CENTREX
HELPING TO DEVELOP POLICING

Digest

August 2006

Legal Validation and Research

August 2006

Digest

Legal Validation and Research Department

www.centrex.police.uk/digest

The Digest is produced on a monthly basis by the Legal Validation and Research Department based at Centrex, Harrogate. The Digest is an environmental scanning publication intended to capture and consolidate topical and key issues, both current and future, impacting on police forces and the police training environment. In producing the Digest, information is included from Governmental and quasi-governmental bodies, criminal justice organisations and research bodies. As such, the Digest should prove an invaluable guide to those responsible for strategic decision making, operational planning and police training.

This edition contains updates on a number of Parliamentary Bills which have been covered in previous issues of the Digest but which have now been subject to further amendments and additions, these include the: Animal Welfare Bill; Legislative and Regulatory Reform Bill; Safeguarding Vulnerable Groups Bill; Road Safety Bill and the Violent Crime Reduction Bill Police and Justice Bill. Also included are articles on the recently published Corporate Manslaughter and Corporate Homicide Bill and the Wireless Telegraphy Bill.

Terrorism related articles are again featured this month including Parliamentary reports and reviews as well as two related Home Office Circulars.

Two articles are included in relation to the Data Protection Act 1998, these are proposals to increase the penalty for unlawfully obtaining etc. personal data and a recent order which now enables a payment card issuer to process sensitive personal data provided by law enforcement authorities about people convicted or cautioned (including conditional cautions as well as reprimands and warnings for youth) for certain offences relating to child abuse images.

Updated ASBO guidance, the recently published Fraud review and advice on the use of both mini-motos and self balancing scooters are also covered.

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

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

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

CONTENTS

Report into Impact of Hate Crime on its Victims

The charity organisation Victim Support has published a report entitled, 'Crime and prejudice' which focuses on the experience and support needs of people who suffered attacks because of their ethnic origin or sexual orientation. The report is based on evidence from in-depth interviews with 107 hate crime victims, a survey of and workshops with service providers, and a review of existing research.

The research found that hate crime victims suffered major damage to the quality of their life, including the loss of their home or business due to arson or vandalism, and deterioration of emotional well-being.

Victims gave a number of reasons for not reporting the crime to the police. These reasons were consistent with those cited in previous research projects and included:

- Negative perceptions of the police.
- Negative experience of reporting incidents to the police.
- In the case of new migrants, and asylum seekers in particular, a negative experience of the police in their country of origin.
- A sense that reporting is futile and that nothing will change.
- Difficulties involved in reporting to the police.

Of those who did report the crime, only one in five felt that they were well supported by the police. Victims who were dealt with by specialist police officers were the most satisfied with the support they received.

Victims surveyed wanted the police to be more communicative and more sympathetic, and to take hate crime seriously. They also felt that more use should be made of third party reporting centres.

The report outlines a range of recommendations for those who provide services to victims of hate crime. Recommendations in the report relevant to the police service include:

- The police should consider how the successful features of their specialist units can be mainstreamed.
- Inviting victims of hate crime to participate in police training, to help increase officers' awareness and sensitivity.
- Victim Support should seek to secure guidance from ACPO on the use of discretion to encourage reporting of hate crime by those whose immigration status or other activities may make them reluctant to report such crimes.
- Local partnerships should seek to engage the CPS in hate crime work.
- Greater publicity for third party reporting schemes needs to be undertaken, particularly through outreach, training and support to community organisations. The pilot reporting hotline in West Yorkshire should be evaluated, with a view to establishing a national service for victims of hate crime alongside further research to determine why current third party reporting arrangements are under-utilised.

The report can be found via
http://www.victimsupport.org.uk/vs_england_wales/index.php

Images of Disability Website

A new website which contains guidance about portraying disabled people in communications materials has been launched by the Government. The website is aimed primarily at communications professionals, to provide them with support and guidance in producing effective and inclusive depictions of disabled people. Its current focus is on inclusive Government communications, although it intends to try and influence what happens in the commercial sector. To achieve this, it is targeting Government marketing professionals and advertising agencies on the COI communications roster.

The new website covers a broad range of useful material including:

- An extensive media gallery - containing examples of positive portrayals of disabled people across a range of media channels.
- 'How to...' guides and templates – from campaign briefing to production.
- Sample briefs.
- Tips and techniques about effectively applying a disability message to a campaign.
- Useful research material.
- Case studies and articles about disability

The website address is **http://www.imagesofdisability.gov.uk**

HSE Guidance on Health and Safety Risks of Shift Work

The Health and Safety Executive has published a guidance book entitled, “Managing shift work: health and safety guidance” which explains employers’ legal duties and the risks associated with shift work, and provides advice on risk assessment, design of shift work schedules and the shift-work environment. It suggests measures that employers, safety representatives and employees can use to reduce the negative impact of shift work and to reduce tiredness, poor performance and accidents by enabling employers to control, manage and monitor the risks of shift work.

Details on how to obtain a copy of the guidance book can be found at **http://www.hse.gov.uk/index.htm**

Government Bills Update

This article provides an update on various Government Bills which are currently going through the Parliamentary process, including ones which have been reported in earlier editions of the *Digest*. It must be noted that this report only comments on the provisions of the Bills as they existed at the time of writing this article.

The Bills which have been published can be viewed in full at
http://www.publications.parliament.uk/pa/pabills.htm

Fraud Bill

The Fraud Bill was introduced to the Lords on 25 May 2005. It intends to make provision for, and in connection with, criminal liability for fraud and obtaining services dishonestly. The Bill was amended by the Lords and was introduced to the Commons on 29 March 2006. This amended version of the Bill was reported in the May 06 *Digest*. Since that date, the Bill has passed through the Committee stage without amendment.

Animal Welfare Bill

The Animal Welfare Bill was last reported in the November 2005 *Digest*. Since that date, the Bill has progressed through the Commons and was amended at both the Committee stage and the Report stage. It completed its time in the Commons on 14 March 2006. The Bill is currently awaiting Report stage consideration by the Lords.

Some of the main amendments made to the Bill during this process are listed below.

Docking of dog's tails

A new clause 6 has been inserted into the Bill, creating an offence of docking dogs' tails. Clause 6 (1) and (2) make it an offence for a person to dock a dog's tail or for a person responsible for a dog to cause its tail to be docked or permit it to be docked, otherwise than for the purposes of its medical treatment. The offence is committed if either the whole or any part of the dog's tail is docked. However, the offence is not committed if the dog was under five days old and a vet has certified that it was likely to work (Clause 6(3)). Adog can be certified as a working dog if it is likely to be used for work in connection with law enforcement, activities of Her Majesty's armed forces, emergency rescue, lawful pest control or the lawful shooting of animals.

Clause 6(5) sets out a defence for a person who docks a dog's tail, or causes or permits a dog's tail to be docked. Such a person will not commit an offence if they reasonably believe that either the dog is under five days old or that a vet has certified that it is likely to work.

Any dog which has been legitimately docked by a vet must be identified as such by its owner (Clause 6(6)). A person will commit an offence if they do not take reasonable steps to ensure that a dog which they own is identified before it becomes three months old.

The Bill also makes it an offence to show a dog at an event to which a fee-paying public is admitted if the dog has had its tail removed (Clause 6(7)). This ban on showing will apply to all dogs whose tail was removed after the date on which this clause comes into force. However, the offence will not be committed if the certified working dog is being shown only for the purpose of demonstrating its working ability. It will be a defence for a person to show that they reasonably believed either that the dog was docked before the clause came into force, that a fee-paying public was not being admitted or that the dog was a certified working dog demonstrating its working abilities.

Clause 6(10) creates another offence of knowingly giving false information to a veterinary surgeon in connection with the giving of a certificate.

Fighting etc

The offences in connection with animal fighting have been extended in Clause 8 of the amended Bill. Clause 8(1)(a) will create an offence of causing an animal fight, or attempting to do so. Clause 8(1)(b) – (i) also create additional offences in relation to:

- Knowingly receiving money for admission to an animal fight.
- Knowingly publicising a proposed animal fight.
- Providing information about an animal fight to another with the intention of enabling or encouraging attendance at the fight.
- Making or accepting a bet on the outcome of an animal fight or on the likelihood of anything occurring or not occurring in the course of an animal fight.
- Taking part in an animal fight.
- Having in his possession anything designed or adapted for use in connection with an animal fight with the intention of its being so used.
- Keeping or training an animal for use in connection with an animal fight.
- Keeping any premises for use for an animal fight.

Clause 8(2) will make it an offence to be present at an animal fight without lawful authority or reasonable excuse.

Clause 8(3) creates offences relating to video recordings of animal fights that took place in Great Britain after this clause becomes law. It will be an offence to supply, publish, show or possess with intent to supply, such a recording without lawful authority or reasonable excuse. Clause 8(5) provides an exception from these offences for recordings used, or intended for use, in a "programme service" as defined in the Communications Act 2003. A "video recording" is a recording, in any form, from which a moving image may by any means be reproduced and includes data stored on a computer disc or by other electronic means which is capable of conversion into a moving image.

The offences in relation to video recordings of animal fights are new offences to be included in the Bill.

Improvement Notices

One feature of the amended Bill is "improvement notices". Clause 10 allows inspectors under the Bill to issue such notices if they are of the opinion that the requirements of Clause 9 (duty of person responsible for the animal to ensure welfare) are not being met. The notices are issued to the person responsible for the animal.

The improvement notice must state:

- That the inspector believes that the person is failing to comply with Clause 9.
- The respects in which he believes the person is failing to comply.
- The steps that should be taken in order to comply.
- The time in which such steps should be taken.

The notice must also explain that:

- No prosecution under Clause 9 can be initiated in respect of the non-compliance specified in the notice, or any continuation of that non-compliance, until the period of complying with the notice has passed.
- Where a person responsible for an animal takes the steps specified in a notice issued under subsection (1) within the time specified, no prosecution can be brought under Clause 9 for the non-compliance in relation to which the notice was issued, or any continuation of that non-compliance prior to the taking of the steps specified in the notice.

Clause 10(4) allows an inspector to extend, or further extend, the compliance notice.

Powers in relation to animals in distress

Two new provisions have been added into the amended Clause 18 (powers in relation to animals in distress).

Clause 18(5) remains unchanged and states that an inspector or a constable may take a protected animal into possession if a veterinary surgeon certifies that it is suffering or that it is likely to suffer if its circumstances do not change. However, the amended Bill inserts a new Clause 18(7), which ensures that where an animal is taken into possession under Clause 18(5) and that animal has dependant offspring, those offspring can be taken into possession with it. This ensures that even if the offspring are not themselves suffering or likely to suffer, they can still be taken with the parent, on the basis that they would be likely to suffer if they were separated.

Clause 18(11) is a new addition, requiring an inspector or constable to take such steps as are reasonable, to notify the person responsible for the animal that he has taken action under any of his powers in Clause 18 in relation to that animal. This obligation only applies where the inspector or constable acts otherwise than with the knowledge of the person responsible for the animal, and he must do so as soon as reasonably practicable after he has exercised his powers.

Orders in relation to animals taken under Clause 18(5)

Under Clause 20, a magistrates' court can order any of the following in relation to any animal that has been taken into possession by an inspector or constable because a veterinary surgeon has certified that it is suffering:

- Specified treatment is administered to the animal.
- Possession of the animal is given up to a specified person.
- The animal is sold.
- The animal is disposed of otherwise than by way of sale.
- The animal is destroyed.

A new Clause 20(2) has been inserted to provide that any of the above orders can also apply to the offspring of an animal that was pregnant at the time it was taken into possession.

Seizure of animals involved in fighting offences

Clause 21 gives constables the power to take possession of an animal in relation to which an offence under Clause 8(1) or (2) has been committed. The use of this power would ensure that a seized animal could no longer be used for further fighting offences. The amended Bill also provides that the power to seize extends to any animal which took part in the fight in relation to which an offence under Clause 8(1) or (2) has been committed.

Entry for purposes of arrest

A new Clause 23 has been inserted into the Bill to add the offences relating to the prevention of harm to animals to the list of offences in section 17(1)(c) of the Police and Criminal Evidence Act 1984. The police will therefore have the power to enter and search premises for the purposes of effecting an arrest in connection with these offences. The offences to which this applies are:

- Clause 4 – Unnecessary suffering.
- Clause 5 – Mutilation.
- Clause 6(1) and (2) – Docking of dogs' tails.
- Clause 7 – Administration of poisons.
- Clause 8(1) and (2) – Fighting.

The amended version of the Animal Welfare Bill can be found at **http://www.publications.parliament.uk/pa/pabills/200506/animal_welfare.htm**

Electoral Administration Act 2006

The Electoral Administration Bill was reported in the October 2005 *Digest* and received Royal Assent on 11 July 2006. It is now the Electoral Administration Act 2006. The new Act makes provision in relation to the registration of electors and the keeping of electoral registration information; standing for election; the administration and conduct of elections and referendums; and the regulation of political parties.

The Electoral Administration Act 2006 (Commencement No. 1 and Transitional Provisions) Order 2006 (SI 2006/1972) has provided that a number of sections in the new Act will come into force on 11 September 2006. Those of particular relevance to policing include:

- Section 15 – Offences as to false registration information - It will be an offence to provide false information for any purposes connected with registration. Subsections (6) and (7) increase the maximum term of imprisonment for the offence in England and Wales to 51 weeks. This increase will take effect once section 281 of the Criminal Justice Act 2003 comes into force.
- Section 23 – Offences as to false statements in nomination purposes - This section amends section 65A of the Representation of the People Act 1983. Section 65A(1) is amended to provide that a person shall be guilty of a corrupt practice if he authorises a candidate to use a description, knowing that that person will be standing in more than one constituency where the poll is to be held on the same day. In addition, a new subsection (1A) is inserted into section 65A which provides that a person is guilty of a corrupt practice where he makes a false statement in any document in which he gives his consent to nomination as to his date of birth; his qualification for being elected; or the fact that he is not a candidate at an election for any other constituency where the poll is to be held on the same day as the poll at the election to which the consent relates.
- Section 39 - Undue influence - This section amends section 115 of the Representation of the People Act 1983 and addresses attempts by persons to exert undue influence that do not prove to be successful. The amendment will remedy the fact that unsuccessful attempts at preventing the free exercise of the franchise or prevailing upon an elector to vote or to refrain from voting may not at present amount to the corrupt practice of undue influence.
- Section 40 - Offences relating to applications for postal and proxy votes - This section inserts a new section 62A into the Representation of the People Act 1983. This provides that it will be both a corrupt practice and criminal offence to apply for a postal

or proxy vote with the intention of stealing another person's vote or gaining a vote to which the applicant is not entitled. Section 62A(1) outlines the acts and the intentions that must be proved in order to establish that the offence has been committed. Section 62A(1)(b) specifies that the intention that must be proved is that the person intended to deprive another of the opportunity to vote, or intended to gain a vote to which the person was not entitled, or intended to make some other financial gain. Section 62A(2) details the acts that underpin the offence. These include the applicant pretending to be another elector, or making any other false statement in an application for a postal or proxy vote. It also covers the applicant causing the diversion of communications from the entitled elector or preventing their delivery. If found guilty by an election court, a person may be disqualified from standing for election or from being registered as a voter, for a period of five years. If found guilty on a criminal prosecution, a person may be imprisoned for up to two years and fined.

Legislative and Regulatory Reform Bill

The January 06 *Digest* summarised the effects the Legislative and Regulatory Reform Bill could have on policing. Since that article was written, the Bill has been amended at both the Committee and Report stages in the Commons and at the Committee stage in the Lords. These amendments have affected the two clauses which were highlighted in the original article, namely Clauses 6 (Criminal penalties) and 7 (Forcible entry).

Both of these clauses set limits on order-making powers:

- Clause 6 states that an order cannot create a new offence with penalties which exceed the level specified in the Clause. It also restricts any increase in penalties for existing offences so that they cannot exceed the specified levels.
- Clause 7 provides that an order cannot be made amending, repealing or replacing legislation which would authorise any forcible entry, search or seizure (however, an order may extend a pre-existing power to do any of these things, where the power is extended for purposes similar to those to which the power applied before the order was made).

Before the amendments, these restrictions did not apply where the order was made to implement a Law Commission Recommendation or where the order was merely restating legislation. The amended version of the Bill, however, only limits these exceptions to orders which restate an enactment. Therefore, orders which implement the recommendations of the Law Commission will be subject to the Clause 6 and 7 restrictions.

The Bill is currently awaiting Report stage consideration in the Lords.

Safeguarding Vulnerable Groups Bill

The Safeguarding Vulnerable Groups Bill was reported in the April 06 *Digest*. The Bill was amended at the Report stage in the House of Lords and, most recently, was amended by Standing Committee B in the House of Commons on 13 July 2006. Some of the main amendments made include:

Appeals

Clause 4 provides for an appeal to be made to the Care Standards Tribunal. Originally this could only be made on a point of law against a decision of the Independent Barring Board (IBB). However, the amendment provides that an appeal can now be brought on a finding of fact made by the IBB against a decision of the IBB to include or keep someone on the children's or vulnerable adults' list. Clause 4(5) states that unless the Tribunal finds that the IBB has made a mistake of law or fact, it must confirm the decision of the IBB.

Restriction on participating in regulated activity

A new provision has been included in Clause 8(2) which makes it an offence for a person to engage in regulated activity mentioned in paragraph 1(4) or (9) of Schedule 3, unless he is subject to monitoring. Clause 8(14) provides that it is a defence for any of the offences in this clause for a person to prove that they did not know, and could not reasonably be expected to know, that they were not subject to monitoring in relation to the activity.

Monitoring

Clause 21 has been amended so that when a monitoring application is being made, the Secretary of State can request a person who holds information on the individual to provide it.

Independent Monitor

Clause 21 provides for an 'Independent Monitor' to be appointed by the Secretary of State. This was referred to in the original version of the Bill as an 'Information Monitor'.

Duty to refer

Clause 27 places a duty on regulated activity providers and persons responsible for the management and control of controlled activities to provide prescribed information to IBB. Initially, this duty extended to employment agencies and employment businesses. However, in the amended version of the Bill, the duty no longer extends to these agencies and businesses. Instead, they fall under a new provision (see below).

Personnel suppliers – duty to refer

A new Clause 28 has also been included which sets out the circumstances in which a personnel supplier must provide the IBB with relevant information about an individual. These are that the personnel supplier stops supplying the individual for regulated or controlled activity; and the reason for the cessation of supply is that the personnel supplier thinks that the individual satisfies any of the criteria specified in Schedule 2 for inclusion in a barred list. Personnel suppliers are employment agencies, businesses and education institutions that supply individuals for regulated or controlled activity, such as teacher training colleges. The duty to refer also applies if the personnel supplier would or might have stopped supplying the person if the individual had not otherwise stopped being engaged in the regulated activity.

Registers: notice of barring and cessation of monitoring

Slight amendments have been made to Clause 35, which makes provision for the sharing of information by the Secretary of State and the IBB with professional and regulatory bodies. The clause places a duty on the Secretary of State to inform such a body if an individual that he thinks is on the body's register becomes barred. In this case, the Secretary of State must also require the IBB to provide the body with all the information on which the IBB relied in coming to its decision to bar. This will enable the body to make a decision about whether to remove an individual from its register or place conditions on the individual's registration. Similarly, the Secretary of State must inform a professional or regulatory body if an individual that he thinks is on the body's register ceases to be subject to monitoring. The IBB must also provide a professional or regulatory body with relevant information that it holds about an individual who it thinks is on the body's register. This applies regardless of whether the information has led the IBB to bar the individual. For this duty to be invoked, the information must be relevant to the protection of children or vulnerable adults and to the exercise of the functions of the body concerned. The clause also allows for the list of those holding a register to be amended in the future.

Vulnerable adults

The definition of a vulnerable adult has been amended to include a person who has reached the age of 18 and is receiving a welfare service of a prescribed description. The definition of 'residential accommodation' has also been amended and now includes accommodation provided for a person in connection with any care or nursing he requires, or who is or has been a pupil attending a residential special school. Previously, a person was said to fall into the definition of a vulnerable adult if 'he is elderly'. This has been amended to read 'he has particular needs because of his age'.

Repeals

A new Schedule 6 has been included in the Bill which states that Sections 26– 38 of the Criminal Justice and Court Services Act 2000 (disqualification orders and effect of disqualification from working with children) will be repealed.

Road Safety Bill

The Road Safety Bill has previously been covered in the January 2005 edition of the *Digest*. Amendments to the Bill were also mentioned in the November 2005 *Digest*. Since that date, the Bill has been introduced into the House of Commons and was amended at the Committee stage.

Some of the amendments to the Bill which have been incorporated since it was previously covered by the Digest include:

Prohibition on driving: immobilisation, removal and disposal of vehicles

A new Clause 11 and Schedule 4 make provision regarding the immobilisation, removal and disposal of vehicles where:

- Vehicles have been driven in contravention of drivers' hours (Section 99A of the Transport Act 1968).
- Foreign vehicles have been driven in contravention of Section 3 of the Road Traffic (Foreign Vehicles) Act 1972.
- Unfit or overloaded vehicles have been driven (Section 73 of the Road Traffic Act 1988).

Schedule 4 states that the Secretary of State may make Regulations in respect of such vehicles. These Regulations may allow for such vehicles to be immobilised. In such situations:

- An immobilisation device may be fitted to the vehicle or the vehicle can be moved for this purpose.
- A notice must be affixed to the vehicle indicating the presence of the device and specifying the steps to be taken to secure its release.
- The vehicle can be released if a charge is paid.
- Exceptions exist in relation to vehicles where a current disabled person's badge is displayed.

Regulations can also be made which allow for the removal and disposal of vehicles.

Schedule 5 of the Bill states that a new Schedule 2A will be included in the Road Traffic Act 1988. This will deal with the immobilisation, removal and disposal of vehicles in relation to the offence of keeping a vehicle which does not meet insurance requirements.

Extension of offence in Section 3A of Road Traffic Act 1988

Clause 30 of the Bill extends the offence in Section 3A Road Traffic Act 1988 (causing death by careless driving when under the influence of drink or drugs etc.) to allow for a person whose blood has been taken under Section 7A (specimens of blood taken from persons incapable of consenting) to be prosecuted for the Section 3A offence where, without reasonable excuse, that person does not (when he is later able to) consent to his blood being subjected to a laboratory test. However, for prosecution to take place under Section 3A based on the refusal of consent under Section 7A, the offence must have been committed with a motor vehicle, as opposed to any other kind of mechanically propelled vehicle.

Safety arrangements at level crossings

Clause 50 makes amendments to Section 1 of the Level Crossing Act 1983 with regard to safety arrangements at level crossings.

- The amendments give the Secretary of State the power to make an order requiring the operator of a crossing or the local traffic authority (or both) to provide, at or near the crossing, any protective equipment specified in the order and to maintain and operate that equipment in accordance with the order.
- The Secretary of State may make an order providing for the protection of persons using level crossings with or without the request of the operator. However, the Secretary of State must not make an order without a request unless he has consulted the Office of Rail Regulation and the local traffic authority about the order he proposes to make. This is in addition to sending the operator, the Office of Rail Regulation and the local traffic authority a copy of a draft of the order proposed.
- If an operator wishes to make a request to the Secretary of State to make an order, he must first consult the Office of Rail Regulation and the local traffic authority about the draft order he intends to submit and must give written notice of his intention make a request.

A provisional date of 9 October 2006 has been set for the Report stage in the House of Commons.

Violent Crime Reduction Bill

Articles on the Violent Crime Reduction Bill featured in the July, October and December 2005 editions of the *Digest*. Amendments made to the Bill since then include:

Duration of drinking banning orders

A new Clause 2 deals with the duration of drinking banning orders. As mentioned in the original Bill, a drinking banning order can last for a period between two months and two years and may provide that different prohibitions contained in the order have effect for different periods. What the amended Clause adds is that the order, or a prohibition within it, may cease to have effect early if the subject completes an approved course (see below), specified in the order.

Approved courses and certificates of completion– Clauses 12 and 13

The courses referred to must be approved by the Secretary of State. When deciding whether to approve the course, the Secretary of State must consider the nature of the course and whether an appropriate person will provide and administer it. Courses can be approved for a maximum of seven years and the approval may be withdrawn at any time. A person will be regarded as having completed an approved course if the person providing the course has given a certificate stating that they have. A person cannot receive a certificate if they have failed to pay the course fees, failed to attend the course, or failed to comply with a reasonable requirement of the course provider.

Minimum sentences for certain firearms offences

Clause 28 amends the Firearms Act 1968 in relation to minimum sentence requirements for certain offences involving the possession of various firearms.

Firing an air weapon beyond premises

Clause 32 inserts a new Section 21A into the Firearms Act 1968. The amended Bill also provides defences for the new offence of firing an air weapon beyond premises. It will be a defence for the defendant to show that the only premises into or across which the missile was fired were premises the occupier of which had consented to the firing of the missile.

Specific defences applying to the offence under s.34

Clause 35 sets out defences to the offence under clause 34 (manufacture, import and sale of realistic imitation firearms). It will be a defence to show that the sale etc. of realistic imitation firearms was for the purposes of a museum or gallery, for theatre, film or television productions, or for specified historical re-enactments.

Sale of crossbows

Clause 41 of the Bill amends the Crossbows Act 1987 so that offences in relation to the sale and letting on hire, purchasing and hiring, and possession of crossbows are now committed in relation to persons under 18 years, instead of under 17.

Power to search persons in attendance centres for weapons

Clause 47 contains a new power to allow a member of staff at an attendance centre to search a person attending the centre for weapons. The power is the same as that given to staff at further education institutions, as reported in the December 2005 *Digest*.

Sale and disposal of tickets by unauthorised persons

A new Clause 49 makes amendments to Section 166 of the Criminal Justice and Public Order Act 1994. Section166(1) will be amended so that it is an offence for an unauthorised person to sell a ticket for a designated football match or otherwise to dispose of such a ticket to another person. 'Selling' a ticket includes offering to sell it; exposing it for sale; making it available for sale; advertising that it is available for purchase; and giving it to a person who pays or agrees to pay for some other goods or services or offering to do so. The Bill also proposes to add a new Section 166A into the 1994 Act to deal with the sale and disposal of tickets on the internet. New Section 166A(1) ensures that the provisions in Section 166 do not apply to internet service providers based outside the UK. Section 166A(2) makes it an offence for an internet service provider established in the UK to sell or otherwise dispose of tickets for designated football matches regardless of where the sale etc. takes place. Section 166A(3) to (5) provides a defence in certain circumstances for internet service providers who essentially only transmit or store information.

Continuity of sexual offences law

Clause 51 of the Bill provides that, where a person is charged in respect of conduct that is an offence under the Sexual Offences Act 2003 and was an offence under one of the repealed offences listed in subsection (2), and the only thing preventing the person being found guilty is that it cannot be proven beyond reasonable doubt whether the conduct took place before or after the commencement of the Sexual Offences Act 2003, then it shall be conclusively presumed for the purposes of determining the guilt of the defendant that the conduct took place at a time when the offence in respect of that conduct carried the lower penalty in terms of a custodial sentence which could be imposed on conviction of the defendant. If the penalties are the same, then it shall be conclusively presumed that the conduct took place after the commencement of the Sexual Offences Act 2003.

Power of entry and search of relevant offender's home address – Clause 54

One new provision of the Bill inserts Section 96B into the Sexual Offences Act 2003. This would allow a senior police officer to apply for a warrant authorising a constable to enter and search a relevant offender's premises to assess the risks posed by the offender. In order to issue the warrant, the Justice of the Peace must be satisfied that:

- The premises which need to be searched is the offender's home address.
- A constable has on at least two occasions been unable to gain entry.
- The relevant offender is not remanded or committed to custody by court order, in prison, in detention, detained in a hospital or outside the UK.

The warrant may authorise the constable to use reasonable force to enter and search the premises and it may authorise multiple entries

The Bill is currently awaiting report stage consideration in the Lords. Provisional dates for this include 16 and 18 October 2006.

Police and Justice Bill

The Police and Justice Bill was covered in the January 06 and February 06 editions of the Digest. Since that time it has completed its passage through the House of Commons and has most recently been amended at the Committee stage in the House of Lords. During its passage so far the following Clauses have been added to the Bill:

Delegation of police authority functions

Under Part 6 of the Local Government Act 1972 police authorities can have their functions discharged by a committee, a sub-committee or an officer of the authority. Clause 4 of this Bill will provide additional flexibility for police authorities to delegate their functions, in particular, by providing for a power to delegate to an area committee or to an individual member of the authority. The clause also enables such area committees to include people other than members of the police authority on them. The provision also enables the Secretary of State to impose limitations on the kinds of functions that police authorities can delegate by area and on the make-up of area committees and to which officers and members of authorities delegation can be made.

Power to detain pending DPP's decision about charging

Clause 10 is a new addition to the Bill which enables a custody officer under Section 37 of the Police and Criminal Evidence Act 1984 to detain a person whilst consideration is being given by the Director of Public Prosecutions. It will be a matter for the custody officer to determine on an individual basis whether the person should be detained or granted bail whilst awaiting the outcome.

Supply of information to police etc by Registrar General

Clause 12 provides a power for the Registrars General of England and Wales and of Northern Ireland to supply bulk information contained in any register of deaths to a police force in the United Kingdom; a special police force; the Serious Organised Crime Agency; or a person or body specified, or of a description specified by order in a timely manner for use in the prevention, detection, investigation or prosecution of offences. The supply of information may be subject to conditions imposed by the Registrars General and to the levy of a reasonable fee.

Local authority scrutiny of crime and disorder matters

Clause 18 of the Bill states that every local authority should have a crime and disorder committee with the power to review and scrutinise and make reports and recommendations regarding the functioning of the local Crime and Disorder Reduction Partnership / Community Safety Partnership. Further information relating to crime and disorder committees of local authorities can be found in the new Schedule 6 of the Bill.

Guidance and regulations regarding crime and disorder matters

Clause 19 gives the Secretary or State the power to issue guidance regarding the overview and scrutiny of Crime and Disorder Reduction Partnership's to either local authorities in England, local councillors of those authorities or to their crime and disorder committees directly. The Secretary of State can also make regulations to supplement the provisions of clause 18 in relation to local authorities. These Regulations could include, amongst others, provisions in relation to co-option of members to the crime and disorder committee and the frequency with which the committee should scrutinise.

Joint crime and disorder committees

Clause 20 inserts two new subsections into Section 5 of the Crime and Disorder Act 1998 which extend the order-making power to enable the Secretary of State to require councils to appoint a joint committee to carry out crime and disorder scrutiny functions.

Sentences of imprisonment for bail offences

A new Clause 39 has been included which amends the Criminal Justice Act 2003 so that the sentencing arrangements for prison sentences of less than 12 months introduced by Sections 181 and 182 of the Criminal Justice Act 2003 are not applied to offences of absconding while released on bail, committed under Section 6 of the Bail Act 1976.

Attendance by accused at certain preliminary or sentencing hearings

Clause 49 substitutes Section 57 of the Crime and Disorder Act 1998 for a new Part 3A, comprising of Sections 57A, 57B and 57C which contain provisions in relation to live links. The provisions apply in relation to preliminary and sentencing hearings where the accused is held in custody at the time of the hearing and a live link is needed to secure the accused's attendance at the hearing. If at a preliminary hearing the court convicts the accused and the court proposes to continue the hearing as a sentencing hearing, the accused may continue to attend through the live link if he consents to it and it is not contrary to the interests of justice to do so.

Evidence of vulnerable accused

Clause 50 adds a new Chapter 1A after Section 33 of the Youth Justice and Criminal Evidence Act 1999. The new provisions will allow a person accused of an offence to apply to give oral evidence in court through a live link. However, the application will only be accepted if:

- The accused is under 18, his ability to participate effectively in the proceedings as a witness by giving oral evidence is compromised by his level of intellectual ability or social functioning and a live link would enable him to participate more effectively.
- The accused is over 18 and suffers from a mental disorder or impairment of intelligence and social functioning which makes him unable to participate effectively as a witness.

In both cases, a direction to use a live link will only be given if it is in the interests of justice for the accused to give evidence in that way.

Appeals under Part 1 of the Criminal Appeal Act 1968

Clause 51 inserts additions to section 22 of the Criminal Appeal Act 1968. These include the power of the Court of Appeal to give a live link direction in relation to a hearing at which an appellant is expected to be in custody but is entitled to be present.

The Bill is due to undergo Report stage consideration in the House of Lords on the 9 and 10 October 2006.

Corporate Manslaughter and Corporate Homicide Bill

The Corporate Manslaughter and Corporate Homicide Bill was introduced into the House of Commons by Home Secretary John Reid on 20 July 2006. It aims to create a new offence of corporate manslaughter (to be called corporate homicide in Scotland). The Bill would enable prosecutions to be brought against those companies whose gross negligence had led to the death of employees or members of the public.

Currently, a corporate body may be prosecuted for the common law offence of gross negligence manslaughter (known as corporate manslaughter) where there has been a gross breach of a duty of care owed to the victim. However, before a company can be convicted of such an offence, there must be enough evidence to prove that a single senior person was personally negligent. The Bill, however, proposes to introduce an offence which would consider the overall picture of how an organisation's activities were managed by its senior personnel. The organisation would be liable for the way in which its activities are run by its senior managers, rather than making liability contingent on the guilt of a particular individual.

The Offence

Clause 1 defines the new offence. It will be committed if, in particular circumstances, an organisation to which the offence applies, owes a relevant duty of care to a person and the way in which the activities of the organisation have been managed or organised by senior managers amounts to a gross breach of this duty and causes the person's death. Therefore, for the offence to be committed, the following elements must be proved:

- Duty of care - The organisation must owe a relevant duty of care to the victim. Clause 3 of the Bill states that the duty of care must be owed under the law of negligence and lists the duties of care which are 'relevant' for this offence. They include a duty of care: to employees or to other persons working for the organisation or performing services for it; as occupiers of premises (including land, buildings and moveable structures); where the organisation is supplying goods or services; where the organisation is carrying out any construction or maintenance operations or carrying on any other commercial activity on a commercial basis; or where it is using or keeping any plant, vehicle or other thing. It will be for a judge to decide, as a matter of law, whether or not a duty of care exists.
- Senior managers - The organisation must be in breach of that duty of care as a result of the way in which certain activities of the organisation were managed or organised by its senior managers. The definition of a senior manager is found in Clause 2. This states that a person is a senior manager of an organisation if he plays a significant role in either the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or in the actual managing or organising of the whole or a substantial part of those activities.
- Causation - This management failure must have caused the victim's death. The usual principles of causation will apply, meaning that the management failure need not have been the sole cause of death.

- Gross breach of duty – A breach of a duty of care by an organisation is a gross breach if the conduct which is alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances. Clause 9 sets out the test that the jury must use to establish whether the breach of the duty was gross. It states that the jury must consider whether the evidence shows that the organisation failed to comply with any health and safety legislation and, if so, how serious that failure was and how much of a risk of death it posed. In determining the issue, the jury may also consider any health and safety guidance and the wider context in which these health and safety breaches occurred, including any attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged or tolerated such a failure. These factors are not exhaustive and the jury may take account of any other relevant matters.

The new offence will apply to the following organisations (Clause 1(2)):

- Corporations (any body corporate, whether incorporated in the UK or elsewhere, but does not include corporations sole).
- Departments listed in Schedule 1 of the Bill, which includes the Home Office and Crown Prosecution Service.
- A police force.

Exceptions

The Bill does, however, provide that certain duties of care do not qualify as 'relevant' duties of care and are therefore excluded from the ambit of the offence. These include:

- Public policy decisions – Clause 4(1) states that the duty of care owed by public authorities (defined by reference to Section 6 of the Human Rights Act 1998) in respect of decisions as to matters of public policy is not a 'relevant' duty of care. Therefore deaths alleged to have been caused by such decisions will not come within the scope of the offence.
- Exclusively public functions – Clause 4(2) provides that organisations will not be liable for a breach of any duty of care owed in respect of things done in the exercise of 'exclusively public functions', unless the organisation owes the duty in its capacity as an employer or as an occupier of premises. An 'exclusively public function' is a function that falls within the prerogative of the Crown or is, by its nature, exercisable only with authority conferred by the exercise of that prerogative or by or under a statutory provision. This does not just apply to public authorities, but to all relevant organisations.
- Statutory inspections – Clause 4(3) provides that a duty of care owed by a public authority in connection with the carrying out of statutory inspections is not a 'relevant' duty, unless the authority owes the duty in its capacity as an employer or occupier of premises.
- Military activities – Clause 5 provides that certain duties of care owed by the Ministry of Defence in relation to certain activities do not qualify as a 'relevant duty of care' and are therefore exempt from the offence. This exemption applies to the conduct, preparation and support of military operations, which include peacekeeping, operations for dealing with terrorism, civil unrest or serious public disorder, in which members of the armed forces come under attack or face the threat of attack or violent resistance. It also applies to necessary training of a hazardous nature or which is carried out in a hazardous way, and to the activities of the Special Forces.
- Policing and law enforcement – Clause 6(1) and (2) provides that certain duties of care owed by a police force in relation to certain activities do not qualify as a 'relevant duty of care' and are therefore exempt from the offence. This exemption applies to the

conduct, preparation and support of operations which deal with terrorism, civil unrest or serious public disorder in which the police come under attack or face the threat of attack or violent resistance. It also applies to training of a hazardous nature or which is carried out in a hazardous way which is necessary to improve or maintain the effectiveness of a police force. Clause 6(3) exempts a wider range of policing and law enforcement activities (but not in respect of the duty of care owed as an employer or an occupier). Therefore the offence will not be committed in relation to things such as responses to emergency calls and measures taken to protect witnesses, as duties of care in relation to these activities are not classified as 'relevant' duties of care. This exemption is not confined to police forces. It extends to other bodies operating similar functions and to other law enforcement activity.

- Emergency services – Clause 7 states that any duty of care owed by an organisation to which this clause applies, in respect of the way it responds to emergency circumstances, is not a 'relevant' duty of care. Therefore the offence does not apply to the emergency services when responding to emergencies. An emergency is defined as circumstances that are present or imminent and are causing or are likely to cause, serious harm or a worsening of such harm or are likely to cause the death of a person. However, the exception does not extend to the duty these employers have to provide a safe system of work for their employees or to secure the safety of their premises.

- Child Protection and Probation functions – Clause 8 provides that the offence does not apply in relation to the exercise of functions to protect children from harm or in relation to the activities of probation services, because these duties of care are not 'relevant' duties. However, the offence will apply to local authorities and probation services in respect of their duty to ensure the safety of their employees or the safety of their premises.

Punishment

There are two sanctions available if an organisation is found guilty of corporate manslaughter. Clause 1 states that an organisation found guilty of the offence will be liable on conviction on indictment to an unlimited fine. In addition to this, Clause 10 provides that a court may order a convicted organisation to take steps to remedy the management failure leading to the death. These 'remedial orders' must be applied for by the prosecution, who must set out the proposed terms of the order; but the convicted organisation may make representation to the court about the order. The order will specify how long the organisation has to comply with the required steps, although this period can be extended on application. Failure to comply with a remedial order is an indictable offence for which an unlimited fine can be imposed.

Miscellaneous

The Bill will apply to Crown bodies that are either bodies corporate or are listed in Schedule 1. Crown bodies are to be treated as owing, for the purposes of the offence of corporate manslaughter, the duties of care that they would owe if they were ordinarily constituted corporate bodies independent of the Crown.

As stated in Clause 1(2), the new offence will apply to police forces. Clause 13 defines a police force as a force within the meaning of the Police Act 1996 or the Police (Scotland) Act 1967; the Police Service of Northern Ireland; the Police Service of Northern Ireland Reserve; the British Transport Police Force; the Civil Nuclear Constabulary; and the Ministry of Defence Police. Forces owe a duty of care to police officers who are employees of the force. Similarly, special constables, police cadets, police trainees in Northern Ireland and police officers seconded to the Serious Organised Crime Agency or the National Policing Improvement Agency are said to be employees of that force or agency and are accordingly owed the same duty.

Before any proceedings can be instituted for the new offence, the consent of the Director of Public Prosecutions is required (Clause 16)

Clause 17 makes it clear that the offence only applies to organisations and does not apply to individuals. This also includes secondary liability; hence individuals cannot be guilty of aiding, abetting, counselling or procuring the offence of corporate manslaughter. However, the Bill does not exempt individuals from investigation or prosecution for other individual offences, such as health and safety offences.

Clause 18 abolishes the application of the existing common law offence of gross negligence manslaughter in relation to corporations. All such offences would be covered by the Bill.

Clause 19 allows the Secretary of State to amend Schedule 1 by Order.

Schedule 2 updates references to homicide offences in the Coroners Act 1988 to include the new offence; and ensures that the term 'person' in that Act is wide enough to include organisations capable of committing the new offence but which are not incorporated bodies. The Schedule also amends legislation in England, Wales and Northern Ireland to include the new offence in relation to cases being retried in certain circumstances following acquittal and for appeals by the prosecution against certain terminating rulings.

The second reading of the Bill in the House of Commons is scheduled to take place on 10 October 2006.

Wireless Telegraphy Bill

The Wireless Telegraphy Bill was introduced into the House of Lords on 20 April 2006 and on 3 July it had its First Reading in the Commons. As of yet, there is no date fixed for the Second Reading. The Bill aims to replace and consolidate the six Acts relating to wireless telegraphy.

The definition of 'wireless telegraphy'

Wireless telegraphy is a difficult concept. It is defined in the Bill (clause 116) as being the emitting or receiving, over paths that are not provided by any material substance constructed or arranged for the purpose, of electromagnetic energy of a frequency not exceeding 3,000 gigahertz, that either:

- Serves for conveying messages, sound or visual images (whether or not these are actually received by anyone), or for operating or controlling machinery or apparatus; or
- Is used in connection with determining position, bearing or distance, or for gaining information as to the presence, absence, position or motion of an object or of a class of objects.

PART 1

This Part makes provisions about the general functions of OFCOM.

PART 2

Offences in the Bill

The Wireless Telegraphy Bill would create and consolidate a variety of offences. The main offences are laid out below; however, please note that there are other minor offences and penalties which would apply if the Bill were to be enacted.

Licences

It will be an offence (broadly) to establish or use a wireless telegraphy station or to install or use wireless telegraphy apparatus except under and in accordance with a licence granted by OFCOM.

Failure to provide information etc

It will be an offence to fail to provide information in accordance with a requirement of OFCOM to provide information (generally) relating to the establishment, installation or use of a station or apparatus for statistical purposes (see clauses 32 and 33). However, defences would be available here. It is a defence for a person to show that it was not reasonably practicable for them to comply with the requirement within the period specified, but that they took all reasonable steps to provide the required information after the end of that period.

Keeping available for unauthorised use

Clause 36 provides an offence if a person has a wireless telegraphy station or apparatus in his possession or under his control and intends to use it in contravention of clause 8, or knows or has reasonable cause to believe that another intends to use it in contravention of clause 8. The penalties for this offence are where the relevant contravention of clause 8 would constitute an offence to which clause 35(2) would apply. There are a variety of penalties for this offence, including fines and imprisonment.

Allowing premises to be used for unlawful broadcasting

Under clause 37, a person who is in charge of premises that are used for unlawful broadcasting would commit an offence if he knowingly caused or permitted the premises to be used in this way, or had reasonable cause to believe that the premises were being used in this way (but failed to take such steps as are reasonable in the circumstances of the case to prevent them from being used in this way).

A person will be classed as in charge of premises if he is the owner or occupier, or he has, or acts or assists in, the management or control of the premises.

Facilitating unauthorised broadcasts

Under clause 38 a person will commit an offence if he:

- Participates in the management, financing, operation or day-to day running of the broadcasting station, knowing, or having reasonable cause to believe, that unauthorised broadcasts are made by the station.
- Supplies, installs, repairs or maintains wireless telegraphy apparatus or any other item knowing, or having reasonable cause to believe, that the apparatus or other item is or is to be used for the purpose of facilitating the operation or day-to-day running of the broadcasting station and that the unauthorised broadcasts are made by the station.
- Renders any other service to a person knowing, or having reasonable cause to believe, that the rendering of the service to the person will facilitate the operation or day-to-day running of the station and that unauthorised broadcasts are made by the station.
- Supplies a film or sound recording knowing, or having reasonable cause to believe, that an unauthorised broadcast of it is to be made by the station.
- Makes a literary, dramatic, musical or artistic work knowing, or having reasonable cause to believe, that an unauthorised broadcast of it is to be made by the broadcasting station.

- Participates in an unauthorised broadcast made by the station knowing, or having reasonable cause to believe, that the unauthorised broadcasts are made by the station.
- Advertises or invites another to advertise by an unauthorised broadcast made by the station knowing, or having reasonable cause to believe, that unauthorised broadcasts are made by the station.
- Publishes the times or details of unauthorised broadcasts by the station or publishes an advertisement of matter to promote the station knowing, or having reasonable cause to believe, that unauthorised broadcasts are made by the station.

Contravening Regulations

Under clause 45, OFCOM will be able to make regulations prescribing things that are to be done or not done in connection with the use of a wireless telegraphy station or apparatus. Under clause 46, it will be an offence for a person to contravene these regulations or cause or permit a wireless telegraphy station or apparatus to be used in contravention of the regulations.

Misleading messages

Under clause 47, a person will commit an offence if, by means of wireless telegraphy, he sends or attempts to send a message which, to his knowledge, was false or misleading and was likely to prejudice the efficiency of a safety of life service or to endanger the safety of a person or of a ship, aircraft or vehicle.

This clause will apply in particular to a message which, to the person's knowledge, falsely suggested that a ship or aircraft was in distress or in need of assistance, or was not in distress or not in need of assistance.

Interception and disclosure of messages

An offence will also be committed if, otherwise than under the authority of a designated person, a person:

- Uses wireless telegraphy apparatus with the intention to obtain information as to the contents, sender or addressee of a message of which neither he nor a person on whose behalf he is acting was the intended recipient; or
- Discloses information as to the contents, sender or addressee of such a message.

'Designated person' means:

- The Secretary of State.
- The Commissioners for Her Majesty's Revenue and Customs.
- Any other person designated for the purposes of this section by regulations made by the Secretary of State.

PART 3

This Part deals with regulation of apparatus.

Obstruction and failure to assist

Under clause 60, an offence will be committed if someone either intentionally obstructs a person in the exercise of the powers conferred on him under clause 59 (in relation to the power of a person authorised by OFCOM, with or without the aid of constables, to enter

and search premises, such power conferred by a justice of the peace in certain conditions) or he fails, or refuses without reasonable excuse, to give assistance which he has a duty to give.

Restriction orders

Clause 62 outlines when restriction orders can be made in relation to wireless telegraphy apparatus and to apparatus designed or adapted for use in connection with wireless telegraphy apparatus. A person will commit an offence under clause 66 if they (generally) contravene a restriction order which has been made under clause 62. A person who commits the offence will be liable summarily to a fine not exceeding level 5.

Deliberate interference

Under clause 68, a person will commit an offence if they used apparatus for the purpose of interfering with wireless telegraphy.

PART 4

This Part deals with the approval of apparatus.

Information etc on or with apparatus and in advertisements

Under clause 74, a person will commit an offence if, in the course of a trade or business, they supply, or offer to supply, apparatus in contravention of an order under clause 72.

It will also be an offence to publish an advertisement for apparatus to be supplied in the course of a trade or business, if the advertisement fails to comply with the requirements imposed by an order under clause 73.

PART 5

This Part deals with prohibitions of broadcasting from sea and air.

Clauses 77 and 78 would make it unlawful for a broadcast to be made from a ship, aircraft or marine structure or areas of high seas in certain circumstances.

Enforcement officers

For the purpose of Part 5 of the Bill, the term 'enforcement officers' in clause 88 includes police officers and persons authorised by the Secretary of State or OFCOM.

Enforcement Powers

Clause 89 of the Bill states that, if certain conditions are satisfied in the case of a ship, structure or other object, an enforcement officer may exercise the powers mentioned below. These conditions are Condition A and Condition B.

Condition A is satisfied if the enforcement officer has reasonable grounds for suspecting that:

(a) an offence under this Part has been or is being committed by the making of a broadcast

(i) from a ship, structure or other object in external waters or in tidal waters in the United Kingdom, or

(ii) from a British-registered ship while it is on the high seas;

(b) an offence under clause 78 has been or is being committed by the making of a broadcast from a structure or other object in waters in a designated area;

or

(c) an offence under clause 79 has been or is being committed by the making of a broadcast from a ship.

Condition B is satisfied if a written authorisation has been issued by the Secretary of State or OFCOM for the exercise of the powers in relation to that ship, structure or other object.

The powers which the enforcement officers (including the police) would have are:

- To board and search the ship, structure or other object.
- To seize and detain it, and any apparatus or other thing found in the course of the search that appears to have been used, or to have been intended to be used, in connection with the commission of the suspected offence, or to be evidence of the commission of the suspected offence.
- To arrest and search any person whom the officer has reasonable grounds to suspect has committed or is committing an offence under this Part, if the person is on board the ship, structure or other object, or the officer has reasonable grounds for suspecting that the person was on board at, or shortly before, the time when the officer boarded the object.
- To arrest any person who assaults an officer, or an assistant of his, while exercising any of the powers mentioned in this subsection, or who intentionally obstructs him, or an assistant of his, in the exercise of any of those powers.
- To require any person on board the ship, structure or other object to produce any documents or other items that are in his custody or possession and are or may be evidence of the commission of an offence under this Part.
- To require any such person to do anything for the purpose of enabling any apparatus or other thing to be rendered safe and, in the case of a ship, enabling the ship to be taken to a port, or facilitating in any other way the exercise of any of the powers mentioned in this subsection; and to use reasonable force, if necessary, in exercising any of those powers.

Enforcement powers: facilitation offences

Enforcement officers (including the police) may, if certain conditions are satisfied, exercise the powers above in relation to any ship, structure or other object.

Exercise of powers

The powers stated above may only be exercised in tidal waters in the UK or in external waters (except in certain circumstances).

Further offences which may be committed

Offences will be committed under clause 92 if a person:

- Assaults an enforcement officer, or an assistant of his, while the officer is exercising any of the powers conferred by (what will become) section 89 or 90 (enforcement powers and enforcement powers: facilitation offences); or
- Intentionally obstructs an enforcement officer, or an assistant of his, in the exercise of any of those powers; or
- Fails or refuses, without reasonable excuse, to comply with such a requirement as is mentioned above.

It is stated that an enforcement officer (including a police officer) would not be liable in civil or criminal proceedings for anything done in purported exercise of any of the powers conferred by clause 89 or 90, if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

It is also important to note that nothing in clauses 89-91 or 92 would affect the exercise of any powers exercisable apart from those sections.

Penalties and proceedings

A person who commits an offence is liable, on conviction summarily, to imprisonment for a term up to 12 months or to a fine up to the statutory maximum or both, or, on indictment, to imprisonment for up to 2 years or to a fine or both.

PART 6

Fixed penalties for summary offences

Clause 96 introduces and gives effect to Schedule 4, which makes provision as respects fixed penalty notices for certain summary offences.

Power of entry and search

Clause 97 allows for justices of the peace to grant a search warrant if they are satisfied that:

- There is reasonable ground for suspecting that an offence under the Act (other than in Part 4 or the would-be section 111) has been or is being committed **and** evidence of the commission of the offence is found on premises specified in the information, or in a vehicle, ship or aircraft so specified.

This search warrant would empower a constable or person(s) authorised for the purpose by OFCOM or the Secretary of State to:

- Enter, at any time within the relevant period (being the period of three months beginning with the day after the date of the warrant), the premises specified in the information, or (as the case may be) the vehicle, ship or aircraft so specified and any premises on which it may be. (Please note that the reference to three months should be read as one month for Scotland and Northern Ireland).
- Search the premises, vehicle, ship or aircraft.
- Examine and test any apparatus found there.

Please also note that where a person authorised by OFCOM or the Secretary of State is empowered by a search warrant under this section to enter premises, there may be the possibility that constables could be asked to exercise the warrant with them.

It is also stated that a person authorised by OFCOM or the Secretary of State to exercise a power conferred by this section may, if necessary, use reasonable force in the exercise of the power.

Obstruction and failure to assist

A person would commit an offence if he:

- Intentionally obstructs a person in the exercise of the powers conferred on him, under clause 97 above

or

- Fails or refuses, without reasonable excuse, to give to such a person assistance which he is under a duty to give to him.

Powers of seizure

In relation to a variety of offences under the Act, in certain circumstances the warrant may authorise a constable or a person authorised by OFCOM to seize and detain things for the purpose of the warrant under clause 99.

The Bill can be accessed at
http://www.publications.parliament.uk/pa/ld200506/ldbills/095/2006095.htm

HOC 22/2006
Authorisations of Stop and Search Powers under Section 44 of the Terrorism Act 2000

This Circular explains the authorisation process for Section 44 of the Terrorism Act 2000 and offers guidance on the issues to be considered for Section 44 authorisations with the purpose of ensuring forces consider as wide a range of factors as possible when making an application.

The Circular replaces Home Office Circular 038/2004 and all future authorisations should be made in accordance with this Circular. Attached to the Circular is a revised authorisation form which must be completed for all authorisations.

The Circular also highlights that additional guidance is available in the 2005 Home Office Stop & Search Manual and the Centrex Stop & Search Practice Advice, published in July 2006.

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

HOC 23/2006
Detention of Terrorist Suspects under Section 41 of the Terrorism Act 2000

This Circular announces the introduction of the new Code H issued under the Police and Criminal Evidence Act 1984 and the bringing into force on 25 July of Sections 23-25 of the Terrorism Act 2006, which contain provisions that:

- Enable prosecutors to apply for extension of detention warrant.
- Require approval by a senior judge for warrants over 14 days (as opposed to a magistrate for under 14 days).
- Extend the maximum period of detention from 14 to 28 days.
- Amend the grounds for detention to include detention which is necessary pending the results of an examination or analysis of relevant evidence, or of anything which is being examined or analysed with a view to obtaining relevant evidence.
- Cause the 28-day provision to lapse one year from the commencement of Section 23 unless renewed by Order.

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

HOC 24/2006
Section 53 of the Immigration, Asylum and Nationality Act 2006

This Circular contains advice on the application of Section 53 of the Immigration, Asylum and Nationality Act 2006 which comes into force on the 31 August 2006 (see SI 2226/2006 in SI section).

It confirms that the powers of arrest with warrant in deportation cases are available when a notice of decision to deport is ready but has not yet been given to a prospective deportee.

Section 53 - Arrest pending deportation - states:

At the end of paragraph 2 (4) of Schedule 3 to the Immigration Act 1971 (deportation: power to detain) insert "; and for that purpose the reference in paragraph 17 (1) to a person liable to detention includes a reference to a person who would be liable to detention upon receipt of a notice which is ready to be given to him."

At present an immigration officer may apply to a District Judge or Sheriff for a warrant under paragraph 17 (2) of schedule 2 to the Immigration Act 1971 to enter any premises where a person liable to be arrested is reasonably believed to be for the purpose of searching for and arresting him.

Paragraph 17 (2) applies to deportation cases by virtue of paragraph 2 (4) of schedule 3. Warrant applications are made in deportation cases where it is imperative to enter premises to effect arrest and detention concurrently with service of the notice of decision to deport in order to prevent a prospective deportee from absconding and thereby frustrating attempts to remove him.

Officers applying for a warrant will need to satisfy the court that this is not a speculative visit. It will be best practice to show a copy of the signed and dated notice of decision to deport to the District Judge or Sheriff. If the notice of decision to deport is not available at the time the application for the warrant is made the officer applying for the warrant will need to assure the court that it will be ready for service before entering the premises. The decision notice should continue to be served on the prospective deportee prior to making the arrest.

Section 53 clarifies, for the purposes of deportation cases, that the power to arrest without warrant under paragraph 17 (1), and to grant a warrant under paragraph 17 (2), is available as soon as the Secretary of State has issued a notice of decision to deport, even though the decision is yet to be given to the prospective deportee.

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

Power to Remove or Close Credit Card Accounts Used to Obtain Indecent Photographs or Pseudo-photographs of a Child

The Secretary of State has made an Order under provisions in the Data Protection Act 1998 which now enable a payment card issuer to process sensitive personal data provided by law enforcement authorities about people convicted or cautioned (including conditional cautions as well as reprimands and warnings for youth) for certain offences relating to child abuse images where a payment card has been used to commit the offence. The offences listed in the Order are:

- Section 1 of the Protection of Children Act 1978.
- Section 160 of the Criminal Justice Act 1988.
- Article 15 of the Criminal Justice (Evidence etc) (Northern Ireland) Order 1988.
- Article 3 of the Protection of Children (Northern Ireland) Order 1978.
- Section 52 of the Civic Government (Scotland) Act 1982.

Or

- Incitement to commit any of these offences.

Therefore card issuers now have the power, based on their contracts with cardholders, to remove any payment card and to cancel any account that has been used to make an illegal purchase. See the Data Protection (Processing of Sensitive Personal Data) Order 2006 (SI 2068/2006).

Report into Counter-Terrorism Policy and Human Rights

The Parliamentary Joint Committee on Human Rights has published its third report on its ongoing inquiry into counter-terrorism policy and human rights.

Main recommendations from the report include:

- That in future all terrorism legislation should have a life limited to five years maximum, and require renewal by primary legislation, not ministerial order.
- That provision is made in future terrorism legislation provision for parliamentary review of the operation of that legislation.
- The removal of the ban on the use of intercept evidence in court.
- That the Home Office amends PACE Code of Practice C so as to permit post-charge questioning and the drawing of adverse inferences from a refusal to answer questions at such an interview.
- That the Government should urgently consider ways of enhancing incentives to give evidence and the safeguards which must accompany such incentives.
- That there ought to be an enforceable right to compensation for those held in pre-charge detention but not charged.
- That the PACE Code of Practice should make provision for counselling support for those who are detained beyond 14 days.
- Establishing inter-agency arrangements for the sharing of intelligence. That the arrangements be subject to independent scrutiny and are made publicly available in an effort to increase public confidence.
- That the Crown Prosecution Service's (CPS) growing specialisation in terrorist cases be supported and strengthened.

On the subject of the extension of pre-charge detention period beyond 28 days, the Committee's view is that this will probably be unnecessary should a combination of provisions and procedures be in place. These are, in particular: the Committee's recommendation to introduce a provision to permit the drawing of adverse inferences from a refusal to answer questions at a post-charge interview; active judicial oversight of the application of the post-charge timetable; the CPS threshold test.

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

Review of the Implementation of the Human Rights Act 1998

The Lord Chancellor has published a review on the implementation of the Human Rights Act 1998. It includes:

- Executive Summary.
- Introduction by the Lord Chancellor.
- Background.
- Impact on development of substantive law.
- Direct impact on policy formulation and decision making.
- Myths and misperceptions.
- Analysis of overall effect.
- Possible solutions.
- Annex: The Convention rights.

The report states that the Government remains fully committed to the European Convention on Human Rights, and to the way in which it is given effect in UK law by the Human Rights Act and has no intention of repealing the Human Rights Act.

It sets out a number of actions that the Government is taking in support of its commitment, including:

Conducting a thorough review of how police, probation, parole and prison services balance public protection and individual rights and if necessary, introducing legislation to ensure that public protection is given priority.

Provision of better and more consistent guidance and training on human rights within Departments, with specific reference to areas in which such guidance is currently lacking.

Revising and strengthening generic guidance on human rights for public sector managers, placing particular emphasis upon safety arguments.

A Government lead drive to ensure that the public as well as the wider public sector are better informed about the benefits which the Human Rights Act has given ordinary people, and try to debunk many of the myths which have grown up around the Convention rights.

The review report can be found at
http://www.dca.gov.uk/peoples-rights/human-rights/publications.htm

Report on the Draft Sentencing Guideline on the Sexual Offences Act 2003

The Commons Home Affairs Committee has published its report into the draft sentencing guideline on the Sexual Offences Act 2003, which was published by the Sentencing Guidelines Council on 7 June 2006.

The Committee's report does not cover the entire draft guideline, which deals in detail with sentencing starting points and additional aggravating and mitigating factors for each of the 57 separate offences contained in the Act. It instead considers the sections in the draft guidelines on general principles and general aggravating and mitigating factors; and makes a number of recommendations, which include:

- That if consensual sexual familiarity immediately preceding rape is accepted as mitigating factor, that any reduction in sentence should be small, and may not apply in all such circumstances.
- That drug or alcohol misuse should not mitigate offending.
- That the draft guideline should make clear that provocation should not be a mitigating factor in rape cases, and that not all general aggravating and mitigating factors may be relevant.
- That grave psychological damage to children, especially as a result of long-term abuse and enforced complicity with deceit, should be an additional aggravating factor. As should filming/photographing assaults on mobile phones, and buying/selling another person for trafficking.
- That restorative justice is specifically mentioned in the guideline as a possible option for consideration in appropriate cases after sentence, depending on interim progress. But that it should be an addition, rather than an alternative, to normal sentencing options.
- That the 'dangerousness' provisions be kept under review by the Government in order to promote the effectiveness of sentences, by ensuring that custodial periods and continuing treatment needs may be appropriately balanced.

The report also recommends that the National Offender Management Service (NOMS) should tailor sex offender prevention orders to individual risk, rather than routinely requesting the imposing of multiple conditions by the courts. It also calls for better liaison between NOMS and the Probation Service about concurrent licence conditions.

The report can be found in full at
http://www.publications.parliament.uk/pa/cm/cmhaff.htm#reports

The draft sentencing guidelines and advice on the Sexual Offences Act 2003 can be found in full at **http://www.sentencing-guidelines.gov.uk/**

Updated ASBO Guidance

The Home Office has published a new guidance document for local authorities and police forces on anti-social behaviour orders (ASBOs), entitled 'A guide to anti-social behaviour orders'. The document supersedes previous guides and advice produced by the Home Office, in particular, 'A guide to anti-social behaviour orders and acceptable behaviour contracts', published in November 2002.

The new guidance document is very much based on the previous document but includes updated information on issues such as publicity, dealing with young people, managing the court process and promoting awareness of disability and race equality.

On the subject of publicity, the guidance reflects the judgment of Lord Justice Kennedy, presiding judge in the case of R (on application of Stanley, Marshall and Kelly) v Commissioner of Police for the Metropolis and Chief Executive of London Borough of Brent [2004] EWHC 2229 (Admin), commonly referred to as Stanley v Brent (covered in the October 2004 *Digest*).

The main principles here are:

- There is no 'naming and shaming': ASBOs are not intended to punish or embarrass individuals but to protect communities.
- Publicity is essential if local communities are to support agencies in tackling anti-social behaviour. There is an implied power in the Crime and Disorder Act 1998 and the Local Government Act 2000 to publicise an order so that it can be effectively enforced.
- Orders protect local communities.
- Obtaining the order is only part of the process; its effectiveness will normally depend on people knowing about the order.
- Information about orders obtained should be publicised to let the community know that action has been taken in their area.
- A case-by-case approach should be adopted, and each individual case should be judged on its merits as to whether or not to publicise the details of an individual who is subject to an order. Publicity should be expected in most cases.
- It is necessary to balance the human rights of individuals who are subject to orders against those of the community as a whole when considering publicising orders.
- Publicity should be the norm, not the exception. An individual who is subject to an order should understand that the community is likely to learn about it.

Some of the guidance points which are new or amended from previous guidance include:

Interim orders

- A without notice interim order has no effect until it has been served on the defendant. If it is not served within seven days, it will cease and will not have effect.
- Section 139 of the Serious Organised Crime and Police Act 2005 gives the court the power to grant an interim order pending an adjourned hearing for an order on conviction.

Orders against children and young people

- Under the Crime and Disorder Act 1998, applications for ASBOs against young people aged 10 to 17, and in certain circumstances 18-year-olds, can be heard in the magistrates' court.
- As a result of the recent practice direction (the Magistrates' Courts (Anti-Social Behaviour Orders) Composition of Benches practice direction, February 2006), the justices constituting the court should normally be qualified to sit in the youth court unless to do so would result in a delayed hearing. Applications for orders are not heard in the youth court as a matter of course because of the civil status of the orders, although youth courts may make orders where appropriate on conviction.
- Parenting orders are available alongside other court action where an ASBO or a sex offender order has been made in respect of a child or young person or a child or young person has been convicted of a criminal offence, but should only be made 'in the interest of preventing repetition of the behaviour which led to the order being made or the conviction'.
- The court can decide to make a parenting order without having to obtain the consent of the parent or guardian.
- In addition to the requirement on the parent or guardian to attend counselling or guidance sessions, parenting orders now require that the parent or guardian comply, for a period of not more than 12 months, with such requirements as are specified in the order and are set by the court to try and prevent any repetition of the anti-social behaviour, for example ensuring that the child attends school regularly, avoids certain places, or is home by a certain time at night. (This element of a parenting order was previously discretionary).
- An order made against a child or young person under 18 is usually made in open court and is not usually subject to reporting restrictions. However, if reporting restrictions have been imposed, they must be scrupulously adhered to.
- In applications where evidence has consisted of details of a child or young persons past convictions, and reporting restrictions were not lifted for the proceedings leading to those convictions, the publicity should not make reference to those convictions.
- Where an order on conviction has been imposed on a child or young person in the youth court, unless reporting restrictions are lifted, details of the offences or behaviour alluded to in that hearing cannot be reported. However, details of the behaviour outlined in the order on conviction hearing can be used, unless the court orders otherwise.
- Age alone is an insufficient reason for a court making an order to impose reporting restrictions under Section 39 of the Children and Young Persons Act 1933.
- Orders issued to young people should be reviewed each year.
- Reviews should be administrative rather than judicial, and should be undertaken by the team that decided upon the initial application. Where practicable, the Youth Offending Team (YOT) should provide the group with an assessment of the young person.

In an annex to the guidance document there is a list of interventions available for children under 10 years of age.

Terms of an order

The guidance recommends as good practice that an applicant provide a draft of the conditions sought, to the court. The conditions that may be imposed are those necessary to protect persons from further anti-social behaviour by the defendant. They must be prohibitive and must not impose positive obligations. Therefore each prohibition must be:

- Negative in nature.
- Precise, and target the specific behaviour that has been committed by the defendant.
- Proportionate to the legitimate aim pursued and commensurate with the risk to be guarded against, which is particularly important where an order may interfere with an ECHR right (R v Boness [2005] EWCA 2395).
- Expressed in simple terms and easily understood.

The final wording of the order will be a matter for the court. Following the cases of Wadmore and Foreman, there is now a requirement for the court to set out its findings of fact in relation to anti-social behaviour on the face of the order.

Immediate post-order procedures

- Where an individual has not been personally served with the order at the court, the court should be asked to arrange for personal service as soon as possible thereafter.
- The lead agency, if not the police, should ensure that a copy of the order is forwarded immediately to the police. The agency should also give copies of the order to the anti-social behaviour co-ordinator of the local crime and disorder reduction partnership, the other partner agencies and the main targets and witnesses of the anti-social behaviour, so that breaches can be reported and acted upon.
- The police should notify the appropriate police area command on the same working day so that details of the defendant and the conditions of the order can be recorded.
- A copy of the order should be provided by the court to the lead agency's legal representative on the same day as the court hearing, and in the case of a child or young person, the court will provide a further copy for the YOT.

The guidance document can be found in full at **http://www.together.gov.uk/home.asp**

Fraud Review Published

The Attorney General has published the final detailed report of the Fraud Review for consultation.

The 377 page report makes a total of 62 specific and detailed recommendations. In summary some of these include:

- Setting up a National Fraud Strategic Authority as a public/private partnership to devise and implement a national fraud strategy.
- Creating a Multi-Agency Co-ordination Group (MACG), chaired by the ACPO Economic Crime Portfolio holder, as a subordinate group with the responsibility of co-ordinating operational work on priority areas as designated by the NFSA.
- Establishing a National Fraud Reporting Centre (NFRC) for England and Wales (housed within the National Lead (Police) Force) which has the capacity to link to domestic and international partners.
- Establishing a Financial Court jurisdiction in the High Court; to link the Crown Court with a division of the High Court so that the different proceedings arising from serious fraud cases can be brought together in one court, and to extend sentencing options available to the court.
- Making fraud a policing priority within the National Community Safety (Policing) Plan and encouraging law enforcement agencies to develop plans which include local performance targets for fraud.

- Looking at the option of setting up Regional Support Centres (RSCs) comprising specialist resources like surveillance and technical services (possibly an RSC in each ACPO region in England and Wales outside London i.e. eight centres) that would be tasked on fraud investigations and anti-fraud police activity throughout that region.
- That as a minimum the existing capacity of fraud squads should be maintained and these resources should be ring fenced so far as possible.
- As part of the developing work on police reform consideration should be given to the best way of enabling police forces to investigate Level 2 and Level 3 frauds that arise within their jurisdiction.
- Further cooperation and collaboration over investigations between police, other public sector investigative bodies, and the private sector should be pursued e.g. organizing a more structured programme of secondments and exchanges between public and private sector investigative bodies; police forces recruiting individuals with fraud investigation expertise as special constables.
- Increasing to 14 years the maximum sentence for the most serious or repeated fraud offences.
- Introducing a formal plea bargaining system specifically for cases dealt with by the Serious Fraud Office, the Fraud Prosecution Service in the CPS and serious and complex fraud cases brought by other prosecuting authorities.

Responses to the report are requested by Friday 27 October 2006. The Fraud Review report and details of how to respond can be found at **http://www.lslo.gov.uk/fraud_review.htm**

Guidance on Tackling Misuse of Mini-Motos

Following reported increases in the number of complaints being received by the police of the misuse of mini-motos (shin-high motorcycles marketed as toys) the Home Secretary, John Reid, has asked police to target those users of mini-motos who are using them illegally.

In support of this request, the Respect Task Force has produced a step-by-step practical guide intended to help police forces and crime and disorder reduction partnerships effectively to tackle the problem.

The guidance points out that mini-motos are 'motor vehicles', as defined by Section 185 of the Road Traffic Act 1988 (RTA 1988), and therefore would need to meet the mandatory European construction requirements to be ridden on roads. Research has shown that the majority of mini-motos are not manufactured in such a way that allows them to meet these requirements, and that in most cases they would need to be modified significantly to do so.

For use on roads, mini-motos would also require:

- Registration with the DVLA.
- Road tax.
- For the driver to have a driving licence that authorises the use of that vehicle, to have appropriate insurance and to be wearing a suitable safety helmet.

In respect of a mini-moto being ridden on a footpath or pedestrian area, the guidance also points out that, under Section 72 of the Highways Act 1835, it is illegal to ride mini-motos and any other vehicles (including pedal cycles) on the pavement, the only exception to this being invalid carriages which can be ridden on the pavement or the road.

Therefore the only place where the majority of mini-motos can be ridden legally is on privately owned land, where permission from the owner has been given, as long as it doesn't cause harassment, alarm or distress, or a statutory nuisance.

To deal with problems, the guidance makes several suggestions that police forces and crime and disorder reduction partnerships could undertake, including:

- Undertaking a leaflet campaign in areas with a problem, explaining what will and what will not be tolerated, including locations of any legal sites that exist locally.
- Working with local schools, presenting lessons on the usage of mini-motos and holding anti-social behaviour awareness days.
- Engaging with the local motoring community, who may be keen to work with young people, letting them know how they can get the best out of mini-motos safely and legally.
- Using diversionary activities such as directing young people into mechanical and maintenance courses, to channel their energy into a legitimate activity.
- Running a mini-moto proficiency course to ensure that young people know how to ride them safely and where they can go to do it.
- Arranging local competitions with motoring groups to direct people to legal sites.

The guidance encourages the use of robust enforcement powers against those who are deliberately disregarding the law, in particular the use of powers to seize and dispose of vehicles.

It sets out the legislation that allows seizure in different situations i.e. from unlicensed drivers, from uninsured drivers, and those used in a manner causing alarm, distress or annoyance.

The powers to seize vehicles being driven without a licence or insurance are contained under Section 165A of the RTA1988.

The power to seize a vehicle ridden in contravention of either Section 3 (on roads or public places without due care and attention) or Section 34 (off-road, e.g. footpaths, bridleways, common land etc.) of the RTA 1988 in a manner that causes alarm, distress or annoyance, is contained under Section 59 of the Police Reform Act 2002 (PRA 2002).

Once a vehicle has been seized, it may be disposed of after being retained for the minimum storage period, or returned after the owner has provided the requisite documentation and paid the appropriate fees. Details on seizure, retention and disposal of vehicles can be found in the Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005 (SI 2005/1606) in relation to Section 165A RTA1988 seizures and in the Police (Retention and Disposal of Motor Vehicles) Regulations 2002 (SI 2002/3049) for seizures under Section 59 PRA 2002.

In addition to the prosecution of offenders the guidance suggests several other measures that could be pursued to deal with the problem, including:

- Anti-social behaviour contracts.
- Anti-social behaviour injunctions.
- Anti-social behaviour orders.
- Noise abatement notices.

The guidance document can be found at **http://www.respect.gov.uk**

DfT Advice on Self-Balancing Scooters

The Department for Transport has produced a fact sheet on the subject of self-balancing scooters, such as the Segway Human Transporter (featured in an article in January *Digest*) and their use on public roads or footpaths.

The advice given in the fact sheet is very similar in nature in respect of the use of mini-motos in the previous article i.e. that because of the following reasons in most cases they cannot be ridden anywhere than on land which is private property and with the landowner's permission.

In relation to road use, the Department for Transport considers that these sort of powered vehicles are subject to road traffic law. In particular, that they would require to be registered and licensed under the Vehicle Excise and Registration Act 1994. Additionally, the user would need a driving licence and motor insurance.

As most self-balancing scooters are not made in accordance with the European Community Whole Vehicle Type Approval (ECWVTA) rules they are not eligible for licensing and registration in the UK.

Two or three wheeled vehicles not approved to ECWVTA could theoretically meet the requirements of the Motorcycle Single Vehicle Approval (MSVA) scheme and if so, would be eligible for licensing and registration. However the DfT opinion is that such vehicles would not pass the MSVA inspection.

The fact sheet can be found at
http://www.dft.gov.uk/stellent/groups/dft_roads/documents/page/dft_roads_612198.hcsp

Proposals to Increase Penalty for Offence under Section 55 of the Data Protection Act 1998

The Government is proposing to increase the penalty available to the courts in sentencing a person found guilty of an offence under Section 55 of the Data Protection Act (DPA) 1998.

Section 55 relates to the offence of unlawfully obtaining etc. personal data. Subject to certain exceptions, a person who knowingly or recklessly, without the consent of the data controller, obtains or discloses personal data or the information contained in personal data, or procures the disclosure to another person of the information contained in personal data, is guilty of an offence. The current penalty available for this offence is, on summary conviction, a fine not exceeding the statutory maximum (currently £5,000), or on conviction on indictment, to an unlimited fine.

The Government proposes to amend Section 60, which sets out the penalties available for offences under the Act, and to increase the penalty available for an offence under Section 55 to:

- On summary conviction, up to six months, imprisonment (which will be increased to 12 months imprisonment in England and Wales if and when Section 154 Criminal Justice Act 2003 comes into force) and/or a fine of up to £5,000.
- On conviction on indictment, up to two years' imprisonment and/or an unlimited fine.

Prior to these proposals being pursued further, the Department for Constitutional Affairs has published a consultation paper seeking views on them. The consultation is due to run until 30 October 2006. The consultation document can be found at **http://www.dca.gov.uk/consult/misuse_data/cp0906.htm**

Plans to Reform the Immigration Nationality Directorate

The Home Office has published a paper entitled, 'Fair, Effective, Transparent and Trusted: Rebuilding Confidence in our Immigration System' which sets out the Home Secretary's vision on how the Government can work to improve the way that Immigration Nationality Directorate (IND) tackles immigration in the future. The paper is intended to build on the Government's five-year asylum and immigration strategy published in 2005.

Key proposals include:

- Introducing exit controls (embarkation) year by year until everyone is counted in and out. (It is anticipated that this will not be complete until 2014).
- Extending border checks on people before they travel to this country, targeting high risk routes.
- Strengthening the powers of the border service and make it a more visible uniformed presence, doubling spending on enforcement by 2009/10.
- Implementing ID cards, starting with biometric residence permits for foreign nationals in 2008.
- Requiring non-EEA nationals to have unique, secure IDs to be able to travel to Britain by 2011, to allow criminality to be checked.
- Granting or removing 90% of new asylum claimants within six months by 2011.
- Increasing removals and deportation by effective use of detention, tagging and monitoring of asylum claimants.
- Improving the effectiveness of deportation arrangements by removing in-country rights of appeal.
- Implementing fines for employers, seizing assets of persistent offenders, disbarring company officers who knowingly employ illegal workers and working across Government to stop fraudulent access to benefits.
- Establishing IND as an agency on a shadow basis from April 2007, eventually leading to full agency status.
- Reforming and simplifying immigration laws, rules and guidance.

Many of the proposals will require new legislation or legislative changes. It is expected that the Government will introduce an early Bill to introduce these proposed measures.

The paper also states that the Home Office intends to conduct consultations on the establishment of a new Migration Advisory Committee to advise Government on migration issues and also on the creation of a single, independent regulatory body for the IND.

The paper can be found in full at
http://www.ind.homeoffice.gov.uk/aboutus/reports/indreview

Consultation on Part 6 of the Traffic Management Act 2004

The Department for Transport has published a consultation paper which is seeking views on the Government's proposals for strengthening the system of decriminalised parking enforcement (DPE) in England.

The proposals will be given effect through regulations made under the Traffic Management Act 2004 (TMA) and associated statutory guidance. At present, all London authorities and 148 English local authorities outside London operate decriminalised parking enforcement (DPE). Under DPE, parking regulations are enforced by parking attendants employed by local authorities, rather than the police service. Part 6 of the TMA 2004 provides a single framework for the civil enforcement of parking, bus lanes, some moving traffic offences and the London lorry ban.

The Government intends to implement the provisions in Part 6 in stages, beginning with those on parking which are expected to be introduced in 2007. Under the TMA, decriminalised parking enforcement will become known as 'civil parking enforcement' (CPE). In recognition of their wider remit, parking attendants will become known as Civil Enforcement Officers (CEOs).

CPE is applicable only to on-street parking and car parks owned by local authorities. It does not apply to car parks owned by the private sector unless they are regulated by an order made under Section 35 of the Road Traffic Regulation Act 1984.

The statutory guidance stresses to local authorities that they should not view CPE in isolation or as a way of raising revenue. The guidance requires that CPE policies be reviewed on a regular basis in consultation with local stakeholders and, once finalised, published.

In respect of CEOs, the guidance recommends that they achieve minimum standards through recognised training courses, such as those recommended by the British Parking Association, and that they undergo Criminal Records Bureau checks. A CEO's main role will be to ensure parking controls are observed and enforced in a fair, accurate and consistent manner. Other duties will also include helping the public, inspecting parking equipment, checking and reporting for defective signs and road markings, issuing information leaflets or warning notices, providing witness statements and, where appropriate, appearing before a parking adjudicator. Additional duties that it is suggested authorities may wish to consider asking them to carry out include informing the police of criminal parking activity, reporting suspected abandoned vehicles, reporting to DVLA vehicles with no valid tax disc, putting in place and removing notices about the suspension of parking places, checking that shops selling parking vouchers have adequate stocks, reporting on changes in parking patterns and assisting with on-street enforcement surveys. Whilst carrying out the functions of issuing Penalty Charge Notices (PCNs) and the authorising or carrying out of wheel-clamping or the removal of vehicles, a CEO must be in uniform. It is recommended that they carry a photo-identity card, showing their identification number and the name of their employer; but, in the interests of personal safety, it is advised that the CEO's name need not be included on the identity badge.

The new proposed regulations in relation to the wheel-clamping will extend the time at which a vehicle may be clamped after a PCN has been issued in a paid-for parking place to 60 minutes (presently 15 minutes). However, in the case of a vehicle in respect of which there are three or more penalty charges outstanding, this time will remain at 15 minutes.

In relation to wheel-clamping, the guidance document recommends that:

- If a driver returns to the vehicle whilst clamping or removal is taking place, that the clamping or removal is halted and not pursued, unless the clamp is secured or the vehicle has all its wheels aboard the tow truck.
- If clamping or removal is halted, the PCN should still be enforced as normal.
- Where vehicles are removed, local traffic authorities should ensure the police, or in London, Trace Services, are contacted and advised of the time, place, vehicle registration number, and pound to attend for retrieval so they can deal with queries from motorists who are likely to conclude that their vehicle has been stolen.
- Storage charges should not begin to apply until midnight on the day following the removal of a vehicle.
- When a vehicle is first clamped and then subsequently removed to the pound, the clamp release fee is not payable.

The consultation is also seeking views on the role of the police, who, under the present DPE regime, may only take action against parking that is causing an obstruction or is dangerous. It is suggested that the regulations to enact the TMA could be drawn up in a way that would enable the police to enforce parking if they so wished, even where the local traffic authority had taken on this power.

The deadline for reply to this consultation is 25 September 2006. The consultation document and relevant draft regulations and draft statutory guidance document can be found at
http://www.dft.gov.uk/stellent/groups/dft_roads/documents/divisionhomepage/612002.hcsp

Report on Drug Classification

The House of Commons Committee on Science and Technology has published a report, 'Drug classification: making a hash of it?' that concludes that the current drugs classification system is not fit for purpose. It suggests that the present system should be replaced with a more scientifically-based scale of harm, decoupled from penalties for possession and trafficking.

In the report, the Committee calls for a review of the current system, as it argues that there is a lack of consistency in the way some drugs have been classified in the A,B,C system. It also argues that there is no solid evidence to back-up the view that classification has a deterrent effect.

It comments that effective policy-making is being hindered by the weakness of the evidence base on addiction and drug abuse; and calls for a significant increase in investment in research on this subject.

The report also raises several critical points about the Advisory Council on the Misuse of Drugs (ACMD), the key scientific advisory body on drugs policy. One of its suggestions calls for the ACPO seat on the ACMD to play a full and active role in developing the ACMD's position.

The report can be found in full at
http://www.publications.parliament.uk/pa/cm/cmsctech.htm

Defra Advice on Tackling Fly-Tipping

The results of a Department for Environment, Food and Rural Affairs (Defra) commissioned project looking at the causes, incentives and solutions for fly-tipping has been published, together with a good practice guide for preventing fly-tipping.

The good practice guide includes detailed examples of good practice and advice for local authorities in tailoring services and enforcement to ensure fly-tipping is designed out and future offenders are deterred.

One of the main recommendations made is for local authorities to work closely with other agencies and organisations; and the report contains particular examples how this has been successfully achieved.

Further details on the project and guidance can be found at
http://www.defra.gov.uk/environment/localenv/flytipping/research/index.htm

Search Warrants under Section 23 Misuse of Drugs Act 1971

There has been a lot of recent discussion between the Home Office, police forces and the Justices' Clerks' Society in respect of whether the amendments introduced by the Serious Organised Crime and Police Act 2005 (SOCPA) to Sections 15 and 16 of the Police and Criminal Evidence Act (PACE) have extended the period in which a warrant issued under Section 23 of the Misuse of Drugs Act 1971 (MDA) can be executed, from one month to three months.

The intention of the changes to Section 16 PACE brought about by Section 114(8) SOCPA was that the lifetime of all warrants would be extended to three months.

Schedule 16 of SOCPA makes amendments to various Acts under which warrants can be issued, substituting three months as the relevant time in which a warrant could be executed under these Acts, instead of 28 days or one month. These Acts are:

- Public Order Act 1936
- Incitement to Disaffection Act 1934
- Wireless Telegraphy Act 1949
- Licensing Act 1964
- Biological Weapons Act 1974
- Copyright, Designs and Patents Act 1988
- Computer Misuse Act 1990
- Trade Marks Act 1994

A similar provision as those included in the list above, contained within Section 23(3) of the MDA (which states that the execution of a warrant issued under Section 23 may be carried out at any time within one month from the date of the warrant being granted) was, for whatever reason, not included in Schedule 16 and is therefore still in force.

Therefore the present opinion is that a warrant issued under Section 23 MDA will be operative for only one month from the date of issue. It is expected that when a suitable legislative opportunity arises Section 23 will be amended, extending the period of a warrant's life to three months.

Should it be thought operationally necessary that a warrant might be required for a three month period, an application for a warrant under Section 8 PACE could be considered.

Previous advice on this issue included in guidance issued by the Home Office, (covered in the December 2005 Digest) should be amended accordingly.

Sentencing Guidelines on Robbery

The Sentencing Guidelines Council has published, in accordance with Section 170(9) of the Criminal Justice Act 2003 (CJA), a definitive guideline which applies to the sentencing of offenders convicted of robbery who are sentenced on or after 1 August 2006. By virtue of Section 172 of the CJA, every court must have regard to this guideline.

In the main the guideline deals with three categories of robbery:

- Street robbery or 'mugging'.
- Robberies of small businesses.
- Less sophisticated commercial robberies.

It identifies, in relation to these categories, three levels of seriousness, based on the extent of force used or threatened. It sets out, for each level of seriousness, a sentencing range and a starting point within that range. It deals with adult and youth offenders as separate groups.

Recommendations in the guidance for adult offenders include:

- A starting point of four years custody where a weapon (real or imitation) is produced and used to threaten, and/or force is used which results in injury to the victim.
- An eight-year starting point if a victim suffers serious physical injury through the use of significant force and/or use of a weapon.
- Only where the offence involves the threat or use of minimal force should the starting point be a 12-month custodial sentence.
- Non-custodial penalties should only be passed in exceptional circumstances.

In relation to young offenders who have not been assessed as dangerous, the guideline recommends:

- A starting point of three years' detention for a robbery where a weapon is produced and/or force is used which results in injury to the victim.
- A starting point of seven years' detention where the victim suffers serious physical injury.
- A non-custodial starting point only where the offence includes the threat or use of minimal force.

The guideline also recommends that, in all robbery cases, courts should consider making a Restitution Order or a Compensation Order. In cases where a non-custodial sentence is imposed, it recommends courts should consider making an anti-social behaviour order.

Charts which set out the sentencing guideline are on the following page:

Sentencing Guidelines Council

Maximum Penalty: **Life imprisonment**

	ADULT OFFENDERS		YOUNG OFFENDERS	
Type/nature of activity	**Starting point**	**Sentencing Range**	**Starting point**	**Sentencing Range**
The offence includes the threat or use of minimal force and removal of property.	12 months custody	Up to 3 years custody	Community Order	Community Order – 12 months detention and training order
A weapon is produced and used to threaten, and/or force is used which results in injury to the victim.	4 years custody	2–7 years custody	3 years detention	1-6 years detention
The victim is caused serious physical injury by the use of significant force and/or use of a weapon.	8 years custody	7–12 years custody	7 years detention	6–10 years detention

Additional aggravating factors	**Additional mitigating factors**
1. More than one offender involved. 2. Being the ringleader of a group of offenders. 3. Restraint, detention or additional degradation, of the victim. 4. Offence was pre-planned. 5. Wearing a disguise. 6. Offence committed at night. 7. Vulnerable victim targeted. 8. Targeting of large sums of money or valuable goods. 9. Possession of a weapon that was not used.	Relevant to all: 1. Unplanned/opportunistic. 2. Peripheral involvement. 3. Voluntary return of property taken. 4. Clear evidence of remorse. 5. Ready co-operation with the police. Relevant only to Young Offenders: 6. Age of the offender. 7. Immaturity of the offender. 8. Peer group pressure.

In relation to the above chart, the 'starting points' for young offenders are based upon a first-time offender, aged 17 years old, who pleaded not guilty. In relation to younger offenders, sentencers will consider whether a lower starting point is justified in recognition of the offender's age or immaturity.

The guideline does not provide much input on violent personal robberies in the home or professionally planned commercial robberies, other than to say that, in relation to both of these circumstances, existing case authority is still valid and recommending that consideration be given as to whether the offender is a 'dangerous offender' for the purposes of the CJA.

The guideline can be found in full at **http://www.sentencing-guidelines.gov.uk/**

Telephone Reminder Schemes

The Office for Criminal Justice Reform (OCJR) has published a guidance document about how to set up a defendant telephone reminder scheme.

The document has been produced following evidence from the United States which suggested that phoning defendants to remind them to attend court could improve attendance rates, and the subsequent successful running of a pilot scheme in three criminal justice areas (Camberwell Green, Tower Bridge in London; Devon and Cornwall; Thames Valley).

The guidance includes details of the pilot scheme and summarises its results. It also sets out the key learning points for areas wishing to set up their own telephone reminder schemes, including a sample script for the making of the calls.

A further pilot scheme is also being planned in relation to reminding defendants by text messages.

Further details on both schemes can be obtained by contacting **andrew.waldren@cjs.gsi.gov.uk**

Memorandum of Understanding between ACPO and the NHS Security Management Service

The Memorandum of Understanding (MOU) between ACPO and the NHS Security Management Service (SMS) (first featured in the February Digest) has now been signed and published. It is intended to facilitate good working relationships between all parties and to develop clear lines of communication.

It establishes guidelines to:

- Facilitate effective lines of communication by promoting clear understanding of the NHS SMS and police responsibilities, working procedures and respective legal constraints.
- Assist the police and the NHS Local Security Management Specialist to cooperate at an operational level.
- Facilitate effective exchange of information, investigation of offences and joint working practices, with the objective of maximising the prevention and detection opportunities for all forms of crime against NHS staff and property.

As the NHS SMS has policy and operational responsibility only for NHS health bodies in England, the document only makes reference to matters occurring in England not Wales.

This MOU does not cover fraud work as it is not part of the NHS SMS remit. There is a separate MOU between ACPO and the NHS Counter Fraud Service for that work which can be found at **http://www.cfsms.nhs.uk/pubs/cfs.agreements.html.**

The ACPO/ NHS (SMS) MOU can be found at
http://www.cfsms.nhs.uk/press/index.html

United Kingdom Threat Assessment of Serious Organised Crime 2006/07

The Serious Organised Crime Agency (SOCA) has published a Threat Assessment which describes and assesses the threats posed to the UK by serious organised criminals. There are two versions of the document, the first being a protectively marked version, produced for and circulated to UK law enforcement agencies. The second, which is not protectively marked, is intended to help increase public awareness, thereby helping individuals to protect themselves from becoming the victims of serious organised crime.

The overall threat to the UK from serious organised crime is assessed by SOCA as being high. SOCA has estimated that economic and social costs of serious organised crime, including the costs of combating it, at upwards of £20 billion a year.

The report states that trafficking in Class A drugs continues to be the most visible form of serious organised crime and that the continuing fall in drug prices indicates that efforts to reduce the trade are currently failing.

Other areas reported on in the document include:

- Organised immigration crime.

- Fraud.
- Serious sex offences against children.
- Other serious organised criminal activities (organised armed robbery, road freight crime, organised vehicle crime, intellectual property crime, currency counterfeiting).

The public document can be found at
http://www.soca.gov.uk/assessPublications/index.html

'Disability in the Police Service – Best Practice Document'

The Home Office, in conjunction with local forces, has produced a draft best practice document which is intended to assist forces in the production of their individual force Disability Equality Schemes (DES). The draft document has been forwarded by the Home Offices to forces for comment.

When finalised the document will form part of the 'Complete Works – Disability and the Police' booklets which focus on the employment provisions of the Disability Discrimination Act 1995. These booklets are currently under review by the Home Office to take account of the Disability Discrimination Act 2005. This review is expected to be completed by early October 2006 when the revised information will be disseminated to forces and published on the Home office website at
http://police.homeoffice.gov.uk/human-resources/equality-and-diversity?version=1

Prison Officers Vote for Strike Action

The workplace ballot of prison officers in 132 public sector prisons in England and Wales resulted in overwhelming support for industrial action up to and including strike, over the issue of what the prison officers feel is Government and employers' interference with the Pay Review Body.

Any industrial action will no doubt have a massive effect on the police service, particularly due to the fact that any assistance given by the armed forces could well be diminished by their current commitments overseas.

Autonomous Systems Technology Related Airborne Evaluation and Assessment Programme

The Government has announced an investment of £16 million to support a national programme aimed at ensuring the safe operation of unmanned aviation vehicles in civil airspace without the need for restrictive or specialised operational conditions. The Autonomous Systems Technology Related Airborne Evaluation and Assessment (ASTRAEA), programme is a collaboration between the Department of Trade & Industry and leading private sector businesses and universities.

Some of the advantages envisaged by the advancement of unmanned aircraft technology include the use of such vehicles in police and fire and coastal surveillance operations.

Further information on the ASTRAEA programme can be found at
http://www.astraeaproject.com/

Case Law

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

Compatibility of Section 25 of the Criminal Justice and Public Order Act 1994 with the European Convention on Human Rights 1950 Art.5(3).

O v HARROW CROWN COURT: IN RE O (APPLICATION FOR A WRIT OF HABEAS CORPUS) (2006)

[2006] UKHL 42

HL (Lord Nicholls of Birkenhead, Lord Hutton, Baroness Hale of Richmond, Lord Carswell, Lord Brown of Eaton-under-Heywood) 26/7/2006

CRIMINAL PROCEDURE - HUMAN RIGHTS - PENOLOGY AND CRIMINOLOGY

Bail: Custody Time Limits: Prisoners Rights: Reasonable Time: Right To Liberty And Security: Compatibility Of S.25 Criminal Justice And Public Order Act 1994 With Art.5(3) European Convention On Human Rights 1950: Criminal Justice And Public Order Act 1994 (Commencement No. 1) Order 1994: Art.5 European Convention On Human Rights: S.22(3)(B) Prosecution Of Offences Act 1985: Bail Act 1976: Prosecution Of Offences (Custody Time Limits) Regulations 1987

The Criminal Justice and Public Order Act 1994 s.25 was compatible with the European Convention on Human Rights 1950 Art.5(3).

The appellant (O) appealed against a decision ((2003) EWHC 868 (Admin), (2003) 1 WLR 2756) that the Criminal Justice and Public Order Act 1994 s.25 did not violate the European Convention on Human Rights 1950 Art.5. O had been detained pending trial on charges of rape, false imprisonment and indecent assault. A prior conviction for rape brought him within the scope of s.25 of the 1994 Act, which provided that bail would only be granted to offenders in his category if the court was satisfied that there were exceptional circumstances justifying it. He remained in custody for a period of 22 months until his trial was permanently stayed. He was refused bail both before and after the expiry of the 182-day custody time limit. The main issue before the court was the impact of s.25 in cases where the custody time limit had expired. O argued that once, as in the instant case, the court had refused to extend a custody time limit because of the prosecution's failure to act "with all due diligence and expedition" within the meaning of the Prosecution of Offences Act 1985 s.22(3)(b), the court could not refuse bail without thereby violating Art.5. The Director of Public Prosecutions and the Secretary of State for the Home Department argued that decisions of the European Court of Human Rights showed that there was no automatic equation between a lack of due diligence such as might prompt a refusal to extend the custody time limit and a breach of the reasonable time guarantee in Art.5(3).

HELD

(1) The submission of the DPP and the secretary of state was correct. By the very nature of things, the Strasbourg court would be looking at the case in a different way from the domestic court, in particular from a longer and wider perspective. The Strasbourg court would have the whole picture before it and would take an overall view as to whether the reasonable time guarantee had been exceeded, Contrada v Italy (27143/95) (1998) HRCD 795 and Grisez v Belgium (35776/97) (2003) 36 EHRR 48 considered. The domestic court, by contrast, was inevitably having to decide a much narrower question and within a shorter time-frame. And it was doing so within the strict confines of s.22(3) of the 1985 Act, which, despite the marked similarity between its language and that used in Strasbourg, in fact imposed a more rigid formula for the extension of custody time limits than Strasbourg did with regard to the reasonable time guarantee under Art.5(3). There were not likely to be many cases where, as in the instant case, bail would be refused notwithstanding the court's refusal to extend the time limit; however, there was no necessary inconsistency between the two and Art.5(3) was not necessarily thereby breached. Nor was there any other reason for thinking that O had been wrongly refused bail: on the contrary, the case for his continued detention in custody appeared to have been a strong one. In summary, s.25 should be construed and applied essentially as a guide to the proper operation of the Bail Act 1976 in those cases to which it applied. Additionally, it operated in those cases to disapply the ordinary requirement under the Prosecution of Offences (Custody Time Limits) Regulations 1987 reg.6(6) that bail should be granted automatically to anyone whose custody time limit had expired. Thus applied, it was compatible with Art.5(3).

(2) Hooper J. had been correct to hold in the court below that s.25 placed the burden on the detained person to prove that he should be released but that the section could be read down so as to impose a purely evidential burden on the accused.

Appeal dismissed

Non-Derogating Control Order under the Prevention of Terrorism Act 2005 Comply with The European Convention on Human Rights

SECRETARY OF STATE FOR THE HOME DEPARTMENT v MB (2006)

[2006] EWCA Civ 1140

CA (Civ Div) (Lord Phillips LCJ, Sir Anthony Clarke MR, Sir Igor Judge (President QB)) 1/8/2006

CRIMINAL PROCEDURE - HUMAN RIGHTS

Declarations Of Incompatibility: Judicial Review: Non Derogating Control Orders: Right To Fair And Public Hearing: Standard Of Proof: Terrorism: Procedure For Review By Court Of Non-Derogating Control Order Made By Secretary Of State: Standard Of Review: Terrorism Related Activity: Closed Material: Special Advocate: Purposive Construction: S.3 Prevention Of Terrorism Act 2005: Art.6(1) European Convention On Human Rights: S.4(2)

Human Rights Act 1998: S.3(10) Prevention Of Terrorism Act 2005: S.3 Human Rights Act 1998: S.11(2) Prevention Of Terrorism Act 2005

The provisions for review by the court of the making of a non-derogating control order by the secretary of state, under the Prevention of Terrorism Act 2005 s.3, complied with the requirements of the European Convention on Human Rights 1950 Art.6(1).

The appellant secretary of state appealed against the decision ((2006) EWHC 1000 (Admin)) that the procedures in the Prevention of Terrorism Act 2005 s.3 relating to the supervision by the court of non-derogating control orders made by the secretary of state were incompatible with the rights of the respondent (D) to a fair hearing under the European Convention on Human Rights 1950 Art.6(1). The secretary of state had obtained the court's permission on a without notice application to make a non-derogating control order against D restricting his ability to travel outside the United Kingdom on the basis that D was suspected of involvement with terrorism-related activity and was to be prevented from travelling to Iraq to fight against the coalition forces which included armed forces of the UK. Section 3 of the 2005 Act made provision for supervision by the court of the type of control order made against D and the court was required to follow a special procedure, involving closed material and the use of a special advocate. At the full hearing the judge considered the closed material and concluded that he had no option but to order that the control order remain in force. He further held that the procedure under the 2005 Act whereby the court merely reviewed the lawfulness of the secretary of state's decision to make the order on the basis of the material available to him at that earlier stage was unfair, and made a declaration of incompatibility under the Human Rights Act 1998 s.4(2). The secretary of state submitted that the judge's conclusion as to the limited scope of the court's review of the secretary of state's decision was unsound and that s.3(10) of the 2005 Act required the court to review the secretary of state's decision having regard to the evidence before the court at the time it conducted its review. D submitted that on the facts the use of closed material was incompatible with the requirements of Art.6.

HELD

(1) The judge had erred in holding that the provisions for review by the court of the making of a non-derogating control order by the secretary of state did not comply with the requirements of Art.6.

(2) Having regard to s.3 of the 1998 Act, s.11(2) of the 2005 Act required the court, so far as it was able, to give effect to D's Convention rights having regard to the state of affairs that existed at the time that the court reached its decision, and s.3(10) of the 2005 Act could not be read so as to restrict the court, when addressing a human rights issue, to a consideration of whether, when he made his initial decision, the secretary of state had reasonable grounds for doing so. It was the duty of the secretary of state to keep the decision to impose a control order under review, so that the restrictions that a control order imposed, whether on civil rights or Convention rights, were no greater than necessary. A purposive approach to s.3(10) had to enable the court to consider whether the continuing decision of the secretary of state to keep the order in force was flawed, and therefore the section had to be read as requiring the court to consider whether the decisions of the secretary of state in relation to the control order were flawed as at the time of the court's determination.

(3) The terms of s.3(10) of the 2005 Act, when read in the light of s.11(2) of the 2005 Act, did not restrict the court to a standard of review that fell short of that required to satisfy Art.6 of the Convention. Proceedings under s.3 of the 2005 Act did not involve determination of a criminal charge.

(4) Contrary to the judge's view, s.3 of the 2005 Act did not require the court to apply a low standard of proof. The court had to consider whether there were reasonable grounds for suspicion, and that exercise differed from that of deciding whether a fact had been established according to a specified standard of proof. It was the procedure for determining whether reasonable grounds for suspicion existed that had to be fair if Art.6 of the Convention was to be satisfied.

(5) Both Strasbourg and domestic authorities accepted that there were circumstances where the use of closed material was compatible with Art.6 of the Convention. Article 6 of the Convention could not automatically require disclosure of the evidence of the grounds for suspicion. Reliance on closed material could only be on terms that appropriate safeguards were in place and the provisions of the 2005 Act for the use of a special advocate and rules of court constituted such appropriate safeguards.

(6) The validity of the order had to be reconsidered.

Appeal allowed

Judicial Intervention In Cross Examination of Police Officer

R (on the application of ABDEESALLAM) v HORSEFERRY ROAD MAGISTRATES' COURT (2006)

DC (Richards LJ, Toulson J) 18/5/2006

CRIMINAL PROCEDURE - ADMINISTRATION OF JUSTICE

Bias: Cross Examination: Intervention: Magistrates Courts: Judicial Intervention In Cross Examination Of Police Officer: Impact On Fair Minded Observer: Appearance Of Bias

In the circumstances a fair-minded observer would not have concluded that an intervention by the chairman of a magistrates' court objecting to an assertion of lying put to a police officer in cross-examination showed any bias by the magistrates' court towards the police.

The claimant (C) applied for judicial review of a decision of the defendant magistrates' court to convict him of the attempted theft of luggage and the theft of an Oyster card. Police officers at a London coach station had allegedly observed C acting in a way that suggested that he had a suspicious interest in passengers' luggage. In particular they claimed that C had placed his hand on luggage belonging to an elderly couple whilst their back was turned but had removed his hand when they turned around. The police officers arrested C and allegedly found a stolen Oyster card on his person. In cross-examination of one of the police officers at C's trial, C's then legal representative put it to that police officer that he was lying. The chairman of the magistrates' court intervened and objected to the assertion. C's legal representative objected and on the advice of its legal advisor the magistrates' court allowed the assertion to be made. At the end of the prosecution case C made a submission of no case to answer but it was rejected. C offered no evidence and was convicted. For the purpose of the present proceedings the chairman of the magistrates' court and the legal advisor to it made statements in which they asserted that C's legal representative had put his assertion of lying to the police officer in a hostile tone and that the objection was to the manner in which the police officer was addressed. C contended that there had been an appearance of bias by the magistrates' court.

HELD

The question to be determined was whether a fair-minded observer would have said that the magistrates' court had shown bias in favour of the police. To a fair-minded observer it would have appeared that C's legal representative had put his allegation of lying to the police officer in a manner that the chairman of the magistrates' court thought was inappropriate. The chairman of the magistrates' court had intervened with a form of words

that C's legal representative had taken as preventing him from challenging the police officer's honesty. A fair-minded observer might have reached that same conclusion. However, C's legal representative had then protested; the magistrates' court's legal advisor had then advised the magistrates' court that C's legal representative was entitled to make his assertion that the police officer was lying and C's legal representative had in fact proceeded to make that challenge. The fair-minded observer would not have concluded from that exchange that the magistrates' court had been biased in favour of the police. R v Highgate Magistrates' Court ex p Riley (1996) RTR 150 considered.

Application refused

Magistrates' Court Erred in Admitting a Police Incident Log as Hearsay

MAHER v DIRECTOR OF PUBLIC PROSECUTIONS (2006)

DC (Scott Baker LJ, Leveson J) 12/5/2006

CRIMINAL EVIDENCE

Admissibility: Hearsay Evidence: Multiple Hearsay: Police Incident Logs: Admissibility Of Logs: S.117 Criminal Justice Act 2003: S.117(2)(C) Criminal Justice Act 2003: S.114 Criminal Justice Act 2003: S.121 Criminal Justice Act 2003

A magistrates' court erred in admitting a police incident log as hearsay evidence pursuant to the Criminal Justice Act 2003 s.117. However, the log was admissible in the interests of justice pursuant to s.114 and s.121 of the 2003 Act and as such the appellant's convictions were safe.

The appellant (M) appealed by way of case stated against her convictions for careless driving, failing to stop at the scene of an accident and failing to report an accident to the police. The DPP had alleged that M had whilst reversing her car in a car park, struck a parked car owned by a third party (X) causing damage to that car. The DPP further alleged that M then left the scene of the accident without leaving her contact details. An individual claimed to have seen the accident as it occurred and left a note on X's car with the registration number of the car that allegedly struck X's car. X's girlfriend saw the note and immediately rang the police who made a record of the contents of the note on their incident log. Thereafter M was traced through the registration given in the note and she admitted in a police interview that she had driven her car in the car park on the day that the alleged accident occurred but she claimed that she did not hit X's car. At the date of trial the original note was lost and the DPP sought to adduce the police log as hearsay evidence pursuant to the Criminal Justice Act 2003 s.117. M challenged the admissibility of the log and contended that the requirements under s.117(2)(c) for the person supplying the information to have been acting in the course of a trade or business were not met. The magistrates' court rejected M's submission and convicted her. The question posed for the opinion of the High Court was whether the magistrates' court was correct to admit the log as hearsay evidence under s.117.

HELD

The magistrates' court erred in admitting the log as hearsay evidence pursuant to s.117. The log was based upon the information supplied by X's girlfriend. She was not acting in

the course of her business when she informed the police of the information that she received via the note. However, the evidence in question plainly fell within the magistrates' court's discretion under s.114(1)(d) and s.121(1)(c) of the Act and it would have concluded under those sections that it was appropriate to admit the police log as hearsay evidence in the interests of justice. There was no basis to suggest that the admission of that evidence was not in the interests of justice and the evidence was of substantial value and reliable. Accordingly M's convictions were safe.

Appeal dismissed

Judge's Direction Regarding Alibi

R v MARK ANTHONY CAPRON (2006)

[2006] UKPC 34

PC (Bah) (Lord Bingham of Cornhill, Lord Hoffmann, Lord Hutton, Lord Rodger of Earlsferry, Lord Carswell) 29/6/2006

CRIMINAL PROCEDURE - CRIMINAL EVIDENCE

Alibis: Bahamas: Dock Identification: Identification: Jury Directions: Murder: Recognition: Turnbull Directions: Witnesses: Recognition Cases: Adequacy Of Alibi Direction

Even in a case where an eye witness recognised an accused, the trial judge should always give an appropriate direction in accordance with R v Turnbull (1977) QB 224 unless, as in the instant case, the nature of the eye witness evidence was such that the direction added nothing of substance to the judge's other directions to the jury on how to approach that evidence. The judge's direction regarding alibi in the instant case had, however, been unfairly prejudicial to the accused because it had undermined the alibi that was the central issue raised in the defence.

The appellant (C) appealed against a decision of the Court of Appeal of the Bahamas dismissing his appeal against conviction for murder. According to the Crown's principal witnesses (W), C had shot the victim. At trial, W maintained that they had known C well for many years and they made a dock identification, to which the defence unsuccessfully objected. C's defence had been that W were lying when they identified him as the murderer, and that W and some other men had attacked the victim in connection with a drugs matter. C had also maintained that at the time of the murder he had been talking to his uncle on the porch of the uncle's house, and he had relied on an alibi placing him there before and after the shooting. On the basis that it was not a case of mistaken identity but whether W were lying, the trial judge summed up without a Turnbull warning, but directed the jury that it had to be sure that W were telling the truth and that they were not mistaken about the identity of the person who had shot the victim. The judge also stated that the witness providing the alibi could not say for sure that he had seen C on the porch at the time of the shooting, and said that the jury might think his evidence did not assist C. The Court of Appeal rejected C's criticism of the trial judge in relation to the jury direction. C submitted that:

(1) the trial judge had been wrong to repel his objection to the dock identification of him when they had not previously identified him at an identification parade;

(2) even though the defence had attacked W on the basis that they were lying, rather than that they were mistaken in their identification of C, the judge should have given a Turnbull direction.

HELD

(1) Holding an identification parade for W would have served no useful purpose and their dock identifications did not carry the risk that they might have been influenced to identify C simply because he was sitting in the dock, R v Goldson (Irvin) applied.

(2) Even in a recognition case, the trial judge should always give an appropriate Turnbull direction unless, despite any defence challenges, the nature of the eye witness evidence was such that the direction would add nothing of substance to the judge's other directions to the jury on how they should approach that evidence, R v Turnbull (1977) 145 JPN 478 , Beckford (1993) 97 Cr App R 409 and Shand v R (1996) 1 WLR 67 considered. The jury had the evidence of W who had known C for many years before the incident and who would have been able to recognise him in the conditions prevailing; a full Turnbull direction would not have added anything of substance to the directions that the judge actually gave the jury. The absence of a Turnbull direction did not make C's conviction unsafe.

(3) The judge's comments that the alibi witness had only seen C on the porch before and after the incident rather than at the very time of the shooting, and that his evidence did not take C's case any further, was too extreme and should not have been made in those terms. While it was true that the alibi witness could not say who had fired the shots, the absence of that particular evidence did not detract in any way from the actual evidence that he was able to give, namely that C had been on his uncle's porch both before and after the incident. It was the latter evidence that C was inviting the jury to accept and to use as a basis for inferring that C would also have been on the porch, rather than at the scene, when the victim was shot. C was fully entitled to make that point and it was essential that the jury should have been left to consider it, free from the judge's repeatedly expressed and extremely negative assessment of the evidence. The jury should have been directed that, if the alibi evidence had raised a reasonable doubt about C's guilt, it had to acquit. In the circumstances, the judge's alibi directions were unfairly prejudicial to C because they undermined what was the central issue raised in C's defence. Given that the Crown's case depended on the jury accepting the evidence of W, and that the alibi evidence could be seen as casting doubt on their evidence, it was impossible to say that, if the jury had been given appropriate directions on the alibi evidence, they would inevitably have returned the same verdict. Accordingly, the verdict was unsafe.

Appeal allowed

Dispersal Regime under Section 30 of the Anti-Social Behaviour Act 2003

R (on the application of PARMINDER SINGH) v CHIEF CONSTABLE OF WEST MIDLANDS (2006)

[2006] EWCA Civ 1118

CA (Civ Div) (Wall LJ, Wilson LJ, Hallett LJ) 28/7/2006

CRIMINAL LAW - HUMAN RIGHTS - POLICE

Anti Social Behaviour: Demonstrations: Dispersal: Freedom Of Expression: Police Powers And Duties: Theatre: Authorisation Orders: Using Dispersal Order In Context Of Demonstration: Using Dispersal Order For Group Different From One Intended Under Authorisation: Sikhs: S.30 Anti-Social Behaviour Act 2003: Art.9 European Convention On Human Rights: Art.10 European Convention On Human Rights: Art.11 European Convention On Human Rights

Parliament had intended that the dispersal regime under the Anti-social Behaviour Act 2003 s.30 should apply to protests. Where an authorisation had been validly made within the terms of the Act, it might be used to empower police officers to issue dispersal directions to a group of people acting in an anti-social manner of a kind not contemplated at the time the authorisation was made.

The appellant (S) appealed against the refusal of his application for judicial review of the validity of the decision of the respondent police force (C) to issue a dispersal order in the context of a demonstration. S was one of a number of Sikhs who had demonstrated inside and outside a theatre for several nights during the run of a play to which they took great exception, believing it to be grossly offensive to their religion and their religious beliefs. An authorisation order had already been in force for the area around the theatre, the grounds for which had been the increasing amount of anti-social behaviour and violent incidents associated with both alcohol and the increased number of individuals condensed into a small area during the run up to Christmas. The demonstrations against the play became unruly, and the police consequently issued a dispersal order under the Anti-social Behaviour Act 2003 s.30 to a group of protesters including S. He refused to obey, was arrested and accepted a police caution. Thereafter, S sought to challenge the legal validity of the dispersal order, relying heavily upon the provisions of the European Convention on Human Rights 1950 Art.9, Art.10 and Art.11, emphasising the importance of peacefully manifesting a right to protest. C contended that, whilst the protest had begun as a peaceful one, by the time dispersal directions had been given it was no longer peaceful and had become a threat to public order. The court dismissed S's application. S submitted that

(1) Parliament could not have intended by general and ambiguous words to interfere with the fundamental right to protest lawfully and that, even if it had been thought that Parliament had intended such a result, it would be incompatible with the Convention, and that s.30 of the Act should be construed in such a way that it did not apply to lawful protests;

(2) it had been no more than coincidence that an authorisation happened to be in place to deal with seasonal revellers at the time when the police considered exercising their powers to control the protest, and that it could not have been Parliament's intention that whether one type of activity should be the subject of dispersals under the Act would depend upon the adventitious statutory identification (following consultation and publicity) of a totally different type of problematic activity.

HELD

(1) Looking at the express language of the Act as a whole, and s.30 in particular in its context, it was compellingly clear that Parliament had intended that the dispersal regime under s.30 should apply to protests, R v Special Commissioner Ex p Morgan Grenfell and Co Ltd (2002) UKHL 21 , (2003) 1 AC 563 applied. Parliament had not expressly excluded protesting groups from the authorisation provisions, and there was no warrant for the courts to step in and create the exclusion. Furthermore, s.30 of the Act did not need to be read down so as to be compatible with a protester's fundamental human rights. Allowing a dispersal direction to cover protests of the kind in the instant case was prescribed by law in that the action taken had been pursuant to s.30 of the Act. The use of those powers had had a legitimate aim, namely, the prevention of crime and disorder, the protection of public safety and the protection of the rights and freedoms of others, including the right to freedom of expression of those producing the play and the right of others present in the area to go about their business without being subjected to scenes that were unnecessarily frightening, intimidating and distressing. The use of the s.30 power had been necessary in a democratic society and constituted the right balance between the rights of protesters to express their opinions and the rights of others to be protected from distressing conduct.

(2) Where an authorisation had been validly made within the terms of the Act, it might be used to empower police officers to issue dispersal directions to a group of people acting in an anti-social manner of a kind not contemplated at the time the authorisation was made. Had Parliament intended to limit the use of dispersal directions to anti-social behaviour of the kind specified in the authorisation, it could and no doubt would have done so. It would be absurd if the police were to have to procure a separate authorisation to deal with each successive manifestation or source of disorder.

Appeal dismissed

The Benefit from Criminal Conduct Has to be More Than Fanciful

R v HILDA GONDWE DA SILVA (2006)

[2006] EWCA Crim 1654

CA (Crim Div) (Longmore J, Gloster J, Judge Diehl QC) 11/7/2006

CRIMINAL LAW - CRIMINAL PROCEDURE

Benefit From Criminal Conduct: Jury Directions: Suspicion: Assisting Another To Retain Benefit Of Criminal Conduct: Suspecting That Person Had Benefited From Criminal Conduct: Meaning Of "Suspect" In S.93a(1)(A) Criminal Justice Act 1988: More Than Fanciful Possibility: Dictionary Definitions: Misdirections: S.93a(1)(A) Criminal Justice Act 1988

For the purpose of a conviction under the Criminal Justice Act 1988 s.93A(1)(a), the prosecution had to prove that the defendant's acts of facilitating another person's retention or control of the proceeds of criminal conduct were done by a defendant who thought that there was a possibility, which was more than fanciful, that the other person was or had been engaged in or had benefited from criminal conduct.

The appellant (D) appealed against her conviction for assisting another person to retain the benefit of criminal conduct knowing or suspecting that that other person was or had been engaged in criminal conduct contrary to the Criminal Justice Act 1988 s.93A(1)(a) on the ground that the judge had erred by giving the jury a dictionary definition of the word "suspecting" and then adding a further gloss to that definition. D had been charged with her husband on counts of obtaining money transfers by deception. The husband managed a coffee bar and had arranged for the wages of "ghost workers" to be transferred into D's bank accounts. The husband had been convicted of obtaining money transfers by deception but D had been acquitted. Alternatively D had been charged with offences under s.93A(1)(a) of entering into or being concerned in an arrangement which involved the deposit and withdrawal of sums into and from her bank account facilitating her husband's retention or control of proceeds of his criminal conduct, knowing or suspecting that her husband was or had been engaged in criminal conduct or had benefited from it. On those counts the judge directed the jury that a dictionary definition of "suspicion" was "an act of suspecting, the imagining of something without evidence or on slender evidence, inkling, mistrust", and that therefore any inkling or fleeting thought that the money being paid into her account might be the proceeds of criminal conduct would suffice for the offence against her to be proved. D submitted that

(1) for an offence to be committed under s.93A(1)(a) the suspicion had to be on reasonable grounds;

(2) the judge had erred in giving the jury a definition and in particular a dictionary definition of the ordinary English word "suspicion";

(3) the judge's introduction of the concept "fleeting thought", which was not part of the dictionary definition cited by the judge, constituted a misdirection.

HELD

(1) The court could not imply a word such as "reasonable" into s.93A(1)(a). To do so would be to make a material change in the statutory provision for which there was no warrant. That was all the more the case when it was clear that the draftsman was aware of the difference between "suspecting" and "having reasonable grounds to

suspect" and on occasion used the latter phrase in preference to the former word.

(2) The judge could not have been criticised if he had declined to define the word "suspecting" further than by saying it was an ordinary English word and the jury should apply their own understanding of it. Nor could the judge be criticised for assisting the jury in relation to the word "suspecting" if he did so correctly, R v Gillard Independent, January 4, 1988. If a judge justifiably decided to assist the jury about the meaning of a word, the dictionary definition was, in the absence of judicial authority, likely to be a sensible starting place and there was no English authority in a criminal context on the meaning of "suspect" or "suspicion". The essential element in the word "suspect" and its affiliates, in the context of s.93A, was that the defendant had to think that there was a possibility, which was more than fanciful, that the relevant facts existed. A vague feeling of unease would not suffice. But the statute did not require the suspicion to be clear or firmly grounded or based upon reasonable grounds. A more elaborate direction might be necessary where a defendant had entertained a suspicion but, on further thought, honestly dismissed it from his or her mind as being unworthy or as contrary to such evidence as existed or as being outweighed by other considerations, but that was not the instant case.

(3) Using words such as "inkling" or "fleeting thought" was liable to mislead and there had therefore been a misdirection. However it was not a misdirection which led to any doubt about the safety of the conviction.

Appeal dismissed

Police not Required to Disclose Reasons why an Officer had Failed a Security Vetting Check

JANET BARRACKS v (1) JOHN COLES (2) COMMISSIONER OF POLICE OF THE METROPOLIS (2006)

[2006] EWCA Civ 1041

CA (Civ Div) (Sir Anthony Clarke MR, Mummery LJ, Wall LJ) 21/7/2006

EMPLOYMENT - CIVIL PROCEDURE - DISCRIMINATION - HUMAN RIGHTS - POLICE

Case Management: Disclosure: Investigatory Powers: Race Discrimination: Regulation: Right To Fair Trial: Vetting: Security Vetting: Hearing Discrimination Claim Without Disclosure By Police Of Reasons For Failing Security Vetting: Art.6 European Convention On Human Rights: S.18 Regulation Of Investigatory Powers Act 2000

The employment tribunal had erred in making an unless order, at a case management hearing in a race discrimination claim, requiring the police to disclose the reasons why an officer had failed a security vetting check, when the police believed that they were forbidden by law from disclosing either the information or the legal basis for the prohibition on disclosure, since the unless order unjustifiably prevented the police from defending the discrimination claim in the normal way by adducing evidence in their defence at the substantive hearing.

The appellant (B) appealed against a decision of the Employment Appeal Tribunal allowing an appeal by the respondent police, setting aside an unless order and remitting the matter to the employment tribunal for a hearing on the merits without certain particulars sought by B.

B was a police officer who had applied unsuccessfully for a position as a field intelligence officer. She believed that she had been racially discriminated against and asked for feedback about her application. The police denied that she had been unlawfully discriminated against on the grounds of her race or at all. The police case was that B had failed a security vetting check and that even if there had been no other applicant for the post B would not have been selected for it. B was not given an explanation for failing the vetting check and the police stated that they were prohibited by law from providing the explanation to B and prohibited from disclosing the law that prohibited them from providing the explanation for the failed vetting. The employment tribunal at a case management hearing made an unless order requiring the police to disclose reasons why her application was rejected. The EAT set aside the unless order and held that a substantive hearing of the discrimination claim should take place in the employment tribunal without the disclosure sought by B.

B submitted that there was no error of law in the decision of the employment tribunal, and that any domestic legislation prohibiting the disclosure to B and the employment tribunal of relevant evidence would be contrary to Community law and the European Convention on Human Rights 1950 Art.6. The police submitted that a fair hearing could take place without the vetting information.

HELD

(1) The unless order made by the employment tribunal had been wrongly made and had been rightly set aside by the EAT. It was wrong in law to make an unless order with which the police could not, on their case, comply without breaking the law, which they understood prohibited either disclosure of the information or of the legal basis for the prohibition on disclosure. The unless order unjustifiably prevented the police from defending the discrimination claim in the normal way by adducing evidence in their defence at the substantive hearing. Therefore the appeal was dismissed.

(2) The matter was remitted for a full hearing by the employment tribunal on the basis that it was wrong in law to prevent the police from defending the claim at least on the basis of evidence that they were not prohibited from adducing. That would not prevent B from making submissions to the tribunal on the legal and evidential position if the police refused to answer a question in cross-examination or to produce a document relevant to their case. Those submissions might relate to the inferences to be drawn from the evidence, to the burden of proof and the legal entitlement of the police to refuse to answer questions or requests for documents and included the Community law and Convention arguments on which the EAT had ruled. The rulings of the EAT on those issues did not bind the employment tribunal. The Court of Appeal should not itself rule on those arguments.

(3) The employment tribunal should also disregard the EAT decision that it was satisfied that the police were prohibited by law from revealing either the nature of the reasons for B's negative vetting or the legal provisions under which that refusal was made. The case should be remitted to an employment tribunal chaired by a circuit judge in case it was necessary to have a disclosure hearing such as was envisaged by the Regulation of Investigatory Powers Act 2000 s.18.

Appeal dismissed

SI 1917/2006 The Child Abduction and Custody Act 1985 (Jersey) Order 2006

In force **21 August**. This Order concerns The Hague Convention on the Civil Aspects of International Child Abduction 1980 and the European Convention on Recognition and Enforcement of Decision concerning Custody of Children and on Restoration of Custody of Children 1980.

Following Jersey's enactment of the Child Abduction and Custody (Jersey) Law 2005, this Order gives effect to the Conventions and allows the legislation to apply between Jersey and the constituent parts of the United Kingdom.

By Article 2, references in the 1985 Act to orders made, proceedings brought and other things done in relation to the Conventions in the United Kingdom shall have effect as if they included a reference to orders made, proceedings brought and other things done in Jersey.

SI 1966/2006 The Disability Discrimination Code of Practice (Goods, facilities, services and premises) (Revocation) Order 2006

In force **4 December**. This Order revokes the Disability Discrimination Act 1995 Code of Practice on goods, facilities, services and premises. The Code outlined, to providers of goods, services and premises, practical guidance of their obligations under Part 3 of the Act.

The revocation is due to the coming into force (also on 4 December) of a new Code of Practice that takes into account new rights and duties under the Disability Discrimination Act 1995.

The Code continues to be effective under a transitional arrangement for the purposes of s.53A(6)(c) and s.67(3)(a) of the Disability Discrimination Act 1995. Therefore, it will cover proceedings arising from allegations that a person has, pre 4 December 2006, committed an act of unlawful discrimination under Part 3 of the Act.

SI 1967/2006 The Disability Discrimination Code of Practice (Services, Public Functions, Private Clubs and Premises) Appointed Day) Order 2006

In force **4 December**. This Order brings into force the Disability Discrimination Act 2005 Code of Practice on Rights of Access: services to the public, public authority functions, private clubs and premises under Section 53A(1), (1D) and (1F) of the Act.

The Code contains guidance on the carrying out of functions under Part 3 of the Act. It applies to providers of goods, facilities and services in general, and is aimed at public authorities, private clubs, landlords and managers of let premises.

The Code gives additional guidance to landlords and tenants in England and Wales on making disability-related improvements to let premises.

SI 1972/2006 The Electoral Administration Act 2006 (Commencement No 1 and Transitional Provisions) Order 2006

In force **11 September**. This Order brings provisions of the Electoral Administration Act 2006 into force, these being:

- Section 9 Registration Officers: duty to take necessary steps.
- Section 15 Offences as to false registration information.
- Section 23 Offences as to false statements in nomination papers.
- Section 25 Amount of expenses which may be incurred by a third party.
- Section 27 Meaning of election expenses for purposes of the 1982 Act.
- Section 39 Undue Influence.
- Section 40 Offences relating to applications for postal and proxy votes.
- Section 48 Registered names of parties.
- Section 50 Confirmation of registered particulars.
- Section 51 Removal from register of registered parties.
- Section 52 Time for registration of parties fielding candidates.
- Section 53 Requirements as to statements of accounts.
- Section 54 Time for delivery of unaudited accounts to Electoral Commission.
- Section 55 Policy development grants to be donations
- Section 56 Exemption from requirement to prepare quarterly donation reports.
- Section 57 Repeal of section 68 of the 2000 Act.
- Section 60 Northern Ireland: disapplication of Part 4 of the 2000 Act.
- Section 61 and 62 Regulation of loans etc.
- Section 64 Campaign expenditure: standing for more than one party.
- Section 65 Time limit for claims in respect of campaign expenditure.
- Section 67 Performance of local authorities in relations to elections etc.

See article on page 11.

SI 1998/2006 The Motor Vehicles (Tests) (Amendment) Regulations 2006

In force **8 September**. These regulations amend the Motor Vehicles (Tests) Regulations 1981.

Regulation 2(2) provides:

- Where a vehicle (other than Class VI or VIA) fails the MOT test, remains at the test station and is re-tested within 10 days, no fee will be payable for its re-examination. If the re-test is carried out after 10 days, the full re-test fee is chargeable.

- Where a vehicle fails the MOT test and is brought back for re-test by the end of the next working day and is re-examined on the failed items contained within Regulation 20(3A)(b), no fee will be charged.
- Where the vehicle does not qualify for a re-test for failure of the items listed in regulation 20(3A)(b) and is brought back to the same test centre within 10 days of the initial fail, then a partial re-test is required. The chargeable fee is up to a maximum of one half of the full fee.
- A Class IVA or VA vehicle which passes on seat belt installation but fails other test areas may be re-tested at the same station as a Class IV or V vehicle. Fees chargeable are the same as for Class IV or V.

In any other case full examination is required, attracting a full fee.

SI 2006/2006 The Clean Neighbourhoods and Environment Act 2005 (Commencement No 3) (England) Order 2006

In force **1 October.** This Order brings into force in England Section 84 (Extension of Noise Act 1996 to licensed premises etc) of the Clean Neighbourhoods and Environment Act 2005 to the extent that section is not already in force.

SI 2014/2006 The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2006

In force **1 October**. These Regulations amend both the Maternity and Paternal Leave etc. Regulations 1999 and the Paternity and Adoption Leave Regulations 2002.

These Regulations relate to employees whose expected week of childbirth is on or after 1 April 2007, an employee whose child is expected to be placed with him for adoption by that date or, in cases of overseas adoption, an adopter whose child enters Britain on or after 1 April 2007.

Regulations 5 to 7 remove the requirement of additional length of service as a qualifying condition for additional maternity leave. Employees qualifying for ordinary maternity leave now also qualify for additional maternity leave.

By Regulation 8, the period of required notice of intention to return to work earlier than the end of additional maternity leave is extended from 28 days to eight weeks. The Regulation also sets out notification requirements where the employee changes her mind more than once of her intended return date. Regulation 15 provides the same as Regulation 8 for employees on statutory adoption leave.

Regulation 9 inserts new Regulation 12A, enabling an employee (by agreement) to work up to 10 days during the statutory leave period. Regulation 14 introduces new Regulation 21A. This provides an equivalent arrangement as Regulation 9 for employees on statutory adoption leave.

Regulations 10, 11, 16 and 17 provide protection from detriment and unfair dismissal under the Employment Rights Act 1999 for undertaking, considering undertaking or not undertaking any such work. Regulation 11 and 17 also give employees the right to return to the same or similar job regardless of the size of organisation. An employee prevented from doing so will have been 'unfairly dismissed'.

SI 2015/2006 The Police and Criminal Evidence Act 1984 (Application to the Armed Forces) Order 2006

This Order applies Part V and Section 117 of the Police and Criminal Evidence Act 1984, subject to the modifications set out in Schedule 1, to investigations of offences conducted by service policemen:

- Section 54A (searches and examination to ascertain identity).
- Section 55 (intimate searches).
- Section 55A (x-rays and ultrasound scans).
- Section 56 (right to have someone informed when arrested).
- Section 58 (access to legal advice).
- Section 61 (fingerprinting).
- Section 61A (impressions of footwear).
- Section 62 (intimate samples).
- Section 63 (other samples).
- Section 63A (fingerprints and samples: supplementary provisions).
- Section 64 (destruction of fingerprints and samples).
- Section 117 (power of service policeman to use reasonable force).

SI 2016/2006 The Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2006

In force **26 July**. This Order adds the following organisations to Schedule 2 (proscribed organisations) of the Terrorism Act 2000:

- Al-Ghurabaa.
- The Saved Sect.
- Baluchistan Liberation Army.
- Teyrebaz Azadiye Kurdistan.

SI 2083/2006 The Traffic Signs (Amendment) Regulations 2006

In force **21 August**. These Regulations amend the Traffic Signs Regulations 2002. Regulation 2(2) and the Schedule insert new diagrams, to indicate quiet lanes in England, into Schedule 4 (miscellaneous informatory signs) to those Regulations. Regulation 2(3) makes a consequential amendment to Schedule 17 (illumination of signs).

See link for illustrations **http://www.opsi.gov.uk/si/si2006/uksi_20062083_en.pdf**

SI 2135/2006 The Serious Organised Crime and Police Act 2005 (Appeals under Section 74) Order 2006

In force **28 August**. This Order makes provision for the purposes of appeals under the Serious Organised Crime and Police Act 2005. Under the Act, an offender's case can be referred to the Crown Court if the offender has offered further assistance, has offered assistance following sentence, or he has offered assistance, and as a consequence has received a discounted sentence, but has failed to provide it.

- Section 74(6) covers the first two situations and allows the Crown Court to take account of the extent and nature of the assistance offered and adjust the sentence as it thinks appropriate.
- Section 74(5) allows the Crown Court, if it is satisfied the person has knowingly failed to give assistance, to substitute a greater sentence.
- Section 74(8) states the offender or a specified prosecutor can appeal to the Court of Appeal against a decision of the Crown Court on an application for review of a sentence under Section 74. A specified prosecutor is defined in Section 71(4) of the 2005 Act.

SI 2136/2006 The Drugs Act 2005 (Commencement No 4) Order 2006

In force **1 October**. This Order brings Section 20 (anti-social behaviour orders: intervention orders) of the Drugs Act 2005 into force.

SI 2137/2006 The Crime and Disorder Act 1998 (Relevant Authorities and Relevant Persons) Order 2006

In force **1 October**. This Order adds the Environment Agency and Transport for London to the list of 'relevant authorities' who can apply for ASBOs under section 1, 1B, 1CA and 1E of the Crime and Disorder Act 1998.

SI 2138/2006 The Crime and Disorder Act 1998 (Intervention Orders) Order 2006

In force **1 October**. This Order prescribes certain matters for the purposes of intervention orders under Section 1G of the Crime and Disorder Act 1998.

Where an authority applies for an ASBO, and the person's 'trigger' behaviour is the result of drugs misuse, the Order enables the attachment to the ASBO of an 'intervention order', which specifies particular requirements that the person is to comply with.

Article 2 of the Order prescribes the persons to be consulted before an application for an intervention order is made.

Article 3 prescribes the person responsible for the provision or supervision of "appropriate activities" under such an order, namely a trust or authority (referred to in article 2) which provides or supervises, or arranges for the provision or supervision of, those activities.

Article 4 prescribes those activities and who constitutes an "appropriately qualified person" to compile a report for the purposes of such an application.

SI 2143/2006 The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2006

In force **26 July**. This Order provides exceptions to Section 4 of the Rehabilitation of Offenders Act 1974, in line with continuing assessment of public risk.

New exceptions amend s.4(2) (concerning questions in relation to spent convictions) for questions asked in relation to public contract tendering under EC law, and concerning the questions that can be asked in assessing the suitability of football stewards. The Order also provides exceptions to s.4(3)(b) (spent convictions not to be a proper ground for dismissal or prejudicing a person in any occupation or employment).The exceptions relate to the refusal of persons to undertake activities of a football steward.

To the list of exempted professions, offices, work and employments in Schedule 1 is added the post of 'home inspector'. Amendments are made with regard to those working with vulnerable adults and to reflect the new arrangements in HM Customs and Revenue and the Revenue and Customs Prosecutions office. New posts are added, including those designated under the Traffic Management Scheme 2004, and various persons working in the courts.

Also added to Schedule 3 are new proceedings in which spent convictions can be used.

SI 2165/2006 The Police and Criminal Evidence Act 1984 (Codes of Practice) (Revisions of Code A) Order 2006

In force **31 August**. This Order brings into force the revision of PACE Code A, which concerns the exercise by police officers of statutory powers of stop and search and the exercise by police officers and police staff of requirements to record public encounters.

The revision is to paragraph 4 of Code A (recording requirements including recording of encounters not governed by statutory powers). This enables constables of the British Transport Police operating in certain locations to provide an electronic receipt when they undertake a stop and search procedure,

SI 2178/2006 The Misuse of Drugs (Amendment No.3) Regulations 2006

In force **1 September** (also see below). These Regulations amend the Misuse of Drugs Act Regulations 2001.

Regulations 3, 4 and 6(2) exclude veterinary prescriptions from the requirement that all private prescriptions containing controlled drugs, in Schedules 1, 2 or 3 of the 2001 Regulations, must be issued on a standard form and that such prescriptions must be submitted to the National Health agency after supply of the drug. In Wales, the exclusion comes into force on **1 January 2007**.

Regulation 5 amends Regulations 16(2) and 23 of the 2001 Regulations, relating to retention of private prescriptions. The amendment removes prescriptions (other than veterinary prescriptions) containing controlled drugs from Schedules 1, 2 or 3 of the 2001 Regulations.

Regulation 7 amends Regulation 2(2) of the Misuse of Drugs (Amendment No.2) Regulations 2006 (SI 2006/1450) to make the commencement date of Regulations 7(1) and 10 of the 2006 Regulations to be **1 January 2008**. This corrects the defective amendment appearing in the earlier SI.

SI 2181/2006 The Police Act 1997 (Criminal Records) (Amendment No 2) Regulations 2006

In force **1 September** (also see below). These Regulations are made under Part 5 of the Police Act 1997 and amend the Police Act 1997 (Criminal Records) Regulations 2002 by:

- Expanding Enhanced Disclosure eligibility to include Independent Mental Capacity Advocates (IMCAs) and school governors.
- Providing for eligibility for checks of the Protection of Vulnerable Adults list (POVA) in respect of IMCAs.
- Providing for an exemption to the general prohibitions on the passing of disclosure information under Section 124 of the Police Act 1997 in the case of information passed between employment agencies supplying school staff and schools which are considering employing such persons.

Regulation 2(g) of these Regulations comes into force 25 September. It prescribes the British Transport Police as a 'relevant force' to enable the Criminal Records Bureau to request information from the chief cfficer when processing an application for an enhanced disclosure certificate.

SI 2182/2006 The Serious Organised Crime and Police Act 2005(Commencement No 9) and Amendment Order 2006

In force **25 September**. This Order brings into force Section 163(2) of the Serious Organised Crime and Police Act 2005.

The effect is to bring into force provisions inserted by Section 162(2) in the Police Act 1997, which make the British Transport Police a relevant police force for the purpose of obtaining information to be disclosed in an enhanced criminal record certificate under Part V of the 1997 Act.

SI 2213/2006 The Motor Vehicles (Wearing of Seat Belts by Children in Front Seats) (Amendment) Regulations 2006

In force **18 September**. These Regulations make provision relating to the wearing of seat belts and other restraints by children in the front of motor vehicles. (See also SI 1892/ 2006 Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006 in July edition of Digest).

These Regulations require that when travelling in the front of a motor vehicle:

- Children up to 11 years of age but less than 135 centimetres in height, to be secured by child restraints appropriate for their height and weight.
- Children aged 12 and 13 (and those under 12 but 135 centimetres or more in height), to use either appropriate child restraints or else an adult seat belt.

They retain certain previously existing exemptions, these are:

- For children with a medical condition making it inadvisable for them to wear a seat belt or child restraint.
- For disabled children if they are wearing a disabled person's belt.

Children aged 12 and 13 will also be allowed to travel unrestrained in the front of a vehicle if there is no seat belt for them in the front of the vehicle. This exemption will also extend to children under 12 but 135cms or more in height (currently it would only be available if they were 150cms or more in height).

The Regulations remove exemptions allowing:

- Children under 1 year to travel in a carry cot.
- Children to travel in the front seat of a motor car first used before 1st January 1965 which has no rear seat and no appropriate seat belt or child restraint available for the child.

The Regulations also amend two of the existing exemptions.

The existing exemption allowing children aged 3 years or over to use an adult belt if an appropriate child restraint is not available either in the front or rear of all classes of vehicle will now only be available where the child is travelling on a bus.

They restrict the existing exemption allowing children to travel unrestrained in certain larger classes of vehicle which are being used to provide a local service to travel on buses which are providing a local service in a "built up" area or on which standing is permitted (provided that the bus is designed for this).

SI 2215/2006 The School Crossing Patrol Sign (England and Wales) Regulations 2006

In force **4 September**. These Regulations revoke the School Crossing Patrol Sign (England and Wales) Regulations 2002 albeit the provisions in these new Regulations are based upon the provisions of the 2002 regulations. The principal changes are an increase in the permissible size of the perimeter strip and increased flexibility with regard to the colouring and illumination requirements of the patrol signs.

SI 2226/2006 The Immigration, Asylum and Nationality Act 2006 (Commencement No 2) Order 2006

In force **31 August**. This Order brings into force provisions of the Immigration, Asylum and Nationality Act 2006, these being:

- Section 1 (variation of leave to enter or remain).
- Section 2 (removal).
- Section 3 (grounds of appeal).
- Section 5 (failure to provide documents).
- Section 6 (refusal of leave to enter).
- Section 7 (deportation).
- Section 11 (continuation of leave).
- Section 14 (consequential amendments) together with all the provisions of Schedule 1 except paragraph 11.
- Section 19 (code of practice).
- Section 23 (discrimination: code of practice).

- Section 27 (documents produced or found).
- Section 28 (fingerprinting).
- Section 29 (attendance for fingerprinting).
- Section 40 (searches: contracting out).
- Section 41 (section 40: supplemental).
- Section 42 (information: embarking passengers).
- Section 46 (inspection of detention facilities).
- Section 49 (capacity to make nationality application).
- Section 53 (arrest pending deportation).
- Section 54 (refugee convention: construction).
- Section 55 (refugee convention: certification).
- Section 59 (detained persons: national minimum wage).
- Section 61 (repeals) together with Schedule 3, to the extent that they relate to the entries in that Schedule listed in Schedule 2 to this Order.

Sections 1 to 3 and Section 5 of the Act shall apply only in respect of a decision made on or after 31 August 2006.

For further guidance on Section 53 see article on HOC 24/2006 on page 29.

CENTREX

HELPING TO DEVELOP POLICING

Legal Validation and Research

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