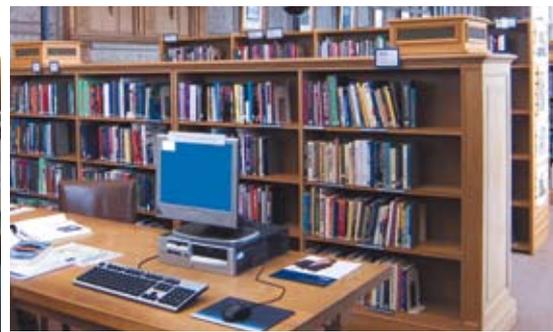


Digest

AUGUST 2007



CASELAW Police News Diversity
LEGISLATION POLICE NEWS
POLICE NEWS LEGISLATION
DIVERSITY Criminal Justice

The Digest is produced monthly by the Legal Services Department of the NPJA. The Digest is an environmental scanning publication intended to capture and consolidate topical and key issues, both current and future, impacting on all areas of policing. In producing the Digest, information is included from Governmental and quasi-governmental bodies, criminal justice organisations and research bodies. As such, the Digest should prove an invaluable guide to those responsible for strategic decision making, operational planning and police training.

This month's edition contains articles on a number of Governmental proposals including its Draft Legislative Programme for the Next Session of Parliament, its Crime Strategy for the period 2008-2011, the green paper on Constitutional Reform and a consultation on its future Drug Strategy.

Also included this month is a summary of the provisions contained within the Criminal Justice and Immigration Bill.

Articles relating specifically to policing include, The Home Affairs Committee report on police funding, the proposed standard powers and duties of Police Community Support Officers, a new collaborative initiatives for improving protective services, the ACPO Motorcycle Enforcement Strategy. This edition also contains practice advice on; critical incident management; reducing knife-enabled crime; and a revised version of the ACPO 'Good Practice Guide for Computer-Based Electronic Evidence'.

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

Case law in association with



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Study of Sexual Orientation and Religion or Belief Tribunal Cases

The results of a project, funded by the DTI and conducted by the TUC to study all cases taken under the Employment Equality (Sexual Orientation and Religion or Belief) Regulations 2003, have been published in a report.

The work involved analysing published employment tribunal decisions and any relevant higher court judgments, as well as liaising where possible with ACAS, the Employment Tribunal Service and other sources to obtain additional information about cases that have been withdrawn, settled or otherwise disposed of.

The report concludes that many interesting aspects of these two new areas of non-discrimination law were revealed in the study. It found that some of the anticipated issues have already arisen in the judgments, while others have yet to be deliberated upon.

It found that there has been a preponderance of direct discrimination cases on religion or belief, no cases on harassment and a range of cases in which religious adherence has been treated primarily as an indirect discrimination issue. It also found that there have not yet been any decided indirect discrimination cases on sexual orientation discrimination.

Other findings include:

- ◆ There has not been any controversy over what amounts to sexual orientation. A case at present at hearing will consider the issue of the possible distinction between sexual orientation and 'sexual practices' but this is an issue in relation to direct discrimination rather than the definition of sexual orientation itself.
- ◆ Tribunals have had no difficulty in accepting bona fide religions, such as Seventh-day Adventists, as recognised religions. Issues such as paganism and witchcraft have not arisen.

The report can be found in full at <http://www.tuc.org.uk/equality/tuc-13485-f0.cfm>

Employment Appeal Tribunal to Utilise Acas Conciliation Service in Certain Tribunal Appeal Cases

The Employment Appeal Tribunal (EAT) is to refer certain cases to Acas, the employment relations service. These types of cases are those where conciliation might assist the parties in reaching a resolution without the need for a hearing and include those:

- ◆ Where the parties' employment relationship is ongoing.
- ◆ Where a case could be referred back to the employment tribunal.
- ◆ Appeals relating to monetary awards.

Criminal Justice and Immigration Bill

The Ministry of Justice has published the new Criminal Justice and Immigration Bill. The purpose of the Bill is to make further provision about criminal justice (including provision about the police) and dealing with offenders and defaulters; to provide for the establishment and functions of Her Majesty's Commissioner for Offender Management and Prisons and to make further provision about the management of offenders; to amend the criminal law; to make further provision for combating crime and disorder; to make provision about the mutual recognition of financial penalties; to make provision for a new immigration status in certain cases involving criminality.

Part 1 of the Bill relates to Youth Rehabilitation Orders.

Clauses 1 and Schedule 1 introduce youth rehabilitation orders (YROs), a new generic community sentence for children and young people which allows a court to impose on the person one or more of the following requirements:

- ◆ An activity requirement.
- ◆ A supervision requirement.
- ◆ In a case where the offender is aged 16 or 17 at the time of the conviction, an unpaid work requirement.
- ◆ A programme requirement.
- ◆ An attendance centre requirement.
- ◆ A prohibited activity requirement.
- ◆ A curfew requirement.
- ◆ An exclusion requirement.
- ◆ A residence requirement.
- ◆ A local authority residence requirement.
- ◆ A mental health treatment requirement.
- ◆ A drug treatment requirement.
- ◆ A drug testing requirement.
- ◆ An education requirement.

Youth rehabilitation orders must in certain cases impose an electronic monitoring requirement. Subject to certain conditions, in certain other cases the court may also impose such a requirement.

Clause 2 and Schedule 2 make provision for their enforcement, revocation and amendment.

Clause 3 and Schedule 3 make provision about the transfer of youth rehabilitation orders to Northern Ireland.

The remaining Clauses 4-8 set out the definitions in relation to YROs, duties of responsible officers and the abolition of certain existing community sentences which are to be replaced by the YRO.

Part 2 of the Bill relates to Sentencing.

Provisions in Part 2 include:

- ◆ The abolition of suspended sentences for summary offences (Clause 10).
- ◆ Changes to the method by which courts determine the tariff (that is, the minimum time that a person must spend in custody) when they are imposing an indeterminate sentence (Clause 12).
- ◆ The recall to prison of non-dangerous offenders who breach the terms of their licence or who re-offend, for a fixed period of 28 days. The role of the Parole Board is changed in such cases, so that it acts as an appellant authority rather than routinely reviewing all recalls (Clause 16).
- ◆ Allowing the Secretary of State to recall to prison a life prisoner who has been released on licence (Clause 18). This clause, in effect, removes the existing rule that the Secretary of State cannot, except in certain circumstances, recall a life prisoner except on the recommendation of the Parole Board.
- ◆ Giving the staff of Her Majesty's Court Service (HMCS) access to benefit records held by the Department for Work and Pensions (DWP) for the purpose of fine enforcement.

Part 3 of the Bill relates to Appeals.

Clause 26 amends Section 2 of the Court of Appeal Act 1968. At present, Section 2 states that the Court of Appeal shall allow an appeal against conviction if it thinks a conviction is unsafe.

The amendment made by Clause 26 states that a conviction is not unsafe if the Court of Appeal is satisfied that the appellant is guilty of the offence. However, the amendment goes on to say that the Court of Appeal is not prevented from allowing an appeal against conviction where it thinks that it would be incompatible with the appellant's Convention Rights to dismiss the appeal.

This Clause is likely to be the subject of discussion and debate as the Bill goes through the Parliamentary process: on the one hand, it will probably be argued that it will prevent people who are 'clearly guilty' from having their conviction quashed; on the other hand, it will probably be argued that any breach of procedures or protocols, however 'technical', have influenced a person's right to a fair trial.

Clause 27 alters the test for ordering a retrial (or that the trial should resume) where the Court of Appeal allows a prosecution appeal against a terminating ruling.

Clause 28 provides that, where a discretionary life sentence or indeterminate sentence is referred to the Court of Appeal by the Attorney General on the grounds that it is unduly lenient, the Court may not, on re-sentencing, give the offender any discount in the new sentence to reflect any anxiety and distress arising from being sentenced for a second time. This is an extension of the prohibition which already applies to mandatory life sentences for murder.

Part 4 of the Bill (Clauses 29-52 and Schedules 6 to 10) establishes HM Commissioner for Offender Management and Prisons.

Part 5 of the Bill covers a number of other criminal justice provisions, including:

- ◆ Extending the adult conditional caution scheme, provided for in Part 3 of the Criminal Justice Act 2003, to young offenders aged 16 and 17 years. The Bill also provides for the publication of a Code of Practice for youth conditional cautions. (Clause 53 and Schedule 11).
- ◆ Amending the Rehabilitation of Offenders Act 1974 to bring warnings, reprimands, simple cautions and conditional cautions within the ambit of that Act. This means that warnings, reprimands and simple cautions will become “spent” immediately, while conditional cautions will become “spent” after 3 months; and thereafter an ex-offender will not be obliged to declare them, for example, when applying for a job (save in excepted circumstances). (Clause 54 and Schedule 12).
- ◆ Amending Schedule 3 to the Criminal Justice Act 2003 to restore the power of magistrates’ courts to commit cases tried summarily to the Crown Court for sentence. (Clause 56 and Schedule 13).
- ◆ Amending Section 11 of the Magistrates’ Courts Act 1980 (MCA 1980) to state that, if an accused person who has attained the age of 18 years fails to appear at the time and place appointed for the trial or adjourned trial of an information and the prosecutor appears, the court shall proceed in his absence unless it appears to the court to be contrary to the interests of justice to do so. This provision is subject to other existing provisions in the MCA 1980. The Bill also introduces a further provision which states that the court shall not proceed in the absence of the accused if it considers that there is an acceptable reason for his failure to appear. In relation to an accused person under 18, the Bill provides that the court may proceed in his absence, again subject to other provisions in the MCA 1980. The Bill also further amends the MCA 1980 by removing subsection 13(5) which will allow the magistrates’ court to issue a warrant of arrest for a person who has failed to appear and whose trial is being dealt with in his absence. (Clause 57).
- ◆ Extending the range of proceedings in magistrates’ courts where the Crown Prosecution Service (CPS) may be represented by designated non-legal staff. (Clause 58).
- ◆ Amending Section 133 of the Criminal Justice Act 1988, which relates to the award of compensation for miscarriages of justice. The changes: impose a 2 year time limit for making applications for compensation (save

in exceptional circumstances); place an upper limit of £500,000 on the amount of compensation that may be awarded; restrict the compensation that may be paid for loss of earnings to 1.5 times the median gross annual earnings (the same as for compensation paid to victims of crime); and enable the Assessor to make deductions from the level of compensation in the light of any contributory conduct or any previous convictions held by the applicant. (Clause 62)

Part 6 of the Bill covers a number of criminal law provisions in relation to pornography, street offences, nuclear material and nuclear facilities, data protection.

Pornography

Possession of extreme pornographic images

Clause 64 creates a new offence of possession of extreme pornographic images. An 'extreme pornographic image' is an image which is both:

- ◆ Pornographic (i.e. it appears to have been produced solely or principally for the purpose of sexual arousal), and
- ◆ An extreme image.

'Image' for the purposes of this offence means:

- ◆ A moving or still image (produced by any means); or
- ◆ Data (stored by any means) which is capable of conversion into a moving or still image.

An 'extreme image' is an image of any of the following where (in each case) any such act, person or animal depicted in the image is or appears to be real:

- ◆ An act which threatens or appears to threaten a person's life.
- ◆ An act which results in or appears to result (or be likely to result) in serious injury to a person's anus, breasts or genitals.
- ◆ An act which involves or appears to involve sexual interference with a human corpse.
- ◆ A person performing or appearing to perform an act of intercourse or oral sex with an animal.

References to a part of the body include references to a part surgically constructed (in particular through gender reassignment surgery).

The consent of the Director of Public Prosecutions is required for proceedings to be undertaken for this offence.

An offender convicted of possession of an image which depicts an act which threatens or appears to threaten a person's life or an act which results in or appears to result (or be likely to result) in serious injury to a person's anus, breasts or genitals will be liable:

- ◆ On summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum, or both.
- ◆ On conviction on indictment, to imprisonment for a term not exceeding 3 years or a fine, or both.

If the offence relates to the remaining definitions of an extreme image, the offender will be liable:

- ◆ On summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum, or both.
- ◆ On conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

A person convicted of this offence, who was 18 or over at the time the offence was committed and who is sentenced in respect of the offence to a term of at least 2 years' imprisonment for the offence, will become subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.

Clause 65 provides for the exclusion of classified films etc.

Clause 66 provides statutory defences which are:

- ◆ That the person had a legitimate reason for being in possession of the image concerned.
- ◆ That the person had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image.
- ◆ That the person was sent the image concerned without any prior request having been made by or on behalf of the person, and did not keep it for an unreasonable time.

The Government has estimated that the annual costs to the police of implementing and enforcing this new offence will be £11,000.

The Protection of Children Act 1978 - Indecent photographs of children

Clauses 68 and 69 extend the definition of an indecent photograph in the Protection of Children Act 1978 (and the equivalent Northern Ireland legislation) to include a tracing or other image derived from a photograph.

Obscene Publications Act 1959

Clause 70 increases the maximum penalty for publication of obscene material and for the possession of such material for gain under the Obscene Publications Act 1959.

Street offences

The Street Offences Act 1959 - Offence of loitering etc. for purposes of prostitution

Clauses 71 to 73 and Schedule 14 of the Bill make changes to the offence of loitering or soliciting for the purposes of prostitution under Section 1 of the Street Offences Act 1959.

The amended offence will read:

- ◆ It shall be an offence for a **person** (whether male or female) **persistently** to loiter or solicit in a street or public place for the purpose of prostitution.

As can be seen, this removes the term 'common prostitute' from the legislation, replacing it with the term 'person', and adds the word 'persistently'.

The Bill goes on to state that:

- ◆ Conduct is persistent if it takes place on two or more occasions in any period of three months.

It also clarifies that:

- ◆ Any reference to a person loitering or soliciting for the purposes of prostitution is a reference to a person loitering or soliciting for the purposes of offering services as a prostitute.

The Bill also introduces a new sentencing option, as an alternative to a fine, for those convicted of loitering or soliciting. This new option allows the court to make an order requiring the offender to attend three meetings with a person ('the supervisor') specified in the order or with such other person as the supervisor may direct.

The idea behind the introduction of these orders is to promote an offender's rehabilitation by assisting them at the meetings, to address the causes of the conduct constituting the offence and to find ways to cease engaging in such conduct in the future.

Nuclear material

Clause 74 and Schedule 15 amend the Nuclear Material (Offences) Act 1983 and the Customs and Excise Management Act 1979.

The amendments made to the Nuclear Material (Offences) Act 1983 Act create a number of new criminal offences, including offences relating to damage to the environment and to the importation and exportation of nuclear material.

Data protection

Clause 75 amends the penalty for the offence of unlawfully obtaining, disclosing or procuring personal data under Section 55 of the Data Protection Act 1998. On conviction summarily, the offender will be liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both; or on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

Part 7 of the Bill relates to international co-operation in relation to criminal justice matters.

Clauses 76-81 implement the Council Framework Decision on the application of the principle of mutual recognition to financial penalties (2005/214/JHA), which was adopted in 2005. The Framework Decision allows a financial penalty imposed on an offender in one European Union Member State to be transferred to another Member State for enforcement. Responsibility for the

enforcement of financial penalties received from another Member State will rest with the magistrates' court where the offender is located and its designated Fines Officer, in line with their responsibilities for enforcement of fines imposed domestically.

Part 8 of the Bill makes provision for a new civil preventative order - the Violent Offender Order.

Clauses 83 to 102 makes provision for a new civil preventative order, to be known as a violent offender order (VOO). The qualifying offences which may trigger an application for a VOO are:

- ◆ Manslaughter.
- ◆ An offence under Section 4 of the Offences against the Person Act 1861 (soliciting murder).
- ◆ An offence under Section 18 of the Offences against the Person Act 1861 (wounding with intent to cause grievous bodily harm).
- ◆ An offence under Section 20 of that Act (malicious wounding).
- ◆ Attempting to commit murder or conspiracy to commit murder.

Offenders subject to full or interim VOOs will also be subject to notification requirements.

Clause 91 sets out the information the offender needs to supply to the police when he first makes a notification. This will be his:

- ◆ Date of birth.
- ◆ National insurance number.
- ◆ Name on the relevant date or, if the offender used two or more names on that date, each of those names.
- ◆ Home address on the relevant date.
- ◆ Name on the date on which the notification is given or, if the offender used two or more names on that date, each of those names.
- ◆ Home address on the date on which the notification is given.
- ◆ The address of any other premises in the United Kingdom at which on that date the offender regularly resides or stays.

The timescale within which he is required to provide that information to the police is (subject to certain exceptions) within the period of 3 days beginning with the date on which the VOO, or the interim VOO, comes into force in relation to the offender (the relevant date).

Clause 92 sets out the requirements on a relevant offender to notify the police when there are changes to his notified details.

Clause 93 provides that an offender must re-notify the police of the details set out in Clause 91 within one year after each notification date, unless during this period he re-notifies, because of a change of circumstances, under Clause 92.

Clause 94 provides a power for the Secretary of State to make regulations setting out notification requirements for relevant offenders who travel outside the UK. The regulations would oblige such persons to notify certain details concerning their travel plans to the police.

Clause 95 states that the offender must notify the police of the relevant information by attending any police station in the offender's local police area and giving an oral notification.

Clause 96 provides that, in the case of an offender under 18, the court may make a direction in respect of a person with parental responsibility for the offender, requiring them to comply with the notification requirements in place of the offender until either the offender attains the age of 18 or until an earlier date specified by the court.

Clause 97 provides that a court may vary, renew or discharge a parental direction.

Other provisions provided for within Part 8 include:

- ◆ The procedures in respect of applications for and the making, variation, renewal or discharge of a VOO, and also for interim orders and appeals.
- ◆ Creation of criminal offences for breaching an order or interim order, failing to comply with the notification requirements and the penalties.

The Government has estimated that the total annual cost to the police, nationally, in relation to the implementation, monitoring and enforcement of VOOs at between £1-1.5 million. It also estimates that these provisions will have an average impact of approximately 20 prison places per year.

Part 9 of the Bill relates to anti-social behaviour.

Closure of premises associated with persistent disorder or nuisance

Clause 103 and Schedule 17 insert Part 1A into the Anti-social Behaviour Act 2003. This new part introduces new powers for the courts to close, on a temporary basis, premises associated with significant and persistent disorder or persistent serious nuisance to members of the public.

A Part 1A closure notice may be issued if a police officer, not below the rank of superintendent ("the authorising officer"), or the local authority has reasonable grounds for believing:

- ◆ That at any time during the relevant period a person has engaged in anti-social behaviour on the premises, **and** that the use of the premises is associated with significant and persistent disorder or persistent serious nuisance to members of the public.

These powers and the associated procedures are virtually identical to the powers and procedures set out in Part 1 of that Act to deal with premises used in connection with the unlawful use, production or supply of a Class A controlled drug, and that the use of the premises is associated with the occurrence of disorder or serious nuisance to members of the public.

The main difference between the two parts is that Part 1A, in addition to allowing the police to issue a closure notice, also allows a local authority to do so, providing that the appropriate chief officer of police has been consulted and that reasonable steps have been taken to establish the identity of any person who lives on the premises or who has control of or responsibility for, or an interest in, the premises.

Part 1A also sets out the procedures for the issue of closure notices by the police and local authorities, and for the making of applications for closure orders; and makes provision for the enforcement (including by making breach of an order a criminal offence), extension and discharge of closure orders and for appeals against the grant or refusal of an order.

The cost to the police of an estimated 100 closure orders a year is estimated by the Government at £135,000.

Causing nuisance or disturbance on NHS premises

Clauses 104 to 107 create a new offence of causing nuisance or disturbance on National Health Service (NHS) premises.

Under Clause 104, a person will commit this offence if, without reasonable excuse and while on NHS premises, he causes a nuisance or disturbance to an NHS staff member who is working there or is otherwise there in connection with work, and he refuses, without reasonable excuse, to leave the NHS premises when asked to do so by a constable or an NHS staff member, and the person is not on the NHS premises for the purpose of obtaining medical advice, treatment or care for himself or herself.

The offence is a summary offence for which a person will be liable to a fine not exceeding level 3 on the standard scale.

A person ceases to be on NHS premises for the purpose of obtaining medical advice, treatment or care for himself once he has received the advice, treatment or care.

A person will not be classed as being on NHS premises for the purpose of obtaining medical advice, treatment or care for himself if he has been refused the advice, treatment or care during the last 8 hours.

NHS premises include the hospital, hospital grounds and any building, other structure or vehicle, associated with the hospital and situated on hospital grounds.

Clause 105 confers powers on a constable or an authorised member of NHS staff to remove a person reasonably suspected of committing the offence from the premises concerned. Under Clause 106, provision is made for the Secretary of State to issue guidance on the exercise, by NHS staff, of the removal powers.

Schedule 18 of the Bill makes provision for Northern Ireland, corresponding to the provision made for England by Clauses 104 to 106.

The Government has estimated the annual costs of the new offence to the police as £360,000.

Annual review of Anti-Social Behaviour Orders

Current Home Office guidance on the use of Anti-Social Behaviour Orders (ASBOs) against children and young people recommends that applicant authorities carry out an assessment after one year to review the offender's progress towards compliance with the order, with a view to varying it if circumstances warrant such a course.

Clause 108 of the Bill will make this a statutory requirement for Anti-Social Behaviour Orders, including ASBOs made against a child or young person under the age of 17, under Section 1B or 1C of the Crime and Disorder Act 1998.

Individual support orders

Clause 109 requires a court to consider making an individual support order in all cases where an ASBO is made in respect of a child or young person.

Parenting contracts and parenting orders

Clause 110 extends the list of local authorities in England which may enter into a parenting contract or apply for a parenting order.

Part 10 of the Bill deals with policing issues.

Police misconduct and performance procedures

Clause 111 introduces Schedule 19 of the Bill. Part 1 of Schedule 19 makes a number of amendments to the Police Act 1996, in relation to police misconduct and to performance procedures of members of police forces and special constables, and makes other minor amendments to that Act.

Part 2 of that Schedule makes equivalent amendments to the Ministry of Defence Police Act 1987, for the purposes of the Ministry of Defence Police.

Part 3 of that Schedule makes equivalent amendments to the Railways and Transport Safety Act 2003, for the purposes of the British Transport Police.

Investigation of complaints of police misconduct etc.

Clause 112 gives effect to Schedule 20, which amends Schedule 3 to the Police Reform Act 2002. Schedule 3 makes provision about the handling and investigation of:

- ◆ Complaints about the conduct of a person serving with the police (a complaint).
- ◆ Matters which are not the subject of a complaint but in which there is an indication that a person serving with the police may have committed a criminal offence or behaved in manner which would justify the bringing of disciplinary proceedings (a conduct matter).
- ◆ Cases which are not the subject of a complaint and which are not a conduct matter but in which a person who was, broadly, in the care of the police has died or sustained a serious injury.

Schedule 20 also amends Schedule 3 to remove references to 'requirement to resign or retire', 'reduction in rank or other demotion' and 'the imposition of a fine', as these disciplinary sanctions will no longer exist in the new disciplinary arrangements for members of a police force and special constables.

It also places a duty on the person investigating a complaint, where there is an indication that a person serving with the police may have committed a criminal offence or behaved in a manner justifying the bringing of disciplinary proceedings, or a recordable conduct matter, to assess whether the conduct concerned, if proved, would amount to misconduct or gross misconduct; and what form any likely disciplinary proceedings in respect of the conduct could be expected to take.

The assessment must be made after consultation with the appropriate authority, which is, in the case of a senior officer, the police authority for the area of the police force of which he is a member or, in the case of a person who is not a senior officer, the chief officer under whose direction or control the person is.

In relation to the changes outlined above under Part 10 of the Bill, the Government has recognised that there will be some initial training implementation costs and has stated in its Regulatory Impact Assessment (RIA) for the Criminal Justice and Immigration Bill that these will be met by the National Policing Improvement Agency.

Financial Assistance under Section 57 of the Police Act 1996

Clause 113 clarifies, but does not extend, the Secretary of State's existing powers under Section 57(1) to maintain or contribute to organisations, services and facilities that promote the efficiency and effectiveness of the police. It inserts two new subsections: 57(1A), which makes it clear that the Secretary of State can provide financial assistance in exercising his power under Section 57(1); and 57(1B), which provides that financial assistance may in particular be given by way of grant, investment in a body corporate, loan or guarantee, and that the Secretary of State can set the terms and conditions on which the assistance is given.

Part 11 of the introduces a new Special Immigration Status

The Bill creates a new, special immigration status, so that certain individuals without the right of abode in the United Kingdom may be designated as 'foreign criminals'. The provision will allow reporting and residency conditions, and will deny those with this special status access to employment and to mainstream benefits. Instead, those who are destitute will be supported by the Border and Immigration Agency. The provisions allow for the electronic monitoring of a designated 'foreign criminal'.

A person who without reasonable excuse fails to comply with a condition imposed under this provision commits an offence and will be liable on summary conviction to a fine not exceeding level 5 on the standard scale, imprisonment for a period not exceeding 51 weeks, or both.

A 'foreign criminal' is a person who is not a British citizen, and who satisfies one or more of the conditions set out below:

- ◆ Condition 1 is that Section 72(2)(a) and (b) or (3)(a) to (c) of the Nationality, Immigration and Asylum Act 2002 applies to the person. This applies where a person has been convicted of an offence, either in the United Kingdom or abroad, and has been sentenced to a period of imprisonment of at least two years. If the conviction was outside the United Kingdom, there is a further requirement that the person could have been sentenced to a period of imprisonment of at least two years had his conviction been in the United Kingdom for a similar offence.
- ◆ Condition 2 is satisfied where Section 72(4)(a) or (b) of the Nationality, Immigration and Asylum Act 2002 applies to a person and the person has been sentenced to a term of imprisonment of any length. Section 72(4)(a) applies where a person is convicted of an offence specified by order of the Secretary of State, and Section 72(4)(b) where he is convicted outside the United Kingdom of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order under Section 72(4)(a).
- ◆ Condition 3 applies where Article 1F of the Refugee Convention applies to a person. Where Article 1F applies, the person concerned cannot be a refugee.

The Bill can be found in full at <http://www.publications.parliament.uk/pa/cm200607/cmbills/130/2007130.pdf>

Peace Activists Appeal to European Court of Human Rights against Conviction under Section 132 of the Serious Organised Crime and Police Act 2005

Two peace activists, arrested in October 2005 during an anti-war protest near Downing Street, have appealed to the European Court of Human Rights to determine if the Government's ban on spontaneous protest violates freedom of expression and assembly. Milan Rai and Maya Evans were convicted under the Serious Organised Crime and Police Act 2005 (SOCPA) for organising an unauthorised demonstration within one kilometre of Parliament.

In December 2006, the High Court upheld their conviction under Section 32 of SOCPA and determined that there could be no further appeal to the House of Lords (see article on the case in January *Digest*).

HOC 21/2007 The Police And Justice Act 2006

Home Office Circular 21/2007 provides details of the provisions in the Police and Justice Act 2006 which were brought into force on 1 April 2007 by way of SI 709/2007 (covered in the March *Digest*).

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

Guidance on the Power of Arrest and Detention of Offenders for Failing to Comply with Conditional Cautions

The Office for Criminal Justice Reform has issued guidance in relation to the new powers of arrest and detention of offenders in relation to conditional cautions, which powers came into effect on 29 June 2007 (see SI 1614/2007 in July *Digest*).

This guidance has been issued in advance of the new Code of Practice on Conditional Cautioning, which is in the process of being revised following a public consultation period which ended in May 2007. It was expected to be published, subject to Parliamentary approval, in summer 2007; however, due to the changes brought about by the creation of the Ministry of Justice and ministerial personnel changes, the opportunity to put the revised code before Parliament has been lost. It is now expected that the revised code will not be brought into effect until early 2008.

Section 18 of the Police and Justice Act 2006 inserted Sections 24A and 24B into the Criminal Justice Act 2003 (CJA 2003).

The effect of Section 24A of the CJA 2003 is to allow a constable to arrest any person whom he has reasonable grounds for believing has failed, without reasonable excuse, to comply with any conditions of a conditional caution. The section also provides a power to keep the person in police detention if it is necessary to do so, for the purpose of investigating whether he has failed, without reasonable excuse, to comply with any conditions attached to the conditional caution.

Section 24B specifies which provisions (and any modifications to those provisions) of the Police and Criminal Evidence Act 1984 apply in the case of a person arrested under Section 24A of the CJA 2003.

The guidance states that this power of arrest should only be exercised where considered necessary. It suggests that, whilst the necessity criteria in subsections 24(4) and (5) of PACE do not apply to arrests under Section 24A of the CJA 2003 for failure to comply with a conditional caution, these may provide a useful indication regarding where arrest could be considered necessary.

The guidance also states that offenders should only be detained for as long as is necessary to explore the reasons for any breach and/or to undertake any charging procedures. This should be done as soon as practicable after arrest or arrival at the police station.

In situations where it is clear that this cannot be achieved in a short period of time, the offender should be released on bail under subsection 24A(2)(b) of the CJA, whilst the authorised person enquires into the non-compliance and the prosecutor decides whether the original offence should be charged.

Once the enquiry into the non-compliance has been concluded, the case will be referred to a prosecutor for decision. Where it appears likely that referral may not be concluded within a short period of time, the offender will be released on an appropriately short period of bail.

This guidance is identical to that contained in paragraph 14 of the draft code details of which can be found via http://www.cjsonline.gov.uk/the_cjs/whats_new/news-3509.html

or at

<http://www.cjsonline.gov.uk/downloads/application/pdf/2nd%20Code%20of%20Practice%20on%20conditional%20cautions.pdf>

Draft Investigation of Protected Electronic Information Code of Practice - Part III of the Regulation of Investigatory Powers Act 2000

The provisions in Part III of the Regulation of Investigatory Powers Act 2000 (RIPA), Sections 49-56, are not yet in force. These provisions are intended to maintain the effectiveness of existing law enforcement powers in the face of increasing criminal use of encryption.

The reason for the provisions not yet having been brought into force is that the Government recognised concerns about how the provisions in Part III would work in practice. It decided not to implement Part III before Parliament had the opportunity to consider and approve a code of practice that sets out guidance on the scope of the Part III provisions and how they should be applied and sets rules for public authorities on the giving of notices which impose disclosure requirements.

The Home Office has now published a draft code of practice relating to the powers and duties conferred or imposed under Part III of RIPA.

The Government intends to commence the provisions of Part III on 1 October 2007, subject to Parliamentary approval of the code of practice.

A draft order has been laid before Parliament to secure approval of the Investigation of Protected Electronic Information draft Code of Practice. Once each House of Parliament approves the draft Order and the Order is made, the code will be issued under Section 71 (RIPA). It is expected that the code will be brought into force on 1 October 2007, at the same time as Sections 49-56 of RIPA.

Section 49: Notices requiring disclosure

Section 49 provides a power to enable properly authorised persons (such as members of the law enforcement, security and intelligence agencies) to serve notices on individuals or bodies requiring them to put lawfully acquired protected electronic information into an intelligible form (to provide access to it or to decrypt or decode it) or to disclose the key (such as a code or password) to enable the data to be put into an intelligible form.

Examples of protected information which has been, or is likely to be, lawfully obtained includes material:

- ◆ Seized under a judicial warrant (e.g. under the Police and Criminal Evidence Act 1984).
- ◆ Intercepted under a warrant personally authorised by the Secretary of State under Chapter I of Part I of RIPA.
- ◆ Lawfully obtained under an authorisation given under Chapter II of Part I or Part II of RIPA.
- ◆ Lawfully obtained by an agency under their statutory functions but not under a warrant (e.g. under the Customs and Excise Management Act 1979).
- ◆ Which has lawfully come into the possession of an agency but not by use of statutory functions (e.g. material which has been voluntarily handed over).

This Section also states that only persons with the 'appropriate permission' may serve a notice imposing a disclosure requirement in respect of the protected information in question, if there are reasonable grounds for believing:

- ◆ That the key to the relevant protected information is in the possession of the person on whom the notice is being served.
- ◆ That serving a notice imposing a disclosure requirement is necessary in the interests of national security; for the purpose of preventing or detecting crime; in the interests of the economic well-being of the United Kingdom; or necessary for securing the effective exercise or proper performance of any statutory power or duty of a public authority.
- ◆ That imposing a disclosure requirement is proportionate to what is sought to be achieved by doing so.
- ◆ That an intelligible version of the relevant protected information cannot be obtained by any other reasonable means.

Schedule 2 of the Act deals with the duration and types of 'appropriate permission' which may empower a person to serve a notice under Section 49. The authority required to grant such permission varies depending on the powers under which unintelligible information is or is likely to be obtained.

Section 50: Effect of notice imposing disclosure requirement

This Section explains the effect of serving a notice imposing a disclosure requirement in various circumstances.

Section 51: Cases in which key required

This Section sets out the extra tests to be fulfilled if the required disclosure is of a key rather than of protected information in an intelligible form.

Section 52: Arrangements for payments for disclosure

This Section allows for payment arrangements to be made in order to compensate persons required to disclose information following service of a notice under Section 49.

Section 53: Failure to comply with a notice

This Section creates an offence of failing to comply with the terms of a notice served under Section 49. A person guilty of an offence under this Section shall be liable:

- ◆ On conviction on indictment, to imprisonment for a maximum term of five years imprisonment in national security cases or two years in other cases or to a fine, or to both. (There is no upper limit to fines set in the Crown Court (on conviction on indictment)).
- ◆ On summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (currently £5,000), or to both.

Where a person claims not to have or not to know the key to the data, the prosecution must prove beyond reasonable doubt that the person did have or did know the key.

Section 54: Tipping-off

This Section creates an offence where the recipient of a notice (but only one which explicitly contains a secrecy requirement), or a person who becomes aware of it, tips off another that a notice has been served, or reveals its contents. It also sets out various statutory defences.

A person who makes a disclosure to any other person of anything that he is required by a Section 49 notice to keep secret shall be guilty of an offence and liable:

- ◆ On conviction on indictment, to imprisonment for a term not exceeding five years or to an unlimited fine, or to both.
- ◆ On summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum (currently £5,000), or to both.

Section 55: General duties of specified authorities

This section describes the safeguards that must be in place for the protection of any material (e.g. a decryption key) handed over in response to the serving of a notice under this Act.

Section 56: Interpretation of Part III

This section provides for the interpretation of various terms used in Part III of the Act.

The Investigation of Protected Electronic Information draft Code of Practice

RIPA provides that the code will be admissible in evidence in criminal and civil proceedings. If any provision of the code appears relevant to a question before any court or tribunal hearing any such proceedings, or to the Investigatory Powers Tribunal established under RIPA, or to one of the Commissioners responsible for overseeing the powers conferred by RIPA, it must be taken into account. The code will extend to the United Kingdom.

One of the most important rules contained in the code is that no public authority may serve any notice under Section 49 of the Act without the prior written approval of the National Technical Assistance Centre (NTAC).

NTAC provides technical support to public authorities, particularly law enforcement agencies and the intelligence services; this includes a facility for the complex processing of lawfully obtained protected electronic information.

The code advises that all public authorities should consult with NTAC at the earliest opportunity, when considering the exercise of the powers in Part III.

The code also makes clear that no requirement to disclose a key to protected information should be imposed upon any company or firm authorised by the Financial Services Authority without prior notification to the Chief Executive of the Authority or a person designated by him for that purpose.

The role of NTAC as a guardian and gatekeeper of the use of Part III is intended to provide assurance to the Commissioners that the scope for inappropriate use of the powers is mitigated. Equally the Commissioners' oversight extends to NTAC itself.

The draft code of practice can be found in full at <http://security.homeoffice.gov.uk/ripa/publication-search/ripa-cop/electronic-data-cop>

The draft order and an explanatory memorandum can be found at <http://www.opsi.gov.uk/si/dsis2007.htm>

Draft Acquisition and Disclosure of Communications Data Code of Practice - Chapter II of Part I of the Regulation of Investigatory Powers Act 2000

The Home Office has published a draft code of practice relating to the powers and duties conferred or imposed under Chapter II of Part I of the Regulation of Investigatory Powers Act 2000 (RIPA).

The draft code provides a statutory framework for the acquisition of communications data by public authorities and its disclosure by communications service providers. There is an outstanding requirement for adoption of a statutory code of practice relating to the exercise of these powers, although a draft code has been in place, and thoroughly developed, since its publication in January 2004.

RIPA provides that the code is admissible in evidence in criminal and civil proceedings. If any provision of the code appears relevant to a question before any court or tribunal hearing any such proceedings, or to the Tribunal established under the Act, or to one of the Commissioners responsible for overseeing the powers conferred by the Act, it must be taken into account.

Communications data is information held by communication service providers relating to the communications made by the users of their services. It includes:

- ◆ Itemised call records.
- ◆ Routing information.
- ◆ Subscriber details.

Communications data does not include the content of any communication, i.e. it does not relate to interception of communications content.

The draft code features specific guidance on:

- ◆ Situations where acquiring communications data is considered necessary and proportionate.
- ◆ Grounds on which each relevant public authority can and cannot access communications data.
- ◆ When to grant authorisations, when to issue notices.
- ◆ Duration, renewal and cancellation of authorisations and notices.
- ◆ Record keeping.
- ◆ Data protection.

A draft order has been laid before Parliament to secure approval of the Acquisition and Disclosure of Communications Data Code of Practice. Once each House of Parliament approves the draft Order and the Order is made, the code will be issued under Section 71 (RIPA). It is expected that the code will be brought into force on 1 October 2007.

The draft code can be found at <http://security.homeoffice.gov.uk/ripa/publication-search/ripa-cop/acquisition-disclosure-cop.pdf>

The draft order and an explanatory memorandum can be found at <http://www.opsi.gov.uk/si/dsis2007.htm>

Revised Guidance Issued under Section 182 of the Licensing Act 2003

The Department for Culture, Media and Sport (DCMS) has published a revised version of the Guidance to licensing authorities on the discharge of their functions under the Licensing Act 2003. The Guidance came into force on 28 June 2007.

Section 4 of the Licensing Act 2003 provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under Section 182. The requirement is therefore binding on all licensing authorities to that extent.

As the guidance cannot anticipate every possible scenario or set of circumstances that may arise, and as long as licensing authorities have properly understood the Guidance, they may depart from it if they have reason to do so, as long as they are able to provide full reasons.

Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

The Guidance also provides information for magistrates hearing appeals against licensing decisions; and is intended to be of benefit to operators of licensed premises, their legal advisers and the general public. It is available at <http://www.culture.gov.uk/NR/rdonlyres/597B72E2-61BC-44AD-98D2-6BC7208FD740/0/RevisedGuidanceJune2007.pdf>

Guidance to police officers on the use of closure powers in the Act to deal with disorder or noise nuisance problems on premises, which was previously contained in Chapter 11 of the Guidance issued under Section 182, has been removed and is now available as separate advice on DCMS website at <http://www.culture.gov.uk/NR/rdonlyres/1F29E260-DF43-4D98-BB92-86890846F505/0/Policeclosurepowersguidance.pdf>

Draft Legislative Programme for the Next Session of Parliament

The Prime Minister, Gordon Brown, has set out the draft legislative programme for the next session of Parliament, ahead of this autumn's Queen's Speech, which will take place on 6 November.

This is a change from normal procedure, as most of the Government's legislative programme is announced each year in the Queen's Speech. However, as part of the new Government's policy of the opening up of Government, it is proposed that an annual statement will be made on what legislation the Government intends to propose to Parliament in the following Session and that this will be accompanied by a Green Paper giving further details of the Government's plans. This first such paper has been published and contains details in respect of the following proposed Bills:

- ◆ Children in Care Bill.
- ◆ Child Maintenance and Other Payments Bill.
- ◆ Climate Change Bill.
- ◆ Constitutional Reform Bill.
- ◆ Coroners Bill.
- ◆ Counter Terrorism Bill.
- ◆ Criminal Justice Bill.
- ◆ Crossrail Bill.
- ◆ Education and Skills Bill.
- ◆ Employment Simplification Bill.
- ◆ Energy Bill.
- ◆ European Communities (Finance) Bill.
- ◆ Health and Social Care Bill.
- ◆ Housing and Regeneration Bill.
- ◆ Human Tissues and Embryos Bill.
- ◆ Local Transport Bill.
- ◆ National Insurance Contributions Bill.
- ◆ Pensions Bill.
- ◆ Planning Reform Bill.
- ◆ Planning Gain Supplement Bill.
- ◆ Regulatory Enforcement and Sanctions Bill.

- ◆ Sale of Student Loans Bill.
- ◆ Unclaimed Assets Bill.

In addition, the Government is considering the following Draft Bills:

- ◆ Single Equalities Bill.
- ◆ Marine Bill.
- ◆ Heritage Protection Bill.

Children in Care Bill

This Bill aims to reform the statutory framework around the care system, to enable children and young people to receive high quality care and support and to drive improvements in the delivery of services focused on the needs of the child.

Child Maintenance and Other Payments Bill

This Bill aims to:

- ◆ Establish the Child Maintenance and Enforcement Commission as a non departmental public body.
- ◆ Amend the Child Support Act 1992 to simplify and strengthen the assessment and enforcement of child maintenance liability.
- ◆ Set up a scheme paying a lump sum to those suffering from the asbestos-related disease mesothelioma, who are not currently eligible for compensation.

Climate Change Bill

This Bill aims to:

- ◆ Create a long term legal framework to reduce the UK's carbon dioxide emissions up to 2050 and beyond.
- ◆ Establish a statutory advisory non departmental public body, the Committee on Climate Change, to advise the Government on the pathway to the 2050 target.

The Draft Climate Change Bill (published on 13 March 2007), Consultation Document and Partial Regulatory Impact Assessment can be found at <http://www.defra.gov.uk/corporate/consult/climatechange-bill/index.htm>

Constitutional Reform Bill

This Bill aims to take forward the initial legislative elements of the constitutional renewal package set out in the Government's Green Paper 'The Governance of Britain' (see following article).

Coroners Bill

The Draft Coroners Bill has been brought forward in response to Dame Janet Smith's report following her investigation into the killings carried out by Dr Harold Shipman. It was first published on 12 June 2006 and is awaiting introduction to Parliament (see article in June 2006 *Digest*).

The main elements of the Bill are:

- ◆ Provisions about the purpose of coroners' investigations and inquests.
- ◆ Provisions about the conduct of coroners' investigations and inquests.
- ◆ New arrangements for drawing up of coroner areas, and for appointment of coroners.
- ◆ Provisions about the duties of a new Chief Coroner and other national governance arrangements.
- ◆ Provisions centralising the function of coroners' responsibilities to assess whether or not discovered items are classified as "treasure" (i.e. of historical interest).

Counter Terrorism Bill

The main provisions in the Bill are to include:

- ◆ A requirement for convicted terrorists to provide the police with personal information on their release from prison and to notify any changes to this information.
- ◆ Introduction of a foreign travel order that will enable convicted terrorists to be banned from travelling overseas.
- ◆ Changes to enable post-charge questioning of terrorist suspects and the drawing of adverse inferences from a refusal to say something that is later relied on in court.
- ◆ Enhanced sentences for those convicted of terrorist-related offences.
- ◆ Putting the police counter terrorist DNA database on a sound statutory footing and making other changes to enable the full use of DNA in terrorist cases.
- ◆ Possible extension of pre-charge detention for terrorist suspects beyond the current limit of 28 days.

See article in July edition of *Digest*.

Criminal Justice and Immigration Bill

The purpose of the Bill is to take forward the Government's criminal justice reform agenda by reducing re-offending, protecting the public, promoting justice, improving access to justice and increasing confidence in the justice system. See article on page 7.

Crossrail Bill

This Bill has been progressing through the Parliamentary process since it was first introduced in May 2005. It makes provision for a railway transport system running from Maidenhead, in the County of Berkshire, and Heathrow Airport, in the London Borough of Hillingdon, through central London to Shenfield, in the County of Essex, and Abbey Wood, in the London Borough of Greenwich.

Education and Skills Bill

The purpose of the Bill is to raise to 18 the minimum age at which young people can leave education or training; and to bring in the legislative changes needed to implement key elements of the Leitch Review into the UK's long-term skills needs.

Employment Simplification Bill

The purpose of this Bill is to simplify, clarify and build a stronger enforcement regime for key aspects of employment law.

Elements of the Bill will include:

- ◆ Implementation of the outcome of the Gibbons review of workplace dispute resolution (including repeal of the statutory dispute resolution procedures and implementation of a package of replacement measures to encourage early/informal resolution and changes to the employment tribunal system).
- ◆ Clarification and strengthening of the enforcement framework for the national minimum wage (NMW), specifically through the introduction of a straightforward penalty that can be levied against all non-compliant businesses and a fairer method of calculating arrears.
- ◆ Strengthening the employment agency standards enforcement regime by making offences under the Employment Agencies Act each way offences and clarifying investigative powers.
- ◆ An amendment to trade union membership law in light of the ECHR's judgment in *Aslef v UK* (such that trade unions can expel members on the basis of their membership of a political party).

It is also possible that the Bill might be used to clarify provisions in the NMW Act related to voluntary workers, depending on the outcome of the current consultation which closes 4 September.

Energy Bill

The purpose of the bill is to help the UK to ensure secure supplies of energy, tackle climate change and target fuel poverty measures more effectively.

European Communities (Finance) Bill

The purpose of the Bill is to amend the European Communities Act 1972 to include the revised decision on the Communities' system of own resources (Own Resources Decision (ORD)).

Health and Social Care Bill

Provisions in the Bill will:

- ◆ Establish a new, integrated health and adult social care regulator, Ofcare, from existing regulators, and set out its functions.
- ◆ Introduce legislation to use the civil, rather than criminal, standard of proof for all healthcare professional regulatory bodies.
- ◆ Create an independent adjudicator to undertake independent and objective formal adjudication for the professional regulatory bodies.
- ◆ Ensure that all healthcare organisations employing or contracting with doctors appoint a 'responsible officer' with personal responsibility to work with the General Medical Council to identify and handle cases of poor professional performance by doctors.

Housing and Regeneration Bill

Provisions to be included in the Bill will:

- ◆ Establish a new homes agency.
- ◆ Implement the recommendations of the Cave Review of Social Housing Regulation, published in June 2007.
- ◆ Implement policies responding to John Hills' Assessment of Social Housing, published in February 2007.
- ◆ Implement ECHR ruling on Gypsies and Travellers.

Human Tissue and Embryos Bill

The purpose of the Bill is to:

- ◆ Update the regulation of assisted reproduction and embryo research.
- ◆ Create the Regulatory Authority for Tissue and Embryos (RATE), replacing the Human Fertilisation and Embryology Authority (HFEA) and the Human Tissue Authority (HTA).

The Bill was published in draft on 17 May 2007 and is undergoing pre-legislative scrutiny by a joint committee of both Houses of Parliament, which is due to conclude on 25 July 2007.

Local Transport Bill

The main elements of the Bill are:

- ◆ Giving local authorities the right mix of powers to improve the quality of local bus services.
- ◆ Giving local authorities in major conurbations the power to review and propose their own arrangements for local transport governance, to support more coherent planning and delivery of local transport.

- ◆ Updating existing legal powers so that, where local areas wish to develop proposals for local road pricing schemes, they have the freedom and flexibility to do so in a way that best meets local needs.

This Bill was published in draft form in May 2007 and is currently undergoing pre-legislative scrutiny, with the consultation closing on 7 September 2007.

National Insurance Contributions Bill

The purpose of the Bill is to:

- ◆ Implement part of the Budget announcement by the Chancellor on 21 March 2007 setting out a package of reforms to modernise the tax and benefit system.
- ◆ Enable alignment of the Upper Earnings Limit (UEL) for Class 1 National Insurance Contributions (NICs) purposes with the point at which higher rate income tax becomes payable.
- ◆ Remove the current primary social security legislation that restricts the maximum UEL to no more than seven and a half times the Primary Threshold. The Primary Threshold is the point at which Class 1 NICs become payable on a person's earnings.

Pensions Bill

The purpose of the Bill is to enact the remaining provisions of the pensions reform package set out in the May 2006 White Paper, 'Security in retirement: towards a new pension system'.

Planning Reform Bill

The purpose of the Bill is to streamline and improve planning, including introducing a single consents regime for major infrastructure projects, establishing an independent infrastructure planning commission and making further measures to improve the town and country planning system.

Planning Gain Supplement Bill

The purpose of the Bill is to:

- ◆ Create a major new levy to capture a modest portion of the land value uplift created at the grant of full planning permission and to generate additional revenue for investment in local and regional infrastructure.
- ◆ Reform planning obligations in England to help speed up the process.

Regulatory Enforcement and Sanctions Bill

The main element of the Bill is the establishment of the Local Better Regulation Office as a statutory corporation and to confer on it five key functions:

- ◆ Issuing guidance to local authorities.
- ◆ Supporting best practice by local authorities.

- ◆ Giving advice to Ministers.
- ◆ Reviewing and updating the Government's list of national regulatory priorities.
- ◆ Promoting consistent regulatory enforcement by local authorities.

Sale of Student Loans Bill

The purpose of the Bill is to enable the Government to conduct a programme of sales of the student loan portfolio.

Unclaimed Assets Bill

The main purpose of the Bill is to enable the banking industry to transfer unclaimed assets in the banking system so that they may be reinvested in society, whilst ensuring that the rights of owners to be reunited with their assets are protected.

The Green Paper, 'The Governance of Britain – The Government's Draft Legislative Programme' can be found in full at <http://www.commonleader.gov.uk/output/Page1.asp#>

Government's Constitutional Reform Green Paper

The Government has published a Green Paper, 'The Governance of Britain', which sets out its vision and proposals for constitutional renewal. The paper is broken down into four main sections, which cover the issues of:

- ◆ Limiting the powers of the executive.
- ◆ Making the executive more accountable.
- ◆ Re-invigorating our democracy.
- ◆ Britain's future: the citizen and the state.

It sets out a number of powers that the Government will seek to surrender or limit (subject to consultation with interested parties and, where necessary, legislation), as it considers that, in a modern democracy, these should not be exercised exclusively by the executive. These include powers to:

- ◆ Deploy troops abroad.
- ◆ Request the dissolution of Parliament.
- ◆ Request the recall of Parliament.
- ◆ Ratify international treaties without decision by Parliament.
- ◆ Determine the rules governing entitlement to passports and for the granting of pardons.
- ◆ Restrict parliamentary oversight of the intelligence services.
- ◆ Choose bishops.

- ◆ Have a say in the appointment of judges.
- ◆ Direct prosecutors in individual criminal cases.
- ◆ Establish the rules governing the Civil Service.

Proposals in relation to making the executive more accountable include:

- ◆ Consulting on how the statutory basis of the Intelligence and Security Committee should be amended to bring the way in which it is appointed, operates and reports as far as possible into line with that of other select committees, while maintaining the necessary arrangements for access to, and safeguarding of, highly-classified information on which effective security depends.
- ◆ Publishing a National Security Strategy, which will be overseen by a new National Security Committee, chaired by the Prime Minister.
- ◆ Introduce a pre-Queen's Speech consultative process on the Government's proposed legislative programme for the forthcoming year, at an appropriate time in advance of the Queen's Speech.

On the issue of re-invigorating our democracy, the paper sets out a number of the Government's intentions on how it will achieve this, including:

- ◆ Continuing to develop reforms for a substantially or wholly elected second chamber.
- ◆ Conducting a consultation on whether or not to move voting to weekends for general and local elections.
- ◆ Reviewing the provisions introduced in Sections 132-138 of the Serious Organised Crime and Police Act 2005 that govern the right to protest in the vicinity of Parliament. These provisions have been challenged in the courts by a number of defendants and a case is due to be heard in relation to this matter by the European Court of Human Rights (see article on page 18).

Proposals on the issue of Britain's future include the Government:

- ◆ Initiating an inclusive process of national debate to develop a British statement of values.
- ◆ Working with Lord Goldsmith to conduct a review of British citizenship.
- ◆ Launching a Youth Citizenship Commission, which will look at citizenship education, ceremonies and the possibility of reducing the voting age.
- ◆ Consulting on the current guidance on flying the Union Flag from government buildings and Westminster Parliament.

The Green Paper can be found in full at <http://www.justice.gov.uk/publications/governanceofbritain.htm>

The Government's Crime Strategy 2008-2011

The Government has published its new crime strategy for 2008-2011. The document entitled, 'Cutting Crime: a new partnership 2008-2011', sets out the main lessons learned over the past ten years and sets out a new framework for central and local government, local crime-fighting partnerships and non-government organisations over the next three years.

Key areas for focus over the period 2008-11 include:

Stronger focus on serious violence

The Government is to:

- ◆ Publish a new violent crime strategy towards the end of 2007, which will set out this stronger focus out in more detail.
- ◆ Publish a new safer communities Public Service Agreement proposal for 2008-11 in the autumn of 2007 which will recognise performance in tackling the most serious violence and sexual offending separately from crimes such as burglary and car crime.

Another proposed measure is the introduction of Violent Offender Orders, which are covered in Part 8 of the Criminal Justice and Immigration Bill (see page 7).

Continued pressure on anti-social behaviour

The document states that there will be a fresh drive to increase the take-up of supportive interventions, with the Government (national and regional, and Welsh Assembly Government) providing an active supportive role to agencies.

Renewed focus on young people

The new Department for Children, Schools and Families (DCSF) will focus on lifting more children out of poverty, re-engaging disaffected young people and raising standards.

A youth crime strategy and practitioner toolkit for local partners will be produced jointly by the Home Office, DCSF, the Association of Chief Police Officers, Youth Justice Board and Ministry of Justice.

The Government is committed to supporting the development of Safer Schools Partnerships (SSPs) and has written to Chief Constables asking them to consider a further push to develop SSP support for the schools in the communities which would most benefit from it. The good practice approaches in the proposed practitioner toolkit will include Safer Schools Partnership work.

New national approach to designing out crime

The Government intends to work closely with the corporate sector to design crime out of new products and services (including the built environment) at an early stage, focusing on:

- ◆ Creating an early warning system to identify quickly issues that are best tackled at national level.

- ◆ Developing incentives for businesses to 'think crime'.
- ◆ Working with consumer groups to increase the demand for crime-free products and services.
- ◆ Supporting the inclusion of crime prevention in the professional training of scientists and designers.
- ◆ Including fraud prevention as a key element in the planned Government National Fraud Strategy.

Freeing up local partners, building public confidence

A new safer communities PSA is being developed in such a way that fewer partnerships will be subject to central requirements for targets, and even then only on a more limited number of (more serious) specific crime types. Instead, by setting a target to increase public confidence in agencies, the police, local authorities and other agencies will be measured on how well they respond to those issues that matter most to their local communities. This will be set out in more detail in autumn 2007.

A single framework for assessing performance on community safety, streamlining three frameworks into one, will be developed during 2007/08 for implementation in 2008/09. The provisionally titled Assessments of Policing and Community Safety (APACS) will cover performance on those matters which are the responsibility of the police, acting alone or in partnership with others. Every indicator in APACS will have specific and agreed responsible partners, including the police, local authorities and PCTs. It will also include scope for assessing outcomes which are identified by partnerships as local priorities. This will be aligned with the new framework for local authority performance in England, which also brings a reduced number of indicators and of improvement targets for local authorities. This will ensure that the police, local authorities and other partners are all working towards the same set of nationally and locally prioritised targets for which they are jointly accountable.

Improving organisational capacity and capability

In relation to the police the document states that a key area of the ongoing programme of modernising the police workforce to deliver better, more flexible resources is to reduce bureaucracy, focus resources on front-line policing, and to deliver flexibility in finance arrangements wherever possible.

The National Policing Improvement Agency (NPIA) will have a crucial role in delivering all this change. The agency will deliver the training and leadership programmes needed to develop staff, and develop and apply the latest policing doctrine, standards and best practice. It will also support the development and delivery of ICT.

In pursuing the recommendations made in the HMIC report, 'Closing the Gap' relating to the need to improve police forces' capacity and capability to tackle 'protective services' effectively a new programme have also been launched (see article on page 42).

This crime strategy document will be supported by three new sister publications which will set out more detailed actions on how key elements of the crime strategy will be achieved. They are:

- ◆ Safe. Sensible. Social. The next steps in the National Alcohol Strategy June 2007 (covered in July *Digest*).
- ◆ The Government's Violent Crime Strategy (to be published at the end of 2007).
- ◆ The Government's new Drug Strategy (to be published in April 2008). This is presently the subject of a public consultation see following article.

The Government's Crime Strategy document can be found at <http://www.homeoffice.gov.uk/documents/crime-strategy-07/crime-strategy-07?view=Binary>

Drug Strategy Consultation

The Government has published a consultation paper, 'Drugs: Our Community, Your Say', which seeks views on its proposals to renew and refresh its drug strategy which was originally published in 1998. The Government intend to implement their new strategy in April 2008.

The Government has also announced that it has asked the Advisory Council on the Misuse of Drugs to look again at the classification of cannabis.

The closing date for this consultation is Friday 19 October 2007. The paper can be found in full at <http://www.drugs.gov.uk/publication-search/drug-strategy/drug-strategy-consultation.pdf?view=Binary>

Inquiry into Governments New Counter-Terrorism Legislation Proposals

The Home Affairs Committee has announced that it will hold a short inquiry into the Government's proposals for new counter-terrorism legislation, set out in the Home Secretary's statement to the House on 7 June (covered in July *Digest*).

The inquiry is likely to consist of two or three evidence sessions held between July and October. Details of dates and witnesses will be announced in due course.

Penalty Notices for Disorder

Penalty Notices for Disorder (PNDs) now come under the remit of the newly created Ministry for Justice. The Ministry has indicated that, due to the fact that new ministers will require briefing on the subject, the progression of a number of key areas of development in relation to PNDs will not take place until after the summer parliamentary recess.

Areas currently being developed include:

- ◆ Expansion of the list of offences.
- ◆ Issue of PNDs to 10 - 15 year-olds.
- ◆ Revised Operational Guidance.
- ◆ De-prescribing of PND form.

Novice Drivers

The Parliamentary Select Committee on Transport has published a report following its examination into the potential for the introduction of more radical measures to tackle the problem of road deaths and injuries among novice drivers.

The report presents a selection of measures to address the novice driver problem, together with evidence which demonstrates the potential effectiveness of each measure. These include measures such as placing restrictions on novice drivers at night time; in relation to carrying passengers; lower alcohol limits; limiting engine size; and introducing a minimum 12-month learning period.

It makes numerous recommendations. Those directly involving the police include:

- ◆ That the Department for Transport, in collaboration with the police, should collect the data necessary to understand the scale and nature of the crash involvement of novice drivers, independently of young drivers.
- ◆ That there is more traffic law enforcement and that roads police officers are a deterrent to drivers violating traffic law, including seat-belt wearing, speeding, drink and drug driving, and licensing and insurance requirements.
- ◆ The Home Office and the police must make enforcement of licensing offences, and disqualified driving, a real priority.
- ◆ That serious driving offences should be included in the 'offences brought to justice' target for the police.

The report can be found in full at <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/355/35502.htm>

Report on Tackling Anti-Social Behaviour

The Committee of Public Accounts has published a report which sets out its findings and recommendations on tackling anti-social behaviour. The findings are based on evidence it received from the Home Office and the Respect Task Force, and an examination of cases of individuals receiving anti-social behaviour interventions reviewed by the National Audit Office.

In particular the report recommends that the Home Office take stock of the 10 different interventions available to anti-social behaviour coordinators that are already on the statute book, consider whether all are necessary, and make them easier to understand and use at local level.

The report can be found at <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmpublic/246/246.pdf>

Roadside Drug-Screening Devices

The Home Office is hoping to publish a 'Guide to Type Approval of Drug Testing Devices' by September 2007. The availability of devices will then depend largely on how quickly manufacturers prepare devices in accordance with the specification given and submit them for approval, how they perform in the necessary operational and laboratory tests, and how soon after approval the manufacturers make them commercially available.

Government Response to Consultation on Restricting the Use of Backed for Bail Warrants

The Government has published a document which sets out the responses to the consultation on restricting the use of backed for bail warrants, conducted between 28 December 2006 and 19 March 2007 (covered in January *Digest*), as well as its own response and proposals.

The Government's view is that, in order to help speed the return to court of bailed defendants who fail to appear, only the complete abolition of bail warrants would have a significant impact. However, it believes that this would not be appropriate, both for reasons of maintaining judicial discretion and because a backed for bail warrant can be an appropriate response in a given set of circumstances.

Therefore, the Government proposes to restrict the use of these warrants through the identification, dissemination and implementation of good practice guidance, rather than by taking a legislative approach. It has announced that it is currently engaged with criminal justice partners, both centrally and locally, to finalise this good practice guidance and will issue it during summer 2007.

Crime in England and Wales: 2006/07

The Home Office has published a statistical bulletin which brings together statistics from the British Crime Survey (BCS) and crimes recorded by the police for the period 2006/07.

Statistics from the 2006/07 BCS compared with 2005/06 BCS show:

- ◆ Overall levels of crime stable.
- ◆ Risk of crime up by 1%.
- ◆ Violent crime stable.
- ◆ Personal crime stable.
- ◆ Domestic burglary stable.
- ◆ Vehicle thefts stable.
- ◆ Vandalism up 10%.

The police recorded crime statistics for 2006/07 compared with 2005/06 show that:

- ◆ Total recorded crime down 2%.
- ◆ Domestic burglary down 3%.
- ◆ Other burglary down 4%.
- ◆ Vehicle crime down 4%.
- ◆ Other theft down 4%.

- ◆ Robbery up 3%.
- ◆ Most serious violence against the person down 9%.
- ◆ Other violence against the person down 1%.
- ◆ Most serious sexual offences down 7%.
- ◆ Other sexual offences down 8%.
- ◆ Drug offences up 9%.

The report is available online at <http://www.homeoffice.gov.uk/rds>

Police Funding

The Home Affairs Committee has published a report on its short inquiry into police funding. The inquiry considered how the significant investment in the police service in recent years has been reflected in police performance and crime reduction, and the scale and implications of a possible tighter funding settlement for the Comprehensive Spending Review (CSR) 2007 period.

The Committee makes a number of recommendations in its report, including:

- ◆ That senior police leadership must demonstrate that they are making concerted and sustained efforts to target their resources effectively so as to achieve the Audit Commission's level 4 'strong performance' rating — which to date has not been achieved by any of the forces in England and Wales.
- ◆ That ACPO and police authorities exert pressure on individual forces to implement the recent Home Office guidance on delegation.
- ◆ That chief constables ensure that 'personal digital assistant' technology is introduced in all forces as a matter of urgency, in order to reduce the proportion of police officer time spent on paperwork.
- ◆ That the Government should look again at the specific question of whether it is appropriate for police precept to remain effectively capped at 5%, in line with other local authority budget increase limits. It suggests that the Government should commission research into the reasons behind the considerable disparity in the amount of police precept raised by different forces, and what might be done to reduce this.
- ◆ That the Government must be specific and realistic about the scale and nature of efficiencies it expects the police to make.
- ◆ That the Home Office should keep under review its policy of not mandating police forces in regard to making shared services a key element of the police efficiency agenda.
- ◆ That in answer to evidence presented to the Committee that showed that significant numbers of Police Community Support Officers (PCSOs) are being deployed inside police stations rather than on front-line duties, the Government should commission independent research into how PCSOs are being used, as a matter of priority. It adds that it would also welcome the offer of research on the same subject from the Police Federation.

The report can be found in full at <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmhaff/553/55302.htm>

Draft Statutory Instrument - The Police Reform Act 2002 (Standard Powers and Duties of Community Support Officers) Order 2007

The Police Reform Act 2002 (Standard Powers and Duties of Community Support Officers) Order 2007 is presently undergoing the parliamentary process before it is brought into force.

This Order will bring into effect the standard powers and duties of Police Community Support Officers (PCSOs) under Section 38A of the Police Reform Act 2002 (PRA).

Section 38 of the PRA enabled a Chief Officer to designate an individual employed by the police authority but under his/her direction and control as a PCSO and confer upon them any of the powers listed under Part 1 of Schedule 4 to the PRA. Before designating a person as a PCSO the Chief Officer must be satisfied that the individual is trained, suitable and capable for carrying out the functions of a PCSO.

Section 7 of the Police and Justice Act 2006 (PJA) amended Section 38 of the PRA so that any person designated under that section as a PCSO will have the standard powers and duties of a community support officer (Section 7(1) PJA).

It also inserted Section 38A into the PRA which enables the Secretary of State to make an order that creates a standard set of powers and duties for PCSOs.

This Order sets out the standard set of powers that the Secretary of State has made under this power. It can be viewed in full at <http://www.opsi.gov.uk/si/dsis2007.htm>

Protective Services Demonstration Sites

The Government have announced the forces and police authorities being taken forward as 'Demonstrator Sites' for new collaborative initiatives for improving protective services.

As set out in the Government's new crime strategy (see page !!!), 'protective services' covers the response to serious and organised crime, counter-terrorism and domestic extremism, civil contingencies and emergency management, critical incident management, major crime, public order, protection of vulnerable people and strategic roads policing.

10 initiatives have been selected in a programme overseen by the Protective Services Strategy Group, a subgroup of the National Policing Board. The new Demonstrator sites are:

- ◆ Avon & Somerset/Devon & Cornwall/Dorset/Wiltshire/Gloucestershire: South West Region Shared Services Programme delivering improved protective services through shared service arrangements.
- ◆ Cheshire/Cumbria/Lancashire/Merseyside/North Wales: North West Regional Cross Border Crime Team establishing a joint team tackling serious organised crime.

- ◆ Cleveland/Durham: Police Firearms Resources developing a joint firearms unit.
- ◆ Derbyshire/Leicestershire/Lincolnshire/Northamptonshire/Nottinghamshire: Witness Protection establishing a dedicated joint Witness Protection team including the refinement of policies, procedures and best practice.
- ◆ DyfedPowys/Gwent/North Wales/South Wales: Public Protection improving the delivery across the region of public protection (child protection, sex offender and serious offender management, domestic violence, vulnerable adult abuse and missing persons).
- ◆ DyfedPowys/Gwent/North Wales/South Wales: Major Crime and Serious Organised and Cross Border Crime exploring collaborative approaches to delivering these services across the forces in Wales.
- ◆ Essex/Kent: Project Forefront developing and implementing a coordinated and integrated strategic command capability, improving operational delivery of policing services to the Thames estuary, sea ports, air ports and the strategic roads network.
- ◆ Hertfordshire/Bedfordshire: Major Crime Collaboration establishing a co-located major crime capability.
- ◆ Humberside/North Yorkshire/South Yorkshire/West Yorkshire: Regional Undercover Unit/Human Resources Policies creating a unit to provide a policy lead, training and support infrastructure to undercover officers and exploring the potential for integrating employment frameworks, terms and conditions and human resources policies.
- ◆ Surrey/Sussex: Joining Forces Programme drawing together protective services into an integrated specialist operations command covering both force areas.

The Demonstrators are being given a total of £3.7M to contribute to their start up costs. They will be evaluated and monitored by the NPIA as they explore new collaborative initiatives for making improvements to the way the police combat serious organised crime and other threats to public safety. The programme is designed to ensure that these projects will benefit the whole of the police service by providing a coordinated process for recording and disseminating lessons learnt and establishing best practice in the different approaches to collaborative working.

HOC 22/2007 Police Pensions Scheme - Pension Arrangements For Part-Time Constables And Sergeants With Effect From 1 July 2007

Up until 1 July 2007, only a part-time officer's determined hours have been pensionable. Any additional hours worked by such officers have not been pensionable.

As a result of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, which require part-time workers to have the same entitlements to pensions on a pro rata basis as full-timers, agreement has been reached by a PNB Technical Working Group, which included representatives from Official Side, Staff Side and ACPO, to amend the Police Pensions Regulations 1987 and the Police Pensions Regulations 2006 to introduce revised arrangements for part-time officers.

The amendment order to bring about these changes is currently being drafted by the Home Office, but is currently not expected to be formally introduced until late August/September 2007.

However, in the meantime, police forces are being advised to follow the detailed guidance laid out in Home Office Circular 22/2007, to enable them to introduce and administer the new pension arrangements for part-time constables and sergeants with effect from 1 July 2007. This article will summarise some of the main points.

The new pension arrangements affect serving or former officers (including those with deferred pensions and those with pensions already in payment) that have served on a part-time basis at any time since 1 July 2000 at the rank of constable or sergeant.

From 1 July 2007, a part-time constable or sergeant's additional hours will be automatically pensionable. Members of the Police Pension Scheme (1987) will pay 11% officer contributions (7.5% if ineligible for ill-health retirements benefits) and members of the new Police Pension Scheme (2006) will pay 9.5% officer contributions (6% if ineligible for ill-health retirement benefits). If an officer chooses to take time-off in lieu instead of payment for additional hours, no further changes to pensionable pay are required.

Police authorities are required to pay employer contributions in respect of any additional pensionable pay on or after 1 April 2006.

Additional hours, for this purpose, are defined as the hours paid at plain time that a part-time officer works over and above their determined hours and up to forty hours (the normal hours of a full time officer of the same rank in a relevant week). This does not include any hours worked at an enhanced rate or those taken as time-off in lieu. This definition of additional hours should be applied throughout this guidance.

Changes will be backdated to 1 July 2000 or to a date 6 years before any claim received by a court or Employment Tribunal, whichever is the earlier. Serving and former officers can choose whether they wish to make any such previous

additional service pensionable. This will not be done automatically on their behalf and officers are required to pay contributions to make any previous service pensionable.

Police forces are responsible for notifying all affected serving officers and, wherever possible, former officers (which includes those with deferred pensions and those with pensions already in payment) of the new arrangements, the retrospective changes and all the options available to them.

Police forces should also:

- ◆ Ensure that pensionable hours are capped at 40 hours per week.
- ◆ Calculate additional reckonable service on an annual basis.
- ◆ Ensure that annual benefit statements accurately reflect the new arrangements.
- ◆ Consider providing officers with confirmation of receipt of the application.
- ◆ Verify the validity of an application for backdated payments, confirm additional hours that are pensionable and calculate additional pension contributions and reckonable service.
- ◆ Provide officers with specific information within a month of receiving the initial application.
- ◆ Apply internal dispute resolution procedures for both serving and former officers.

Officers can choose whether to make none, some (between 1% and 99%) or all of their previous additional service pensionable. If they choose to make only some of previous additional service pensionable, their additional contributions should be calculated on a pro-rata basis, e.g. if an officer chooses to purchase 40% of previous additional service, this will cost 40% of the total additional contributions.

Officers should note that they only have one opportunity to make additional service pensionable and should consider options for backdating payments carefully.

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

HOC 23/2007 Amendments to the Home Office Health and Safety Guidance for Police Officers and Police Staff

This Home Office Circular notifies police forces of changes to the Health and Safety Guidance for Police Officers and Police staff. The guidance has now been updated to reflect the introduction of ACPO and the Home Office Health and Safety Standing Committee Benchmarking Standards. This guidance replaces the guidance outlined in Home Office Circular 35/1997. The revised guide is available on the ACPO intranet site.

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

HOC 24/2007 Allowance Payable to Superintendents and Chief Superintendents

This Home Office Circular clarifies that the allowance payable to Superintendents and Chief Superintendents rated as exceptional when on the penultimate pay point as agreed by the Police Negotiating Board (PNB) on 6 July 2007 and set out in PNB Circular 07/3 is not a fixed payment, but is equivalent to the second increment in the pay scales which are in place at the time the payment is awarded.

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

Practice Advice on Critical Incident Management

The NPIA Professional Practice team has published a practice advice document on critical incident management.

The strategic document is aimed primarily at chief officers and senior managers. It aims to bring clarity to the concept and terminology of critical incidents and consistency to their management. In particular, it sets out a national definition of what a critical incident is and provides guidance on how critical incidents should be identified and managed in practice.

The document considers the causes of critical incidents and focuses on three main objectives:

- ◆ Preparation.
- ◆ Management.
- ◆ Restoring best confidence.

The document is available via the police Genesis website, or alternatively as a hardcopy book or interactive CD Rom, copies of which can be obtained by contacting NPIA Specialist Operations Centre on 0870 241 5641.

Knife Crime Best Practice Guidelines

The Home Office and the Association of Chief Police Officers (ACPO) have published a guidance document to enable forces to access the best practice available and to formulate strategies to reduce knife-enabled crime (KEC).

ACPO is also to establish a system for forces to share their experiences in dealing with KEC: this will be done via a network of regional representatives established through the Superintendents' Association, to draw together best practice.

The National Knife Crime Best Practice Guidance identifies four main strands: intelligence, prevention, enforcement and reassurance.

In relation to intelligence, the document recommends:

- ◆ The production of a force wide problem profile using the National Intelligence Model (NIM) system.
- ◆ Tasking of dedicated source units.
- ◆ That knife-related incidents are accurately recorded both by police forces and by partner agencies (e.g. health authorities supplying de-personalised data to police regarding casualties treated for knife-related injuries in A&E departments, schools reporting any knife-related incidents and licensed premises reporting knife-related incidents that might not otherwise be reported, such as door supervisors seizing weapons).

Ideas in respect of prevention include:

- ◆ Increasing high visibility patrolling of areas identified as hot spots.
- ◆ Using Crimestoppers to encourage those that may have information on people that carry weapons to report to police.
- ◆ Encouraging licensed premises to utilise their door staff to routinely scan customers for knives as a condition of entry.
- ◆ Identifying community champions to promulgate the anti-knife message, as this has been shown to generate a great deal of media and target audience participation in the campaign (e.g. the Damilola Taylor Trust used Rio Ferdinand as their community champion).

Suggested tactical options to be considered in relation to enforcement include:

- ◆ Use tasking processes to proactively target those individuals that intelligence suggests carry weapons through both stop and search or search warrants.
- ◆ Prioritising warrants for those suspects who have a PNC warning marker for weapons: this enables these individuals to be processed through the criminal justice system faster and reduces the opportunity for repeat offending.
- ◆ Using search arches at targeted hot spots to detect metallic objects and facilitate grounds to search.
- ◆ Conducting test purchase operations in partnership with trading standards, with a view to prosecuting retailers that fail to adhere to the law.

In relation to reassurance, the document states that, as with many crime types, the fear that KEC creates appears to exceed the probability of becoming a victim of knife crime. It suggests that forces consider:

- ◆ Using various media resources to communicate the facts around knife crime and clear messages about how the force is effectively tackling it.
- ◆ Making use of some form of local independent advice group to act as both a critical friend and a direct link to community perceptions (but it highlights that clear terms of reference are essential).

The guidance document can be found in full at <http://www.crimereduction.gov.uk/violence/violence023.pdf>

ACPO Motorcycle Enforcement Strategy for England, Wales & Northern Ireland

The Association of Chief Police Officers (ACPO) has published a strategy document in relation to the enforcement of traffic legislation by the police in respect of motorcyclists.

It is hoped it will help to:

- ◆ Reduce the number of people killed and seriously injured.
- ◆ Alleviate animosity between the police and motorcycle groups, and encourage an environment of co-operation and partnership, working together to achieve a safer road environment for all.
- ◆ Reduce the level of anti-social behaviour associated with a small irresponsible minority of motorcyclists that disproportionately affect the quality of life for some communities.

In respect of enforcement, it states:

- ◆ Breaches of Section 2 of the Road Traffic Act 1988 (dangerous riding) should in most cases be dealt with by way of prosecution, especially in cases where there is a victim. There is a need to deliver a clear message that behaviour constituting this offence will not be tolerated and that firm and positive action will be taken to address it.
- ◆ Breaches of Section 3 of the Road Traffic Act 1988 (careless riding) - it is recommended that where this offence is committed, and there is a victim, prosecution should be the preferred option, with all road users dealt with in the same manner.
- ◆ The use of Section 59 Police Reform Act 2002 should also be considered. It should be noted that the primary offence of Section 3 (careless and inconsiderate riding) must have been committed, with the extra elements of causing or likely to cause alarm, distress or annoyance to the public, before Section 59 can be implemented.
- ◆ In victimless cases, alternative pre-court interventions such as 'Rider Improvement Schemes' should be considered.
- ◆ Exceeding speed limits - prosecution in compliance with existing detailed ACPO guidelines and individual force policies.
- ◆ Breaches of Section 36 of the Road Traffic Act 1988 (failure to comply with road signs) - consider pre-court interventions. These offences should not normally be isolated incidents, but should be accompanied by aggravating factors, for example excessive speed or prolonged misuse of double white line markings. In cases where there is a victim and/or the offences have a higher degree of 'mens rea', prosecution should be the preferred option.

- ◆ Registration plates - apply a simple test of legibility, based upon the standard eyesight test for riders and drivers. If plates are not easily legible from 20.5 metres, prosecute and inform DVLA.
- ◆ Illegal exhausts - In cases with no noise annoyance, consider the use of the Vehicle Defect Rectification Scheme (VDRS) and appropriate advice. Where noise annoyance is a factor, prosecution is recommended, with consideration to be given to the use of Section 59 Police Reform Act 2002 for persistent offenders or excessive noise nuisance. It is recommended that all forces use the PNC to record and administer Section 59 warnings and seizure notices.
- ◆ Tinted visors - If used during daylight hours, advice only. If used during the hours of darkness or conditions of reduced visibility, consider prosecution, using 'Tintman' equipment where available. Only in cases where there is an obvious danger should prosecution be considered.
- ◆ Coloured headlamps - intervention recommended only if the light cover is red. VDRS is recommended as the primary option. Advice to be given for colours other than white.

The strategy document can be found in full at http://www.acpo.police.uk/asp/policies/Data/motorcycle_enforcement.doc

Revised Good Practice Guide for Computer-Based Electronic Evidence

The Association of Chief Police Officers (ACPO) has published a revised version of its 'Good Practice Guide for Computer-Based Electronic Evidence'.

The guidance is intended for use in the recovery of computer-based electronic evidence and relates to:

- ◆ Personnel attending crime scenes or making initial contact with a victim/witness/suspect - Securing, seizing and transporting equipment from search scenes, with a view to recovering computer-based electronic evidence, and identifying the information needed to investigate a high-tech crime.
- ◆ Investigators - Planning and management by investigators of the identification, presentation and storage of computer based electronic evidence.
- ◆ Evidence recovery staff - Recovery and reproduction of seized computer-based electronic evidence by personnel who are trained to carry out the function and have relevant training to enable them to give evidence in court of their actions.
- ◆ External consulting witnesses - The selection and management of persons who may be required to assist in the recovery, identification and interpretation of computer-based electronic evidence.

The revised guidance can be found at <http://www.acpo.police.uk/asp/policies/Data/ACPO%20Guidelines%20v18.pdf>

Police use of Taser in England and Wales

The Minister of State for Security, Counter-Terrorism, Crime and Policing, Tony McNulty, has made a written ministerial statement on the police use of Taser in England and Wales.

With effect from 20 July 2007, chief officers throughout England and Wales have Government approval to deploy Taser for use by Authorised Firearms Officers, in operations or incidents where the criteria for the authorisation to issue firearms does not apply, but where officers are facing violence or threats of violence of such severity that they would need to use force to protect the public, themselves and/or the subject(s) of their action.

In addition, the 12 month trial of the deployment of Taser, by specially trained units who are not firearms officers, in similarly violent circumstances requiring conflict management (covered in June *Digest*) has also been approved and will start on 1 September 2007 in the following 10 forces: Avon and Somerset, Devon and Cornwall, Gwent, Lincolnshire, Merseyside, Metropolitan Police Service, Northamptonshire, Northumbria, North Wales and West Yorkshire.

ACPO has produced new policy and operational guidance documents for both the extension and the trial. All Taser deployments will continue to be monitored and a detailed report of every deployment will be produced. These reports will be collated by the Home Office Scientific Development Branch and summarised on a three-monthly basis for assessment by the Defence Scientific Advisory Council (DSAC) Sub-Committee on the Medical Implications of Less Lethal Weapons (DOMILL).

ACPO Youth Justice Conference 2007

The Association of Chief Police Officers (ACPO), in partnership with Avon and Somerset Constabulary, will hold their annual Youth Justice Conference on 3-4 October 2007 at the Assembly Rooms, Bath, Somerset.

This year's theme is 'Every Young Person Matters – Time to Make a Difference' and is set to challenge the existing structure and purpose of welfare and crime prevention groups for young people, promoting instead the formation of a streamlined, consolidated centre for knowledge and a strident plan of action for youth workers at both local and national level.

The agenda will include interactive workshops and debates, seminars on topical issues such as gang culture, modern parenting and restorative justice.

Conference and registration enquiries should be forwarded to Jenna Ford at Apex Conference & Event on 01625 429370 or email jennaF@apex.co.uk

Independent Police Complaints Commission Annual Report 2006 - 2007

The Annual Report of the Independent Police Complaints Commission (IPCC) was laid before Parliament on 23 July 2007 and has been published.

The report deals with the work completed in 2006/2007 and, in particular, how the IPCC has dealt with the challenges which its third year of existence has brought and how it has engaged with diverse communities and stakeholders.

The IPCC remit now extends beyond the police service it having operational responsibility for complaints about the conduct of members of the Serious Organised Crime Agency and of Her Majesty's Revenue and Customs who use 'police like powers'. Their remit will be further extended to cover similar functions in the Borders and Immigration Agency.

The report will be available at http://www.ipcc.gov.uk/index/resources/evidence_reports/corp_reports-plans.htm

Case Law



NPIA 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.

Admittance of Evidence Obtained in Breach of PACE Code C Rendered Conviction Unsafe

R v CHEB MILLER (2007)

CA (Crim Div) (Gage LJ, Davis J, Judge Chapman QC) 10/7/2007

Criminal Evidence - Police

Admissibility: Cautions: Pace Codes Of Practice: Police Inquiries: Possession Of Offensive Weapons: Police Evidence Obtained Without Caution In Breach Of Code C Pace Codes Of Practice: S.23 Misuse Of Drugs Act 1971: S.78 Police And Criminal Evidence Act 1984

[A judge had erred in admitting evidence unlawfully obtained in breach of the PACE codes of practice Code C.](#)

The appellant (M) appealed against a conviction for having an offensive weapon. M was stopped and searched by police officers under the Misuse of Drugs Act 1971 s.23. During the search they discovered a "butterfly" knife tucked into M's waistband. One of the officers (P) asked M why he possessed the knife without cautioning him. M initially stated that he had panicked upon seeing the officers and had put the knife in his waistband. Following a further question, M changed his account to state that he had found the knife on a bus. P made a contemporaneous note of what M had said and asked him to sign it but M refused. Following his arrest, M gave a no comment interview. At trial, M's defence was that, following an argument, he had removed the knife from his girlfriend (G) as she had a history of self-harming, that he was acting in her interest, and that he had panicked when he saw the police. G gave evidence to support M's account and evidence was admitted to demonstrate that she was receiving psychiatric treatment for self-harming. The Crown successfully applied for P's note to go before the jury despite objections by M that the note was obtained in breach of the PACE codes of practice Code C. The judge ruled that there had not been a breach of Code C since P's questions had been reasonable in order to establish if M had a defence to having the knife. M submitted that the judge had erred in permitting P's evidence to go before the jury as it had been unlawfully obtained.

HELD

The issue was whether or not the admission of P's evidence had rendered M's trial unfair. M had declined to sign P's notebook and there was no question of unfairness that he subsequently could not remember the conversation he had had with P. There was no suggestion of impropriety by P in taking down the note, but the Crown had accepted after the trial that the failure to provide a caution was a breach of Code C and therefore the evidence had been unlawfully obtained. It was true that the judge had provided a Lucas direction in relation to the fact that M had clearly lied when initially questioned by P, but the purpose of a caution was to notify a suspect that he need not say anything if he did not want to, in order to allow him to stop and think. Had M been cautioned, he might not have said anything to P or he might have provided the same explanation that he later provided at trial. Although that line of reasoning was speculative, the information put in evidence from P's note was nevertheless obtained unlawfully. Had the Crown concluded that there had been a breach of Code C at the time of trial, there would have been no application to put the evidence before the jury, or if the Crown had so applied the judge would have exercised his discretion under the Police and Criminal Evidence Act 1984 s.78. Therefore, the verdict was clearly unsafe.

APPEAL ALLOWED



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Confession for the Purposes of Section 76A PACE

R v JASON EVERTON JOHNSON (2007)

CA (Crim Div) (Pill LJ, Dobbs J, Lloyd Jones J) 11/7/2007

Criminal Evidence

Basis Of Plea: Confessions: Guilty Pleas: Admissibility Of Vacated Guilty Plea
As Evidence: S.76a Police And Criminal Evidence Act 1984: S.76a(1) Police
And Criminal Evidence Act 1984

A plea of guilty and the written basis for the plea amounted to a "confession" for the purposes of the Police and Criminal Evidence Act 1984 s.76A and was admissible in evidence at the request of a co-accused under s.76A(1) of the Act.

The appellant (J) appealed against his conviction on two counts of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of controlled drugs. A parcel, addressed to a co-accused (C), which contained cocaine and cannabis had been intercepted. Police made the parcel available for collection and C attended the parcel depot and collected it. C was arrested and premises, with which C was linked, were searched. It was discovered that she was J's former girlfriend. J was subsequently arrested. In an interview he stated that he had given C a lift to collect the package, but denied any knowledge of the drugs. At first J pleaded not guilty, he subsequently pleaded guilty, on a written basis of plea, to the cocaine count. J then successfully applied to have the plea vacated. At trial C stated that she

had collected the package on behalf of J and had been told it contained clothing. The recorder admitted in evidence J's guilty plea and written basis of plea as confessions under the Police and Criminal Evidence Act 1984 s.76A. J contended that the recorder should not have admitted in evidence the earlier plea and written basis of plea.

HELD

The basis of plea was clearly a "confession" within the meaning of s.76(A) of the Act and was admissible at the request of the co-accused under s.76(A)(1). A defendant would be understandably frustrated by being permitted to vacate a plea but then not permitted to enjoy the fruits of vacation by way of a trial unencumbered by the earlier plea; however, the issue at trial was essentially between J and the co-accused and the decision in R v Myers (Melanie) (1998) AC 124 and s.76(A) were designed to ensure a fair trial in that situation, Myers applied.

APPEAL DISMISSED



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Information to be Considered by the Court when Assessing an Offenders 'Dangerousness'

R v LAWRENCE PHILIP CONSIDINE: R v JAY DAVIS(2007)

CA (Crim Div) (Gage LJ, Rafferty J, Swift J) 6/6/2007

Sentencing

Admissibility: Dangerousness: Information: Pre-Sentence Reports: Public Protection: Information Used In Assessing Dangerousness: Information Not Substantiated Or Proved By Criminal Convictions: S.229 Criminal Justice Act 2003: S.225 Criminal Justice Act 2003

In making an assessment of the offender's dangerousness under the Criminal Justice Act 2003 s.229, the court could take into account any information about the offender, about any pattern of behaviour of which the offence formed part, and about the nature and circumstances of the offence. The information could take the form of material adverse to the offender which was not substantiated or proved by criminal convictions.

The appellant (C) appealed against his sentence of imprisonment for public protection imposed for two offences of making threats to kill. The applicant (D) applied for leave to appeal against his sentence of detention for public protection for possessing a firearm with intent to cause fear or violence. C had 12 previous convictions for 24 offences, including violent offences. He had threatened to kill his former partner. At trial, his former partner gave evidence which revealed a pattern of violence by C towards her throughout the relationship. She described a number of specific incidents which had not

formed the basis for any of C's convictions. The judge took account of that evidence in reaching his conclusion that the statutory presumption of dangerousness should not be disapplied. D had previous convictions for possessing an offensive weapon, threatening behaviour, assaulting a police constable, criminal damage and harassment. The pre-sentence report contained admissions by D that he had been interested in guns since childhood, that he was of the opinion he lived in a "gangster type" culture in which threats and violence were common, and that he had a problem with his temper. The judge took that information into account in reaching his conclusion that D represented a significant risk of causing serious harm to members of the public. The issue for determination in both cases was whether the assessment of dangerousness for the purposes of the Criminal Justice Act 2003 s.225 to s.229 had been based on inadmissible material.

HELD

- (1) Section 229(2) and s.229(3) of the 2003 Act required the court to take into account all such "information" as was available about the offender, about any pattern of behaviour of which the offence formed part, and about the nature and circumstances of the offence. An assessment based on "information" was not restricted to "evidence". The information to be taken into account was not limited to the offender's previous convictions or a pattern of behaviour established by them, or indeed information about the offender which was limited to them. Information bearing on the assessment of dangerousness could take the form of material adverse to the offender which was not substantiated or proved by criminal convictions. It was doubtful whether the full ambit of the principle in *R v Kidd (Philip Richard)* (1998) 1 WLR 604, which was concerned with establishing guilt, applied to the assessment of dangerousness. The decision in *R v Farrar (Stuart)* (2006) EWCA Crim 3261, (2007) 2 Cr App R (S) 35, consistently with *Kidd*, prohibited the introduction of the possibility of conviction, or effective conviction, of a serious criminal offence after trial by judge alone in the course of a sentencing decision. *Farrar* did not decide that, absent a conviction, the court making the s.229 decision was precluded from considering evidence of previous misconduct which would amount to a criminal offence, *Farrar* explained, *Kidd* applied and *R v Johnson (Paul Anthony)* (2006) EWCA Crim 2486, (2007) 1 WLR 585 considered.
- (2) The judge in C's case had been entitled to take into account the information supplied by C's former partner, and the assessment that he was dangerous could not be faulted. Furthermore, there was no reason for interfering with the conclusion reached by the judge in D's case that he represented a significant risk of causing serious harm to members of the public.

JUDGMENT ACCORDINGLY



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Failure to Direct Jury on Evidence of Bad Character does not Automatically Render a Conviction Unsafe

R v DARYL HARPER (2007)

CA (Crim Div) (Latham LJ (VP CA Crim), Pitchers J, Royce J) 25/6/2007

Criminal Evidence

Bad Character: Co-Defendants: Jury Directions: Previous Convictions: Summing Up: Failure To Give Full Direction: S.101(1)(A) Criminal Justice Act 2003

Although a judge had failed to provide a specific warning to a jury concerning the use it could make of a defendant's previous convictions, those convictions were not a significant issue in the case and, in any event, the judge had already provided a full direction in relation to the previous convictions of a co-defendant.

The appellant (H) appealed against his conviction for wounding with intent to cause grievous bodily harm. The victim (V) had been travelling home in the early hours of the morning. As he walked through an alleyway, V became aware of a group of youths behind him and another man in front of him. V suffered a blow to the face that caused a significant injury but he did not see whether he was hit or if an object was used. V fled to a nearby house and sought refuge whereupon an affray occurred around the entranceway. During the affray, H was alleged to have made a remark to V, indicating that the next time he was hit, it would result in splits to both sides of his mouth. H pleaded guilty to affray but denied that he had struck the initial blow, alleging that his co-defendant (D) had been responsible. H asserted that D had struck V with a broken bottle from behind. The Crown alleged that on V's evidence, it was plain that the only person that could have struck V was the person in front of V in the alleyway and, on the evidence, that was H. The issue for the jury was whether H had been the person to strike V causing injury to his face. On the basis that D's previous convictions were to go before the jury under the Criminal Justice Act 2003 s.101(1)(a), H's lawyers made a tactical decision to put his previous convictions in evidence for completeness and to reflect his earlier plea of guilty to affray. H submitted that the judge erred in failing to provide an appropriate direction to the jury as to how they should use the information that he had previous convictions for similar offences to the offence alleged. H argued that the fact that he had put the previous convictions in evidence himself did not relieve the judge from giving the jury assistance on how they should approach them.

HELD

The reasoning behind H's decision to put his previous convictions in evidence was understandable and it was true that the judge had not provided a specific direction in relation to them. The judge had provided an appropriate direction in relation to D's previous convictions on the basis that the Crown were asking the jury to bear them in mind as showing evidence of a propensity to indulge

in behaviour identified by those convictions. He gave a full and proper warning that the jury should not conclude that D had committed the offence alleged merely because he had committed similar offences in the past. As a matter of law H's submission was entirely correct but the issue for the court was whether, in the circumstances, the failure to provide a direction on H's previous convictions affected the safety of his conviction. It was notable that it was a very experienced judge and, having failed to give a specific direction in relation to H, neither counsel for the Crown or H indicated at the time that the judge had failed to fully address the issues in the case or draw his attention to it. H's convictions had been put before the jury for the sake of completeness and had not been used as a significant issue in the trial. In the circumstances, the matter had not been considered of such significance that a failure to provide a warning to the jury would have had an effect on the jury's deliberations. In any event, even if H's previous convictions had been of significance they would have fallen into the exact same category as those of D and the judge had already provided a very proper and full direction on those convictions.

APPEAL DISMISSED



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Where Evidence of Bad Character is Introduced, the Jury Should be Given Assistance as to its Relevance to the Case

R v KENNETH GEORGE CAMPBELL (2007)

CA (Crim Div) (Lord Phillips LCJ, Henriques J, Teare J) 26/6/2007

Criminal Procedure - Criminal Evidence

Bad Character: Credibility: Jury Directions: Previous Convictions: Propensity: Relevance: Bad Character Directions: S.101(1)(D) Criminal Justice Act 2003: S.101 Criminal Justice Act 2003

It was unhelpful for a trial judge to give to a jury the Judicial Studies Board's specimen directions in relation to bad character by reference to the terms of the Criminal Justice Act 2003 s.101 without relating them to the facts of the case, and to include a direction that referred to a person with bad character being less likely to tell the truth.

The appellant (C) appealed against his convictions for false imprisonment and assault occasioning actual bodily harm. The Crown's case was that C, who had had a sexual relationship with the victim (V), had shut V in her bedroom in a flat; that he had threatened and frightened her; that on one occasion, when she had attempted to escape, he had dragged her back upstairs by her hair; and that, when V had escaped, he had banged her head against a wall and had tried to strangle her. The Crown obtained permission under the Criminal Justice Act 2003 s.101(1)(d) to adduce evidence of two of C's previous convictions for violence, on the ground that the evidence showed a propensity

to commit acts of violence towards women. The trial judge directed the jury that the previous convictions could be taken into account in determining whether C had a propensity to be violent towards women and in deciding whether C had been truthful when giving evidence. C submitted that, in directing the jury as to the relevance of evidence of bad character, the judge should have had regard only to the gateway under s.101 through which the evidence was introduced or any other gateway through which the evidence could have been introduced. C submitted that, since his previous convictions had been admitted under s.101(1)(d), the important matter in issue being whether he had propensity to commit offences of the kind with which he had been charged, the judge should not have directed the jury that the previous convictions might have relevance to his credibility.

HELD

- (1) Where evidence of bad character was introduced, the jury should be given assistance as to its relevance that was tailored to the facts of the individual case. Once the evidence had been admitted through a gateway under s.101, it was open to the jury to attach significance to it in any respect in which it was relevant. It would be unsatisfactory to direct the jury only to have regard to it for a particular purpose and to disregard its relevance in other respects, *R v Highton (Edward Paul)* (2005) EWCA Crim 1985, (2005) 1 WLR 3472 applied. In considering the inference to be drawn from bad character, it was usually unrealistic to draw a distinction between propensity to offend and credibility. If the jury learnt that a defendant had shown a propensity to commit criminal acts it may conclude that it was more likely that he was guilty and that he was less likely to be telling the truth. The question as to whether a defendant had a propensity for being untruthful would not normally be capable of being described as an important matter in issue unless telling lies was an element of the offence in question. Even then, the propensity to tell lies was only likely to be significant if the lying was in the context of committing criminal offences. In the rare case where propensity to be untruthful was an important issue, the direction should always explain the relevance of the evidence with reference to the particular facts that made the matter important. Propensity for untruthfulness would not, of itself, go very far to establishing the committal of criminal offences.
- (2) It was undesirable for the Judicial Studies Board specimen directions in relation to bad character to direct the judge to identify the gateway or gateways through which bad character had been admitted by reference to the wording of the Act. If the jury was told in simple language and with reference, where appropriate, to the particular facts of the case, why bad character evidence might be relevant, that would necessarily encompass the gateway by which the evidence was admitted. Where evidence of a criminal or blameworthy act on the part of the defendant was adduced and the evidence had no bearing on the defendant's propensity to commit the offence, that should be made plain to the jury.
- (3) In the instant case, the trial judge had given the Judicial Studies Board's specimen directions without relating them to the facts of the case, which could not have assisted the jury. It was also unhelpful to include a part of

a specimen direction that referred to a person with bad character being less likely to tell the truth. However, the terms of the summing up had no impact on the safety of the verdict reached by the jury.

APPEAL DISMISSED



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Failure to Include Unlawful Killing as Possible Verdict in Coroners Court

R (on the application of HELEN CASH) (Claimant) v HM CORONER FOR NORTHAMPTONSHIRE (Defendant) & CHIEF CONSTABLE OF NORTHAMPTONSHIRE (Interested Party) (2007)

QBD (Admin) (Keith J) 8/6/2007

Administration Of Justice - Civil Evidence - Human Rights

Coroners' Courts: Findings Of Fact: Juries: Jury Directions: Right To Life: Standard Of Proof: Unlawful Killing: Verdicts: Failure To Include Unlawful Killing As Possible Verdict: Effect Of Jury's Failure To Make Core Factual Findings: Art.2 European Convention On Human Rights: R.36(2) Coroners Rules 1984

An inquest was required to provide a mechanism for the United Kingdom to discharge its obligations under the European Convention on Human Rights 1950 Art.2, and the failure by a jury to determine whether the force used by police officers on the deceased had been justified, combined with the Coroner's decision not to include a verdict of unlawful killing for the jury's consideration, was fatal to the inquest's legitimacy.

The claimant (X), applied for judicial review of the decision of the defendant coroner not to include unlawful killing as a possible verdict for the jury's consideration in an inquest into the death of her brother (C). C, who had taken an overdose of tablets, had died shortly after being restrained by police officers. During the inquest, questions had arisen over the need for the police to restrain C at all and the reasonableness of the force used. The police had contended that C had become agitated and, having become sufficiently concerned for his safety and that of his girlfriend, as well as their own safety, the attending officers had decided to restrain him. The coroner, having reviewed the evidence in line with the "required standard of proof", had ruled not to include unlawful killing as a possible verdict for the jury's consideration, leaving possible verdicts of either accidental death or an open verdict. The coroner had also directed the jury that its recorded narrative verdict should be neutral and factual, and that no judgment or opinion should be expressed. The jury had followed the coroner's direction regarding the narrative and had returned a verdict of accidental death. X submitted that

- (1) inadequate reasons had been given for the coroner's decision not to include a possible verdict of unlawful killing

- (2) following the decision in *Jordan v United Kingdom* (24746/94) (2003) 37 EHRR 2, where an inquest was intended to be the mechanism for the discharge of the United Kingdom's obligation under the European Convention on Human Rights 1950 Art.2, the standard of proof required for a verdict of unlawful killing was lower than the criminal standard;
- (3) the coroner should have directed the jury to provide a narrative verdict that incorporated their conclusions on the core disputed factual issues.

HELD

- (1) A coroner was obliged to leave to the jury only those verdicts which were properly open to them to reach on the evidence, which required an exercise of judgment, *R v Galbraith (George Charles)* (1981) 1 WLR 1039, *R v HM Coroner for Exeter and East Devon Ex p Palmer*, *R v HM Coroner for Inner London South District Ex p Douglas-Williams* (1999) 1 All ER 344, and *R (on the application of Sharman) v HM Coroner for Inner North London* (2005) EWHC 857, (2005) ACD 96 considered. However, the coroner in the instant case had given no reasons for her conclusion that there was no evidence on which the jury could have returned an unlawful killing verdict, and should have done so.
- (2) For the purposes of Art.2, the requirement on the police authorities to provide a "satisfactory and convincing" explanation for the use of force, as propounded in *Jordan*, was to be treated as an evidential burden. However, once an explanation, which was capable of being regarded as such had been given, then the jury then had to be satisfied, to the criminal standard, that the circumstances in which the force had been used meant that the deceased had been unlawfully killed. In the instant case, the police officers' explanation for the force used to restrain C had been capable of being regarded by the jury as satisfactory and convincing. For the purposes of "unlawful act" manslaughter, however, it could not be said that there was no evidence on which the jury, properly directed, could have concluded that the degree of force used to restrain C was unreasonable or contributed significantly to his death. The coroner had accordingly erred in law in failing to leave the jury with the possibility of returning a verdict of unlawful killing on that basis. The coroner had not, however, erred in failing to leave the jury with the possibility of returning an unlawful killing verdict on the basis of "gross negligence" manslaughter.
- (3) The prohibition in the Coroners Rules 1984 r.36(2) did not preclude conclusions of fact, as opposed to expressions of opinion, by the jury, *R (on the application of Middleton) v HM Coroner for Western Somerset* (2004) UKHL 10, (2004) 2 AC 182 considered. The coroner's direction had prevented the jury from embodying into the verdict a judgmental conclusion on the core disputed factual issues.
- (4) The absence of any findings on the core factual issues raised at the inquest, together with the coroner's erroneous decision not to leave a verdict of unlawful killing for the jury's consideration, had been fatal to the inquest's legitimacy. As a result, the inquest had failed to arrive at a determination of whether the force used by the police had been justified in

the circumstances, as required by Jordan. In that respect, the inquest proved not to be an effective mechanism for the discharge of the UK's obligation under Art.2, Jordan applied.

- (5) The jury's inquisition was quashed, and an order was made for a fresh inquest to be held into C's death, to be presided over by a different coroner.

APPLICATION GRANTED



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Failure to obtain leave of the High Court under the Mental Health Act 1983 to bring civil proceedings will render those proceedings a nullity

ROBERT EDWARD SEAL v CHIEF CONSTABLE OF SOUTH WALES (2007)

HL (Lord Bingham of Cornhill, Lord Woolf, Baroness Hale of Richmond, Lord Carswell, Lord Brown of Eaton-under-Heywood) 4/7/2007

Mental Health - Civil Procedure - Human Rights

Civil Proceedings: Mental Patients: Nullity: Permission To Issue: Proportionality: Right Of Access To Court: Effect Of S.139(2) Mental Health Act 1983: Parliamentary Intention: Legitimate Objective: Limitation Periods: Limitation Act 1980: S.139(2) Mental Health Act 1983: S.136(1) Mental Health Act 1983: Art.6 European Convention On Human Rights

[A failure to obtain the leave of the High Court under the Mental Health Act 1983 s.139\(2\) before commencing civil proceedings rendered those proceedings a nullity.](#)

The appellant (S) appealed against a ruling ((2005) EWCA Civ 586, (2005) 1 WLR 3183) upholding a decision to dismiss his action against the respondent chief constable. After an incident at S's mother's house, the police removed him to a place of safety under the Mental Health Act 1983 s.136(1). He was detained for just over a week. On the eve of the expiry of the limitation period, S, acting in person, issued proceedings in the county court against the chief constable. The district judge dismissed the action on the ground that S had issued it without obtaining the leave of the High Court in breach of s.139(2) of the 1983 Act. S argued that

- (1) the lack of leave, even when required, was an irregularity which could be rectified, not a fatal flaw which invalidated the proceedings;
- (2) the effect of s.139(2) was to infringe his right of access to the court contrary to the European Convention on Human Rights 1950 Art.6.

HELD

(Baroness Hale and Lord Woolf dissenting)

- (1) The important question was whether, in requiring a particular condition to be satisfied before proceedings were brought, Parliament intended to confer a substantial protection on the putative defendant, such as to invalidate proceedings brought without meeting the condition, or to impose a procedural requirement giving rights to the defendant if a claimant should fail to comply with the requirement, but not nullifying the proceedings. To answer that question, a broad inquiry, looking at the legislative history, case law and academic opinion, was called for. When Parliament legislated in 1982-1983, there had been a clear consensus of judicial, professional and academic opinion that lack of the required consent rendered proceedings null, and Parliament had to be taken to have legislated on that basis, *Pountney v Griffiths* (1976) AC 314, *R v*

Angel (Robert Charles) (1968) 1 WLR 669, Secretary of State for Defence v Warn (1970) AC 394 and R v Pearce (Stephen John) (1981) 72 Cr App R 295 applied.

- (2) Section 139(2) did not breach Art.6. The European Court had accepted that the right of access to the court was not absolute, but might be subject to limitations. The protection of those responsible for the care of mental patients from being harassed by litigation had been accepted as a legitimate objective. What mattered was that the limitations applied had not to restrict or reduce the access left to the individual in such a way or to such an extent as to impair the very essence of the right. But the threshold for obtaining leave under s.139(2) had been set at a very unexacting level, so that an applicant with an arguable case would be granted leave. S's undoing lay not in his failure to obtain the leave which he should have had but in his failure to proceed within the generous time limit allowed by the Limitation Act 1980, which would not itself fall foul of Art.6.
- (3) (Per Baroness Hale) The fact that leave was required might not emerge until a relatively late stage in the proceedings. That a claimant who had suffered a wrong should be deprived of his remedy merely because of a procedural failure which no one noticed at the time was an affront to justice. It would not be appropriate to interpret s.139(2) so as to achieve such an obviously unjust result unless driven by the statutory language to do so. The statutory language made it clear that if anyone, including the claimant, appreciated the point, then leave had to be obtained; it did not make it clear that if no one, including the court or the defendant, did so, the proceedings would be a nullity. Halfway houses were usually to be preferred to absolute extremes. As to Art.6, restrictions on access to the courts had to be proportionate to the legitimate aim sought to be achieved. If s.139(2) had the effect that proceedings issued in breach of it were always a complete nullity, thus depriving a claimant of a good claim, that was an effect out of all proportion to the aim which it was attempting to pursue; interpreting the subsection so as to allow the court to cure the defect once detected was a proportionate response.

APPEAL DISMISSED



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Conclusive Presumptions under Section 76 Sexual Offences Act 2003

R v HARVINDER SINGH JHEETA (2007)

CA (Crim Div) (Sir Igor Judge (President QB), Simon J, Judge Goldsack QC) 11/7/2007

Criminal Law - Sentencing

Consent: Deception: Presumptions: Procuring Intercourse: Rape: Sexual Offences: Irrebuttable Presumptions: Nature Of Deceit Causing Complainant To Have Sexual Intercourse: S.76 Sexual Offences Act 2003: S.76(2)(A) Sexual Offences Act 2003: S.74 Sexual Offences Act 2003: S.28 Criminal Justice And Court Services Act 2000

In circumstances where an offender had deceived a complainant and pressured her into having sexual intercourse more frequently than she would have done otherwise, the conclusive presumption under the Sexual Offences Act 2003 s.76 had no application as the complainant had not been deceived as to the nature or purpose of sexual intercourse.

The appellant (J) appealed against convictions, and subsequent sentence of eight years' imprisonment, on two counts of procuring sexual intercourse by false pretences contrary to the Sexual Offences Act 1956 s.3(1), four counts of rape contrary to the Sexual Offences Act 2003 s.1(1) and one count of blackmail. J had met the complainant (C) in college and in 2002, they began a consensual sexual relationship. A few months later C started receiving threatening text messages and she confided in J. J was in fact responsible for the messages but reassured C that he would protect her. The messages continued and C decided to involve the police. J said he would lodge a complaint on her behalf. C then received various text messages purportedly from police officers involved in her case. As a result of one of the messages C paid J sums of money to arrange security for her and watch her house. C had no idea J was responsible for the entire process and over a period of two or three years tried to break off the relationship. Whenever she tried she would receive text messages purportedly from the police officers telling her to sleep with J or she would be liable for a fine. In 2006, after letters were sent to her home and read by her mother, C went to the police and J was arrested. In interview J admitted C had intercourse with him because of the texts and that she had not truly consented. J stated that C would have been happy to have intercourse from time to time but he wanted greater frequency. J was charged with rape under the 2003 Act for some of the offences, as the offence of procuring sexual intercourse by false pretences had ceased to exist when the 2003 Act came into force. J was advised to plead guilty to rape on the basis that his admitted behaviour fell within the ambit of s.76 of the 2003 Act and accordingly there was an irrebuttable presumption that C had not consented to intercourse. J was sentenced to eight years concurrent on each count. J contended that the admitted deception was not a deception about the nature or purpose of the "relevant act" for the purpose of s.76(2)(a) of the 2003 Act and advice given to him at the time was incorrect in law. The Crown contended that the 2003 Act brought together all the offences of a sexual

nature could not have been intended to decriminalise deliberate conduct designed to deceive a woman into having sexual intercourse.

HELD

- (1) The ambit of s.76 of the 2003 Act was limited to the "act", which in the case of rape was vaginal, anal or oral intercourse. Section 76(2)(a) of the 2003 Act was relevant to the comparatively rare cases where a defendant deliberately deceived a complainant about the nature or purpose of the intercourse. No conclusive presumptions arose merely where a complainant was deceived by a defendant's lies; whilst they may be deceptive and persuasive they would rarely go to the nature or purpose of intercourse. The cases in which the conclusive presumption, under s.76(2)(a) of the 2003 Act, would arise would be rare, *R v Flattery* (John) (1876-77) LR 2 QBD 410, *R v Williams* (1923) 1 KB 340, *R v Tabassum* (Naveed) (2000) 2 Cr App R 328 and *R v Green* (Peter Donovan) (2002) EWCA Crim 1501 considered. In the instant case the conclusive presumption in s.76(2)(a) of the 2003 Act had no application and J had been wrongly advised that it had. It was clear from the basis of plea that J had deceived C and had pressured her into having sexual intercourse more frequently than she would have done. However she was not deceived as to the nature or purpose of intercourse but deceived as to the situation in which she found herself.
- (2) J had admitted that on some occasions that intercourse had taken place when C was not truly consenting. C's choice to have intercourse on those occasions was not a free choice or consent for the purpose of s.74 of the 2003 Act and, therefore, J's convictions for rape were safe.
- (3) The sentences passed for the offences of procuring sexual intercourse by false pretences exceeded the statutory maximum and would be quashed and replaced with sentences of 18 months. The overall sentence was excessive and would be reduced to six years' imprisonment. Further, the disqualification order under the Criminal Justice and Court Services Act 2000 s.28 was inappropriate given the age of C and was quashed.

APPEAL ALLOWED IN PART



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SI 1573/2007 The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007

In force **1 July**. These Regulations impose requirements and prohibitions in relation to the carriage of dangerous goods by road and by rail and, in so far as they relate to safety advisers, by inland waterway. In doing so they implement certain Directives as respect Great Britain.

The enforcing authorities for these Regulations are:

- ◆ The Health and Safety Executive in relation to road and rail.
- ◆ The Secretary of State for Transport in relation to road and inland waterways.
- ◆ The chief officer of police of each area in relation to road.

SI 1817/2007 The Road Vehicles (Construction and Use) (Amendment) Regulations 2007

In force **1 August**. These Regulations further amend the Road Vehicles (Construction and Use) Regulations 1986.

Regulation 2 amends the definition of “the emissions publication” in Schedule 7B of the 1986 Regulations, so as to refer to the most recent edition of the publication entitled “In Service Exhaust Emission Standards for Road Vehicles – Thirteenth Edition”. The publication contains in-use emissions limits that petrol-engined cars and light vans are required to meet at MoT and roadside emissions tests. The publication includes information on new models of petrol-engined passenger cars and light commercial vehicles, which have come onto the market since the last amending regulations came into effect on 1 August 2006; it also revises a small amount of data on existing models.

SI 1819/2007 The Community Drivers’ Hours and Recording Equipment Regulations 2007

In force **2 July**. The purpose of this Instrument is to facilitate compliance with a new European Regulation (EC) No 561/2006 on drivers’ hours and is necessary to:

- ◆ Put in place new enforcement provisions.
- ◆ Define historic status (for the purpose of a new automatic exemption).
- ◆ Implement some of the discretionary national derogations available to Member States (which exempt certain vehicles from the new EU Regulation).

These Regulations:

- ◆ Revoke the Community Drivers’ Hours and Recording Equipment (Exemptions and Supplementary Provisions) Regulations 1986, as amended, which set out the national derogations adopted under the previous EU drivers’ hours rules - Council Regulation (EEC) No 3820/85.

- ◆ Make consequential amendments to Part VI of the Transport Act 1968, as amended, which sets out the drivers' hours enforcement penalties (in relation to both the EU and domestic drivers' hours rules).

SI 1830/2007 The Crime and Disorder (Formulation and Implementation of Strategy) Regulations 2007

In force **1 August**. These Regulations extend to England only. They set out minimum standards for how Crime and Disorder Reduction Partnerships (CDRPs) should function as they formulate and implement strategies to tackle crime and disorder in their communities.

SI 1831/2007 The Crime and Disorder (Prescribed Information) Regulations 2007

In force **1 August**. These Regulations strengthen CDRP partners' existing obligations to share relevant information by specifying the sets of depersonalised information that relevant authorities have a duty to disclose to each other if held by them.

SI 1832/2007 The Gaming Machines in Alcohol Licensed Premises (Notification Fee) (England and Wales) Regulations 2007

In force **1 August**. Section 282 of the Gambling Act 2005 entitles persons who hold a relevant alcohol licence under the Licensing Act 2003, to make available up to two gaming machines on the premises. To do so, licence-holders must notify their licensing authority of their intention to rely on this entitlement and must pay a fee. These Regulations set that prescribed fee at £50.

SI 1833/2007 The Gambling Act 2005 (Licensed Premises Gaming Machine Permits) (England and Wales) Regulations 2007

In force **1 August**. These Regulations set the fees in relation to licensed premises gaming machine permits and specify the form of the permit.

SI 1834/2007 The Gambling Act 2005 (Club Gaming and Club Machine Permits) Regulations 2007

In force **1 August**. These Regulations set the fees in relation to club gaming and club machine permits, and specify the application form and the form of each permit.

SI 1840/2007 The Crime and Disorder Strategies (Prescribed Descriptions) (England) (Amendment) Order 2007

In force **31 July**. This Order prescribes registered social landlords to be co-operating bodies with the responsible authorities of Crime and Disorder Reduction Partnerships (CDRPs) in England.

The Order also prescribes the Environment Agency to be an invitee to participate with the responsible authorities in their functions on the CDRP.

SI 1845/2007 The Domestic Violence, Crime and Victims Act 2004 (Commencement No 9 and Transitional Provisions) Order 2007

In force **1 July**. This Order brings into force the following provisions of the Domestic Violence, Crime and Victims Act 2004:

- ◆ Section 1 (breach of non-molestation order to be a criminal offence).
- ◆ Section 4 (extension of Part 4 of the Family Law Act 1996 Act to non-cohabiting couples).
- ◆ Section 58(1) (amendments and repeals) in so far as it relates to paragraphs 36 to 39 (Family Law Act 1996) of Schedule 10 (minor and consequential amendments).
- ◆ Section 58(2) (amendments and repeals) in so far as it relates to the entries in Schedule 11 (repeals) relating to sections 42(5)(a), 47(1) and 49(4) of the Family Law Act 1996.
- ◆ Section 59 (transitional and transitory provisions) in so far as it relates to paragraph 1 of Schedule 12.

The provisions referred to above (except Section 4) are not commenced in any case where a power of arrest has been attached to a non-molestation order before 1 July 2007. The exception to this is that if the power of arrest ceases to have effect on or after 1 July 2007.

An article on Sections 1 and 4 were featured in the July edition of the *Digest*.

SI 1859/2007 The Armed Forces (Alignment of Service Discipline Acts) Order 2007

In force **28 June**. This Order amends the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 to remove the current restrictions on the number of civilians who may sit as lay members of a court-martial when a civilian accused is to be tried. The amendments provide that rules dealing with courts-martial made under these Acts may provide for the different composition of courts-martial when dealing with civilian accused and, in particular, may provide for persons other than officers or warrant officers to sit as lay members of a court-martial. The amendments also provide for the modification of Part 2 of the Acts (discipline, trial and punishment) if it is consequent upon the new rules as to composition of courts-martial of civilian accused.

SI 1861/2007 The Armed Forces (Service Police Amendments) Order 2007

In force **28 June**. This Order makes minor changes to nine statutory instruments. The amendments provide for consequential changes in the legislation following the change of title of the Royal Naval Regulating Branch to that of the Royal Navy Police. Various amendments in Schedule 16 to the Armed Forces Act 2006, that provide for the change of name from the Royal Navy Regulating Branch to that of the Royal Navy Police in primary legislation, have already been commenced, and this Order supplements those changes by changing the name in the subordinate legislation.

SI 1867/2007 The Education (Penalty Notices) (England) Regulations 2007

In force **1 September**. These Regulations prescribe the necessary details for the operation of the penalty notice scheme under:

- ◆ Section 444A of the Education Act 1996.
- ◆ Section 105 of the Education and Inspections Act 2006.

They apply only in England and, in the case of truancy offences under Section 444 of the 1996 Act, apply to penalty notices served on or after the date on which they come into force, whether the offence was committed before or after they come into force.

SI 1890/2007 The Traffic Management Act 2004 (Commencement No 4 and Transitional Provisions) (England) Order 2007

This Order brings into force on several dates, as respects England, further provisions of Part 4 (street works) of the Traffic Management Act 2004, relating to the New Roads and Street Works Act 1991; and makes related transitional provisions.

SI 1892/2007 The Police Act 1997 (Criminal Records) (Amendment No 2) Regulations 2007

In force **26 July**. These Regulations amend regulation 5A of the Police Act 1997 (Criminal Records) Regulations 2002, to expand the list of purposes in respect of which applications for enhanced criminal record certificates can be made, to include:

- ◆ Staff in the DfES with access to sensitive and personal information.
- ◆ Contact Point operators.
- ◆ Individuals giving advice to children over the telephone.
- ◆ Members of staff of the Independent Barring Board of the new vetting and barring Scheme for those working with children and vulnerable adults.
- ◆ Staff in the Public Guardianship Office.
- ◆ The Commissioner for Older People in Wales.
- ◆ Persons working with under 18s in the armed forces.
- ◆ Staff in the Gambling Commission with access to sensitive information and intelligence.

The Regulations will also amend current eligibility for enhanced criminal record checks by replacing existing references to the Gaming Act 1968 and the Lotteries and Amusements Act 1976 with a reference to the Gambling Act 2005, which will govern the new regulatory regime in such areas.

SI 1897/2007 The Mental Capacity Act 2005 (Commencement No 2) Order 2007

In force **1 October**. This Order brings into force the following provisions of the Mental Capacity Act 2005 which are not already in force:

- ◆ Sections 5 to 29 (Preliminary, Lasting powers of attorney, General powers of the court and appointment of deputies, Powers of the court in relation to lasting powers of attorney, Advance decisions to refuse treatment, Excluded decisions).
- ◆ Sections 45 to 63 (The Court of Protection, Supplementary powers, Practice and procedure, Fees and costs, The Public Guardian, Court of Protection Visitors, Declaratory provision, Private international law).
- ◆ Sections 65 to 69 (General).
- ◆ Schedules 1 to 7.

This Order also brings into force on **1 October** for all purposes those sections of the Mental Capacity Act 2005 which have already been commenced for limited purposes only. Those sections include:

- ◆ Sections 1 to 4 (The principles, People who lack capacity, Inability to make decisions, Best interests).
- ◆ Section 42(4) (Codes of Practice).
- ◆ Section 42(5) (Codes of Practice).
- ◆ Section 64 (Interpretation).

SI 1898/2007 The Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007

In force **1 October**. This Order makes amendments that are transitional and consequential upon the Mental Capacity Act 2005 coming into force.

Article 3 of the Order makes provision for transitional arrangements in relation to pending proceedings when the Act is implemented.

Article 4 provides for the current Master of the Court of Protection to exercise the jurisdiction of the Court of Protection and to be the Senior Judge in the new Court of Protection.

Article 5 enables pre-existing written advance decisions on which individuals are relying to have effect after the Act comes into force, notwithstanding that they do not meet all the criteria which will be required of such decisions in the future. The conditions specified in article 5 must still be met for the advance decision to be valid and applicable.

Article 6 and Schedule 1 of this Order make minor and consequential amendments to other legislation.

SI 1899/2007 The Mental Capacity Act 2005 (Transfer Of Proceedings) Order 2007

In force **1 October**. This Order provides for transfers of proceedings between the Court of Protection and a court having jurisdiction under the Children Act 1989.

Article 2 specifies the circumstances in which proceedings in the Court of Protection may be transferred to a court having jurisdiction under the Children Act and sets out how proceedings are to be dealt with when a transfer is made.

Article 3 specifies the circumstances in which proceedings in a court having jurisdiction under the Children Act may be transferred to the Court of Protection and sets out how proceedings are to be dealt with when a transfer is made.

Article 4 makes provision for treating any fee paid to start the proceedings which are transferred as if it had been the fee payable to start proceedings in the court to which the transfer is made.

SI 1932/2007 The Police Pension Fund Regulations 2007

In force **1 August**. These Regulations make provision for the establishment and maintenance of a police pension fund by police authorities for the purposes of the Regulations mentioned in regulation 3(6).

Sums paid or repaid to a police authority for the purposes of those Regulations shall be receivable into the police pension fund. Sums paid or repaid by a police authority for the purposes of those Regulations shall be payable out of the police pension fund. Without prejudice to this general provision, regulation 4 sets out particular amounts which shall be receivable into or payable out of the police pension fund.

Regulation 5 requires police authority contributions to be transferred into the police pension fund.

Regulations 6 and 7 make provision for the payment of particular provisions of the Police (Injury Benefit) Regulations 2006 (which came into force on 6 April 2006) and the corresponding provisions of the Police Pensions Regulations 1987 as in force between 1 April and 5 April 2006.

Under regulation 8, where the police pension fund shows a net credit in respect of any financial year, the surplus shall be transferred into the police fund. Conversely, where the police pension fund shows a net debit in respect of any financial year, an amount equal to that net debit shall be transferred from the police fund into the police pension fund.

Under regulation 9, where money is transferred into the police fund in accordance with regulation 8, that money shall in turn be transferred into the Consolidated Fund. Similarly, where money is transferred from the police fund under regulation 8, the Secretary of State shall pay to the police authority a sum not exceeding that amount out of moneys provided by Parliament.

Regulation 10 makes provision for information to be provided to the Secretary of State.

Regulations 12 and 13 make particular provision relating to the Inspectorate of Constabulary and former commissioners of police of the Metropolis.

SI 1940/2007 The Gambling Act 2005 (Exempt Gaming in Alcohol-Licensed Premises) Regulations 2007

In force **1 September**. These Regulations prescribe the maximum amounts that may be staked and won in equal chance games provided in accordance with Section 279 of the Gambling Act 2005.

Section 279 of the Act authorises premises with an on-premises alcohol licence (a premises licence under Part 3 of the Licensing Act 2003, which authorises the supply of alcohol for consumption on the licensed premises), or a relevant Scottish licence (defined in Section 277 of the Act), to provide facilities for equal chance gaming without the need to obtain further authorisation under the Act (such as an operating licence, premises licence, or a permit), providing they comply with the conditions in Section 279.

One of the conditions under Section 279(2) of the Act is that the arrangements for the gaming satisfy prescribed requirements in relation to limiting the amounts that may be staked or the amount or value of a prize.

Regulation 2(2) limits the maximum amount that may be staked by a person in any equal chance game, except for dominoes and cribbage, to £5.

Regulation 2(3) relates only to poker, and sets a limit on the aggregate amount that may be staked on poker in any one day to £100.

Regulation 3 limits the maximum amount that may be won by a person in a game of poker to £100.

SI 1942/2007 The Gambling Act 2005 (Gaming in Clubs) Regulations 2007

In force **1 August**. These Regulations prescribe the kinds of gaming for which a club may be established or conducted to provide facilities, in order to be a members' club or a commercial club despite Sections 266(1)(a) and 267(1)(a) of the Gambling Act 2005.

SI 1944/2007 The Gambling Act 2005 (Exempt Gaming in Clubs) Regulations 2007

In force **1 September**. These Regulations prescribe the maximum amounts that may be staked and won and the maximum participation fee that may be charged in games of equal chance provided in accordance with Section 269 of the Gambling Act 2005.

Regulation 2 sets out that:

- ◆ The amount that may be staked by a person on any game of poker must not exceed £10.
- ◆ The aggregate of the amounts that may be staked on games of poker in any one day must not exceed £250.

- ◆ The aggregate of the amounts that may be staked on games of poker in any period of seven days must not exceed £1,000.

Regulation 3 sets out that the maximum amount or value of a prize that may be won in any game of poker is £250.

Regulation 4 prescribes the limits on participation fees for relevant clubs that do not hold a club gaming permit.

The regulation sets a single limit on games of bridge and whist at £18, provided that the game is played on a day on which no facilities for any kinds of gaming (other than bridge or whist) are provided by the relevant club on that day.

For all other games there are two separate limits, one of which applies to commercial clubs that hold a club machine permit and which is £3, whilst the other limit is £1 and applies in all remaining circumstances.

Regulation 5 prescribes the limits on participation fees for members' clubs and miners' welfare institutes that hold a club gaming permit. The regulation sets two different limits, one for games of bridge and whist, which is £20 (exclusive of value added tax), if the game is played on a day on which no facilities for any kinds of gaming (other than bridge or whist) are provided by the relevant club on that day. The other limit is £3 for all other equal chance gaming.

SI 1945/2007 The Gambling Act 2005 (Club Gaming Permits) (Authorised Gaming) Regulations 2007

In force **1 September**. These Regulations prescribe the games of chance that may be played under a club gaming permit and the maximum amount that may be charged by way of a participation fee in respect of those games.

Section 271 of the Gambling Act 2005 authorises gaming in accordance with a permit, without the need to obtain an operating licence or premises licence. A permit will authorise up to three gaming machines (which must be of category B3A, B4, C or D – except that category B3A may not be made available for use in commercial clubs), the provision of facilities for equal chance gaming which satisfies the conditions in Section 269 of the Act (except for the condition which imposes limits on stakes and prizes), and the provision of facilities for other games of chance that are prescribed by the Secretary of State and meet the conditions in Section 271(4).

Regulation 2 prescribes pontoon and chemin de fer as the games of chance for which the provision of facilities is authorised under a permit.

Regulation 3 imposes a limit of £3 in any one day on the participation fee for pontoon or chemin de fer.

SI 1999/2007 The Criminal Justice Act 2003 (Commencement No 16) Order 2007

In force **25 July**. This Order brings into force in England and Wales Sections 29(1)-(3), (5) and (6) and Section 30 of the Criminal Justice Act 2003 for the purposes of criminal proceedings instituted by specified persons in a magistrates' court sitting in specified locations, which are:

- ◆ Barking Magistrates' Court.
- ◆ Bexley Magistrates' Court.
- ◆ Brentford Magistrates' Court.
- ◆ Bromley Magistrates' Court.
- ◆ Coalville Magistrates' Court.
- ◆ Croydon Magistrates' Court.
- ◆ Harrow Magistrates' Court.
- ◆ Hendon Magistrates' Court.
- ◆ Knowsley Magistrates' Court.
- ◆ Loughborough Magistrates' Court.
- ◆ Melton Magistrates' Court.
- ◆ Oakham Magistrates' Court.
- ◆ Redbridge Magistrates' Court.
- ◆ Richmond Magistrates' Court.
- ◆ St Helens Magistrates' Court.
- ◆ Waltham Forest Magistrates' Court.
- ◆ City of Westminster Magistrates' Court.
- ◆ Wimbledon Magistrates' Court.

The effect of the Order is that a member of a police force, or a person authorised by a police force to institute criminal proceedings, may, under Section 29 of the 2003 Act, institute criminal proceedings by issuing a written charge and requisition in magistrates' courts sitting in these locations.

A person authorised under Section 49 of the Vehicle Excise and Registration Act 1994 to conduct and appear in any proceedings involving the Secretary of State under that Act may also institute criminal proceedings by issuing a written charge and requisition in a magistrates' court sitting in Portsmouth Magistrates' Court.



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