if resources were available for additional investment.

As part of the review David Blakey will visit a number of prisons and engage with stakeholders. He will examine current measures used by the Prison Service to prevent drug supply into prisons, such as the use of drug detection dogs and police searching procedures.

The report will be submitted by 31 May 2008.

Probation Service Funding

The Justice Minister David Hanson MP has announced an extra £40 million of funding for the National Probation Service. It is anticipated that the extra funding will be used to pilot intensive alternatives to custody and the provision of more rigorous non-custodial regimes, which were recommended in the Carter Review. The funding will also ensure that the Probation Service is able to establish suitable community sentences for those offenders for whom a non-custodial sentence would be appropriate.

More information can be found at
<http://www.justice.gov.uk/news/newsrelease110308c.htm>

Funding to Tackle Antisocial Behaviour Announced

The Department for Children, Schools and Families has announced £13 million to help fund challenge and support projects across the country to help tackle antisocial behaviour. The money is available for 52 local authorities to bid for, so as to promote the use of Individual Support Orders for young people who misbehave.

Department for Transport Plans to Tackle Motorways and Urban Congestion

The Department for Transport has published a feasibility study into providing better managed motorways and more funding to tackle urban congestion. The study looked at:

- ◆ Whether new systems could offer additional lanes and traffic flow capacity when and where needed, within the land corridors of existing motorways.
- ◆ Ideas for lane reservation such as high occupancy vehicle lanes, heavy vehicle lanes and through traffic lanes.
- ◆ Better separation of slower and faster moving traffic.
- ◆ The provision of better and more timely information to drivers.
- ◆ Compliance and enforcement issues.
- ◆ Ways to secure environmental benefits from better flow management.

The study looked into extending the successful pilot of hard shoulder lanes running on the M42 near Birmingham. It identified over 800 lane kilometres of England's motorways which could benefit from the use of the hard shoulder as an extra lane. It concluded that:

- ◆ There was a strong economic case for implementing hard shoulder running schemes more widely across the motorway network. This would create a more managed motorway network infrastructure that could also be deployed in other ways to enhance the management of traffic flows.

- ◆ The environmental impacts of hard shoulder running schemes are likely to be lower than those associated with road widening.
- ◆ In the medium term at least, most of the benefits of planned motorway widening could be achieved through hard shoulder running, at significantly lower cost.
- ◆ Locations identified for hard shoulder running where widening was not previously planned also offer good value investments.
- ◆ Further work should be undertaken on the designs, costs and benefits at particular locations.

The Transport Secretary, Ruth Kelly has also announced extra funding to help towns and cities develop congestion busting schemes such as local congestion charging.

More information can be found at

<http://www.gnn.gov.uk/environment/fullDetail.asp?ReleaseID=357657&NewsAreaID=2&NavigatedFromDepartment=False>

Consultation on the Draft Code of Practice about the Sanctions for Non-compliance with the Biometric Registration Regulations

The Border and Immigration Agency have launched a consultation paper on the draft Code of Practice about the sanctions for non-compliance with the Biometric Registration Regulations.

The Borders Act 2007 gave the Government powers to issue identity cards to foreign nationals subject to immigration control. The cards will confirm both the person's immigration status and their entitlement to work and access to public funds in the UK. (The implementation of this scheme is covered in the following article.)

As required under the Act a draft Code of Practice has been issued which covers the operation of the civil penalty regime and other sanctions for non-compliance.

Copies of the documents can be found at

<http://www.bia.homeoffice.gov.uk/aboutus/consultations/current/>

Plan for Implementation of ID Cards Announced

The Home Secretary has announced details of the plan for the introduction of the system of national ID cards.

Foreign Nationals

- ◆ By November 2008 non-EEA foreign nationals living in the UK will have to carry one of the new ID cards.

- ◆ The cards for foreign nationals will replace the existing stickers and other insecure UK immigration status documents which have been subject to fraud in the past.
- ◆ The stand-alone card will have a chip which holds a digitised photograph and fingerprints, alongside biographical information. The card will also indicate whether the holder is allowed to work or access benefits and how long their visas allow them to stay in the country.
- ◆ Within three years all foreign nationals who apply to enter or extend their stay in the UK will be issued with a card.
- ◆ By 2015 it is planned that 90% of foreign nationals will have the cards.

UK Citizens

- ◆ Next year the ID will also be issued to some UK citizens such as those with sensitive jobs where verification of identity is needed to ensure public protection. It is thought airport staff will be likely to be the first group to be issued with the cards.
- ◆ From 2010, young people will be able to volunteer to have ID cards to help them prove their identity when they first open a bank account, take out a student loan or start employment. Later that year the scheme will be opened to voluntary applicants of any age.
- ◆ From 2011, all passport applicants will be automatically registered for ID cards when they apply for new biometric passports containing fingerprints. They will be able to choose whether to have a passport, an ID card or both. It is thought that this will speed up the roll out and could save around £1bn.

The information on the cards will be held on a National Identity Register which will hold a small amount of personal biographic details separately from biometric fingerprints and photographs, making it incredibly difficult to steal or exploit another's identity.

The publication 'Introducing compulsory identity cards for foreign nationals' sets out in more detail when and how the identity cards will be introduced. This document can be found at

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/managingourborders/compulsoryidcards/>

Neighbourhood Policing Scheme Plans Announced

The Prime Minister has announced plans to establish neighbourhood policing teams in every council ward for England and Wales. This follows the success of a trial system in Lambeth. The teams will be made up of police officer and police community support officers and will aim to:

- ◆ Give people a say in how their streets are policed.
- ◆ Provide a visible and accessible police service.
- ◆ Address local priorities.

Funding for neighbourhood policing schemes has been set at £324 million for 2008/2009.

Plans for the new scheme, which is to be rolled out by April, include:

- ◆ A campaign to let people know how they can contact their local team - 'Name in Every Neighbourhood'.
- ◆ A national website for the public which will provide the names and numbers of their local neighbourhood policing team.
- ◆ Ongoing work with the public to develop neighbourhood policing best practice.
- ◆ Establishment of local contacts between the police and the public.
- ◆ Households given mobile phone numbers to access their neighbourhood force and email addresses for officers responsible for their street.
- ◆ Regular public meetings.

Have Your Say on Tackling Crime

The Government has announced a 'Have Your Say' exercise led by the head of the Crime and Communities Review who are looking at how the police and other front-line organisations can improve their services by working with local communities.

The cross-government Crime and Communities Review covers four main areas:

- ◆ How the police and other agencies can work with communities to reduce crime.
- ◆ How to raise public confidence in crime fighting organisations.
- ◆ How best to police local neighbourhoods.
- ◆ How to ensure the justice system has the public's full support by being open and responsive.

The Review team is assembling hundreds of community activists at a series of interactive public events in Sheffield, Birmingham and Manchester as well as nationwide visits, police walkabouts and meetings with resident groups.

The Review team is expected to report back by June to a new Ministerial group comprising the Home Secretary, the Secretary of State for Justice, The Secretary of State for Children, Schools and Families, the Secretary of State for Communities and Local Government, the Attorney General and the Minister for the Cabinet Office.

A questionnaire inviting views on the specific areas of focus has been produced and anyone wishing to contribute can log onto <http://www.cabinetoffice.gov.uk> or send their view by post.

Tackling Retail Crime

Home Office Minister Vernon Coaker has announced new measures to tackle retail crime. Speaking at the 'Tackling Retail Crime' Conference, Mr Coaker stated that the Government was committed to working with retail partners to ensure that effective solutions are found to retail crime. The National Retail Crime Steering Group is to be involved in a number of proposals, including:

- ◆ Discussion about possibly issuing Penalty Notices for Disorder for shop theft.
- ◆ Revised guidance to police forces about the use of PND's for shop theft.
- ◆ Publication of good practice examples of preventing and tackling crime in the retail sector.
- ◆ Development of an audit tool which large retailers can apply to their stores and significantly lower the opportunities for shop thieves to operate.
- ◆ Access to Neighbourhood Policing Teams (see article on page 21).

For more information please see

<http://press.homeoffice.gov.uk/Speeches/VC-Speech-On-Retail-Crime>

Government Plans for Policing at the UK Border

The Home Secretary Jacqui Smith has announced new measures to ensure closer working at the border between the police and the UK Border Agency (UKBA). The UKBA will bring together The Border and Immigration Agency, Customs Officers and UK Visas and will work with the police to improve border security and controls.

The measures include:

- ◆ The Chief Constable Roger Baker of Essex Police will join the UKBA to strengthen effective police coordination at a strategic level.
- ◆ 39 new specialist posts at ports will be funded in 2008/09 to increase Special Branch coverage.
- ◆ Funding for border policing will increase to around £75 million in the new financial year.
- ◆ A new framework will be published in April for inter-agency co-operation at the border.
- ◆ A new legislative basis and new powers will be sought for the UKBA as part of the new Immigration Bill.
- ◆ Discussions will take with police forces and authorities about whether change is necessary in the current regime for special funding of Special Branch posts at ports and airports with a view to implementing a new regime from 2009/10.

- ◆ Consideration about how to implement conclusions of the independent report into airport policing, with the aim of clarifying the roles and responsibilities of the police, airport operators and other agencies to deliver a high level of security at UK airports.

The Home Office is also working with ACPO to look at how policing is structured at the border. It will also be discussing with the Scottish Devolved Administration and ACPOS ways of strengthening working relationships between the Scottish Police Service and the new agency taking into account the devolved nature of policing in Scotland.

For more information please see

<http://press.homeoffice.gov.uk/press-releases/border-policing-strengthened>

Increased Risk of Money Laundering and Terrorist Financing

Following a warning issued by the Financial Action Task Force (FATF), HM Treasury has issued advice, effective from 29 February 2008, regarding the heightened risks of money laundering or terrorist financing in certain jurisdictions.

The advice recommends that UK businesses factor in the heightened risks posed by deficiencies in the anti-money laundering and combating the financing of terrorism regimes of these jurisdictions. The jurisdictions concerned are:

- ◆ Uzbekistan.
- ◆ Iran.
- ◆ Pakistan.
- ◆ Turkmenistan.
- ◆ Sao Tome and Principe.
- ◆ The northern part of Cyprus.

Criminal Justice System Business Plan

A new Criminal Justice System Business Plan has been published which sets out the targets and funding for reform of the Criminal Justice System for 2008-2009. The plan underpins the Criminal Justice System Strategic Plan (2008-2011) (as reported in the December 2007 *Digest*).

The business plan:

- ◆ Sets out the Criminal Justice System targets for the year and details how Local Criminal Justice Boards will contribute to their delivery.
- ◆ Describes how the Criminal Justice System will approach the challenge of taking forward reform during the year, with Local Criminal Justice Boards taking the lead.
- ◆ Provides the strategic context for the targets and reform programme, including how these relate to the Criminal Justice Service Strategic Plan.

Focus is put on Local Criminal Justice Boards working with other local partnerships to achieve the overall aim of reducing crime and re-offending. A new Local Criminal Justice Board Model has been developed and funding allocations for 2008-2009 will be provided to enable Local Criminal Justice Boards to meet these objectives.

The Business Plan can be found in full at:

<http://www.cjsonline.gov.uk/downloads/application/pdf/CJS%20Business%20Plan%202008/09.pdf>

Specialist Domestic Violence Courts Review

A Specialist Domestic Violence Courts Review 2007-2008 has been published. 'Justice with Safety', produced by the Home Office, CPS and Her Majesty's Court Service outlines the findings of a review into the first 23 Specialist Domestic Violence Courts (SDVC's) in England and Wales.

The review aimed to:

- ◆ Assess the performance of SDVC's and develop a better understanding of the key components needed to deliver the measures of success;
- ◆ Identify barriers to delivery and good practice in relation to operating an SDVC; and
- ◆ Inform the ongoing development of the SDVC Programme including a review of the core components and the subsequent updating of the National Resource Manual.

The review analysed the data and performance of the 23 SDVC's from October 2006 until March 2007. It found that:

- ◆ Ten of the 23 SDVC's achieved a successful prosecution rate of over 70%, with one reaching over 80%.

- ◆ The remaining 12 achieved an average successful prosecution rate of 66%.
- ◆ There has been an improvement in the responses of individual agencies - in relation to the police there has been a high level of domestic violence perpetrators being arrested (average of over 80%).
- ◆ Just under 6,000 victim referrals were made to Independent Domestic Violence Advisers - an average of 269 referrals per service.
- ◆ Around 74% of clients involved in the court process were supported by Independent Domestic Violence Advisers at Court.

The review recommends that:

- ◆ SDVC's review their practice and processes in light of the review and identify and implement issues for improvement where necessary.
- ◆ The National Resource Manual is revised to reflect the findings of the review.
- ◆ All SDVC's are requested to ensure all components of the National Resource Manual are adhered to.
- ◆ The National SDVC Steering Group draws up proposals for the future SDVC programme.

The review comes at the same time as an announcement by the Home Secretary to provide new funding to tackle domestic and sexual violence:

- ◆ £50,000 for Relate to equip 300 counsellors to respond effectively when victims of domestic violence come forward.
- ◆ £760,000 to continue funding the 38 Independent Sexual Violence Advisors being piloted across the country.
- ◆ £75,000 for Rape Crisis England and Wales.
- ◆ £75,000 for the Survivor's Trust.

A pledge has also been made by the Home Secretary that Section 9 of the Domestic Violence, Crime and Victims Act 2004 (putting the establishment and conduct of Domestic Homicide Reviews on a statutory footing) will come into force in the summer.

The review can be found in full at

<http://www.crimereduction.homeoffice.gov.uk/dv/dv018a.pdf>

Deciding the Age and Identity of Unaccompanied Minors

On 8 February 2008, the Court of Appeal made a decision in the case London Borough of Lambeth v. TK & KK which has wide implications for many vulnerable children who enter the UK every year, many of whom are unaccompanied, lacking formal identification, may have been trafficked, and are ultimately reliant on local authorities to assist them.

The issue in the case brought by the Children's Legal Centre on behalf of the child K against the London Borough of Lambeth, revolved around K who had

arrived in the UK alone from Uganda, asserting a specific identity and claiming to be 14 years old. Following a breakdown in the arrangements with her carers, she sought care from a London Borough. The Local Authority determined that K was neither the person nor the age she claimed to be. In their view she was an adult, and ineligible for their assistance.

The Court of Appeal was asked to decide whether a local authority could have the final say on the matter of a young person's age and identity; or if such a decision should ultimately rest with the Court.

The court held that a local authority does not have the final say on the matter of a young person's age and identity, and that such a decision should ultimately rest with the court.

National Ballistics Intelligence Service Launched

A new National Ballistics Intelligence Service (NABIS) has been launched. The £8 million project aims to help the police catch criminals quicker by using a state of the art national database to identify weapons and link gun crime incidents. The service will be jointly funded by the Home Office and ACPO and will include:

- ◆ A registry of all guns and ammunition recovered by Police in England and Wales.
- ◆ Ballistics comparison capability to link many crimes within 24 hours.
- ◆ Intelligence data on suspects, weapons, crime scenes and incidents.

Roll out of the service will begin in April from hubs in Birmingham, London and Manchester. It is anticipated that the service will be fully operational by September.

Further information can be found at <http://www.west-midlands.police.uk/ballistics/index-temp.asp>

Improved CPS Performance

A report published by HM CPS Inspectorate has indicated improved performance by the CPS. The Overall Performance Assessment, which was last done in 2005, looked at 13 key aspects of work in the 42 CPS areas. Some of the areas include pre-charge decision making, ensuring successful outcomes in Magistrates' and Crown Courts, service to victims and witnesses, sensitive cases and hate crime and securing community confidence.

The report rates each aspect of work as either 'excellent', 'good', 'fair' or 'poor'. It points out that the number of CPS areas with an 'excellent' rating has increased.

- ◆ Five areas were rated 'excellent' - Humberside, Lincolnshire, Norfolk, South Yorkshire, Warwickshire.
- ◆ Fifteen areas were assessed as 'good'.
- ◆ Two areas were rated as 'poor'.

The CPS aims to continue with improved performance and ultimately aims to raise the standard of all its areas of work to 'good' or 'excellent'.

CPS Policy on Sexual Transmission of Infection

The CPS has published a public policy statement and guidance to prosecutors to explain how it deals with cases involving the intentional or reckless sexual transmission of infection. It is hoped that the guidance will lead to consistent decision making and clarity.

In developing the guidance, the CPS have consulted with clinicians, charities and community groups.

The policy statement covers:

- ◆ The Code for Crown Prosecutors and how it is applied in all cases;
- ◆ The offences that the CPS will consider in relation to cases of the intentional or reckless sexual transmission of infection and what the CPS needs to prove;
- ◆ The application of the public interest in such cases; and
- ◆ Witness and victim care issues.

The Guidance applies to all infections which may be passed through sexual contact. To date, there have been ten convictions in England and Wales under Section 20 of the Offences Against the Person Act 1861 (OAPA), all based on the reckless transmission of HIV.

Copies of the Policy and the Guidance can be found at http://www.cps.gov.uk/news/pressreleases/119_08.html

Sentencing Guidelines for Violent Offenders

The Sentencing Guidelines Council has published guidelines which state that violent offenders who carry weapons to the scene of a crime and then use them on victims should face severe sentences.

Use of a weapon will usually increase the seriousness of an offence and therefore the guidelines extend the higher level of culpability to those carrying a weapon to the scene with the intention of using it or to having it available for use. In particular the guidelines propose that sentences for offenders who inflict particularly grave injuries should be in the range of 10 and 16 years imprisonment.

The guidelines set out a series of factors which should be taken to specifically aggravate assaults and therefore should result in a higher sentence. These include:

- ◆ Offenders operating in gangs or groups.
- ◆ The deliberate targeting of vulnerable victims or choosing isolated places for carrying out the attack.

- ◆ Attacks on victims working in the public sector or providing a service to the public.
- ◆ 'Happy slapping' which will be even more serious where the attack is published on the internet.
- ◆ Offenders who inflict injury as a result of a planned honour killing or attempt to force someone into an arranged marriage.

The guidelines also provide advice to sentencers dealing with cases of assault with intent to resist arrest and assaults on police officers in the execution of their duty.

A definitive guideline on sentencing in cases of attempted murder will be issued at a later date due to issues identified at an earlier consultation stage to these guidelines.

The definitive guideline is available on the SGC website at <http://www.sentencing-guidelines.gov.uk>

Sentencing Guidelines for Assaults on Children

The Sentencing Guidelines Council has published guidelines which relate to assaults on children and the offence of cruelty to a child.

The guideline states that where the victim is a child and the offender an adult, custody will normally result, particularly where the offence involves an abuse of trust. It goes on to say however that where an offender only intended to administer lawful chastisement and a relatively minor injury resulted that was neither foreseen nor intended, then custody will not normally be appropriate.

The guideline explains that 'although the defendant would have intended nothing more than lawful chastisement, as currently allowed by the law, he or she would have had no defence to such a charge because an assault occasioning actual bodily harm does not require the offender to intend or even foresee that the act will result in any physical harm; it is sufficient that it did.'

Child cruelty cases will normally result in a custodial sentence but sentencers will also have to take into account any available information regarding the future care of the child such as where the imprisonment of the offender deprives the child of his or her sole carer and the impact this will have on the victim if they then have to go into care.

The definitive guideline is available on the SGC website at <http://www.sentencing-guidelines.gov.uk>

Consultation Guideline for Theft and Burglary (Non-Dwelling) Offences

The Sentencing Guidelines Council has released a consultation guideline which covers five areas:

- ◆ Theft in breach of trust.
- ◆ Theft from the person.
- ◆ Theft in a dwelling.
- ◆ Theft from a shop.
- ◆ Burglary in a building other than a home.

The proposals state factors which may make higher custodial sentences more appropriate. These include:

- ◆ Those who target elderly victims and steal from them in the street or in their homes.
- ◆ Where the thief steals items worth more than £2,000 or the property is of a high sentimental value.
- ◆ Members of organised shoplifting gangs who intimidate their victims or use or threaten force.
- ◆ Shoplifters who steal from small independent retailers, are already subject to a banning order or involve a child carrying out the offence.
- ◆ In relation to burglary (non-dwelling) targeting vulnerable community premises such as schools, places of worship and doctors' surgeries may result in a higher than usual degree of harm in terms of inconvenience caused.

At the other end of the scale the Council recognises that fines should be the starting point for the first time opportunist thief who steals on impulse.

The consultation recognises the fact that theft from a shop is the category of theft most commonly before the courts and which amounts to a substantial amount of magistrates' workloads. Clear messages are therefore being sent out that offenders will receive higher penalties in either community or custodial sentences.

The consultation closes on 23 May 2008 and the guideline is available on the SGC website at <http://www.sentencing-guidelines.gov.uk>

Rape Medical Examinations by the NHS

Amid concerns that in some parts of the country, inadequate services are contributing to the low conviction rate for rape, proposals have been made which may potentially take the responsibility of medical examinations of rape victims away from the police and hand it instead to the NHS.

A working party of police, civil servants, doctors and nurses, set up by the Department of Health, is expected to report in the summer and recommend the creation of regional centres of excellence run by the health service.

These centres, supported by a network of local referral centres, would be responsible for the medical examination of rape victims. Highly-qualified doctors and nurses would provide forensic examinations, the morning after pill, testing for sexually transmitted diseases and psychological support and aftercare.

At present most sexual assault services are funded by police forces and also provided by the force or contracted out to private companies. The new proposal would mean forces purchasing the specially trained services of doctors and nurses from the NHS.

Some of the disparities of rape services around the UK hope to be alleviated by the new model. Problems identified include the following:

- ◆ A lack of consistency with some areas providing 24/7 holistic victim care in specialist sexual assault referral centres (Sarcs) whilst other areas outsourcing services to private companies and others carrying out forensic examination in victim examination suites on police premises.
- ◆ Private companies given contracts for only three to five years, giving doctors no job security, career progression and little scope to acquire specialist training.
- ◆ Many rape examinations are carried out as a sideline by doctors contracted to treat suspects in police cells.
- ◆ Some doctors are recruited abroad for fixed term contracts and may have returned home by the time the case comes to court.

The move is backed by the police and doctors in the field despite concerns of a shortage of specially trained doctors willing to do the work. The working party believe that sexual assault is a health issue first and foremost rather than a criminal justice issue. The hours after a victim comes forward are crucial for the victim's welfare and the outcome of the case and therefore by shifting the focus to the early investigation process in a non-police environment, the reporting rate may well increase and with it the conviction rate.

European Court on Human Rights to Decide on the Destruction of DNA and Fingerprint Evidence

The European Court of Human Rights is to make a ruling on the decision to continue storing fingerprints and DNA samples taken from applicants after unsuccessful criminal proceedings against them were closed.

A hearing was held in the Grand Chamber on 27 February to decide the case of S. and Michael Marper v. the United Kingdom. The background to the case is as follows:

- ◆ In 2001 S was arrested and charged with attempted robbery. His fingerprints and DNA samples were taken. He was later acquitted.

- ◆ Mr Marper was also arrested in 2001 and charged with harassing his partner. His fingerprints and DNA samples were also taken. The charges were dropped following reconciliation with his partner and the case against him was discontinued.

In this case both applicants requested that their fingerprints and DNA samples be destroyed. These requests were rejected and after their appeal was thrown out by the House of Lords, they took it to the European Court on Human Rights. Both applicants stated that the retention breached their Article 8 ECHR rights (right to respect for private and family life) and Article 14 ECHR rights (prohibition of discrimination). The concerns they raise include:

- ◆ Their fingerprints and DNA samples are being used in ongoing criminal investigations.
- ◆ Worries about possible future uses of those samples.
- ◆ Retention of fingerprints and DNA samples casts suspicion of people who have been acquitted or discharged or crimes.
- ◆ People without convictions who are no longer suspected criminals should be treated in the same way as the rest of the unconvicted population of the United Kingdom.

The deliberations of the Court will be held in private and the judgement will be delivered at a later date.

Review of Criminality Information - Part 2

The second part of the Independent Review of Criminality Information, as covered in the October 2007 *Digest* has now begun. This part of the review will make recommendations to improve the safety of the public and increase the efficiency of the public protection system. It will focus on five areas:

- ◆ There should be, at strategic level, a clear and agreed understanding of the public protection system and the information needed to support it.
- ◆ There should be clear governance and accountabilities from improving information flows.
- ◆ There should be clear leadership messages about the strategic importance of information quality, security and sharing, backed up with clear processes and guidance, creating a positive culture for sharing criminality information appropriately.
- ◆ There should be a focus on risk management and on effective use of resources, which necessarily goes beyond organisational accountabilities.
- ◆ Suitable technology should be deployed effectively to support information flows, in line with best practice.

The review team are once again interested in any views and can be contacted by going to

<http://police.homeoffice.gov.uk/operational-policing/review-criminality-information/?version=2>

Review of the Forum for Preventing Deaths in Custody

The review of the Forum for Preventing Deaths in Custody has been published. The review, conducted by Robert Fulton, was commissioned to look at the role and functions of the Forum for Preventing Deaths in Custody and to recommend how these might be strengthened. The following recommendations were made:

- ◆ A Ministerial Board on Deaths in Custody should replace the Ministerial Roundtable on Suicide in Prisons. The Board should have senior representation from all the organisations which hold people in custody or which are otherwise concerned with the issue.
- ◆ The Forum on Preventing Deaths in Custody should be replaced by an Independent Advisory Panel on Deaths in Custody. This should be a small group, selected for relevant expertise, and whose members would not be representatives of government departments or operational services.
- ◆ The Independent Advisory Panel should be supported by a Stakeholder and Practitioner Group, whose membership would include many of the members of the existing Forum.
- ◆ The Panel and the Stakeholder and Practitioner Group should be serviced by a secretariat which would also act (jointly with the Ministry of Justice) as secretariat to the Ministerial Board.
- ◆ The secretariat should have a staff and budget which will enable it to act as an effective central point for learning and communication about means of preventing deaths in custody.
- ◆ The cost of these arrangements should be shared between the Ministry of Justice, Department of Health and Home Office.
- ◆ There should be a further review in three years time, after which the continuation of the arrangements would depend on how far they had in practice been instrumental in reducing the number and rate of deaths in custody.

The Review is available in full at
[http://www.preventingcustodydeaths.org.uk/
fulton_review_of_forum_for_preventing_deaths_in_custody.pdf](http://www.preventingcustodydeaths.org.uk/fulton_review_of_forum_for_preventing_deaths_in_custody.pdf)

National Fraud Lead Force

It has been announced that a new National Fraud Lead Force will be established to deliver central functions and strengthen the support available to all forces in England and Wales and will provide:

- ◆ Specialist training for public/private sector investigators.
- ◆ Best practice.
- ◆ Prevention advice.
- ◆ Advice on complex enquiries in other regions.
- ◆ Assistance with, or even direction on, complex investigations.

It will be based around the City of London Police's Fraud Squad as they have specialist expertise in dealing with economic crime and are a centre of excellence for fraud investigations.

ACPO (2008) Practice Advice on Evidence of Bad Character

The second edition of the ACPO (2008) Practice Advice on Evidence of Bad Character has been produced by the Professional Practice Unit of the National Policing Improvement Agency (NPIA) on behalf of the Association of Chief Police Officers (ACPO) and published on the police genesis extranet site.

Since it was first published in March 2005 a considerable body of case law has developed on the subject of bad character evidence which is now included in this revised document. It also provides guidance on case management issues and file preparation in readiness for submission to the CPS.

ACPO Strategy on the Prevention of Terrorism and Violent Extremism

ACPO have announced a new strategy to prevent terrorist extremist recruitment. The strategy, which is primarily aimed at preventing al Qaida recruiting fresh supporters, is detailed in a 40 page document (yet to be published). The strategy:

- ◆ Aims to stop extremist ideas gaining hold in schools, colleges, prisons and over the internet.
- ◆ Provides advice for parents on how to stop their children searching for jihadist websites.
- ◆ Outlines details of an anti-extremist agenda to be included at every level of state-maintained education from primary school to university by 2008-2009.
- ◆ Aims to develop relationships between the police and the education sector at every level to prevent violent extremism.

- ◆ Neighbourhood profiling to establish what is normal and what is unusual behaviour.

IPCC Report of Near Misses in Police Custody

A report entitled 'Near Misses in Police Custody: a collaborative study with Forensic Medical Examiners in London' has been published by the IPCC. The report, which was produced in collaboration with forensic physicians working within the Metropolitan Police Service, looked at incidents which resulted in or could have resulted in serious illness or self harm of those held in police custody between May 2005 and April 2006 and calculates the number of 'near misses' across England and Wales.

The report indicates that within the Metropolitan Police Service there were 121 near misses. In 50 of these cases forensic physicians felt that if the incident had not been responded to, death was very likely or fairly likely. Detainees had to be resuscitated in the custody suite in 10% of these cases and 59 detainees were taken to hospital as a result of the incident. On the basis of this information the report estimates there are around 1000 near misses in police custody in England and Wales every year, 400 of which were likely to lead to death without prompt investigation by custody and medical staff.

The study found that the most common incidents involved attempted suicide, drugs consumption or possession, alcohol consumptions and medical conditions. The greatest risk period appeared to be the 12 hour period between 7pm and 7am, with the greatest number of incidents being reported on Wednesdays and Thursdays.

Forensic physicians involved in the study found that several factors had a negative impact on the incident:

- ◆ Searching (in 28% of incidents) - for example items not removed from the detainee or a cell played a central role in a near miss.
- ◆ Custody staff levels (in 15% of incidents) - for example low numbers of custody personnel and high volumes of detainees may have played a part in the incidents occurring.
- ◆ Checking/rousing (in 11% of incidents) - for example custody staff not following the requirements set out in PACE 1984.

However the report did point out that the ability of staff to monitor detainees and follow procedures correctly contributed to near misses being identified and managed.

The report concludes by making 11 recommendations to the police service to help reduce deaths and near misses in police custody.

Recommendation 1

For those responsible for custody policy in police forces to consider whether custody staff are fully aware, or need to be reminded via guidance and training about the appropriate responses to drug swallowing and severe intoxication. Likewise the message needs to be reinforced that apparent symptoms of

intoxication may in fact be the result of an injury or medical condition, and that intoxication may mask or be found in conjunction with serious health needs.

Recommendation 2

For police forces to consider whether Custody Officers have been provided with sufficient guidance on the management of those detainees who are either unwilling or not able to participate in a risk assessment.

Recommendation 3

For police forces and health service providers to ensure that Custody Officers and Forensic Medical Examiners are provided with a record of treatment for detainees returning from hospital. This may require discussion between the two organisations about the best way to communicate any treatment information, and if a method exists already, to ensure that hospital staff are aware of their role in this practice.

Recommendation 4

For police forces to ensure that Custody Officers are aware of the importance of checking cells when they are vacated and the need to remove items which could be used to self-harm by later occupants.

Recommendation 5

For police forces to ensure that Custody Officers have ready access to ligature knives.

Recommendation 6

For police forces to ensure that Custody Officers are aware of the requirements for the monitoring and observation of detainees as outlined in PACE Code C and national guidance on 'The Safer Detention & Handling of Persons in Police Custody'.

Recommendation 7

For police forces to ensure that Custody Officers are clear that 'rousing', as outlined in PACE Code C, means eliciting a verbal or physical response from the detainee.

Recommendation 8

For Forensic Medical Examiners to be aware of the danger of detainees stealing medication during consultations and to take precautions to avoid this occurring.

Recommendation 9

For those responsible for managing custody suites to consider whether the flow of detainees at peak times compromises custody staff's ability to follow PACE Code C and to plan appropriately for such occasions.

Recommendation 10

For police forces to ensure that Custody Officers, as part of their training, gain sufficient awareness of the symptoms of key conditions, involving substance misuse and health conditions, to be able to conduct robust risk assessments.

Recommendation 11

For police forces to consider developing ways in which near misses in custody can be reported to those with responsibility for managing custody policy and procedures.

For further information on the report see http://www.ipcc.gov.uk/news/pr_120308.htm

Guidance for Police on Tackling Mortgage Fraud

A restricted ACPO Intelligence report has been sent to the financial industry and police forces highlighting the nature of mortgage fraud. The report, which follows an increase in reported mortgage fraud during 2007, aims to raise awareness of the problem and provide guidance on how to investigate and tackle it.

The report is based on evidence taken from, amongst others, 47 Police forces, 45 mortgage providers, the Serious Organised Crime Agency, Serious Fraud Office and the Financial Services Authority, and highlights the following conclusions:

- ◆ There is currently a low risk of detection and high profit opportunities in mortgage fraud.
- ◆ It generates significant income for organised crime groups.
- ◆ Property sales can be used to launder the proceeds of other crime, including drug supply, human trafficking and prostitution.
- ◆ Mortgage fraud has implications for society in the form of a transfer of asset wealth from the legitimate to the criminal sector.

The report gives examples of the various forms that organised mortgage fraud takes:

- ◆ Overvaluation of 'new build' residential properties.
- ◆ False valuations by corrupt surveyors which result in higher loans to asset ratio and quick illegal profit.
- ◆ Bogus applications predicated on false identity documents.
- ◆ Applications supported by false income documentation.
- ◆ Conveyancing professionals assisting organised criminal groups to secure mortgages illegally.
- ◆ Commercial property values being significantly inflated by the use of fraudulent lease contracts.

As part of its guidance on how to identify and investigate organised mortgage fraud, the report identifies key features of mortgage fraud:

- ◆ It is concentrated in pockets around the UK, with London being the main areas (46% of cases).

- ◆ It is generally committed by men in their mid to late 30's from a range of social backgrounds.
- ◆ Organised crime groups associated with mortgage fraud are often grouped along ethnic lines depending on their geographical location.

Key recommendations for tackling the problem of mortgage fraud made in the report include:

- ◆ Organised mortgage fraud should be considered as a higher priority within future Home Office Policing Plans.
- ◆ Effective intelligence led initiatives by governing/regulatory bodies, mortgage providers and law enforcement are needed to reduce the threat of organised mortgage fraud.
- ◆ Nationally agreed measurement indicators need to be developed to assess the value and volume of mortgage fraud crime.
- ◆ The establishment of an automated, online, system of checking all mortgage applications against official records including passports, driving licences, National Insurance numbers, declared income and benefits data.
- ◆ The creation of a multi-agency Mortgage Fraud Bureau to analyse trends and supported targeted investigation.
- ◆ The creation of a National Mortgage Fraud Intelligence Database under the control of a single law enforcement agency.
- ◆ Provide regular updates to the mortgage industry and law enforcement agencies regarding current typologies, fraud indicators, geographic 'hotspots' and information on organised mortgage fraudsters.
- ◆ Clear and direct action to be taken by governing/regulatory bodies against property professionals involved in mortgage fraud.
- ◆ Mortgage industry to produce best practice guidance for lenders regarding the identification and prevention of organised mortgage fraud.
- ◆ Consideration by the Financial Services Authority of central registration and regulation of individual mortgage intermediaries.
- ◆ Advice leaflets for customers regarding the mortgage process, helping them to understand the market and recognise warning signs of fraud.

Guidance on the Police Strategic Management of CBRN Events

Restricted guidance setting out the strategic roles, responsibilities and considerations that need to be taken into account in order to enable the police service to respond effectively to any CBRN terrorism threat or event has been published and is available via the police Genesis extranet site.

Police Federation Poll on Police Officers Industrial Rights

The Police Federation of England and Wales is to launch a survey poll of its 140,000 members as to whether police officers want industrial rights.

The poll, which will be undertaken by independent research company Ipsos MORI will ask:

- ◆ Do you think the decision of the independent Police Arbitration Tribunal should be binding on the government?
- ◆ In the absence of binding arbitration on the Government, do you wish the Police Federation of England and Wales to start to lobby for a change in legislation to allow police officers full industrial rights?

Police Federation members will be able to access the online survey via the Police Federation website from 24 March until 25 April. Local Federation Branch Boards will also have paper questionnaires for officers who wish to complete the poll in this alternative way.

It is expected that the results will be made available at the Police Federation annual conference in Bournemouth in May.

The police Federation website can be found at <http://www.polfed.org>.

Allegations of Rape Protocol Between the Police and Crown Prosecution Service

A model protocol designed to improve the investigation and prosecution of rape cases throughout England and Wales, has been signed by the Crown Prosecution Service (CPS) and the Association of Chief Police Officers (ACPO).

The protocol is intended to:

- ◆ Reflect national ACPO and CPS policy.
- ◆ Ensure the adoption of the recommendations of Without Consent, the 2007 report on the joint review of the investigation and prosecution of rape offences.
- ◆ Achieve improved and consistent performance in the investigation and prosecution of rape.
- ◆ Improve the service to, and increase confidence in the Criminal Justice System for, victims of rape.

Although the protocol is not mandatory on police forces and the CPS, Chief Officers of Police and Chief Crown Prosecutors are being encouraged to adopt the protocol.

The protocol sets out how cases will be handled from first response, through the investigation, including forensic examinations, early consultation with the CPS, charging, case preparation, dealing with victims and witnesses, to the trial and sharing any lessons to be learned at the end of the case.

Some of the main points from the protocol include:

- ◆ The Police will appoint a Rape Champion and the CPS will appoint an Area Rape Coordinator who will ensure that the investigation and prosecution of rape is coordinated between the agencies.
- ◆ Police will ensure that first response officers responding to reports of rape are sufficiently trained to present a supportive attitude to the victim.
- ◆ Investigative teams will include a Specially Trained Officer (STO), trained in sexual offence investigation techniques.
- ◆ The police will not make an automatic decision to visually record interviews with complainants. Decisions will be taken on a case by case basis following receipt of the witness's views which should be obtained following a full explanation of the available options to include the advantages and disadvantages of pre-recorded evidence.
- ◆ The police will not make an automatic decision to visually record interviews with complainants. Decisions will be taken on a case by case basis following receipt of the witness's views which should be obtained following a full explanation of the available options to include the advantages and disadvantages of pre-recorded evidence.
- ◆ The police will consult with the witness and obtain their views which will be passed to the CPS to inform any special measures application.
- ◆ The medical examination of the victim should be carried out by an appropriately trained Forensic Physician (FP), Forensic Nurse (FN) or paediatrician. Where practicable the wishes of the victim will be taken into account and adhered to in terms of the gender and or ethnicity of the FP or FN.
- ◆ Where an expert opinion is sought the Police will, as soon as is reasonably practicable, provide the FP with all prosecution evidence including the suspect's initial account, and with the defence statement when received.
- ◆ The CPS will always include the FP in the conference with the prosecutor, trial advocate and the investigating officer (IO) unless there are particular reasons for not doing so.
- ◆ CPS will maintain a list of rape specialist prosecutors (rape specialists). The CPS will ensure that rape cases are allocated to a rape specialist who will advise and have responsibility for rape cases from the pre-charge stage to the end of the case.
- ◆ CPS will undertake regular monitoring of counsel who prosecute rape cases in accordance with the principles agreed with the Bar Council.
- ◆ CPS will remind advocates to provide a written report in any case involving an allegation of rape which results in an acquittal. Such reports will be copied to the Police.
- ◆ Feedback about good practice and aspects for improvement will be shared with the police through regular meetings between the Police Rape Champion and CPS Area Rape Coordinator.

- ◆ Feedback meetings should also address: Rate of no criming; Rate of sanction detections; Rate of withdrawal between charge and court; Number of prosecutions; Rate of discontinuance; Rate of rape trials resulting in a conviction.

The model protocol can be found in full at
http://www.cps.gov.uk/publications/agencies/rape_protocol.html#02

Police Overtime May be a Thing of the Past

A Police Federation Conference has heard that the police overtime budget is under discussion by the Government. Police Minister, Tony McNulty and Shadow Police Reform Minister David Ruffley attended the meeting where it was said that the government has estimated the police overtime budget to be worth around £250 million a year and that there is a proposition that overtime may be bought out and replaced with a higher basic salary.

With the pending Judicial Review of the police pay rise dispute due in April and a report earlier this year from the Institute for Public Policy Research which said that pay rises should be performance related rather than based on length of service, the office of constable is still in constant dispute.

Impact of Legal Aid Reforms on Custody Suite Procedures - Update

January's *Digest* covered the changes to custody suite procedures regarding the information to be provided to detainees and the contacting of solicitors through the Defence Solicitor Call Centre (DSCC).

The January *Digest* stated that police were required to inquire whether a suspect wished to pay for legal advice. Since publication, the proposals were changed prior to implementation.

The new procedure, effective from 17 January, requires that the police are only to ask a suspect 'Do you want legal advice?', and if yes, 'Do you want a named solicitor?' The suspect is not to be asked whether they wish to pay for legal advice.

All requests for legal advice are then to be passed to the DSCC, who will either refer the case to CDS Direct or will contact the named solicitor. If the named solicitor cannot be contacted, the call will be passed to the duty solicitor.

As of 1 February 2008, the CDS Direct service was expanded to provide telephone advice for less serious offences where a person requests a named solicitor. This expansion is currently being piloted in the police areas of Greater Manchester, West Midlands and West Yorkshire, with national implementation on 21 April 2008. The changes to PACE Code C which take account of this expansion took effect on 1 February 2008.

Increased Speed Limit during Hard Shoulder Running on M42 Goes Ahead

The Highways Agency announced on 18 March 2008 that from that date motorists will be allowed to drive at up to 60mph on the hard shoulder of a section of the M42.

The move follows a detailed safety study which showed that there would be no significant reduction in road safety levels. The pilot scheme was proclaimed a success in October 2007 with average journey times falling by more than a quarter on the northbound carriageway.

The Government proposed other sites where the congestion busting techniques could be used in the future in a report published on 4 March. These included stretches of the M1, M6 and M62.

More information about Active Traffic Management or the Highways Agency can be found at <http://www.highways.gov.uk>

Regulation of Bailiffs

The Ministry of Justice has announced plans to protect householders from unscrupulous Bailiffs in England and Wales.

The new measures will:

- ◆ Require more training for bailiffs to help prevent cowboy practices.
- ◆ Set qualifications to promote consistency and raise standards.
- ◆ Create a powerful independent regulator.

Regulation of bailiffs is needed to protect householders from some in the industry who use threats, bullying and intimidation in disputes over debts and fines. The rules will ensure that only licensed agents are able to enter property and that they know their legal limits.

The plans have been announced in response to the consultation paper 'Regulation of Enforcement Agents' which recommends that bailiffs in England and Wales should be regulated by one body, the Security Industry Authority (SIA). The document also recommends that there is a common system of standards across the enforcement industry necessary to regulate Crown employees.

Enforcement agent powers are covered by the Tribunals, Courts and Enforcement Act 2007. Extended powers of entry will not be brought into force until the statutory regulation of the industry is in place.

More information may be found on the Ministry of Justice website at <http://www.justice.gov.uk>

Study into Profile of Internet Sex Offenders

A new study has been published by the American Psychological Association entitled 'Online Predators and Their Victims; Myths, Realities, and Implications for Prevention and Treatment'. The study, written by researchers from the UNH Crimes Against Children Research Centre analyses the stereotype of internet sex offenders.

The study was based on:

- ◆ Telephone interviews of 3,000 internet users between the ages of 10 and 17 in 2000 and 2005.
- ◆ 612 interviews with federal, state and local law enforcement officials in the USA.

Its findings conclude that contrary to common opinion, most internet sex offenders are not adults who target young children by posing as another youth, highlighting that internet offenders pretended to be teenagers in only 5% of the crimes studied by the researchers. Instead they are young adults who target teens and seduce victims into sexual relationships. Those most at risk were found to be youths with histories of sexual or physical abuse, family problems and tendencies to take risks both on and offline.

The researchers found that adolescents' use of networking sites, such as My Space and Facebook did not appear to increase their risk of being victimized and efforts being made discouraging children from giving out personal details online may not be effective.

More details about the study and its findings can be found at <http://www.unh.edu/ccrc/>

Two Road Safety Reports Show Black Children More Likely to be Injured on Roads

Two road safety reports were published on 17 March by Transport for London (TfL). They explore the relationship between deprivation, ethnicity and road safety.

The reports have shown that casualty rates for black child pedestrians are still significantly higher than those for white children by as much as one and a half times. This is despite findings that show that the situation regarding road accidents involving London's Black Minority and Ethnic communities has improved greatly since 2000.

According to the new research there still appears to be evidence of a strong link between deprivation and child injury rates which differs between ethnic groups, the causes of which are not quite clear.

Transport for London are funding a number of pilot projects that work directly with local communities to find out more and are spending a record £49m in tackling road safety issues. Projects include, drop in safety advice centres,

teaming up with Parent Teacher Associations and road safety training activities such as pedestrian skills and cycle training.

The two reports can be viewed at

<http://www.tfl.gov.uk/corporate/projectsandschemes/roadsandpublicspaces/2840.aspx>

Calls for Changes to Press Reporting of Rape Cases

The Lilith Project's 'Just Representations? Press Reporting and the Reality of Rape' study, funded by the Home Office, calls for fundamental changes in the way rapes are reported by the press.

The study identifies that the press coverage of rape cases is highly selective and sensational. It identifies a press "construct" of rape as an outdoor crime committed by monstrous deviants and highlights that this construct contradicts all research and crime statistics. It concludes that this reporting has distorted public perceptions of rape, to the extent that juries are no longer able to recognise the more typical rape case when presented with it at a trial.

The study makes recommendations on how to tackle this to central government, editors, newspapers and the press industry, the Press Complaints Commission, the women's sector and journalists.

Information on the Lilith Project can be found at

http://www.eaves4women.co.uk/Lilith_Project/Lilith_Project.php

Case Law



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Confiscation Orders - Power to Fix Time for Payment

MIRIAM ESCOBAR v DIRECTOR OF PUBLIC PROSECUTIONS (2008)

DC (Maurice Kay LJ, Walker J) 6/3/2008

Criminal Procedure

Certificates Of Inadequacy: Committal For Default: Confiscation Orders: Controlling Prostitutes: Variation: Power To Fix Time For Payment When Making Order Under S.83 Criminal Justice Act 1988: Criminal Justice Act 1988: S.83 Criminal Justice Act 1988: S.75(1) Criminal Justice Act 1988: S.139 Powers Of Criminal Courts (Sentencing) Act 2000: Pt Iv Criminal Justice Act 1988: S.75(2) Criminal Justice Act 1988: S.75(3) Criminal Justice Act 1988

[When making an order under the Criminal Justice Act 1988 s.83 for the reduction of the sum payable under a confiscation order, the Crown Court had the power under s.75\(1\) of the Act to fix a time for payment.](#)

The appellant (M) appealed by way of case stated from a decision that an order varying the date for payment of a confiscation order was invalid. M had pleaded guilty to offences of controlling prostitution. A confiscation order was made under the Criminal Justice Act 1988 to be paid by October 2003. Following a certificate of inadequacy, the judge made an order in March 2007 under s.83 of the 1988 Act reducing the amount of the confiscation order and requiring that it be paid by March 2008. However in April 2007 the judge modified the March 2007 order by removing the provision identifying March 2008 as the date for payment and concluded that he did not have power, when varying a confiscation order under s.83, to fix a time for payment. The April 2007 order accordingly contained a note stating that the date for payment remained October 2003 in accordance with the original order. M submitted that a power to grant further time was conferred on the Crown Court by the combined effect of s.75(1) of the 1988 Act and the Powers of Criminal Courts (Sentencing) Act 2000 s.139. The DPP contended that in s.75(1) of the 1988 Act the expression "orders the defendant to pay" had application to the occasion when a confiscation order was originally made, but did not apply to an occasion when the court "substituted for the amount to be recovered under the order" a lesser amount under s.83(4).

HELD

- (1) Section 75(1) had effect in relation to an order under s.83 and the judge ought not to have varied the March 2007 order. Section 75, when read as a whole, was generally concerned to make provision for orders made under s.83 as well as those under other provisions in Part IV of the 1988 Act. It would be absurd if s.75(2) and s.75(3) of the 1988 Act were read as excluding orders made under s.83. The words used in those subsections identifying when they came into play were identical or almost identical to those used in s.75(1). It was consistent with the natural and grammatical meaning of the relevant provisions that s.75(1) operated in relation to an order under s.83.
- (2) The conclusion that s.75(1) operated in relation to an order under s.83 also removed a potential for injustice if the contrary position advanced by the DPP were to apply. Where realisable assets were identified which a defendant acquired after the original order was made or could not reasonably be expected to have realised earlier, and even so that defendant did not have sufficient realisable assets to pay the amount of the original order, it would be manifestly unjust if the statute were to require, without any scope for judicial discretion, that interest must be paid from the date for payment fixed under the original order. Time to pay was intended as an incentive to realise assets and make payments before the deadline. The April 2007 order was only made because the judge was persuaded that he did not have jurisdiction to grant time to pay. The judge did have that jurisdiction and the April 2007 order was therefore quashed, leaving the March 2007 order in full force and effect.

APPEAL ALLOWED



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Legitimate Expectation of Final Warning Rather Than Prosecution

R (on the application of D) v COMMISSIONER FOR THE METROPOLITAN POLICE (2008)

QBD (Admin) (Maurice Kay LJ, Walker J) 14/2/2008

Criminal Procedure

Abuse Of Process: Aggravating Features: Criminal Charges: Criminal Damage: Legitimate Expectation: Reprimands And Warnings: Young Offenders: Application Of Final Warning Scheme: Legitimate Expectation Of Final Warning Rather Than Prosecution: S.66 Crime And Disorder Act 1998

The police commissioner and the CPS had been entitled to prosecute two youths for the offence of criminal damage, and the CPS had not, on the evidence, made a representation giving rise to a legitimate expectation on the youths' part that the matter would be dealt with by way of reprimand or final warning as opposed to prosecution.

The claimant youths (B and D) applied for judicial review of decisions of the first defendant police commissioner to charge them for the offence of criminal damage, of the second defendant CPS to continue with the prosecution, and of the third defendant magistrates to refuse to stay the proceedings as an abuse of process. B and D had been arrested together with two other youths for committing acts of criminal damage in respect of four cars. In accordance with guidance entitled "Final Warning Scheme" issued by the Secretary of State for the Home Department pursuant to the Crime and Disorder Act 1998 s.66, the appropriate gravity score for such an offence was 2 on a scale of 1 to 4, 4 being the most severe. A score of 2 normally required that the police issue a reprimand or final warning, but the relevant police officer (P) gave B and D's offence a score of 4 and brought charges. P, in a witness statement, said that he gave that score on the basis of existing aggravating features, namely that such crimes were prevalent in the area, that they had acted as a group, that on the estimation of another officer the value of the damage was high, and that the damage was caused deliberately and not recklessly. P subsequently conceded that the score should have been 3 rather than 4 but maintained that the public interest required prosecution of the case. The case was listed for a hearing and the Crown allegedly represented that the matter would be dealt with by way of final warning as opposed to prosecution. The matter was adjourned and by the time of the relisted hearing, the Crown made clear that it wished to continue with the prosecution. B and D accordingly applied to stay the proceedings as an abuse of process but the application was rejected. B and D submitted that (1) P and the CPS had misapplied the guidance and shown no rational basis for departing from it; (2) in the light of the evidence of representations made by the Crown that it would deal with the case by way of final warning, namely a note of a court clerk and the evidence of a barrister, they had a legitimate expectation that there would be no prosecution, and no reasonable magistrate could come to the conclusion that the case should not be stayed as an abuse of process.

HELD

- (1) It could not be said that the approach taken by the CPS was inappropriate and there was, therefore, no basis for the court to interfere with P's decision. It was true that P was in error when he upgraded the offence from a score of a 2 to a score of 4 as the guidance stated that the gravity score could only be upgraded by one point irrespective of the number of aggravating features present. However, that in itself did not mean that P's decision could not survive scrutiny. Since the decision of the CPS to continue with the prosecution was sustainable, P's decision to the same effect was justified, *R (on the application of A) v South Yorkshire Police* (2007) EWHC 1261 (Admin), (2007) 171 JP 465 applied. Further, it was reasonable for P to act on the information he had received from the other officer as to the value of the damage: he was not under a duty to defer his decision until further evidence had been adduced. P was also reasonable in his conclusions concerning intentional damage as opposed to reckless damage and the prevalence of such crimes in the area. Attempts to stifle the way in which police officers dealt with matters were to be deprecated.
- (2) It was axiomatic that to establish a legitimate expectation there needed to be a clear representation from which it would be unfair to resile. The evidence fell short of showing a clear representation by the Crown.

APPLICATION REFUSED



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R v BAKISH ALLA KHAN & ORS (2008)

**CA (Crim Div) (Lord Philips LCJ, Sir Igor Judge (President QB), Silber J)
14/3/2008**

Criminal Procedure

Bias: Crown Prosecution Service: Impartiality: Jurors: Police Officers: Prison Officers: Police And Prison Officers Serving On Juries: Criminal Justice Act 2003

The mere fact that jurors in separate trials had been serving police officers, prison officers at prisons at which defendants had been held, or members of the Crown Prosecution Service, did not render them biased to the prosecution case and therefore impartial.

The appellants in conjoined appeals appealed against their convictions on the ground that a member of each jury had, by reason of his occupation, an appearance of bias. The jurors, prior to the Criminal Justice Act 2003 would, because of their occupation, have been disqualified from being jurors. The first and second appellants (K and H) had been convicted of conspiracy to supply a Class A drug. During the trial a juror had informed the judge that he was a police dog handler and knew one of the police officer witnesses for the prosecution. The third appellant (L) had been convicted of causing grievous bodily harm with intent. He had admitted being at the scene of the assault but denied committing it. At the beginning of the trial a juror informed the judge that he was a police Detective Chief Inspector involved with drugs crimes working outside the area, and that he did not know any of the witnesses. The fourth appellant (MK), as a result of a prosecution by the Department of Trade and Industry, had been convicted of non-disclosure of property in his bankruptcy. A juror at his trial was employed by the CPS as a media officer. In each case the trial judge had rejected an application to discharge the juror. The fifth appellant (C) had been convicted of wounding with intent. The sixth appellant (HL) had been convicted of attempted murder. After conviction both had become aware that one of the jurors at their trials was a prison officer at a prison where each had been remanded before and during trial. K and H submitted that the fact that the juror was a police officer who knew one of the police officer witnesses meant that he would appear likely to favour the case of the prosecution, and if the judge had known that the juror had been involved in recent drug operations he was unlikely to have permitted the juror to remain on the jury. K also argued that the juror's involvement in drugs operations meant that he might have become aware of K's previous conviction for dealing heroin. L argued that the police juror should not have been allowed to sit on the jury because with his experience he would have drawn inferences from L's silence at interview; the fact that L had a previous conviction for assaulting a police officer meant that the juror would have been prejudiced against him; and, where there was a significant factual issue between L and a police witness, the juror would have been predisposed to accept the police witness's evidence. MK argued that the juror had in fact previously worked for the CPS for many years as a case officer and would have been involved in preparing prosecutions and therefore

had the appearance of bias. C and HL argued that there was a risk that the prison officers knew information detrimental to them.

HELD

- (1) The fact that a juror was a police officer would not, of itself, disqualify the juror for want of impartiality. The fact that a police juror might seem likely to favour the evidence of a fellow police officer would not, automatically, lead to the appearance that he favoured the prosecution, *R v Abdroikov (Nurlon)* (2007) UKHL 37, (2007) 1 WLR 2679 applied. If the police evidence was not challenged or did not form an important part of the prosecution case, it would not normally do so. The fact that a police officer had taken part in operations involving the type of offence with which a defendant was charged, did not give rise, of itself, to an appearance of bias on the part of the police officer. Most police officers were likely to have had experience of most of the common types of criminal offence, not least drug dealing. Familiarity with the particular offence charged against an offender would not lead the objective observer to suspect a police juror of bias. In K's case, if the juror had known anything about K's previous convictions he would have informed the judge. In any event, K's previous conviction was placed before the jury. In those circumstances, the allegation of jury bias made by K and H was not made out.
- (2) To the extent that the police juror had been better able to draw inferences, that was not capable of leading to unfairness. The factual issue was of little significance, as was any inclination that the police juror might have been thought to have to favour the police witness's evidence on the issue.
- (3) L had been prosecuted by the DTI, not the CPS, and there could be no objection to a member of the CPS being a juror in a case prosecuted by a different authority, *Abdroikov* applied.
- (4) Knowledge of a defendant's bad character did not automatically result in the juror ceasing to qualify as independent and impartial. The mere suspicion that a juror might, by reason of having been employed as a prison officer in a prison where the defendant was held, have acquired knowledge of that defendant's bad character could not, of itself, lead an objective observer to conclude that the juror had an appearance of bias. There was no evidence that the prison officers in C or HL's case had any such knowledge.
- (5) It was essential that a trial judge was aware at the stage of jury selection if any juror in waiting was, or had been, a police officer or a member of the prosecuting authority, or was a serving prison officer. Those called for jury service should be required to record on the appropriate form whether they fell into any of those categories, so that that information could be conveyed to the judge.

APPEALS DISMISSED



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Football Banning Orders - No Time Limit on Relevant Offences Relating to Football Matches

DIRECTOR OF PUBLIC PROSECUTIONS v (1) BARRY WADE BEAUMONT (2) JAMES MARK DOWLING (2008)

DC (Richards LJ, Swift J) 4/3/2008

Sentencing - Criminal Law

Football Banning Orders: Football Matches: Time Limits: Offence Related To Football Matches: S.5 Public Order Act 1986: S.14a Football Spectators Act 1989: S.14a(1) Football Spectators Act 1989: S.7(10) Football Spectators Act 1989: Sch.1 Para.1 Football Spectators Act 1989: S.1(8) Football Spectators Act 1989: Football Spectators Act 1989

[A relevant offence that justified the imposition of a football banning order pursuant to the Football Spectators Act 1989, namely an offence "related to football matches", did not have temporal limitation of being an offence that occurred within one hour of the end of a football match.](#)

The appellant Director of Public Prosecutions appealed against a decision of a Crown Court to quash football banning orders imposed on the respondents (R). R had pleaded guilty in a magistrates' court to offences under the Public Order Act 1986 s.5 in respect of their rowdy behaviour on a train whilst returning from watching a football match. The magistrates' court fined R and made each of them the subject of a three-year football banning order pursuant to the Football Spectators Act 1989 s.14A. R successfully appealed against the imposition of the orders to the Crown Court. The Crown Court found that, whilst R's behaviour would have amply justified the making of the orders, the magistrates' court had no power in the circumstances of the case to impose such orders. The Crown Court found that the magistrates' court was bound by s.14A(1) of the 1989 Act to make a banning order if the offence of which R were, respectively, convicted was a "relevant offence". The Crown Court found that a "relevant offence" was defined by s.7 (10) and Para.1 (k) of Sch.1 to the 1989 Act as being one "related to football matches". The Crown Court further found that "related to football matches" was to be given the same meaning as the phrase "relevant to" in s.1(8) of the 1989 Act, which provided that "relevant to" a football match meant a period ending one hour after a football match. The Crown Court held that there was insufficient evidence to show that the public order offences had occurred within an hour of the end of the football match that R had attended. The Crown Court, however, rejected a submission by R that the magistrates' court had failed to make a statutory declaration of relevance, namely a declaration that the offences "related to football matches". The DPP submitted that the Crown Court had misdirected itself as to the statutory interpretation to be given to the phrase "related to football matches". R contended that the Crown Court had erred in finding that the magistrates' court had made a declaration of relevance.

[HELD](#)

- (1) The phrase "related to football matches" in para.1(k) of Sch.1 to the 1989 Act did not have the same meaning in law as the phrase "relevant to" in s.1(8) of the Act. The 1989 Act did not define the phrase "related to football matches" and in the absence of a definition it was inappropriate to ascribe any meaning to that phrase other than its ordinary meaning and apply that meaning in a reasonable way in practice. Further it certainly could not be said that the phrase "related to football matches" had the temporal limitation that the Crown Court found, *R v Smith (Paul Roger)* (2003) EWCA Crim 2480, (2004) 1 Cr App R (S) 58 considered. Moreover to ascribe the same meaning to the two phrases in question would create a redundancy that would be contrary to Parliament's intent.
- (2) Any failure by the magistrates' court to state in terms that the offences were "related to football matches" was not fatal. Moreover it could properly be inferred that such a declaration had been made. Accordingly the magistrates' court had been entitled to impose the banning orders and it was appropriate to reinstate those orders.

APPEAL ALLOWED



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Effect of Breath Analysis Machine Error on Requirement to Provide Breath Specimens

ASIF HUSSAIN v DIRECTOR OF PUBLIC PROSECUTIONS (2008)

DC (Leveson LJ, Lloyd Jones J) 19/3/2008

Criminal Evidence - Road Traffic

Breath Samples: Breath Tests: Failure To Provide Specimen: Requirement To Provide Two Breath Specimens For Analysis: Effect Of Breath Analysis Machine Error: S.7(6) Road Traffic Act 1988: S.11(3) Road Traffic Act 1988

Where a motorist provided two breath specimens in two separate cycles of breath testing and the breath analysis machine registered an error after the provision of the second breath specimen in each cycle, the motorist had not provided two valid specimens of breath for the purposes of the Road Traffic Act 1988 s.11(3) and could be asked for further breath specimens until he has provided two valid specimens for analysis.

The appellant motorist (H) appealed by way of case stated against the decision of a district judge to convict him for failing to provide a specimen of breath. H had been required to produce a specimen of breath in relation to an offence of driving over the alcohol limit. He provided the first of two required specimens of breath in two separate cycles. However, in both cycles the breath analysis machine would not allow a second specimen to be provided and the words "ambient fail" appeared on the screen of the machine and on the print out subsequently produced. The police officer administering the procedure formed the opinion that the machine was malfunctioning and had not produced a reliable indication of the proportion of alcohol in H's breath. H was taken to another police station so that a different machine could be used. H then refused to produce specimens of breath. H was subsequently found guilty of an offence under the Road Traffic Act 1988 s.7(6) as he had not provided two valid specimens of breath for analysis as required by s.11(3) of the Act. The question posed for the opinion of the High Court was whether the specimens of breath actually provided by H constituted valid specimens of breath for the purposes of s.11(3).

HELD

The specimens of breath provided by H did not constitute valid specimens of breath for the purposes of s.11(3), *Denny v DPP* (1990) 154 JP 460 DC applied and *Stewart v DPP* (2003) EWHC 1323 (Admin), (2004) 168 JP 82 considered. It was open to the district judge to conclude that the initial specimen of breath in each cycle had not been provided in such a way as to allow the object of the breath testing procedure to be achieved. The specimens provided could not be said to be reliable as the breath analysis machine had clearly indicated in each cycle of analysis that an ambient failure had occurred.

APPEAL DISMISSED



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Section 7 Road Traffic Act 1988 - Declaration of Medical Condition

PIGGOTT v DIRECTOR OF PUBLIC PROSECUTIONS (2008)

DC (Moses LJ, Sullivan J) 8/2/2008

Road Traffic - Criminal Evidence

Asthma: Breath Samples: Breath Tests: Driving While Over The Limit: Failure To Provide Specimen: No Requirement To Inform Police Of Medical Condition Preventing Provision Of Specimen: S.7 (3) (A) Road Traffic Act 1988

There was no legal requirement that a motorist accused of driving while under the influence of alcohol should inform the police officer conducting a breath test of any medical conditions from which she suffered that might prevent her from providing sufficient breath for a specimen. However, in the majority of cases, the failure to do so might result in the court concluding as a matter of evidence that any medical excuse belatedly proffered was not acceptable and indicated a wilful failure to provide a specimen.

The appellant motorist (P) appealed by way of case stated against a decision of a magistrates' court to convict her of the offence of failing to provide a breath specimen without reasonable excuse contrary to the Road Traffic Act 1988 s.7(6). P had been arrested on suspicion of being unfit to drive through the consumption of drink or drugs and was required to provide a breath test at the police station. P failed to provide sufficient breath for a specimen to be obtained. The testing officer asked her if there were any medical reasons why she could not provide specimens and P replied that there were none. In a medical report produced subsequently an expert stated that there was a medical reason that P failed to give a breath specimen, namely that she suffered from asthma and hyperventilation syndrome. The report was accepted by the magistrates' court. P claimed that she had tried as best she could to provide a sample and that she had told the arresting officer, who witnessed the breath test, that she suffered from asthma. The prosecution claimed that P had not made any real effort to provide a sample and that neither the arresting officer nor the testing officer was aware that P suffered from asthma. The court held that although P's medical condition might have been mentioned to the arresting officer, P failed to offer any explanation for her failure to provide a specimen to the testing officer and was therefore guilty of the offence charged. The court held, following *Teape v Godfrey* (1986) RTR 213 QBD, that if P knew that she suffered from a medical condition that might affect her ability to provide a sample she was under a duty to inform the testing officer. The issue was whether the magistrates were correct to find that it was essential for P to inform the testing officer whether she suffered from any medical condition that could prevent her providing the specimens or whether they should have found that informing the arresting officer was sufficient. P submitted that the comments in *Teape* were obiter and had been criticised in subsequent authorities. P argued that there was nothing in the language of the Act that put any onus on a motorist to disclose anything to the testing officer, or that would relieve the Crown of the burden of proving the absence of reasonable excuse.

The DPP contended that if there was no legal obligation on motorists to disclose medical conditions of which they were aware at the time of a breath test it would render s.7(3)(a) of the Act unworkable.

HELD

There was no legal obligation to advance medical reasons to the testing officer, Teape, *McClory v Owen-Thomas* (Rhys Jonathan) 1989 JC 141 HCJ and *DPP v Kinnersley* (1993) 14 Cr App R (S) 516 DC considered. The observations made in *McClory* and *Kinnersley* were to be preferred to those made in *Teape*. It would not be appropriate to graft a non-statutory limitation of notification onto the defence of "reasonable excuse". Although the DPP's argument had force, it was to be noted that in the great majority of cases a failure to mention any relevant medical conditions of which a motorist was aware at the time of a breath test might very well result in the court concluding, as a matter of evidence, that a medical excuse belatedly proffered was not acceptable and indicated a wilful failure to provide a specimen. The magistrates were not correct in their finding that it was essential for P to inform the testing officer whether she suffered from any medical condition that could prevent her providing the specimens and it was sufficient, though not necessary, that P had informed the arresting officer of her condition. P's conviction was accordingly quashed.

APPEAL ALLOWED



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Former Transport Police Officer Could be an Expert Witness in Trial for Speeding Offence

R (on the application of DOUGHTY) v ELY MAGISTRATES' COURT (2008)

DC (Richards LJ, Swift J) 7/3/2008

Criminal Evidence - Police - Road Traffic

Expert Witnesses: Police Officers: Speed Measuring Equipment: Speeding: Sufficient Experience and Knowledge

Magistrates had erred in holding that a former transport police officer did not have sufficient knowledge and expertise to be an expert witness in the trial of a driver charged with speeding as they had relied on matters that went to the weight to be given to his evidence and not to his competence to appear as an expert witness.

The claimant (D) applied for judicial review of a decision of the defendant magistrates' court that he was not an expert witness and that his evidence was therefore inadmissible in the trial of a driver charged with speeding. D was a former transport police officer and the managing director and founder of a company that specialised in giving expert opinion on road traffic matters. One of D's clients had been charged with speeding on the basis of police camera evidence. D produced a report raising doubts about the reliability of the specific

speed detection device used. The interested party CPS also instructed an expert (L), who produced a report which called into question D's expertise. The magistrates had before them evidence of D's and L's qualifications and experience, and held that D did not have sufficient knowledge to be an expert witness in the trial. The magistrates, in coming to their decision, relied on the fact that D had not operated the device in question since he had been a police officer nine years previously, and the fact that, unlike L, D had not attended recent courses run by the manufacturer of the device. They held, therefore, that D's knowledge was not of an equivalent level to that of L. D submitted that his lack of direct recent experience in the use of the device and his non-attendance of recent training courses on the operation of the device were matters that could only go to the weight to be given to his evidence, and not to his competence to appear as an expert witness. The CPS contended that the magistrates' decision was one that was reasonably open to them. It argued that D's experience and knowledge of the device had lapsed, a fact illustrated by an error in his report as to its function.

HELD

There was no reasonable basis for ruling D out as an expert witness. What the magistrates did was to rely on matters that went to the weight of D's evidence as a reason for preventing him from giving evidence at all. Their finding that D did not have an equivalent knowledge to that of L was the clearest of indications that the magistrates were relying on matters that went to comparative weight in considering the issue of admissibility. The CPS's point in respect of the error in D's report was another such indication. A difference in view ought to be the subject of competing evidence from the individuals concerned which could then be evaluated by the court. It was not something that was properly resolved by ruling a defence witness out of court. Whether D was a good witness or whether his report was accurate were irrelevant. Those matters were not a sufficient basis for ruling that D was not competent. Having regard to D's qualifications and experience, it was unreasonable of the magistrates to conclude that his opinion could be of no value in resolving the issues at trial.

APPLICATION GRANTED



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SI 411/2008 The Welfare Reform Act 2007 (Commencement No. 5) Order 2008

This Order brings into force a number of provisions of the Welfare Reform Act 2007 on the following dates:

1 April 2008 for the power to make regulations, **6 October 2008** for all remaining purposes:

- ◆ Section 32 (housing benefit and council tax benefit for persons taking up employment).
- ◆ Section 33 (section 32: supplemental).
- ◆ Section 34 (sections 32 and 33: interpretation).

1 April 2008 for all purposes:

- ◆ Section 38 (duty to send inspection reports to the Secretary of State).
- ◆ Section 39 (directions by Secretary of State).
- ◆ Paragraphs 5 to 7 and 9 of Schedule 5 (minor and consequential amendments relating to Part 2) in relation to certain amendments.

19 February 2008 for the power to make regulations, **7 April 2008** for all remaining purposes:

- ◆ Section 46 (local authority powers to investigate fraud).
- ◆ Section 47 (local authority powers to prosecute benefit fraud).

SI 431/2008 The Wildlife and Countryside Act 1981 (Variation of Schedule 5) (England) Order 2008

In force **6 April**. This Order amends Schedule 5 of the Wildlife and Countryside Act 1981, which lists the animals given protection under section 9 of the Act. The Order gives varying degrees of protection to the following animals:

- ◆ Short snouted seahorse.
- ◆ Spiny seahorse.
- ◆ Angel shark.
- ◆ Roman snail.

The order also replaces the limited protection afforded to water vole with general protection.

SI 442/2008 The Public Rights of Way (Combined Orders) (England) Regulations 2008

In force **6 April 2008**. The Order prescribes certain descriptions of order as those to which Section 53A (power to include modifications in other orders) of the Wildlife and Countryside Act 1981 applies. This removes the requirement for local authorities to make a separate order modifying the definitive map when an order makes changes to the public right of way network, by allowing the modification provisions to be contained in the original order.

SI 473/2008 The Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008

In force **7 April 2008**. The Order requires the Independent Barring Board (established under Section 1 of the Safeguarding Vulnerable Groups Act 2006) to include, or consider including, certain persons in the children's barred list or the adult's barred list maintained by the Board under Section 2 of the Act.

This is required to bring together all those unsuitable to work with children or vulnerable adults on the lists for transition purposes and because the existing restrictions will be repealed when the Act is fully implemented. The persons to be included in the barred lists are those:

- ◆ Persons disqualified from working with children (Regulation 2).
- ◆ Other persons disqualified from teaching etc. (Regulation 3).
- ◆ Persons considered unsuitable to work with vulnerable adults (Regulation 4).

SI 504/2008 The Offender Management Act 2007 (Commencement No. 2 and Transitional Provision) Order 2008

This Order brings into force a number of provisions of the Offender Management Act 2007, on the following dates:

1 March 2008 in England and Wales:

- ◆ Section 5 (power to establish probation trusts) and Schedule 1 (probation trusts: further provisions).
- ◆ Section 11(2) (transfer of property and staff etc.) and Schedule 2 (transfers of property etc. and staff in connection with probation services arrangements).

1 April 2008 in England and Wales:

- ◆ Section 3(6) (power to make arrangements for the provision of probation services).
- ◆ Section 7(1) and (2) (national standards for the management of offenders).
- ◆ Section 9 (officers of providers of probation services).
- ◆ Section 12(1) and (2) (the inspectorate).
- ◆ Section 13 (approved premises).
- ◆ Section 14 (disclosure for offender management purposes).
- ◆ Section 21 (assisting a prisoner to escape).
- ◆ Section 22 (conveyance of prohibited articles into or out of prison).
- ◆ Section 23 (other offences relating to prison security).
- ◆ Section 24 (offences under sections 40B to 40D of the Prison Act 1952: extension of Crown Immunity).

- ◆ Section 39 (minor and consequential amendments, transitionals, and repeals) insofar as it relates to the entries in Schedules 3, 4 and 5 specified the following four bullet points.
- ◆ Part 1 (new arrangements for the provision of probation services) of Schedule 3 (minor and consequential amendments).
- ◆ Parts 1 (provisions relating to Part 1) and 2 (provisions relating to Part 2) of Schedule 4 (transitional and transitory provisions and savings).
- ◆ Part 1 (probation services) of Schedule 5 (repeals), the entries relating to:
 - ◆ (i) sections 6(1), 9 and 25 of the Criminal Justice and Court Services Act 2000; and
 - ◆ (ii) section 104(4) of the Local Government and Public Involvement in Health Act 2007; and
- ◆ Part 2 (prisons) of Schedule 5 (repeals), the entry relating to section 41 of the Prison Act 1952.

1 April 2008 in relation to the specified police areas (see below) only:

- ◆ Section 1 (meaning of “probation purposes”).
- ◆ Section 2 (responsibility for ensuring the provision of probation services).
- ◆ Section 3(1) to (5), and (7) (power to make arrangements for the provision of probation services).
- ◆ Section 4 (restriction on certain arrangements under section 3).
- ◆ Section 6 (power to make grants for probation purposes etc.).
- ◆ Section 7(3) (national standards for the management of offenders).
- ◆ Section 8 (annual plans).
- ◆ Section 10 (national framework for qualifications of officers).
- ◆ Section 11(1) (abolition of local probation boards).
- ◆ Section 12(3) (the inspectorate).
- ◆ Section 15 (power to repeal section 4).
- ◆ Section 39 (minor and consequential amendments, transitionals, and repeals) insofar as it relates to the entries in Schedule 5 specified in the bullet point below.
- ◆ Part 1 (probation services) of Schedule 5 (repeals), the entries relating to the following provisions of the Criminal Justice and Court Services Act 2000:
 - ◆ Sections 1 to 5
 - ◆ Section 8
 - ◆ Section 10

- ◆ Section 18
- ◆ Section 20(2)
- ◆ Section 21(5)
- ◆ Section 22
- ◆ Schedule 1.

The specified areas for these provisions are:

- ◆ Humberside
- ◆ Leicestershire
- ◆ Merseyside
- ◆ West Mercia
- ◆ Dyfed Powys
- ◆ South Wales.

SI 508/2008 The Motor Vehicles (Driving Licences) (Amendment) Regulations 2008

In force **1 April 2008** (except Regulations 7(a) and (b) and 12, in force **29 September 2008**). These Regulations increase the fee for theory tests in respect of cars, motorcycles and mopeds and increases the fees for practical and unitary tests for cars and vehicles with trailers (from 1 April 2008) and motorcycles and mopeds (from 29 September 2008).

The Regulations revoke the changes to lorry and bus theory tests which were due to take effect in April 2008 - higher fees, more questions and higher fees for pass certificates issued by non Driving Standards Agency in-house test organisations. New requirements are added to the practical motorcycle and moped practical tests from 29 September 2008. The fees for driving licences are also revised, with effect from 1 April 2008.

SI 511/2008 The Car Fuel Benefit Order 2008

In force **19 March 2008**. This Order increases the cash equivalent of fuel received by employees by reason of their employment from £14,400, to £16,900. The cash equivalent of the benefit is calculated by applying the appropriate percentage (calculated by reference to the car's CO2 emissions) to this figure.

SI 523/2008 The Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) (Amendment) Regulations 2008

In force **1 April 2008**. These Regulations amend the Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005 (SI 3382/2005) which make provision relating to the payment of legal expenses out of property which is the subject of civil recovery proceedings.

The amendments take account of the abolition of the Assets Recovery Agency and its Director by the Serious Crime Act 2007 by replacing references to the Director with references to the relevant enforcement authority.

SI 531/2008 The Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2008

In force **6 April 2008**. This Order amends the Public Interest Disclosure (Prescribed Persons) Order 1999 by adding the Children's Commissioner and the Commissioner for Children and Young People in Scotland into the Schedule to that Order. This prescribes those people to whom a worker may make a qualifying disclosure without suffering detriment under Section 43F of the Employment Rights Act 1996.

SI 539/2008 The Immigration, Asylum and Nationality Act 2006 (Duty to Share Information and Disclosure of Information for Security Purposes) Order 2008

In force **1 March 2008**. The Order specifies travel related information which the Secretary of State, Her Majesty's Revenue and Customs and a chief officer of police (collectively, "the border agencies") must share with each other for immigration, Revenue and Customs or police purposes and which they may disclose to the Security and Intelligence Agencies, if the information is likely to be of use for certain security purposes.

The Order specifies powers under which information (in respect of international air, sea and rail travel) is obtained or held and matters in respect of travel or freight. Information which is obtained or held under those powers or which relates to the specified matters is made subject to the duty to share under section 36 and the statutory gateway under section 38 of the Immigration, Asylum and Nationality Act 2006.

SI 544/2008 The Immigration and Nationality (Fees) (Amendment) Regulations 2008

In force **29 February 2008** (except for Regulation 2(11), in force **1 April 2008**). The Regulations set the fees for the applications stated in the Immigration and Nationality (Fees) (Amendment) Order 2008 as those for which a fee is charged. This includes certain applications under the new Points Based System.

The fee for a Highly Skilled Migrant Programme leave to remain application is deleted by the Regulations. Regulation 2(11) makes provision for the fees to be charged for sponsorship applications, entry clearance applications and certificates of entitlement to the right of abode.

SI 559/2008 The Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2008

In force **11 March 2008**. The Order continues into force Sections 1 to 9 of the Prevention of Terrorism Act 2005 for the period of 1 year. These sections would otherwise have expired at the end of 10 March 2008 pursuant to article 2 of the Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2007.

SI 574/2008 The Serious Organised Crime and Police Act 2005 and Serious Crime Act 2007 (Consequential and Supplementary Amendments to Secondary Legislation) Order 2008

In force **1 April 2008**. The Order brings into effect amendments to statutory instruments and statutory rules of Northern Ireland relating to the Assets Recovery Agency (ARA), its Director and the Serious Organised Crime Agency (SOCA).

The amendments are listed in the Schedule to the Order and delete or amend references to the ARA and its Director, and make amendments in relation to SOCA.

SI 575/2008 The Assets Recovery Agency (Abolition) Order 2008

In force **1 April 2008**. This Order provides that the Assets Recovery Agency and the sole corporation that is its Director shall cease to exist on 1 April 2008.

SI 598/2008 The Offender Management Act 2007 (Establishment of Probation Trusts) Order 2008

In force **1 April 2008**. This Order establishes six Probation Trusts under the power in Section 5 of the Offender Management Act 2007, as part of the new arrangements for the provision of probation services in England and Wales. The new trusts are:

- ◆ Dyfed Powys Probation Trust
- ◆ Humberside Probation Trust
- ◆ Leicestershire and Rutland Probation Trust
- ◆ Merseyside Probation Trust
- ◆ South Wales Probation Trust
- ◆ West Mercia Probation Trust.

SI 617/2008 The Police and Justice Act 2006 (Commencement No. 1, Transitional and Saving Provisions) (Amendment) Order 2008

In force **30 March 2008**. This Order amends the transitional and saving provisions of the Police and Justice Act 2006 (Commencement No. 1, Transitional and Saving Provisions) Order 2006, with the effect that the existing provisions of the Police Act 1996 concerning police authority membership will continue to apply to appointments which take effect before 1 October 2008.

This Order takes effect together with the Police and Justice Act 2006 (Supplementary and Transitional Provisions)(Amendment) Order 2008 (SI 619/2008).

SI 630/2008 The Police Authority Regulations 2008

In force **1 April 2008** (except for Regulation 4, in force **1 October 2008**). These Regulations are to apply in relation to appointments of police authority members which take effect after 1 October 2008. The Regulations make provision for broader representation on police authorities and greater police autonomy in recruitment. Regulation 4 revokes the Police Authorities (Selection Panel) Regulations 1994.

The Metropolitan Police Authority Regulations 2008 (SI 631/2008) creates similar regulations to apply to the Metropolitan Police Authority (MPA), also making provision to increase the role of the Mayor of London in the MPA.

SI 639/2008 The Export Control (Security and Para-Military Goods) Order 2008

In force **6 April 2008**. The Order adds hand-held, spiked batons (so-called "sting sticks" to the list of restricted goods subject to stringent export and trading controls (including where the trading is carried on outside the UK, if a UK person is responsible) by adding them to the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 and the Trade in Goods (Control) Order 2003.

SI 656/2008 The Sex Discrimination Act 1975 (Amendments) Regulations 2008

In force **6 April 2008**. The Regulations amend the provisions of the Sex Discrimination Act 1975 in regards to the definition of sexual harassment, discrimination on grounds of pregnancy or maternity leave and the exceptions applicable to claims of discrimination on grounds of maternity leave.

The Regulations also amend the Act to make it unlawful for an employer who fails to take reasonably practicable steps to protect an employee from persistent third party harassment where they have knowledge of the harassment.

Notes