CENTREX
HELPING TO DEVELOP POLICING

Digest

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Legal Validation and Research

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

This edition contains a detailed article on the provisions contained in the Animal Welfare Act 2006; articles on the recently published Mental Health Bill, Offender Management Bill and the Legal Services Bill mentioned in the Queens Speech in November. It also covers a number of other Private Members' Bills that could impact in some way on policing, which received a formal 1st reading on 13 December. These include: Energy Saving (Daylight) Bill, Off-Road Vehicles (Registration) Bill, Temporary and Agency Workers (Prevention of Less Favourable Treatment) Bill, Vehicle Registration Marks Bill, Polling Stations (Regulation) Bill, Criminal Law (Amendment) (Protection of Property) Bill, Streetscape and Highways Design Bill, Trade Union Rights and Freedoms Bill and the Electric Shock Training Devices Bill.

Also covered are articles on the subject of ASBO'S, Police Complaints and a Police Federation research report on the effect that the Government's policing reforms have had on 24/7 policing.

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

Case law in association with lawtel From Sweet & Maxwell

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This document is intended as a guide to inform organisations and individuals of current and forthcoming issues in the policing environment and Centrex cannot guarantee its suitability for any other purpose. Whilst every effort has been made to ensure that the information is accurate, Centrex cannot accept responsibility for the complete accuracy of the material. As such, organisations and individuals should not base strategic and operational decisions solely on the basis of the information supplied.

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Community Based Approaches to Counter Terrorism

The think tank Demos has published a report, following a twelve month research project to identify effective ways of tackling home grown terrorism through the active engagement of Muslim communities. The report, 'Bringing it home: community based approaches to counter-terrorism' argues that communities must be put at the heart of counter-terrorism, with a broader approach which spans social justice, community cohesion and security.

It sets out a community-based strategy containing six main components, aimed at enhancing the lives of Muslims, strengthening community infrastructure, improving leadership, opening up the foreign policy-making process, diverting youth from extremism, and putting communities at the heart of counter-terrorist interventions.

It makes a number of suggestions in relation to these components, those involving the police are:

- The police and communities should have relationships that extend far beyond the counter-terrorism agenda.
- Community liaison work should become a precondition of promotion, and the police should develop indicators to judge the richness of an officer's community relationships, partly drawing on feedback from the communities.
- Police forces should ensure that officers have a proper understanding of the countries of origin of their communities and that training on Islam is available and prioritised.
- There needs to be a much more open relationship between the police and Muslim communities, where information is shared not on a 'need to know' basis, but on the assumption that open channels of communication are in everyone's best interests. This relationship needs to be grounded within an initially formal process that facilitates the exchange of information between the two. One step towards this would be the roll-out of the Muslim Safety Forum's request for community access to intelligence and sensitive information; another would be to adapt and replicate the 'Project Griffin' initiative between the police and Muslim communities.
- There should be more dedicated resources for police liaison with Muslim communities on issues of security and terrorism. Units like the Metropolitan Police Muslim Contact Unit (MCU) should be established in all areas of high Muslim concentration and the National Community Tension Team should be given greater influence over individual police forces.
- The model of the Metropolitan Police's Cultural and Communities Resource Unit (CCRU) should be replicated across the country, as has been suggested elsewhere but not yet implemented.
- Local police tend to have strong and trusting relationships with communities, which could be better utilised during counter-terrorist interventions. Local officers should be more highly visible, alongside their specialist counterparts, during operations, raids and arrests.
- Assistant Commissioner Andy Hayman should convene a working group to clarify the role of local police forces during counter-terrorist operations.

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- Police forces need to pay more attention to their relationship with the media. In particular, they should work through specialist media channels, both national and international, and systematically monitor media output and correct reporting mistakes, on an ongoing basis, as well as during an intervention.

The report can be found in full at
http://www.demos.co.uk/publications/bringingithome

'Life in the UK' Tests to be Extended

As from 2 April 2007, anyone applying for indefinite leave to remain in the UK will either need to take the 'Life in the UK' test or attend combined English language and citizenship classes.

The test is written in English only and consists of 24 questions about British society, government, history and geography. The test is already required for people applying for British nationality. Details of the test, how to prepare for it and details of test centres are available at **http://www.lifeintheuktest.gov.uk/htmlsite/index.html**

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Forensic Science Site

The Centrex NCPE Investigative Doctrine team based at Wyboston, in collaboration with ACPO, has developed a forensic science site on the Genesis website. The site contains the most up-to-date and relevant material relating to forensic science. Most documents on the site are unclassified, but it is possible to upload restricted documents but a password and login are required to access them. Link **http://www.genesis.pnn.police.uk**

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Animal Welfare Act 2006

The *Digest* reported on the proposed contents of this Act during the Bill stage in 2004. This article outlines the final outcome and what offences the Act has created in respect of animal welfare for both farmed and unfarmed animals.

We are currently advised that the majority of the provisions in the Act that relate to England and Wales will be brought into force on 6 April 2007.

The 2006 Act will repeal the following Acts of Parliament: Protection of Animals Acts of 1911 and 1934, Cockfighting Act 1952, Protection of Animals (Anaesthetics) Acts of 1954 and 1964, Abandonment of Animals Act 1960, Protection of Animals (Penalties) Act 1987, Protection against Cruel Tethering Act 1988 and the Protection of Animals (Amendment) Act 2000. The 2006 Act further repeals and makes amendments to the numerous remaining Acts of Parliament that relate to animals. Section 17 of the Police and Criminal Evidence Act 1984 (PACE) is also amended. The repeals and amendments can be found in Schedules 3 and 4 of the 2006 Act. The 2006 Act has been brought in to unify the existing animal welfare legislation and to provide a cohesive understanding of the laws surrounding animal welfare for those who have responsibilities for animals in their care and the respective authorities.

Section 3 of the Act defines a person having responsibility for an animal as a person who owns, has charge of or is responsible for an animal, whether on a permanent or temporary basis. This includes a person who has actual care and control of a person under the age of 16 who is responsible for an animal. Section 1 defines an animal as a 'vertebrate' (other than man), but excludes an animal in the foetal or embryonic stage. According to the Oxford English Dictionary, a vertebrate is an animal with a backbone or spinal column and includes mammals, birds, reptiles, amphibians and fish. The Act allows for regulations to be made in the future which allow a national authority to alter the definition to include the early stages of development and any 'invertebrates'. The Act does not apply to anything which occurs in the normal course of fishing.

Offences under the Act

The offences which can be committed under the 2006 Act are the unnecessary suffering and mutilation of animals, docking of dog's tails, administering poison, fighting, transferring an animal by way of sale or prize to a person under the age of 16 and failing in the duty of ensuring the welfare of an animal.

Unnecessary suffering

Section 4 outlines the offences of unnecessary suffering.

A person commits an offence under Section 4(1) if the following apply:

An act of his, or a failure of his to act, causes an animal to suffer.

- He knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so.
- The animal is a protected animal.
- The suffering is unnecessary.

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A person commits an offence under Section 4(2) if the following apply:

- He is responsible for an animal.
- An act, or failure to act, of another person causes the animal to suffer.
- He permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening.
- The suffering is unnecessary.

For the purpose of Section 4 when determining whether suffering is unnecessary, certain considerations will be taken into account, which include the following:

- Whether the suffering could reasonably have been avoided or reduced.
- Whether the conduct which caused the suffering was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under enactment.
- Whether the conduct which caused the suffering was for a legitimate purpose, such as benefiting the animal, or protecting a person, property or another animal.
- Whether the suffering was proportionate to the purpose of the conduct concerned.
- Whether the conduct concerned was in all the circumstances that of a reasonable competent and humane person.

Section 4 will not include the destruction of an animal which is carried out in an appropriate and humane manner. The Act defines suffering to mean physical or mental suffering and related expressions shall be construed accordingly.

A protected animal for the purposes of the 2006 Act is if it is of a kind that is commonly domesticated in the British Islands, is not living in a wild state and is under the control of man whether on a permanent or temporary basis. The Act does not define the meaning of a reasonable competent and humane person/manner.

Mutilation

Section 5 outlines the offences of mutilation.

Under Section 5(1) a person commits an offence if:

- He carries out a prohibited procedure on a protected animal.
- He causes such a procedure to be carried out on such an animal.

Under Section 5(2) a person commits an offence if the following apply:

- He is responsible for an animal.
- Another person carries out a prohibited procedure on the animal.
- He permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening.

The above does not apply to the removal of a dog's tail or any part of it: Section 6 below deals with that offence. These offences will relate to e.g. instances where a procedure is carried out which makes the ears of an animal remain permanently erect as in the case of Doberman Pinschers.

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Section 5 will not apply in circumstances specified in a regulation made by a national authority. The prohibited procedure outlined above relates to the interference with sensitive tissues or bone structure of the animal, which is not for the purposes of medical treatment.

Docking of tails

Section 6 relates to the docking of dogs' tails, and also creates an offence for a person to show a dog at an event if the dog has had its tail docked (i.e. docked after this section comes into force)

Subsection (1) states, a person commits an offence if either:

- He removes the whole or any part of a dog's tail, otherwise than for the purpose of medical treatment.
- He causes the whole or any part of a dog's tail to be removed by another person, otherwise than for the purpose of its medical treatment.

Under subsection (2) a person commits an offence if the following apply:

- He is responsible for a dog.
- Another person removes the whole or any part of the dog's tail, otherwise than for the purpose of its medical treatment.
- He permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening.

There is an exception to the above offences, which apply if a dog is a certified working dog and the docking occurs before a dog is five days old (s.6(3)). A dog is a certified working dog if a veterinary surgeon certifies it as such in accordance with the regulation made by the national authority and two conditions are met.

The first condition is that evidence is produced to the veterinary surgeon that the dog is in fact a working dog and is likely to be used for work in connection with law enforcement, activities of Her Majesty's armed forces, emergency rescue, lawful pest control or the lawful shooting of animals.

The second condition is that the dog is a type specified for such a purpose as shown under regulations made by the national authority. A person will commit an offence if he owns a certified working dog and he fails to take reasonable steps to ensure that it is identified as a working dog before the dog is three months old. A person will have a defence under subsections (1) and (2) if he reasonably believed that the dog was one in relation to which subsection (3) applied, i.e. certified working dog. Subsection (12) creates an offence to knowingly give false information to a veterinary surgeon in connection with the giving of a certificate.

Event showing of dogs with docked tails

Sections 6(9)–(11) specify when it is an offence to show a dog at an event to which members of the public attend on payment of a fee (in England, Wales or elsewhere) and the whole or part of a tail of a dog has been removed. The offence will be committed only if the removal of the tail or part of it took place on or after the day this section came into force. This offence will not apply if the dog is being shown purely for its working ability and it is a certified working dog. A person will have a defence if the person can show he reasonably believed: that the event was a non-paying event, the docking occurred before the commencement date or the dog was being shown for its working ability and is a Section 6(3) dog.

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Administration of poisons etc

Section 7 creates offences in relation to the administration of poisons.

Under s.7(1) a person commits an offence if, without lawful authority or reasonable excuse, he either:

- Administers any poisonous or injurious drug or substance to a protected animal knowing it to be poisonous or injurious.
- Causes any poisonous or injurious drug or substance to be taken by a protected animal, knowing it to be poisonous or injurious.

Under s.7(2) a person commits an offence if the following apply:

- He is responsible for an animal.
- Without lawful authority or reasonable excuse, another person administers any poisonous or injurious drug or substance to the animal or causes the animal to take such a drug or substance.
- He permitted that to happen or, knowing the drug or substance to be poisonous or injurious, he failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening.

References to a poisonous or injurious drug or substance include the quantity or manner in which it is administered or taken which has the effect of a poisonous or injurious drug or substance.

Fighting

Section 8 highlights the offences surrounding animal fights. An animal fight is defined as an occasion where a protected animal is placed with an animal, or with a human, for the purposes of fighting, wrestling or baiting (s.8(7)).

Under subsection (1) a person commits and offence if he:

- Causes an animal fight to take place, or attempts to do so.
- Knowingly receives money for admission to an animal fight.
- Knowingly publicises a proposed animal fight.
- Provides information about an animal fight to another with the intention of enabling or encouraging attendance at the fight.
- Makes or accepts a bet on the outcome of an animal fight or on the likelihood of anything occurring or not occurring in the course of an animal fight.
- Takes part in an animal fight.
- Has in his possession anything designed or adapted for use in connection with an animal fight with the intention of its being so used.
- Keeps or trains an animal for use in connection with an animal fight.
- Keeps any premises for use for an animal fight.

Under subsection (2) a person commits an offence if, without lawful authority or reasonable excuse, he is present at an animal fight.

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Subsection (3) outlines the offence of knowingly supplying, publishing or showing a video recording of an animal fight or possessing a video recording of an animal fight, knowing it to be such a recording, with the intention of supplying it. The offences under this subsection are not committed if the recording is of an animal fight that took place outside Great Britain or it was recorded before this subsection came into force. Exemptions also apply under subsection (5) if the supplying, publishing or showing is for the inclusion of a programme service (as defined under s.405 of the Communications Act 2003). Further provisions extend the application of the offence under subsection (3) in relation to the information society services under the European Communities Act 1972. Readers are advised to examine s.8(6) and (7) for its full interpretation; and for an interpretation of showing, supplying or publishing a video, please see s.8(8).

Police powers for Section 8

Under Section 22 (1) a constable may seize an animal if it appears to him that it is one in relation to which an offence under Section 8(1) or (2) has been committed. A constable may enter and search premises for the purpose of exercising the power under Section 22(1) if he reasonably believes that an animal is on the premises, and that the animal is one in relation to which an offence under s.8(1) or (2) has been committed or has taken part in such an offence. The authority to enter does not extend to any part of premises which is used as a private dwelling (however see Section 23 below).

Provided there are reasonable grounds for believing that there is on premises an animal to which an offence under Section 8(1) or (2) has been committed or where an animal had taken part, and Section 52 of this Act has been satisfied, then, a justice of the peace may, on the application of a constable, issue a warrant to enter and search the premises using reasonable force if necessary.

Section 52 states that this section is satisfied if any one of the four conditions outlined below is met.

First condition

The whole of the premises is used as a private dwelling and the occupier has been informed of the decision to apply for a warrant.

Second condition

Any part of the premises is not used as a private dwelling and that each of the following applies to the occupier of the premises:

- He has been informed of the decision to seek entry to the premises and of the reasons for that decision.
- He has failed to allow entry to the premises on being requested to do so by an inspector (not police inspector, see below) or constable.
- He has been informed of the decision to apply for a warrant.

Third Condition

The premises are unoccupied or the occupier is absent, and the notice of intention to apply for a warrant has been left in a conspicuous place on the premises.

Fourth Condition

It is inappropriate to inform the occupier of the decision to apply for a warrant because it would defeat the object of entering the premises, or entry is required as a matter of urgency.

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The Act does not appear to give a meaning as to what 'a notice of intention' is as described under the third condition. The destruction in the interests of the animal, destruction of animals involved in fighting offences, reimbursement of expenses relating to animals involved in fighting offences and the forfeiture of equipment used in offences can be found in Sections 37 to 40 of the Act.

Welfare of Animals

Section 9 places a duty on a person to ensure the welfare of an animal that they are responsible for. A person will commit an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice. The circumstances in which it is relevant to have such regard when applying s.9(1) include, in particular, any lawful purpose for which the animal is kept and any lawful activity undertaken in relation to the animal. An animal's needs shall be taken to include its need for:

- A suitable environment.
- A suitable diet.
- It to be able to exhibit normal behaviour patterns.
- It to be housed with, or apart from, other animals.
- It to be protected from pain, suffering, injury and disease.

Transfer of animals by way of sale or prize to persons under 16

Section 11(1) and (2) makes it an offence for a person to sell an animal to a person whom he has reasonable cause to believe to be under the age of 16. Selling an animal includes transferring or agreeing to transfer ownership in consideration of entry by the transferee into another transaction, i.e. selling an animal directly or indirectly.

Subsection 11 (3) Prizes

A person will commit an offence if he enters into an arrangement where the arrangement is one where a person under the age of 16 years has a chance to win an animal as a prize. As fish are vertebrate, then this will include receiving a goldfish at the local fair. However, some exceptions are outlined below.

The person 'arranging' the animal as a prize will not commit an offence if the person under 16 years of age is 'accompanied' by a person aged 16 years or more at the time of the arrangement and the 'arranger' has reasonable cause to believe that the 'accompanying person' is 16 years or more.

A person does not commit an offence if he enters into an arrangement otherwise than in the presence of the person with whom the arrangement is made, and he has reasonable cause to believe that a person who has actual care and control of the person with whom the arrangement is made has consented to the arrangement (s.11 (5)). Basically what this appears to mean is where a person enters into an arrangement with a 'party' who is under 16, but not in the presence of that 'party', the 'arranger' does not commit an offence if he believes that someone who has the care and control of that 'party' has consented to the arrangement. Therefore anyone aged 16 or over who has care and control of a child under 16 can enter into such arrangement. The Act does not define 'care and control' and neither does it state whether the care or control is permanent, i.e. parent or guardian, or temporary such as an elder sibling or child-minder.

Lastly, a person conducting the 'arranging' will not commit an offence if the 'arranging' is in a family context. The Act does not give an interpretation of family context; however, our interpretation is where the 'arranger' is a member of a family, i.e. mum, dad, uncle etc and the 'arranging' is carried on within the family unit.

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The 2006 Act will repeal Sections 2 and 3 of the Pet Animals Act 1951, which prohibited the sales of animals in the street or public place and the selling of animals as a pet to persons under 12 years old.

Other police powers for animals in distress

Section 24 amends Section 17 of PACE which gives a power to a constable to enter and search premises for the purpose of arresting a person for offences under Sections 4, 5, 6(1) and (2), 7, and 8(1) and (2) of the 2006 Act.

Under Section 18(1) of the 2006 Act if an inspector (not a police inspector) or a constable reasonably believes that a protected animal is suffering, he may take, or arrange for the taking of, such steps as appear to him to be immediately necessary to alleviate the animal's suffering. This subsection does not authorise the destruction of an animal. However, where a veterinary surgeon certifies that the condition of a protected animal is as such that in ought to be destroyed in its own interest, then an inspector or constable can destroy the animal in situ or take it to another place to be destroyed or make arrangement for its destruction (s.18(3)). Even if a veterinary surgeon has not issued such a certificate, a constable or inspector can still destroy the animal if it appears that the condition of the animal is such that there is no reasonable alternative to destruction, and it is not reasonably practical to wait for a surgeon (s.18(4)).

An inspector or constable can take possession of a protected animal that is suffering or is likely to suffer if the circumstances do not change and a veterinary surgeon so certifies; and can do so without the necessary certification if the circumstances do not change and it is not reasonably practicable to wait for a surgeon; this power extends to the offspring of the animal (s.18(5), (6) and (7)).

When an animal has been taken into his possession, an inspector or constable can make arrangements for its removal to a place of safety, or its care on or off the premises where it was being kept or other place that he deems fit. He can also mark the animal or arrange for it to be marked for identification purposes. If any of the powers under Section 18 are exercised without the knowledge of the person responsible for the animal, steps must be taken to inform that person. A person will commit an offence if he intentionally obstructs a person exercising the powers under this Section.

A power of entry to search premises for offences under Section 18 is available for inspectors and constables where they reasonably believe that a protected animal is on the premises, and the animal is suffering or, if the circumstances of the animal do not change, will suffer. Reasonable force can be used to enter the premises but only where the entry is required before a warrant under Section 19(4) can be obtained and executed. This does not authorise entry to any part of premises which is used as a private dwelling (s.19(1), 2) and (3).

The warrant under s.19(4) can be obtained from a justice of the peace, provided that there are reasonable grounds for believing that there is a protected animal on the premises and that the animal is suffering or will do so if the circumstances do not change, and that Section 52 above is satisfied.

A magistrates' court may order an animal taken into possession under s.18(5) to be sold, disposed of otherwise in the way of a sale, destroyed, given to a specified person or receive specified treatment. This applies to pregnant animals or their offspring. The owners of the animals can appeal to against the order to the Crown Court (ss.20 and 21).

Under Section 23, if there are reasonable grounds for believing that an offence (under ss.4 to 9 of the Act) of unnecessary suffering, mutilation, docking of tails, administering poison, fighting, failing to ensure welfare of an animal, or a licensing offence under Section 13 or disqualification offence under Section 34(9) has been committed, a search warrant can be

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obtained by a constable (or inspector). The warrant will allow entry to premises, if necessary by using reasonable force to search for evidence in relation to the above offences, provided that there are reasonable grounds to believe that evidence relating o those offence is to be found there, and that one or more of the conditions outlined in Section 52 is satisfied. Premises include any vehicle, vessel, aircraft, hovercraft, tent or movable structure. Inspectors (see below) are advised to read Schedule 2 of the 2006 Act when obtaining warrants under Sections 19 or 23 of this Act.

Section 51 outlines the meaning of the term 'inspector' to mean a person appointed as such by the appropriate national authority or local authority.

Power to stop and detain vehicles

Under Section 54, a constable in uniform may stop and detain a vehicle for the purpose of entering and searching it when exercising the powers under Sections 19(1), 19(4), 22(2), 22(4) or 23(1).

If accompanied by a constable in uniform, an inspector may stop and detain a vehicle for the purpose of entering and searching when exercising powers under Sections 19(1), 19(2), 26(2), 27(2), 28(2), 28(4) or 29(2).

A vehicle may be detained for as long as is reasonably required in order to exercise the powers under this Act, either at the place where the vehicle was first detained or nearby.

Penalties

Those persons who are found guilty of offences under Sections 4, 5, 6(1) and (2), 7 and 8 will be liable to a term of imprisonment not exceeding 51 weeks, or to a fine not exceeding £20,000, or both. Those found guilty under Sections 9,13 (6) or 34(9) or the Regulations under Sections 12 or 13 shall be subject to a fine and/or to a term of imprisonment not exceeding 51 weeks. Those persons convicted of certain offences under this Act can be subject to deprivation or disqualification regarding owning or keeping animals. The post-conviction powers can be found under Sections 32 to 45.

Licensing and registration

The issues surrounding the licensing of animals are dealt with by Sections 13, 25 to 29, 42 and Schedule 1 of the 2006 Act.

The Act can be found in full at **http://www.opsi.gov.uk/acts/acts2006a.htm**

Safegaurding Vulnerable Groups Act 2006

This Act has now been published. There have been no changes made to the Act since it was covered in the April *Digest*. The Act can be found in full at **http://www.opsi.gov.uk/acts/acts2006a.htm**

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HOC 41/2006
Controlled Drugs: Reclassification of Methylamphetamine

This Home Office Circular publicises the change to the Misuse of Drugs Act 1971 made by the Misuse of Drugs Act 1971 (Amendment) Order 2006, brought into force by Statutory Instrument 3331/2006 (at the time of publication this SI has not yet been published on the Office of Public Sector Information (OPSI) website).

This Order reclassifies methylamphetamine, previously a Class B drug, as a Class A drug by moving it from Part 2 of Schedule 2 to the Misuse of Drugs Act 1971 to Part 1 of that Schedule. The change comes into force on 18 January 2007.

Methylamphetamine salts will also become Class A drugs by virtue of paragraph 4 of Part 1 of Schedule 2 to the Misuse of Drugs Act.

This reclassification will also enable the police and courts to close premises which have been used in connection with the unlawful use, production or supply of methylamphetamine, where there is associated disorder or serious nuisance under the 'crack house' closure provisions in the Anti-social Behaviour Act 2003.

New codes for recording methylamphetamine offences by the police for Home Office statistical purposes have been forwarded to police forces.

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

Public Demonstrations (Repeals) Bill

The Public Demonstrations (Repeals) Bill was introduced to the House of Lords as a Private Member's Bill by Liberal Democrat Baroness Miller of Chilthorne Domer on 23 November 2006. The purpose of the Bill is to repeal and revoke certain provisions in the Serious Organised Crime and Police Act 2005 and the Terrorism Act 2006.

The provisions the Bill seeks to repeal are:

- Sections 128 to 131 of the 2005 Act (trespass on designated site).
- Sections 132 to 138 of the 2005 Act (demonstrations in the vicinity of Parliament).
- Section 12 of the Terrorism Act 2006 (trespassing etc on nuclear sites).

It also seeks to revoke:

- The Serious Organised Crime and Police Act 2005 (Designated Sites) Order 2005 (S.I. 2005/3447).
- The Serious Organised Crime and Police Act 2005 (Designated Area) Order 2005 (S.I. 2005/1537).

The Bill can be found in full at **http://www.publications.parliament.uk/pa/pabills/200607/public_demonstrations_repeals.htm**

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Interception of Communications (Admissibility of Evidence) Bill

The Interception of Communications (Admissibility of Evidence) Bill was re-introduced to the Lords by Crossbencher Lord Lloyd of Berwick on 23 November 2006. This Bill was originally introduced to the Lords by him on 10 October 2005. It received a second reading on 18 November 2005 but was not then considered at Committee Stage and made no further progress.

The purpose of the Bill is to permit the introduction of intercept evidence and evidence of communications data in certain criminal proceedings.

The proceedings in which the contents of an intercepted communication ('intercept evidence') and communications data ('metering evidence') will be admissible, if this Bill is enacted, are:

- Proceedings in respect of serious crime.
- Proceedings in respect of an offence or offences relating to terrorism.

The prosecution will be required to make an application to the court for permission to introduce intercept evidence or metering evidence, or both, for the purpose of conducting a criminal prosecution. Unless and until an application has been made by the prosecution in any such proceedings, the provisions of Section 17 of Regulation of Investigatory Powers Act 2000 (exclusion of matters from legal proceedings) shall continue to apply in connection with those proceedings.

Courts, in deciding whether or not to admit intercept or metering evidence, will be required to take account of all relevant considerations, including in particular:

- Any application by the Secretary of State to withhold the evidence or part of the evidence on the ground that its disclosure, or the disclosure of facts relating to the obtaining of the evidence, would be contrary to the public interest.
- Any submission that the evidence was obtained unlawfully.

The Bill can be found at
http://www.publications.parliament.uk/pa/pabills/200607/interception_of_communications_admissibility_of_evidence.htm

Corruption Bill

The Corruption Bill, a Private Member's Bill, has been re-introduced to the Lords by Lord Chidgey. This Bill was originally introduced to the Commons by Labour MP Hugh Bayley on 23 May 2006 but did not receive a Second Reading and made no further progress. The provisions in the Bill were covered in an article in the June *Digest*. There have been no changes made to the Bill prior to its re-introduction.

The Bill can be found in full at **http://www.publications.parliament.uk/pa/pabills/200607/corruption.htm**

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Offender Management Bill

The Offender Management Bill was introduced into the House of Commons on 22 November 2006. The main extent of the Bill will be for England and Wales. The Bill is split into three parts and includes new arrangements for probation services and prisons and provisions on offender management.

In Part 1, arrangements for probation services, Clauses 1-9 give the Secretary of State responsibility and enable him to contract with others to ensure such provisions are carried out. The clauses abolish local probation boards and allow the formation of probation trusts. Clause 1 defines the 'probation purposes', which is a carbon copy of the provisions in the Criminal Justice and Court Services Act 2000. Clause 1 also clarifies that the probation purpose includes supervision and rehabilitation of persons convicted of an offence outside England and Wales but who are serving all or part of their sentence in England and Wales.

Clause 2 sets out the functions of the Secretary of State, who will be required to consult at least once a year on the probation provisions to be made the following year. Clause 3 sets out how the Secretary of State will make those arrangements. In addition, Clause 3 clarifies that contractual or other arrangements may require or authorise the other party to carry out certain objectives, such as to co-operate with other providers of probation services concerned with crime prevention or assisting victims, etc.

Clause 4 gives the Secretary of State power to establish probation trusts and may, by Order, establish a trust for purposes specified in that order; alter the name or purposes of a probation trust or dissolve a probation trust.

Clause 5 outlines the power to make grants for probation purposes and Clause 6 defines an 'officer of a provider of probation services' as an individual who is for the time being authorised to carry out the function of officer of a particular provider of probation services. Clause 7 provides for the abolition of local probation boards under Section 4 of the Criminal Justice and Court Services Act 2000. Clauses 8, 9 and 10 focus on the Inspectorate, approved premises and the disclosure for offender management purposes respectively.

Part 2 focuses on the Prison Service. Clauses 11 to 15 remove some of the differences in the ways that contracted-out prisons operate, by giving their directors and prisoner custody officers powers comparable to those which governors and prison officers in directly-managed prisons already possess. For instance, Clause 11 amends Section 86(2) of the Criminal Justice Act 1991 (1991 Act) by allowing a prisoner custody officer to require a visitor he wishes to search to remove an item of clothing, which is not restricted to an outer coat, jacket or gloves; however, he will not be allowed to require that an intimate search be carried out. An equivalent restriction placed on a custody officer at a secure training centre is also given by amendments to Section 9 of the Criminal Justice and Public Order Act 1994.

Clause 12 amends the 1991 Act by inserting a 'new' Section 86A. This gives a prisoner custody officer the power to require a visitor to wait with him, where the officer believes the visitor has committed an offence under Section 39 to 40D of the Prison Act 1952; this is to enable a constable to attend. Clauses 16 to 19 reform the existing offence of bringing proscribed articles into a prison and also create a new offence of taking photographic images inside a prison. Clause 20 removes the requirement for prisons to have a medical officer. Clause 21 clarifies who may be authorised to undertake limited searches of prisoners.

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Part 3 provides other provisions about offender management by making amendments and extending certain sections within the Criminal Justice Act 2003, the Crime and Disorder Act 1998, the Powers of Criminal Courts (Sentencing) Act 2000 and the Criminal Justice and Public Order Act 1994.

This Bill can be read in full by referring to Parliament website
http://www.publications.paliament.uk/pa/bils/pabills/200607/offender_management.htm

Mental Health Bill

The Mental Health Bill, introduced on 16 November 2006, has now been published and the *Digest* expands on the article published in the November edition. The Bill seeks to amend the Mental Health Act 1983 (1983 Act) and the Mental Capacity Act 2005 (2005 Act).

Part 1

Clause 1 and Schedule 1 of the Bill will abolish the current four categories of mental disorder, namely mental illness, mental impairment, psychopathic disorder and severe mental impairment and substitute simply 'mental disorder'. This effectively broadens the applications of the provisions to all mental disorders and not just those that fell within the previous four categories. A new definition of mental disorder for Clause 1 will be 'any disorder or disability of the mind'. Although a person suffers from a mental disorder this does not mean that any action can or should be taken against them under the 1983 Act. Disorders or disabilities of the brain are not mental disorders unless (and only to the extent) they give rise to a disability or disorder of the mind as well. Neither are beliefs or behaviours, which are not the result of any disability or disorder of the mind, even if they appear unwise or cause alarm or distress.

Clause 2 makes amendments to the 1983 Act in relation to learning disability. A person with a learning disability, by reason of that disability will not be considered to be suffering from a mental disorder or require treatment in hospital under the provisions of section of the 1983 Act, unless that disability is associated with abnormal aggressive or seriously irresponsible conduct on his part. A learning disability is defined as a state of arrested or incomplete development of the mind, which includes significant impairment of intelligence and social functioning.

Clause 3 amends Section 1(3) of the 1983 Act, which currently states that a person should not be dealt with under the Act where they are suffering by reason only of promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs. Clause 3 substitutes a single exclusion that dependence on alcohol and drugs is not to be considered to be a disorder or disability of the mind for the purposes of Section 1(2) of the 1983 Act. However dependence on alcohol and drugs is regarded as a mental disorder.

Clause 4 introduces a new 'appropriate treatment test' for the detention criteria under Section 3 of the 1983 Act. The criteria cannot be met unless medical treatment is available to the patient, which is appropriate in relation to the nature and degree of the patient's mental disorder. Clauses 5 and 6 make related amendments to cases in which appropriate treatment tests apply and to Part 4 of the 1983 Act.

Clause 7 makes changes to the definition of 'medical treatment' under Section 145(1) of the 1983 Act, so that it reads 'Medical treatment includes nursing, psychological intervention, and specialist mental health habilitation, rehabilitation and care'.

Part 2 makes amendments to the 1983 Act in relation to the mental health professional roles and responsible clinicians.

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Part 3 makes amendments to the role of the patient's 'nearest relative', who has certain rights in connection with the care and treatment of a mentally disordered person under the 1983 Act. Clause 21 will give the patient or a court a right to change the existing nearest relative if that relative is unsuitable. Clause 24 amends the list in Sections 26 and 27 of the 1983 Act of those persons who may act in the role of 'nearest relative', by giving a civil partner equal status to a husband or wife. This brings the legislation in line with human rights issues.

Part 4 deals with supervised community treatment. Clause 25 introduces new Sections 17A – 17G, which set out how supervised community treatment orders (CTO) are to be made, and how they will work. CTOs will replace after-care under supervision and will allow patients who do not need to continue receiving treatment in hospital to be discharged into the community, but with powers to recall them if necessary. It is different from the leave currently under Section 17 of the 1983 Act, which remains suitable for a patient as a means to give shorter term from leave from hospital, as part of the patient's overall management as a hospital patient. Clause 26 deals with the relationship with leave of absence: a responsible clinician must consider whether an SCT is the more appropriate way of managing the patient in the community. Clause 27 and 28 look at the consent to treatment and the authority to treat respectively. Clause 28 introduces a new Part 4A into the 1983 Act, designed to regulate the treatment of community patients whilst in the community and not being recalled to the hospital. Patients 16 or over with capacity can only be treated in the community if they consent to that treatment. A new Section 64B gives the authority to treat adult patients who lack the capacity to consent in the community only. Children under 16 can also be made subject to a CTO. A new Section 64F provides the authority to treat a child who lacks competence in the community. Similar conditions must be met in order to treat a child lacking competence, as for an adult who lacks capacity. In emergencies, force can be used to give treatment to patients who lack capacity or to children who lack competence. A new Section 64G sets out how and when treatment can be given in these situations. Force can be used to give treatment only if it is immediately necessary, prevents harm to the patient and is a proportionate response to the likelihood of the patient suffering harm and to the seriousness of the harm. In other circumstances, force may be used to treat a patient who has not been recalled to hospital if the patient does not object. The factors to be considered by a practitioner in determining whether a patient objects to treatment are outlined in new section 64J.

Part 5, 6 and 7 focus on mental health tribunals, cross-border patients and restricted patients.

Part 8 makes amendments to the Mental Capacity Act 2005 by introducing the Bournewood safeguards, to redress the incompatibility of the Act with the European Convention on Human Rights (ECHR). The 'Bournewood Gap' was born as a result of the ECHR case HL v United Kingdom [2004] and engages the Article 5 right to liberty and security, the Article 8 right to respect for private and family life and the Article 14 prohibition of discrimination. It provides safeguards for people who lack the capacity to make decisions for themselves, who are deprived of their liberty in care homes or hospitals and are not eligible to receive mental health legislation safeguards. These safeguards will prevent arbitrary decisions to deprive a person of liberty and give rights of appeal.

The full Bill can be found at **http://www.publications.parliament.uk/pa/pabills/200607/mental_health.htm**

or

www.dh.gov.uk

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Legal Services Bill

The Legal Services Bill was introduced into Parliament on 23 November 2006.

This Bill contains provisions for:

- The establishment of the Legal Services Board and in respect of its functions.
- The regulation of people who carry out certain legal activities.
- The establishment of an Office for Legal Complaints and also for a scheme to consider and determine legal complaints.
- Claims management services and immigration advice and services.
- Free legal representation.
- The application of the Legal Profession and Legal Aid (Scotland) Act 2006.
- The Scottish legal services ombudsman.

Specifically, the Bill creates three offences.

Clause 14

This Clause states that it is an offence for a person to carry on a reserved legal activity if they are not entitled to do so.

However, it will be a defence for the accused to show that they did not know, and could not reasonably have been expected to know, that the offence was being committed.

A "reserved legal activity" means:

- The exercise of a right of audience.
- The conduct of litigation.
- Reserved instrument activities.
- Probate activities.
- Notarial activities.
- The administration of oaths.

Schedule 2 of the Bill makes provision about what constitutes each of the above activities.

A person would be entitled to carry on an activity ("the relevant activity") which is a reserved legal activity where:

- The person is an authorised person in relation to the relevant activity, or
- The person is an exempt person in relation to that activity.

On conviction of this offence a person will be liable:

- On summary conviction, to imprisonment for a term not exceeding 12 months 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).

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In relation to an offence under the above which is committed before the commencement of Section 154(1) of the Criminal Justice Act 2003, the

reference to 12 months is to be read as a reference to 6 months.

A person who is guilty of an offence under the above by reason of an act done in the purported exercise of a right of audience or a right to conduct litigation, in relation to any proceedings or contemplated proceedings,is also guilty of contempt of the court concerned and may be punished accordingly.

Clause 15

This Clause deals with employers and employees in relation to the carrying on of a reserved legal activity.

It states that references to a person carrying on an activity which is a reserved legal activity include a person ("E") who:

- Is an employee of a body or other person ("B").

And

- Carries on the activity in E's capacity as such an employee.

It is irrelevant whether B is entitled to carry on the activity.

It is also stated that B does not carry on an activity which is a reserved legal activity by virtue of E carrying it on in E's capacity as an employee of B, unless the provision of relevant services to the public or a section of the public (with or without a view to profit) is part of B's business.

Relevant services are services which consist of or include reserved legal activities carried on by employees of B in their capacity as employees of B.

The Secretary of State may by order (on the recommendation of the Legal Services Board) make provision about:

- What does or does not constitute a section of the public.
- The circumstances in which the provision of relevant services to the public or a section of the public does or does not form part of B's business.

If B is a body, references to an employee of B include references to a manager of B.

Clause 16

This will make it an offence for a person to:

- Wilfully pretend to be entitled to carry on any activity which is a reserved legal activity when that person is not so entitled, or pretend to be entitled.
- Take or use any name, title or description with the intention of implying falsely that they are so entitled to it.

The penalty on conviction wil be:

- On summary conviction, to imprisonment for a term not exceeding 12 months 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).

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In relation to an offence under the above which is committed before the commencement of Section 154(1) of the Criminal Justice Act 2003, the reference to 12 months is to be read as a reference to 6 months.

The Bill can be found at
http://www.publications.parliament.uk/pa/ld200607/ldbills/009/07009.i-v.html

Forced Marriage (Civil Protection) Bill

The Forced Marriage (Civil Protection) Bill was introduced into the House of Lords on 16 November 2006. This Bill aims to make provision for protecting individuals against being forced to enter into marriage without free and full consent.

Clause 1

This Clause deals with the prohibition against forcing another into marriage. For this a person must not act in a way which he knows amounts to:

- Forcing or attempting to force another person to enter into a marriage or a purported marriage without the other person's free and full consent.
- Practising a deception for the purpose of causing another person to enter into a marriage or purported marriage without the other person's free and full consent

Clause 2

This Clause deals with unlawful inducement. It is unlawful to knowingly induce or attempt to induce a person to do any act which contravenes the above by either:

- Providing or offering to provide them with any benefit.

Or

- Subjecting or threatening to subject them to any detriment.

The offer or threat will fall within Clause 2 even if it was not directly made to the person in question, if it was made in such a way that he is likely to hear of it.

Clause 3

The Bill also will treat a person who knowingly aids another person to do an act which is made unlawful by Clause 1 or 2 as themself doing the unlawful act of the like description.

However, the person will not be classed as knowingly aiding another to do an unlawful act providing that:

- The person acts in reliance on a statement made to them by the other person that (by reason of any provision in the Act) the act which they aid would not be unlawful and it is reasonable for them to rely on the statement.

Clause 4

The Bill aims to make it so that the court can, by order, grant an injunction to prevent the actual or apprehended breach of Clauses 1, 2 or 3.

An application for this order can be made by:

- A person who is or may be the victim of the conduct in question.

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- Their litigation friend.
- Any other concerned person who has the specific permission of the court.

The prohibitions which could be imposed by an order are those which would be appropriate and necessary for the purpose of protecting the victim from conduct which is contrary to Clauses 1, 2 or 3.

If the court has made an order under this Clause and it appears to the court that the respondent has use or threatened violence against the person who either is or may be the victim of the conduct (A), then the court may attach the power of arrest to the order or to certain provisions contained in the order, unless the court is satisfied that, in all the circumstances of the case, A will be adequately protected without a power of arrest attached.

The court can if it decides to attach the power of arrest to the order, provide that the power is to have effect for a shorter period than the other provisions of the order. The period can also be extended by the court on one or more occasions.

If a power is attached, a constable would be able to arrest without warrant a person whom they have reasonable cause for suspecting to be in breach of any such provision.

If a power is attached to the order and the respondent is arrested for the above:

- The respondent must be brought before the relevant judicial authority within 24 hours beginning at the time of their arrest, and if the matter is not then disposed of forthwith, the relevant judicial authority may remand them.

Warrants may be issued if the court has made a relevant order but has not attached a power of arrest to any provisions, or has attached it to only certain provisions, and the applicant considers that the respondent has failed to comply with the order and applies to the relevant judicial authority for the issue of the warrant for the arrest.

However, the relevant judicial authority can only issue the warrant as above if both:

- The application is substantiated on oath; and
- The relevant judicial authority has reasonable grounds for believing that the respondent has failed to comply with the order.

If a person is brought before the court by virtue of a warrant issued under this, and the court does not dispose of the matter forthwith, the court may remand them.

The court (when exercising its powers under this section) shall have regard to all the circumstances including the need to secure the health, safety, and well-being of the person who is or may be the victim of the conduct.

It is perhaps also important to note that the court may grant initial interim protective relief on any application which is made under the Act, in order to secure the safety of a person who is or may be the victim of the conduct, until the first hearing between the parties. The court can only grant this if either:

- An application for an order is made under this; or
- In any family proceedings to which the respondent is a party, the court considers that the relief should be made for the benefit of any other party in the proceedings or any relevant child.

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Clause 5

An actual or apprehended breach of Clauses 1, 2 or 3 can be subject of a claim in civil proceedings by the person who is or may be the victim of the conduct.

Clause 6

This states that all applications are to be dealt with in private unless the court directs otherwise.

The Bill can be found at
http://www.publications.parliament.uk/pa/ld200607/ldbills/003/2007003.pdf

Private Members Bills

On 13 December the formal First Reading of 20 Private Members' Bills took place in Parliament. Details of those Bills that could impact in some way on policing include:

Energy Saving (Daylight) Bill

Introduced by Tim Yeo, the Bill proposes to advance time by one hour throughout the year to create lighter evenings, for an experimental period. It was ordered to be read a second time on Friday 26 January 2007 and to be printed.

Off-Road Vehicles (Registration) Bill

Introduced by Graham Stringer, the Bill will make provision for the establishment of a compulsory registration scheme for off-road vehicles. It was ordered to be read a second time on Friday 2 March 2007 and to be printed.

Temporary and Agency Workers (Prevention of Less Favourable Treatment) Bill

Introduced by Paul Farrelly, the Bill is intended to prohibit discrimination against temporary and agency workers; and to make provision about the enforcement of rights of such workers. It was ordered to be read a second time on Friday 2 March 2007 and to be printed.

Vehicle Registration Marks Bill

Introduced by Richard Ottaway, the Bill is intended to make further provision about the retention of vehicle registration marks pending transfer. It was ordered to be read a second time on Friday 23 March 2007 and to be printed.

Polling Stations (Regulation) Bill

Introduced by Roger Godsiff, the Bill will make it an offence to campaign in prescribed areas around polling stations on the day of certain elections. It was ordered to be read a second time on Friday 23 February 2007 and to be printed.

Criminal Law (Amendment) (Protection of Property) Bill

Introduced by Shailesh Vara, the Bill proposes that Section 3 of the Criminal Law Act 1967 and Section 3 of the Criminal Law Act (Northern Ireland) 1967 be amended in relation to the use of force in the prevention of crime or in the defence of persons or property. It was ordered to be read a second time on Friday 9 March 2007 and to be printed.

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Streetscape and Highways Design Bill

Introduced by Alan Duncan, the Bill will make provision about standards of streetscape and highways design; it will require the Secretary of State to provide guidance and advice to local authorities and the Highways Agency on streetscape and highways design; it will require local authorities to publish policies on the quality of design of traffic signs and highway developments; and it will require local authorities to have regard to such policies when causing or permitting traffic signs to be placed on or near a road or when carrying out highways work. It was ordered to be read a second time on Friday 9 March 2007 and to be printed.

Trade Union Rights and Freedoms Bill

Introduced by John McDonnell, the Bill is to make provision for the law relating to the rights and freedoms of workers and of trade unions, the regulation of relations between employers and workers, protection of employment in lawful industrial action, and remedies in trade disputes. It was ordered to be read a second time on Friday 2 March 2007 and to be printed.

Electric Shock Training Devices Bill

Introduced by Sarah McCarthy-Fry, the Bill will introduce provisions to prohibit the sale, manufacture, hire, loan, importation or use of electric shock training devices. It was ordered to be read a second time on Friday 2 February 2007 and to be printed.

A Bill cannot progress on to Second Reading until it has been printed. The Bills listed above will progress no further until the text of the Bill is published. These Bills will be covered in more detail if and when they are published.

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Memorandum of Understanding on Sex Offenders Travelling Between the UK and Ireland

A new Memorandum of Understanding (MOU) between the United Kingdom (England, Northern Ireland, Scotland and Wales) and the Irish government has been signed, to ensure that information on sex offenders who plan to travel between the UK and Ireland is shared between the relevant police forces. In practice, this information has been exchanged for some time, but the MOU now puts the arrangements on a formal footing.

Presently in the UK, everyone on the sex offenders register has to notify the police if they intend to travel abroad for more than three days. In Ireland, offenders have to notify the Irish police An Garda Síochána if they intend to travel abroad for more than seven days, and registered sex offenders from abroad must notify the An Garda Síochána if they reside in the State for more than seven days.

The MOU is part of the work undertaken following the Intergovernmental Agreement on North/South Co-operation on Criminal Justice Matters, signed on behalf of the Irish and British Governments in July 2005. Under the Agreement, a Registered Sex Offender Advisory Group has been established, consisting of representatives of An Garda Síochána, the Police Service of Northern Ireland, the Irish Department of Justice, Equality and Law Reform and the Northern Ireland Office. As part of its work, this Group evaluates the potential for sharing information, examining the registration criteria in both jurisdictions for sex offenders and identifying areas for further co-operation.

Discussions are ongoing between the Home Office and its Irish counterpart as to whether the contents of the memorandum will be made publicly available on the internet.

Guidance on the process for complying with the MOU will be published very shortly in the form of a Home Office Circular.

ASBO Statistics

The Home Office has published figures showing the total number of ASBOs issued between April 1999 and December 2005.

The total number reported to the Home Office during this period stands at 9853. Of these ASBOs:

- 56% were issued to adults.
- 41% were issued to juveniles.
- The remaining 3% are unknown.
- 58% were ordered on conviction.
- 42% were ordered on application.

Tables that give the breakdown of this data by CJS area (which includes data for those aged 10-17 years) and by local authority area are also available.

Further details can be found at
http://www.crimereduction.gov.uk/asbos/asbos2.htm

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National Audit Office Report on Tackling Anti-Social Behaviour

The National Audit Office has published a new report entitled, 'Tackling Anti-Social Behaviour', following a study which examined the work of the Home Office's Anti-Social Behaviour Unit (set up in 2003) and the measures introduced by the Home Office since 1997 to tackle anti-social behaviour.

The study looked at the impact of three of the most commonly used interventions: warning letters, Acceptable Behaviour Contracts and Anti-Social Behaviour Orders (ASBOs).

The report finds that:

- The success rate for those receiving warning letters or Acceptable Behaviour Contracts were similar, with around two thirds receiving just one form of intervention from the authorities.
- Over half of those who received the strongest form of intervention, an ASBO, breached the Order, and one third did so on five or more occasions.
- 40% of people who received an ASBO had received an earlier anti-social behaviour intervention and 80% had previous criminal convictions.

The report states that anti-social behaviour has high monetary and emotional costs for society; and quotes Home Office estimates that the cost to government agencies of dealing with reports of anti-social behaviour is £3.4 billion a year. It recognises that the emotional cost for victims of anti-social behaviour, such as anxiety and depression, can affect victims for many years.

The report recommends that to encourage the most effective use of interventions the Home Office should:

- Encourage local areas to improve their case management systems sufficiently to collect comprehensive and comparable case information, including information on age, gender, date of birth and ethnicity. This, it argues, will enable local areas to monitor the effectiveness of the interventions they use and the Home Office to build up a greater understanding of the effectiveness of different interventions in different situations and with different people.
- Encourage all agencies administering interventions to provide targeted support to increase individuals' chances of meeting the conditions of the intervention, preventing further anti-social behaviour and potentially reducing costs in the longer term.
- Make training available, through the Academies programme, to organisations which carry out anti-social behaviour interventions but have limited experience of dealing with young people and people with complex needs. This, it believes, would enable organisations to engage constructively with such people about how they can meet the conditions of the intervention.
- Work with the Respect Task Force as the Government implements the Respect Action Plan, to undertake formal evaluation of the different schemes to build up an evidence base on the cost and effectiveness of different interventions.
- Enable local areas to benchmark their effectiveness against others (for example, by providing information to Crime and Disorder Reduction Partnerships on others with similar characteristics).

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- Develop a strategy to support local areas to communicate more creatively to their local communities the efforts they are making to tackle anti-social behaviour, to reach all groups, and to provide feedback on actions taken to the victims and witnesses of anti-social behaviour.
- Encourage local areas to provide a consistent level of support to victims and witnesses of anti-social behaviour in all areas of the country.

The report can be found in full at **http://www.nao.org.uk/publications/nao_reports/06-07/060799.pdf**

Treasury - Report Issued Ahead of Spending Review

The Treasury has issued a report analysing the long term opportunities and challenges for the UK economy ahead of the 2007 Comprehensive Spending Review. The document, produced following consultation over the past year with experts across Whitehall, business, unions, NGOs, think tanks and academia, explores a number of key long-term trends, including:

- Demographic and socio-economic change.
- Globalisation.
- Technological change.
- Global uncertainty.
- Pressure on natural resources and global climate.

Its findings/predictions include:

- The next ten years will see further increases in the UK population, especially in the south of England.
- There will be more women and older people in the workforce. Average incomes are expected to rise and consumers will become more demanding.
- The balance of global economic activity will continue to shift, with emerging economies accounting for a greater proportion of production; flows of investment and trade will remain drivers of global growth.
- Technology already presents, and will continue to present, significant opportunities to improve the quality, scope and efficiency public services.
- Information and communication technologies (ICT) will continue to open up new possibilities in teaching and learning; in security, technology will improve capabilities in crime prevention and detection and in counter-terrorism.
- Population growth, disease, climate change and pressures on energy and water are likely to be important factors impacting the global security environment.
- There will be pressures locally on the environment in the UK. Climate change could have direct impacts in the UK in the long term. These will be mediated through water, with increases in flooding risks and drought expected.

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The report concludes that the public services will have a central role to play in this changed context, providing the essential foundation for a society in which economic prosperity is combined with fairness and social justice. The UK will also need to play a leading role in global efforts aimed at meeting the global challenges of poverty, climate change and continued security threats. One of the main areas most likely to impact on policing is the advancement of technology. The document relied on 'horizon scanning methods', particularly in respect of the chapter on technological change. It outlines eight areas of technologies in which 'horizon scanning' suggests developments are likely to impact on Government, businesses and individuals in the next decade. These are:

- Information handling and knowledge management.
- Sensor and tracking.
- Network interactions.
- Security technologies.
- Advanced materials.
- Nanotechnologies.
- Mind and body sciences.
- Energy technologies.

The document, 'Long-term challenges and opportunities for the UK: analysis for the 2007 Comprehensive Spending Review' can be found at **http://www.hm-treasury.gov.uk/spending_review/spend_csr07/spend_crs07_longterm.cfm**

Home Office Statistical Bulletin 04/06: The Arrestee Survey Annual Report

This bulletin is the first annual report of the Arrestee Survey and reports the findings from a nationally-representative survey of drugs and crime among arrestees in England and Wales. It provides an overview and baseline on the following topics:

- Prevalence of problematic drug misuse among arrestees.
- Links between drug and/or alcohol consumption and offending.
- Availability of drugs.
- Estimated levels of demand (met and/or unmet) for drug and alcohol treatment services among the arrestee population.
- Levels of intravenous drug use among arrestees.
- Characteristics and self-reported offending histories of individuals entering the criminal justice system.

Some of the main findings include:

- The most common reasons for arrest among all arrestees were assault (16%) and shoplifting (12%). However, for those who had taken heroin, crack and/or cocaine (HCC) in the last 12 months, the most common reasons for arrest were shoplifting (22%) or burglary (13%).
- 57% of arrestees reported having taken one or more drugs in the last month.

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- Cannabis was the most widely taken drug, with 46% having taken it in the last month, followed by heroin (18%) and crack (15%). Powder cocaine use was less prevalent, with 10% having taken it in the last month, and overall 28% had taken HCC in the last month.
- Among those who had used individual drugs in the last year, dependence on heroin was greater than on crack or powder cocaine. 85% of those who had taken heroin in the last year were dependent. Equivalent figures for crack and powder cocaine were 52% and 23%.
- Most arrestees reported having been arrested before - 55% had been previously arrested within the last 12 months and 27% had been arrested longer ago, although 19% had never been arrested before.
- 15% of arrestees said that they had committed crimes in the last four weeks in order to buy or get hold of drugs. This was much more likely among those who had taken HCC in the last 12 months, 36% of whom said they had committed a crime to get drugs, compared with 2% of those who had not taken HCC.
- Treatment is being successfully targeted at those arrestees with greater treatment needs.
- A significant majority of arrestees who had bought heroin, crack and powder cocaine stated that these drugs were always available to them when they had enough money to buy them.

The bulletin is available at **http://www.homeoffice.gov.uk/rds/pdfs06/hosb0406.pdf**

Legal Aid Reform

On 28 November 2006, the Department for Constitutional Affairs and the Legal Services Commission published their joint report, called 'Legal Aid Reform: The Way Ahead'. The report focuses on the reform of the legal aid system and was compiled following consultations on a report written by Lord Carter. His report centred on a best value and market-based system where hourly rates would be replaced by fixed and graduated fees.

Changes being considered are:

- Modified schemes for immigration, family and mental health work
- A change to the graduated fee scheme for advocates in the Crown Court from April 2007
- A new Litigators Graduated Fee scheme for Crown Court work from October 2007
- A Single Graduated Fee scheme in October 2008, which will combine fees for both Crown Court litigators and advocates
- Fees for magistrates' court work will be amended in major urban areas from April 2007 before moving to best value tendering by October 2008
- A graduated fee scheme for care proceedings and a revised scheme for families from October 2007
- Fixed fees for work in police stations from October 2007 before moving to best value tendering from October 2008
- A not-for-profit sector and Tailored Fixed Fee Replacement scheme for solicitors providing civil legal assistance in October 2007

The full report can be obtained at **http://www.dca.gov.uk/laid/laidfr.htm**

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HOC 39/2006
Partial Implementation of Sections 14 and 15(1), (2) Criminal Justice Act 2003

This Home Office Circular gives advice about the provisions in Sections 14(1) and (2) and 15(1) and (2) of the Criminal Justice Act 2003, which are being brought **partially** into force on 1 January 2007 by way of Commencement Order S.I. 3217/2006 (see SI section).

Section 14(1) substitutes a new paragraph 2A of Part 1 of Schedule 1 to the Bail Act 1976. This paragraph provides that if a defendant is 18 years or over and it appears that he committed the offence whilst on bail in criminal proceedings, he may not be granted bail unless the Court is satisfied that there is no significant risk of his committing an offence while on bail.

However, this new paragraph will not totally replace the old paragraph 2A in the Bail Act 1976. It will only apply where the offence for which bail is being considered by the Court is one in relation to which the defendant is liable, on conviction, to a maximum sentence of life imprisonment and where the offence for which the bail decision is being made was committed on or after 1 January 2007. The previous wording of paragraph 2A is retained for all other offences. In effect, as from 1 January 2007 there will be two paragraph 2As in Part 1 of Schedule 1 to the Bail Act 1976.

Section 14(2) inserts a new paragraph 9AA into Part 1 of Schedule 1 to the Bail Act 1976. This provides that if a defendant is under 18 years of age and it appears that he committed the offence whilst on bail in criminal proceedings, that in determining whether there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail, the Court shall give particular weight to the fact that the defendant was on bail in criminal proceedings.

The coming into force of Section 14(2) only applies where the offence is one in relation to which the defendant is liable on conviction to a maximum sentence of life imprisonment and was committed on or after 1 January 2007.

Section 15(1) substitutes a new paragraph 6 of Part 1 of Schedule 1 to the Bail Act 1976. This paragraph provides that if a defendant is 18 years or over and it appears to the Court that, having been released on bail in or in connection with the proceedings for the offence, he failed to surrender to custody, he may not be granted bail unless the Court is satisfied that there is no significant risk that, if released on bail, he would fail to surrender to custody.

This provision does not apply where it appears to the Court that the defendant had reasonable cause for his failure to surrender to custody, unless it also appears to the Court that he failed to surrender to custody at the appointed place as soon as reasonably practicable after the appointed time. But a failure to give to the defendant a copy of the record of the decision to grant him bail shall not constitute a reasonable cause for his failure to surrender to custody

Again, this new paragraph 6 will not totally replace the old paragraph 6 in the Act and will only have effect where the failure to surrender referred to proceedings for which the defendant is liable on conviction to a maximum sentence of life imprisonment and where the failure to surrender occurred on or after 1 January 2007. The previous wording of paragraph 6 is retained for all other offences. In effect, as from 1 January 2007 there will be two paragraph 6s in Part 1 of Schedule 1 to the Bail Act 1976.

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Section 15(2) inserts a new paragraph 9AB into the same Schedule. This provides that if a defendant is under 18 years of age and it appears to the Court that, having been released on bail in or in connection with the proceedings for the offence, he failed to surrender to custody, the Court shall give particular weight to the fact that the defendant failed to surrender or, where there was a reasonable cause for his failure to attend, the fact that he failed to surrender to custody at the appointed place as soon as reasonably practicable after the appointed time.

The coming into force of Section 15(2) only applies where the failure to surrender occurrs on or after 1 January 2007 and is in relation to proceedings for which the defendant is liable on conviction to a maximum sentence of life imprisonment.

Offences with a maximum sentence of life imprisonment are offences for which there is available a sentence of imprisonment for life, a sentence of detention during Her Majesty's pleasure or a sentence of custody for life.

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

Law Commission Homicide Reform Recommendations

The Law Commission published a report on 29 November 2006 entitled 'Murder, Manslaughter and Infanticide', which is Project 6 of the Ninth Programme of Law Reform: Homicide.

The main areas of recommendation include information relating to:

- A three-tier law of homicide.
- Some kinds of manslaughter to become second degree murder.
- Provocation defence to be made fairer.
- Tackling gang violence.
- More options for the jury.

The report will be taken to its next stage next year by the Home Office. This stage will involve a consultation on policy issues and sentencing in this area.

A copy of the report is available from
http://www.lawcom.gov.uk/docs/lc304.pdf

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Racist and Religious Incident Monitoring Annual Report 2005 – 2006

The Crown Prosecution Service (CPS) has published its annual report on prosecution decisions and outcomes in all cases identified by the police or CPS as racist or religious incidents, covering the period 1 April 2005 to 31 March 2006.

Key findings in relation to racially aggravated offences in the report show:

- Police performance in marking racist incident files for CPS attention has increased by 2% to 93% compared to last year's figure of 91%.
- The CPS prosecuted 82% of the cases received. The remaining 18% were discontinued, dropped at court or could not be prosecuted because the defendant failed to appear.
- There were 7430 people charged with racially aggravated offences, an increase of 28% on the previous year.
- The total number of charges increased by 26%, from 8706 in 2004-2005 to 10,940.
- Of the 10,940 charges, 10,570 were charged by the police, the remaining 370 were added by the CPS.
- 2826 of these charges were later dropped, 2754 being police charges, 72 being CPS-added charges.
- Of the 8114 offences prosecuted, 5,951 (73%) were charged under the Crime and Disorder Act 1998. Of these 5,951 offences, 3648 were for racially aggravated public order offences, 1303 for racially aggravated assault, 380 for racially aggravated damage and 620 for racially aggravated harassment.
- The number of defendants pleading guilty increased by 2% from 69% in 2004-05 to 71% in 2005-06.

In relation to the reasons why charges were dropped, the figures show that:

- 38% were due to insufficient evidence.
- 28% were due to witness difficulties.
- 19% were not pursued on public interest grounds, the most common reason being that the defendant was being dealt with on more serious offences or was serving a long prison sentence.
- 11% could not be prosecuted because the defendant failed to attend court and/or could not be traced.
- In the remaining 4% of charges, the defendants were bound over without trial.

Key findings in relation to religiously aggravated offences in the report show:

- During the reporting year 2005-06, 43 cases were finalised and recorded as Religiously Aggravated Incidents under the Racial/Religious Incident Monitoring Scheme, an increase of 26.5% compared with 2004-05.
- Of these 43 cases, 41 defendants (95.3%) were prosecuted, compared with 79.4% last year.

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- In 8 cases (18.6%), the police supplied a copy of their Religious Incident Report or computer record with the files. No report of record was received for the remaining 35 cases (81.4%).
- Of the total 58 charges brought against the 43 defendants, 51 were prosecuted, 34 (66.7%) in the magistrates' court and 17 (33.3%) in the Crown Court. Of the remaining 7 charges, 5 (71.4%) were dropped in the magistrates' court and 2 (28.6%) in the Crown Court.
- Of the 51 charges, 84.3% were prosecuted under the Crime and Disorder Act 1998, with the majority being public order, assault or criminal damage charges.

The report can be found in full at **http://www.cps.gov.uk/publications/reports/index.html**

Consultation on CPS Prosecution Policies and Procedures in Cases of Bad Driving

The Crown Prosecution Service (CPS) has published a consultation paper in relation to a review of its prosecution policies and procedures in cases of bad driving, in particular where a fatality has occurred.

The consultation looks at the way in which the CPS deals with the case itself, the review of the case, the choice of charge, the prosecution through the courts and also the way in which they deal with victims or bereaved families. It seeks views on these issues and asks questions such as:

- What sort of behaviour or actions by drivers should constitute dangerous driving and what should constitute careless driving?
- What information do victims and victims' families want and when do they want this?
- How should cases involving the death of a family member or close friend be prosecuted?

The consultation will run until 16 March 2007. A summary of the consultation responses will be published on the CPS website within three months of the close of the consultation exercise. The responses will inform the CPS public policy statement on bad driving as well as CPS revised guidance in 2007. The paper, 'Prosecuting bad driving - A consultation on CPS Prosecution Policy and Practice' is available at **http://www.cps.gov.uk/news/pbd.pdf**

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Extension of the Community Justice Concept

Lord Falconer, the Constitutional Affairs Secretary, has announced that community justice pilots in Liverpool, Salford and Sheffield are to be extended to 10 new locations across the country, these being:

- Birmingham.
- Bradford.
- Devon and Cornwall.
- Hull.
- Leicestershire.
- Merthyr Tydfil.
- Middlesbrough.
- Nottingham.
- London (two projects).

Each of these community justice projects are currently at different stages and will not necessarily be applied in exactly the same way as another, but all will be based on a number of key principles, which are:

- Courts connecting to the community.
- Justice being seen to be done.
- Cases being handled robustly and speedily.
- Strong independent judiciary.
- Solving problems, finding solutions.
- Working together.
- Repairing harm, raising confidence.
- Reintegrating offenders, building communities.

The Government's intention is to introduce community courts in every part of England and Wales within the next two years.

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Changes Made to Criminal Means Testing

The Legal Aid Minister, Vera Baird, has announced changes to the new means test for legal aid in the magistrates' court. The new means test was introduced on 2 October 2006; approximately sixty thousand representation orders have been granted so far. However, concerns have been raised as to how the means testing has been operating. The changes announced aim to:

- Guarantee that representation orders will start from the date a complete form is first submitted.
- Improve the Early Cover Scheme.
- Provide more flexibility around a partner's signature.
- Improve application forms.

A 21 day consultation period on the contract change which is necessary to implement the change to the Early Cover Scheme was commenced on 11 December 2006 and, subject to the outcome of the consultation, the change will be implemented by 5 January 2007.

Now applications forms will be accepted without a partner's signature if evidence is provided that the partner is:

- Abroad
- In hospital
- Otherwise unable to sign

The defendant will give the partner's information and written consent for an approach to check the information where the partner is contactable. If, after this, the partner refuses to co-operate, withdrawing representation would then be considered.

There are also proposals to amend the application form to include a simple tick box for 16 and 17 year-olds who are not in full time education but have no income or any outgoings (due to the fact that they live at home), in order to ensure that applications can be submitted and processed as quickly as possible.

The new application forms will be issued by 19 January 2007 and the forms will be valid from 22 January 2007.

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The National Community Safety Plan Update

An update of the National Community Safety Plan (NCSP) has been published by the Home Office Crime Reduction and Community

Safety Group. The update:

- Shows the progress made on 2006-7 key actions.
- Reviews key community safety priorities for 2006-9.
- Highlights specific key actions for 2007-8.
- Sets out the roles of some additional key partners.

The document states that it should be read in conjunction with the NCSP 2006-9 and also alongside the 'Vision for the Police Service' which is due to be published shortly. The vision will set out the values and the priorities for reform and continuous improvement in the Police Service over the next few years.

The update sets out the Home Secretary's key strategic priorities which police forces and authorities should reflect in their local policing plans, these are to:

- Reduce overall crime in line with the national PSA target, including by focusing on more serious violent crime, drug related crime and alcohol related crime and disorder.
- Enable people to feel safer in their communities by embedding a dedicated, visible, responsive and accountable neighbourhood policing team in every area by April 2008; working in close collaboration with local government and other community safety partners; and reducing the public perception of anti-social behaviour.
- Continue to bring offences to justice, in partnership with other Criminal Justice agencies in line with the Government PSA target through improved performance on sanction detections, especially in relation to more serious crime.
- Strengthen public protection by increasing capacity and capability for dealing with widespread threats, and in particular by tackling serious and organised crime.
- Protect the country from both terrorism and extremism.

The document sets out detailed key actions for the Police Service in 2007-08 to deliver the key priorities. The full report can be found via **http://www.crimereduction.gov.uk/communitysafety01.htm**

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The Police Federation Report on the Effects of the Government's Reforms on 24/7 Policing

The Police Federation of England and Wales has published a report which discusses the findings of a research project on 24/7 response policing. The research was commissioned by the Joint Central Committee of the Federation following concerns that the under-resourcing of the response function was creating a serious resilience problem which threatened the safety and well-being of 24/7 response officers, and also that it was having a detrimental effect on the quality of service delivered to citizens seeking police assistance, and was, thereby, undermining their confidence in the police.

Findings from the research project found that 24/7 officers:

- Very rarely have time for foot or motorised patrolling specifically to provide visible reassurance patrolling and frequently find they cannot respond to incidents quickly or appropriately enough to provide a quality service.
- Are frequently not able to deal with incidents as well as they consider they should because of workload pressures. This can have serious consequences, such as important evidence being lost, and officers reported that they regularly have to placate citizens who have waited hours or, in many cases, days for the police to respond to incidents.
- Are now denied the exercise of discretion which has been regarded by writers on the police as being definitive of patrol work. Work is now more tightly regulated by rules, procedures, performance targets and other systems of accountability. Force monitoring and recording systems make their decisions and actions more transparent, narrowly circumscribing the area of discretionary decision–making.
- Are now required to submit very detailed reports on their decisions and actions at incidents. This greater transparency often leads to additional questions which then require further enquiries and documentation. Probably the best examples of this arise in connection with case building and the evidence requirements set by the Crown Prosecution Service.
- Are abstracted from 24/7 reliefs to provide the staff for new initiatives set up in response to Home Office reform strategies, but found no evidence that these new initiatives had reduced the work pressures on the 24/7 officers. In addition, it is normally the most experienced officers that are abstracted to specialist teams, thereby leaving the riskiest situations to be dealt with and managed by the least experienced, least trained and least resourced teams.

It also finds that:

- There is regularly only 50% of staff available at the start of the shift, so the department is only at half capacity before they get started and this inevitably depletes further as the shift continues.
- Crown Prosecution Service officials in police stations are placing an unnecessary burden on police officers by adding to the bureaucracy. They have their own targets and procedures to meet about cases going forward to court for prosecution, often placing greater burden on officers and in some cases duplicating investigative procedures.
- The centralisation of custody suites is resulting in officers losing further amounts of time away from the frontline, as they often have to travel further with prisoners or wait in long queues to process prisoners.

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- Pressures on call centres to clear calls to meet government targets often results in re-grading calls which can place greater pressure on already overloaded frontline officers.

The report refers back to the recommendations made in the August 2001 Home Office-commissioned PA Consulting study report, 'Diary of a Police Officer' (Police Research Series Paper 149), the chief ones of which were that:

- Police time is not consumed on activities that are properly the responsibility of other agencies.
- The opportunities to employ support staff to undertake duties are exploited.
- Police officers are used for policing not paperwork.

The Federation-commissioned report finds little or no evidence to suggest that these recommendations have been implemented. It found no evidence that the level of bureaucracy had reduced or that tasks previously undertaken by 24/7 officers are now routinely performed by others instead. It concludes that, far from alleviating the pressure on these officers, elements of the police reform programme and other recent political initiatives have considerably increased their workload by the changes they have introduced to the way officers now have to work, particularly with respect to paperwork.

The report recommends that further research should be undertaken in several specific areas:

- Quantitative data on the 24/7 response function.
- Work force re-engineering and 'mixed economy' policing initiatives.
- The introduction of Neighbourhood Policing Teams (NPTs) and Community Beat Managers.
- Pressure experienced in other roles and departments.
- Call handling and bureaucracy.

The full report '24/7 Response Policing in the Modern Police Organisation - Views from the Frontline' can be found at **http://www.polfed.org**

Draft Police Grant Report for England and Wales 2007-08

The Home Office has published the Home Secretary's determination for 2007/08, made under Section 46(2) of the Police Act 1996, of the aggregate amount of grants for police purposes that he proposes to pay under Section 46 and the amount of grant he proposes to pay each police authority under the same Section. The document can be found in full at **http://police.homeoffice.gov.uk/news-and-publications/publication/finance-and-business-planning/**

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Police Complaints: Statistics for England and Wales

The Independent Police Complaints Commission has published statistics on complaints recorded by police forces in England and Wales, covering the financial year 2005/06. The findings in the report cover the number and type of complaints made by members of the public and how these complaints were subsequently dealt with. It also includes demographic data on those who made complaints and those who were subject to complaints; and provides more detailed analysis on appeals which were upheld during the year.

Findings from the report show:

- 26,268 complaint cases were recorded across England and Wales in 2005/06, an increase of 15% on the previous year.
- 40,384 allegations were recorded in 2005/06, an increase of 16% on 2004/05.
- The largest proportion of allegations recorded related to: other neglect or failure in duty (22%); incivility, impoliteness and intolerance (20%); other assault (16%).
- The largest increases in numbers of allegations were for: other neglect or failure in duty (increase of 2,598 allegations); incivility, impoliteness and intolerance (increase of 861 allegations); lack of fairness and impartiality (increase of 587 allegations).
- Allegations of oppressive conduct or harassment decreased by 227 allegations.
- 30,105 people working in the police service were subject to a complaint in 2005/06. Of these, 93% were police officers, 2% were special constables, traffic wardens and community support officers, 5% were other contracted and police staff.
- Of those subject to a complaint, 79% were male, 19% were female and gender was 'unknown' for 3% of individuals.
- The age group 30-39 of police personnel were the subject of 38% of complaints made.
- 88% of complaints were found to be unsubstantiated.

The report can be found in full at
http://www.ipcc.gov.uk/index/resources/research/stats.htm

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HOC 35/2006
The Police Pension Scheme - PNB/Home Office Joint Guidance for Police Authorities on New Compulsory Retirement Ages & Retirement Policy for Police Officers

This Circular contains guidance which follows up interim guidance set out in HOC 30/2006 (covered in October *Digest*). It contains information to enable police forces and police authorities to implement the changes to compulsory retirement age (CRAs) for police officers as a result of the Employment Equality (Age) Regulations 2006 and to introduce new procedures for retirement policy in the spirit of the new legislation.

The Police Pensions Regulations 1987 will be amended to replace the previous CRAs and provisions for extensions. Since it was not possible for amendments to the Regulations to come into force in time, they will be given back-dated effect from 1 October 2006. However, the changes have taken effect administratively from 1 October 2006 in anticipation of the Regulations being amended. Similarly, the Police Pensions Regulations 2006 will also contain these provisions.

The new CRAs for police officers, which took effect on 1 October 2006 and apply to all Home Office forces in England & Wales, are 60 for the federated ranks (constable-chief inspector) and 65 for superintending/ACPO ranks. Extensions of service beyond CRA are no longer to be limited to a maximum of 5 years.

Former officers who have been compulsorily retired before 1 October 2006 will not be able to 'reverse' their retirement or apply for extensions of service retrospectively.

Individual forces will need to set up locally agreed procedures for processing officers' applications to postpone their compulsory retirement date (CRD), which set out each stage clearly and who is responsible for action at that point. To ensure these procedures are applied consistently across the police service, certain key processes and considerations that should form the basis of those procedures are set out in the Circular. This flowchart outlines the procedure:

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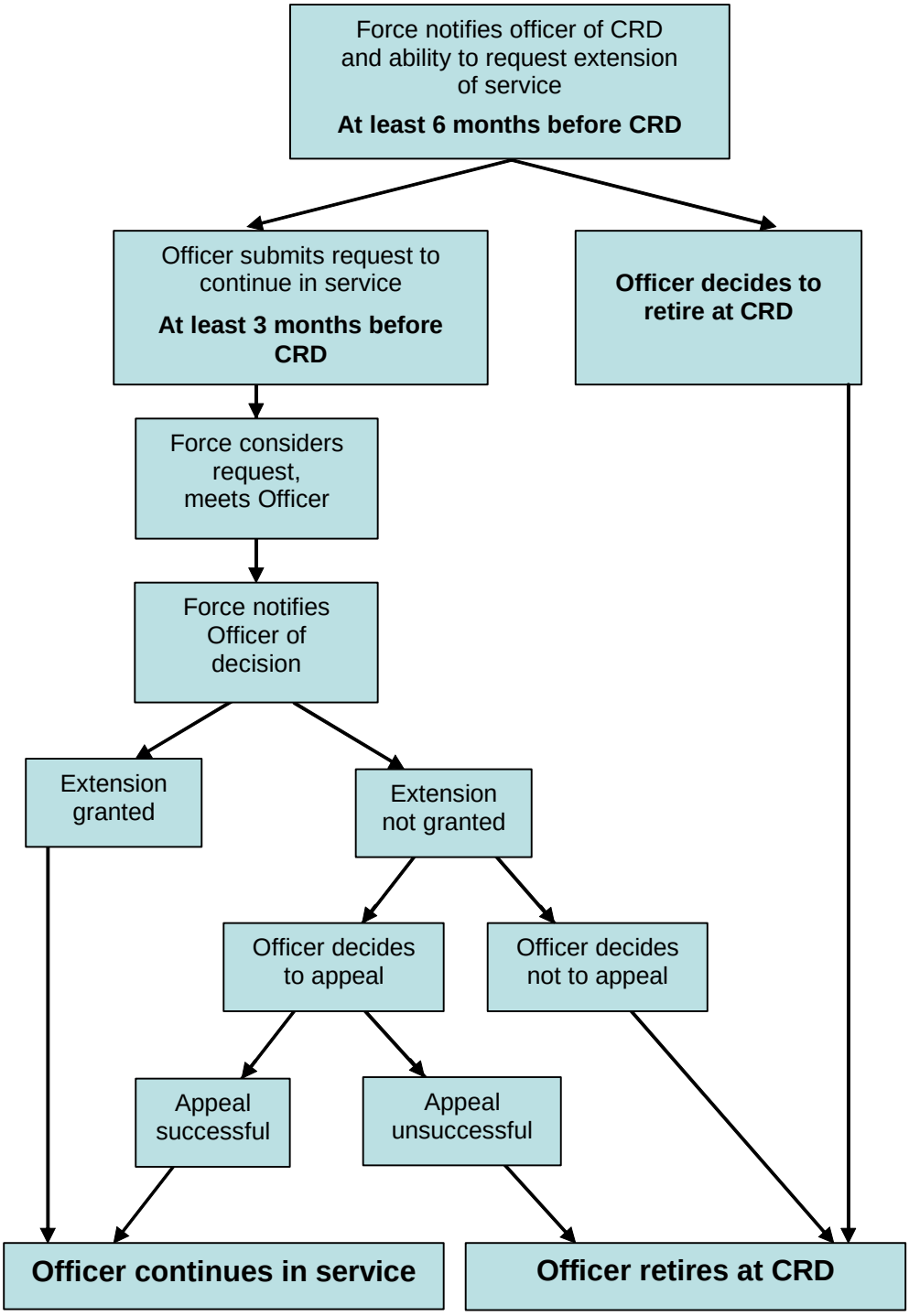

Officers who wish to continue in service should be encouraged to request an extension in writing as soon as possible after receiving notification of their CRD from the force. This request should ideally be made within one month of notification and certainly no more than 3 months after notification. The officer should set out what skills and experience they can offer the force and give the force an indication of how long they would like to continue their service. The officer should also indicate whether they would want to be considered for future service only if they could remain in their current role or if they would still wish to stay on if exceptionally required to be redeployed. Officers on an extension of service remain liable to redeployment where operational resilience dictates.

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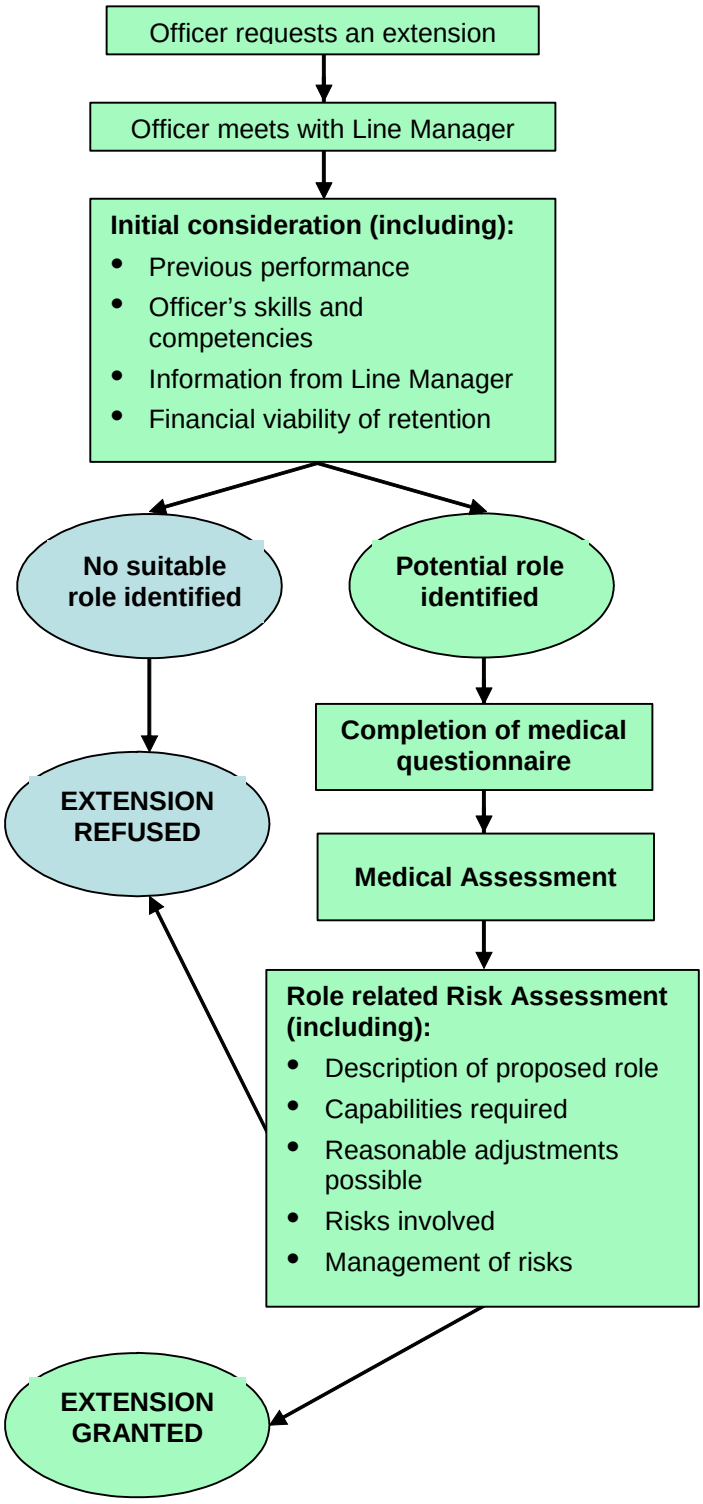
Correct and consistent procedure must be followed when handling requests to continue in service. Each request should be judged on its individual merits and circumstances. This flowchart sets out the procedure for considering extensions:



Following an officers request for an extension to service, the meeting with the officer's line Mmanager or BCU commander should be held within a reasonable period of receiving it (unless not practicable). The line manager/ BCU commander should ensure that a report of this meeting is made available to the chief officer of police (or delegated authority).

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While forces should give such requests due consideration, they are not obliged to grant them. The duration of an extension to service must always be defined.

Officers may appeal against the decision if their request to continue in service is unsuccessful, or if it is accepted only for a shorter period than the default extension period of two years. Forces should exercise discretion when considering an officer's right of appeal in other cases.

The chief officer of police (or assistant commissioner in the Metropolitan Police Service) will make the final decision on appeals. If an extension of service is refused solely on the basis of a medical and the officer contests this by producing another medical practitioner's opinion directly contradicting the opinion of the Force Medical Adviser (FMA), the appeal should in the first place be in the form of a review by the FMA of his or her decision in the light of the fresh medical opinion. If the FMA declines to alter his or her opinion the case should be referred to a third medical practitioner agreed by the FMA and the other medical practitioner. Where the two cannot agree, the third practitioner will be selected by the chief officer of police.

Opportunities for promotion should apply equally to officers on extension as to other serving officers. Where an officer is promoted, there may be a need to review the previous conditions of the extension.

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

HOC 37/2006

This Home Office Circular publicises the introduction of the Police (Amendment) Regulations 2006. These regulations were brought into force on 1 July 2006 and were covered in the June edition of the *Digest* (see SI 1467/2006).

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

HOC 38/2006
Increases to Police Pay, Dog Handler's Allowance, Competence Related Threshold Payment and London Weighting

Home Office Circular 38/2006 publicises the Home Secretary's approval of an increase to the pay of police officers in England and Wales, as recommended by the Police Arbitration Tribunal on 6 November.

The pay of all officers has been increased by 3% with effect from 1 September 2006. The new pay scales have been published in PNB Circulars 6, 7 and 8 of 2006.

The following allowances have also been increased:

- London Weighting is increased from £1,995 to £2,055 with effect from 1 July 2006. See PNB Circular 06/8.
- Dog Allowance is increased from £1,869 to £1,926 with effect from 1 September 2006. This has been published in PNB Circular 06/6.

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- The Competence Related Threshold Payment is increased from £1,062 to £1,095 with effect from 1 September 2006. This has been published in PNB Circular 06/6.

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

HOC 40/2006
Guidance on Pay on Promotion to Inspector under the Police Regulations 1995

This Home Office Circular relates to guidance on pay on promotion to inspector under the Police Regulations 1995. It clarifies issues that arose in HOC 18/2004, which focused on the pay of certain sergeants who were promoted to inspector between 1 September 1994 and 31 August 1996. With effect from 1 September 1996, sergeants promoted between the dates specified above and having served four or more years as a sergeant on 31 August 1994 should have been placed on the appropriate point on the inspectors' pay scale. This would be according to the length of time for which he held the rank of inspector and be at least the second point of pay scale. Chief officers should consult with local Federation branches and make arrangements to alter the pay scales of those affected.

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

Police Federation Central Conferences

The Central Conferences of the Police Federation of England and Wales for 2007 are to be held from 15 May to 17 May 2007, in the Blackpool Wintergardens.

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Report on Suicide and Homicide by People with Mental Illness

The National Confidential Inquiry into Suicide and Homicide by People with Mental Illness (NCI) has published a report, following research it conducted into all suicides and homicides by mental health patients over a 5-year period (April 2000 to December 2004).

Findings in the report in relation to homicide show that:

- Over 50 homicides are committed each year in England and Wales by mental health patients. In many of these cases poor recognition of risk by mental health services is found to have occurred.
- The risk of random killings by mentally ill people has not risen in the last 30 years.
- Of the average 600 homicide convictions per year in England and Wales, around 30 (5%) are committed by people with schizophrenia, around half of whom are existing patients.

The report argues that the figures on homicide indicate that community care has not increased the risk to the general public.

The full report and the executive summary can be found at
http://www.medicine.manchester.ac.uk/suicideprevention/nci/

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Caw Law

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Closure Order Requirements Under the Anti-social Behaviour Act 2003

CHIEF CONSTABLE OF CUMBRIA v (1) WRIGHT (2) WOOD (2006)

DC (Keene LJ, Lloyd Jones J) 20/11/2006

Civil Procedure - Civil Evidence - Legislation - Nuisance

Admissibility: Closure Orders: Ministerial Guidance: Public Nuisance: Statutory Interpretation: Unlawful Use Of Premises: Conditions Required To Prove Unlawful Use: S.2 Anti-Social Behaviour Act 2003: S.1(1)(A) Anti-Social Behaviour Act 2003

The Anti-social Behaviour Act 2003 s.2(3)(b) required a magistrates' court, before issuing a closure order in respect of premises, to be satisfied that the premises was associated with serious nuisance or disorder to the public and that the nuisance or disorder derived from drug use.

The appellant chief constable appealed by way of case stated against the decision of a magistrates' court to refuse his application for a closure order in respect of premises occupied by the respondents. The chief constable had served a closure notice on the premises and subsequently applied to the magistrates' court under the Anti-social Behaviour Act 2003 s.2 for a closure order. The magistrates' court found that the premises had been used in connection with the unlawful use, production or supply of a Class A controlled drug and that s.2(3)(a) of the Act had been satisfied. The magistrates' court further found that having regard to hearsay evidence, the premises had been associated with the occurrence of disorder or serious nuisance. The magistrates' court held firstly that s.2(3)(a) and s.2(3)(b) of the Act were joined and that the disorder or serious nuisance needed to be demonstrated by or result from the use, production or supply of a Class A drug. Secondly, disorder or serious nuisance pursuant to s.2(3)(b) of the Act had to have taken place within the "relevant period" referred to in s.1(1)(a) of the Act for a closure order to be granted and that in the circumstances of the case there was insufficient evidence to find that serious nuisance or disorder had occurred within the relevant three months and that accordingly it was unnecessary to make a closure order. The questions posed for the opinion of the High Court were

(i) what weight the magistrates' court should give to Home Office guidance regarding closure orders;

(ii) whether s.2(3)(b) of the Act required an applicant to prove that the occurrence of disorder or serious nuisance to members of the public had arisen from or was connected to the unlawful use, production or supply of Class A drugs;

(iii) whether an applicant had to present evidence of serious nuisance or disorder occurring that had occurred within the "relevant period" of three months specified in s.1(10) in order for s.2(3)(b) of the Act to be satisfied. The chief constable contended that it did not need to be demonstrated that the disorder or serious nuisance was associated with or resulted from drug use, production or supply, but simply that both were present at the same premises.

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(1) Home Office guidance might be taken into account by a magistrates' court in considering the legal meaning of the Act and it was capable of being of persuasive authority, but it did not bind the courts. Moreover it could not be said that guidance was analogous with explanatory notes to the Act, R (on the application of Errington) v Metropolitan Police Authority (2006) EWHC 1155 (Admin) considered. In the instant case, the guidance had not been of assistance.

(2) On a proper construction, s.2(3)(b) of the Act required a magistrates' court to be satisfied that a premises was associated with serious nuisance or disorder to the public and that the nuisance or disorder derived from drug use as required by s.2(3)(a) of the Act. Any alternative interpretation would mean that the grant of a closure order would depend upon some chance circumstance and not upon drug use; for example a control order could be granted in respect of the playing of loud music. In determining whether a nuisance was linked to drug use a magistrates' court should use common sense.

(3) Under the Act, a magistrates' court had to be satisfied that there was a continuing disorder or serious nuisance to the public. If those terms were met there was no prohibition on historical evidence so long as it was relevant to the statutory test, namely the continuing situation. The fact that s.2(3) of the Act required the magistrates' court to have regard to the existing state of affairs at a premises did not mean that a brief hiatus would deprive the magistrates' court of the power to make a closure order in respect of that premises. In the instant case the magistrates erred in limiting the period for evidence to three months but it was entitled to find on the evidence before it that there was no serious nuisance or disorder.

APPEAL DISMISSED

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Important Threshold Requirement that an Imminent Breach of the Peace Must Exist before any Preventive Action is Permissible at Common Law

R (on the application of JANE LAPORTE) v CHIEF CONSTABLE OF GLOUCESTERSHIRE (2006)

[2006] UKHL 55

HL (Lord Bingham of Cornhill, Lord Rodger of Earlsferry, Lord Carswell, Lord Brown of Eaton-under-Heywood, Lord Mance) 13/12/2006

Police - Human Rights

Breach Of The Peace: Demonstrations: Detention: Freedom Of Expression: Freedom Of Peaceful Assembly: Police Powers And Duties: Preventing A Breach Of The Peace: Proportionality: Imminence Of Breach Of The Peace: Interference With Protesters' Rights Under Art.10 And Art.11 European Convention On Human Rights 1950: Art.10 European Convention On Human Rights: Art.11 European Convention On Human Rights

The police had acted unlawfully in preventing coach passengers from reaching the site of a demonstration because it could not be concluded that a breach of the peace was "imminent" at the time the coaches were stopped. The action was an interference with the protesters' rights under the European Convention on Human Rights 1950 Art.10 and Art.11 and was disproportionate.

The appellant (L) appealed against a decision ((2004) EWCA Civ 1639, (2005) QB 678) that the respondent chief constable had acted lawfully in preventing coach passengers, of which she was one, from reaching the site of a demonstration. The chief constable cross-appealed against the decision that he had acted unlawfully in escorting the coaches away from the site and back to London. L had been in one of three coaches taking passengers from London to RAF Fairford in Gloucestershire in order to join an anti-war demonstration. The police, believing that the protesters were members of a hard core anarchist group, stopped the coaches and searched them. It was found that only eight of the 120 passengers were members of the anarchist group. The chief superintendent (X) had concluded that a breach of the peace was not, at that time, imminent, but decided to send the coaches back to London with a police escort in order to prevent a breach of the peace occurring at RAF Fairford when the passengers disembarked. The Divisional Court and the Court of Appeal held that the police had acted lawfully in preventing the coaches from reaching RAF Fairford on the basis that a breach of the peace was likely to occur there, but had acted unlawfully in forcibly returning the coaches to London. L submitted that the chief constable had interfered with her rights under the European Convention on Human Rights 1950 Art.10 and Art.11, and that while the interference was for a legitimate purpose it was not prescribed by law, because it was not warranted under domestic law. L further argued that the interference was not necessary in a democratic society because it was premature and indiscriminate, and was accordingly disproportionate. The chief constable argued that the true principle of domestic law was that the police could do whatever they judged to be reasonable to prevent a breach of the peace, and that there was no absolute requirement that a breach of the peace must be imminent before the power to take reasonable steps arose, although questions of imminence would be relevant to what was reasonable.

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HELD

(1) There was nothing in domestic authority to support the proposition that action short of arrest could be taken when a breach of the peace was not so imminent as would be necessary to justify arrest. X did not think, when he stopped the coaches, that a breach of the peace was imminent. He was right to reach that conclusion. The action he took, however well intentioned, was unlawful, Albert v Lavin (1982) AC 546 followed, Moss v Charles McLachlan Times, November 29, 1984 distinguished, Humphries v Connor (1864) 17 ICLR 1 and Steel v United Kingdom (1999) 28 EHRR 603 considered. The test of the lawfulness of X's actions was not one of reasonableness, but of imminence. The reasonable apprehension of an imminent breach of the peace was an important threshold requirement that must exist before any preventive action was permissible at common law. In the instant case, no breach of the peace was or could reasonably be apprehended to be imminent when the coaches were stopped and searched.

(2) Where a reasonable apprehension of an imminent breach of the peace existed then the preventive action taken must be reasonable or proportionate. The police must take no more intrusive action than appeared necessary to prevent the breach of the peace. Even if any preventive action had been justified against anyone on the coaches, the action taken was unreasonable and disproportionate. X should have explored other options when he realised the coach passengers did not pose an imminent threat to the peace. The police had failed to discharge the burden of establishing that the actions they took were proportionate and constituted the least restriction necessary to the rights of freedom of speech and freedom of peaceful assembly.

(3) It was not reasonable for the police to believe that there would be disorder once the coaches reached RAF Fairford. Extensive precautions had been put in place there.

(4) (Obiter) Wherever possible, the focus of preventive action should be on those about to act disruptively, not on peaceful protesters. However, preventive action against an innocent person could be taken where it was reasonably apprehended that there was no other possible means of avoiding an imminent breach of the peace, O'Kelly v Harvey (1883) 14 LR Ir 104 considered

APPEAL ALLOWED, CROSS-APPEAL DISMISSED

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Detention of Occupants of Premises during Search for Firearms

CONNOR & ORS v CHIEF CONSTABLE OF MERSEYSIDE (2006)

[2006] EWCA Civ 1549

CA (Civ Div) (Waller LJ (V-P), Hallett LJ, Leveson LJ) 22/11/2006

Torts - Human Rights

Assault: Bias: Detention: False Imprisonment: Firearms: Juries: Malice: Right To Liberty And Security: Search Warrants: Trespass To The Person: Power To Detain Occupants Of House In Course Of Execution Of Search Warrant: Unlawful Detention: S.46 Firearms Act 1968: S.3 Criminal Law Act 1967: S.117 Police And Criminal Evidence Act 1984: Art.5 European Convention On Human Rights

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There was, in principle, a power to take reasonable and necessary steps to detain the occupants of a house in the course of the execution of a search warrant under the Firearms Act 1968 s.46.

The appellants (C) appealed against the dismissal of their claims for damages, including aggravated and exemplary damages, for trespass, assault, unlawful imprisonment, and breach of their human rights. The police had received intelligence, which they considered reliable, that firearms were to be found at C's address in Liverpool. The police had accordingly obtained a search warrant under the Firearms Act 1968 s.46 which had been executed by armed police. The search had been conducted in two parts: first, the removal of all occupants of the house and the making of the house secure; second, a more detailed specialist firearms search. After leaving the house C had been put in police cars for less than an hour. No firearms had been found. C alleged that the police had had no reasonable cause for seeking the warrant and had acted out of malice; that the police had acted unlawfully and disproportionately in the manner of its execution by pointing guns at them, handcuffing them and detaining them whilst the search was conducted; and the second appellant claimed she had been assaulted. The jury found against C on all the questions put to them, namely whether or not guns had been pointed at them and if so whether it was reasonable to do so, whether the handcuffing was reasonable and whether the second appellant had been assaulted by a police officer. C submitted that

(1) in dismissing C's claims for false imprisonment the judge had erred in law because there was no power under s.46 to use force or to detain people;

(2) the judge had displayed bias towards the first appellant which amounted to an irregularity and rendered the decision of the lower court unjust.

HELD

(1) There was, in principle, a power to take reasonable and necessary steps to detain the occupants of the house in the course of the execution of the search warrant, DPP v Meaden (2003) EWHC 3005 (Admin) , (2004) 1 WLR 945 applied, Chief Constable of Thames Valley v Hepburn (2002) EWCA Civ 1841 , (2002) EWCA Civ 1841 distinguished. That conclusion was consistent with the principles of common law relating to the use of reasonable force and the principles embodied in the Criminal Law Act 1967 s.3 and the Police and Criminal Evidence Act 1984 s.117. Further a power could be implied which was necessary to ensure the safe and effective exercise of an express power, Murray v Ministry of Defence (1998) 1 WLR 692, (1998) 2 All ER 521 applied. A detainee was not entitled to a decision from a jury as to the reasonableness and, therefore, lawfulness of his detention, which was a matter of law for the judge, Dallison v Caffery (1965) 1 QB 348 applied, Pollard v Chief Constable of West Yorkshire (1999) PIQR P219 distinguished. The judge had not been wrong to rule that the first appellant's detention had been reasonable and necessary in the circumstances. If there was any detention of the other appellants it was necessary and proportionate. If the European Convention on Human Rights 1950 Art.5 was engaged, there was no breach of C's rights.

(2) The judge had made an inappropriate and inadvisable comment suggesting that the first appellant had been guilty of a criminal offence but that was only one comment in a lengthy trial and it had no adverse impact on the fairness of the trial. The judge had not displayed any bias in making his rulings on the law, which were right, or in the presence of the jury who were the finders of fact.

APPEAL DISMISSED

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An Inchoate Offence Could Be Committed Even Though It Is Not Indictable Offence in England

R v ABU HAMZA (200)

[2006] EWCA Crim 2918

CA (Crim Div) (Lord Phillips LCJ, Penry-Davey J, Pitchford J) 28/11/2006

Criminal Law - Criminal Procedure

Abuse Of Process: Delay: Fairness: Foreign Nationals: Inchoate Offences: Publicity: Soliciting Murder: Statutory Interpretation: Inchoate Offence Not Committed Unless Conduct Incited Indictable In England: Exception To General Principle: S.58 Terrorism Act 2000: S.4 Offences Against The Person Act 1861

The Offences against the Person Act 1861 s.4 provided an exception to the general principle under common law that an inchoate offence was not committed unless the conduct planned or incited would, if carried out, be indictable in England.

The appellant (H) appealed against his convictions for soliciting to murder; using threatening, abusive or insulting words or behaviour with intent to stir up racial hatred; possessing threatening, abusive or insulting sound recordings with intent to stir up racial hatred; and possessing a document or record containing information of a kind likely to be useful to a person committing or preparing to commit an act of terrorism. Most of the counts of which H was convicted related to speeches given by him as Imam of a mosque between 1997 and 2000; the sound recordings in his possession were of such speeches and the documents in his possession were volumes of the Afghani Jihad Encyclopaedia. The cassettes and encyclopaedia had been seized by police in 1999 following his arrest on suspicion of involvement in a terrorist incident in the Yemen. They were returned to him and he was informed that no further action would be taken. The jury had found against H on issues relating to the meaning of his words, whether he had intended to incite to kill or stir up racial hatred and whether the encyclopaedia fell within the Terrorism Act 2000 s.58. H argued that

(1) his conviction for soliciting murder contrary to the Offences against the Person Act 1861 s.4 should be quashed because the prosecution had failed to prove an essential ingredient of the offence in that the solicitation was in a foreign jurisdiction and s.4 was confined to instances where the person solicited was a British national;

(2) there was an abuse of process because the returning of his materials gave him a legitimate expectation that he would not later be prosecuted for possession of them;

(3) the agents of the state had failed to bring a timely prosecution and the delay led to a risk of prejudice to H by reason of changes in attitude and public perception in relation to terrorism and by reason of a sustained campaign of adverse publicity, thus precluding a fair trial.

HELD

(1) It was accepted that the general principle at common law was that an inchoate offence was not committed unless the conduct planned or incited would, if carried out, be indictable in England, Board of Trade v Owen (1957) AC 602 considered. However, s.4 of the 1861 Act had amounted to an exception to that principle. The motivation for the enactment of s.4 appeared to have been the activities of aliens in England in support of murders or attempts to murder outside the jurisdiction. It would not therefore

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have made sense to have restricted the offence to situations where the murderers were to be British subjects. Nothing in the wording of s.4 suggested that the conspirators or the person incited should be British subjects nor was the common law so clear that that should have been implied, R v Bernard (1858) 8 St Tr NS 887 considered. The construction contended for by H would have produced an anomaly in 1861 and still would. There was no principle of international comity that required the legislature to restrict the inchoate offences committed within the English jurisdiction to those relating to a murder carried out by a British subject rather than a foreign subject. On the contrary, comity would weigh in favour of drawing no such distinction, Treacy v DPP (1971) AC 537 applied. Murder was no doubt singled out as an offence even when committed outside the jurisdiction due the particularly serious nature of the crime. It would be extremely anomalous, where no reason of comity existed, to distinguish between inciting a British subject within the English jurisdiction to commit such a crime and inciting an alien to do so.

(2) It was not likely to constitute an abuse of process to proceed with a prosecution unless (a) there had been an unequivocal representation by those with conduct of the investigation or prosecution of a case that the defendant would not be prosecuted and (b) that the defendant had acted on that representation to his detriment, R v Townsend (Phillip Henry) (1998) Crim LR 126 and R v Croydon Justices, Ex p. Dean (1993) QB 769 considered. The facts relating to the prosecution of H on the possession of the cassettes and encyclopaedia fell a long way short of satisfying those criteria.

(3) The fact that adverse publicity could have risked prejudicing a fair trial was no reason for not proceeding if the judge had concluded that it was possible to have a fair trial, R v Coutts (Graham James) (2006)UKHL 39 , (2006)1 WLR 2154 and Montgomery v HM Advocate (2000) UKHRR 124 considered. In the instant case, the judge had correctly concluded that the fairness of the trial was put at risk by the events which occurred during the delay. However, he had also correctly assessed that he could discharge the task of neutralising the effects of those matters by appropriate directions, guidance and summing up. The convictions were safe.

APPEAL DISMISSED

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Badgers are not 'property' for the purposes of the Criminal Damage Act 1971

CRESSWELL v DIRECTOR OF PUBLIC PROSECUTIONS: CURRIE v DIRECTOR OF PUBLIC PROSECUTIONS (2006)

DC (Keene LJ, Walker J) 30/11/2006

Criminal Law - Animals - Personal Property

Criminal Damage: Crown Immunity: Defences: Possession: Property: Snares And Traps: Statutory Interpretation: Wildlife: Destruction Of Traps To Protect Badgers: Protection Of Property: Meaning Of "Property" In S.10 Criminal Damage Act 1971: Destruction Of Badger Traps: S.1(1) Criminal Damage Act 1971: S.5 Criminal Damage Act 1971: S.10 Criminal Damage Act 1971: S.3(1) Criminal Law Act 1967: Protection Of Badgers Act 1992

Badgers that the Government sought to trap were not property for the purposes of the Criminal Damage Act 1971 s.10 nor at common law and accordingly individuals who destroyed badger traps had neither a defence under s.5 of the Act to charges of criminal damage nor the common law defence of protection of property, which still existed.

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The appellants (C) in conjoined cases appealed by way of case stated against a decision of a Crown Court to uphold their convictions for offences of criminal damage contrary to the Criminal Damage Act 1971 s.1(1). C had entered onto farmland and destroyed traps that were placed by officials of the Department for Environment, Food and Rural Affairs to cull badgers as part of research into the link between badgers and bovine tuberculosis. The procedure was to place traps on land until badgers became accustomed to them and then to bait them and finally set them. C contended that they had a lawful excuse to destroy the traps as they did so to protect property, namely the badgers, belonging to another, believing that property to be in danger. The Crown Court held that (i) a lawful excuse defence under s.5 of the 1971 Act was not available to C as badgers in the vicinity of the traps were not "property" within the meaning of s.10 of the 1971 Act and the badgers could not properly belong to another within the meaning of s.5 of the 1971 Act; (ii) the defence of prevention of crime under the Criminal Law Act 1967 s.3(1) was not available to C as the DEFRA officials were not committing a crime because the Protection of Badgers Act 1992 was not applicable to them as officers of the Crown; (iii) at common law the defence of protection of property was not available to C as it had been abolished by the enactment of the 1971 Act, and moreover at common law badgers were not property and C had to believe that a criminal defence was about to be committed and they did not have such a belief. The questions posed for the opinion of the High Court addressed whether the Crown Court had been entitled to come to the conclusions that it did. C contended that (1) badgers were property as they were being "reduced into possession" for the purposes of s.10 of the 1971 Act by the setting of the traps and that they were the property of DEFRA from the moment it had engaged in reducing the badgers into possession by the placing of traps; (2) the Crown was implicitly bound by the 1992 Act as, if it were not, the purpose, namely the protection of the welfare of badgers, would be frustrated; (3) the common law defence of protection of property was available to them.

HELD

(1) The badgers were not property within the meaning of s.10 of the 1971 Act and did not belong to anyone. Section 5 of the 1971 Act only applied if at the time of the act alleged to constitute criminal damage the individual charged believed that the property that he sought to protect was in immediate need of protection. One had to be able to identify with some course of precision an animal being reduced into possession. In the instant case the badgers moved about the vicinity of traps and one could not identify their being reduced into possession until they entered a set trap. Therefore, the Crown Court had been right to conclude that badgers were not property. Further, it could not be said that the badgers belonged to DEFRA from the moment it placed the traps as it had very little control over the badgers until they entered a set trap and the placing of the traps was merely a preparatory step.

(2) C could not rely on the prevention of crime defence under s.3(1) of the 1967 Act as the 1992 Act did not bind the Crown so DEFRA's actions were legal. The 1992 Act contained no such express statutory provision binding the Crown and the purpose of the legislation had not been wholly frustrated by the Crown's immunity so it was inappropriate to imply that the Crown was bound, Bombay Province v Bombay Municipal Corporation (1947) AC 58 applied. (3) The common law defence of protection of property still existed but on the facts as found it was not available to C. Section 5(2) of the 1971 Act clearly stated that "a person charged with an offence ... shall, whether or not he would be treated for the purposes of this Act as having a lawful excuse ...". That wording clearly indicated that s.5 of the 1971 Act was not seeking to substitute its own defence for an existing defence and that the defence at common law continued to exist. The definition of property at common law did not have a wider definition than that contained in s.5 of the 1971 Act and, whilst works of nature could amount to property at common law, badgers did not. Moreover, C did not on the facts as found have a belief that what the DEFRA officers were doing was a crime. Accordingly, whilst the Crown Court had erred in concluding that C did not have a defence at common law, it was correct that on the facts as found C could not avail

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themselves of the defence, DPP v Bayer (2003) EWHC 2567 (Admin) , (2004) 1 WLR 2856 considered. (4) (Obiter) A defence under s.5 of the 1971 Act had two qualifications: firstly, that the thing had to be property and, secondly, that it belonged either to the person charged or another as abandoned property would not meet the second qualification.

APPEALS DISMISSED

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Confiscation Orders: Rebuttal Evidence

R v CHRISTOPHER JOHN HESKETH (2006)

[2006] EWCA Crim 2596

CA (Crim Div) (Hooper LJ, Simon J, Lloyd Jones J) 3/11/2006

Sentencing - Criminal Procedure

Benefit From Criminal Conduct: Confiscation Orders: Rebuttal Evidence: Assumptions Made Regarding Source Of Offender's Income: Offender Asserting Legitimate Income From Gambling: S.71 Criminal Justice Act 1988: S.72aa(4) Criminal Justice Act 1988

The sum of a confiscation order was reduced where documentary evidence was produced that proved that the source of payments into the offender's various bank accounts was his legitimate gambling activities.

The appellant (H) appealed against a confiscation order in the sum of £95,520 made following his pleas of guilty to handling stolen goods. H had admitted buying two cars that he believed were stolen. Having served a notice under the Criminal Justice Act 1988 s.71 commencing confiscation proceedings, the Crown indicated that it considered it appropriate in H's case for the court to apply the assumptions in accordance with s.72AA(4) of the Act. The judge had therefore assumed that the large volume of cheques that had passed through H's various bank accounts and various other investments must have been the proceeds of criminal conduct. Although H claimed that the monies had been lawfully acquired, mainly by means of his gambling activities, at the time of the confiscation hearing documentary evidence requested by him had not been obtained. The judge had accepted the Crown's assertion that the amounts H claimed were generated from his earnings were not sufficient to maintain his lifestyle. Further documentary evidence was produced on appeal that supported H's assertion that the monies had been acquired by means of gambling and H gave detailed oral evidence as to his methods of gambling. The issue for determination was whether H had been able to demonstrate on the basis of the further evidence that the assumptions made had been incorrect on the balance of probabilities. It had to be decided whether the sums in question had been generated solely from gambling or whether they were the proceeds of dealing in stolen cars that had been laundered by the placing of bets. The Crown argued that even if the various payments had been generated by gambling, it was merely the laundering of profits earned by H in dealing in stolen cars. It also submitted that H had not given a satisfactory explanation of the source of his stake money.

HELD

H had rebutted the assumptions made regarding the source of the payments made to his various accounts. On the balance of probabilities, the sums were the product of gambling as described by H and not the proceeds of criminal conduct. Three matters supported that conclusion:

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(a) had gambling been used as a means of money laundering it was to be expected that records would have been kept showing the apparent legitimacy of the transactions, particularly copies of cheques. H had failed to rebut the assumptions in the lower court as he had not kept such records;

(b) had gambling been used as a means of laundering the proceeds of crime it was to be expected that the method employed would be much less sophisticated and labour-intensive than that used by H;

(c) it was to be borne in mind that the provisions of the Act that permitted the assumptions to be drawn against H only applied because of his guilty pleas to the two counts of handling stolen goods. He had no other conviction for a relevant offence and there was no evidence of any involvement in other criminal activities. H's gambling activities could have been carried out using relatively small stakes derived initially from his income from employment. The original order was replaced with one in the sum of £69,000, representing the value of the two stolen cars.

APPEAL ALLOWED IN PART

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Kits Used in the Taking of Blood Samples are Correct Unless Proved to the Contrary

CARTER v DIRECTOR OF PUBLIC PROSECUTIONS (2006)

DC (Latham LJ, Fulford J) 8/11/2006

Criminal Evidence - Road Traffic

Admissibility: Blood Samples: Blood Tests: Driving While Over The Limit: Forensic Evidence: Presumptions Of Fact: Blood Sample: Forensic Testing Procedure: Requirement To Show Proper Procedure Followed: Meaning Of "Used" S.8(1) S.8(2) Road Traffic Act 1988: S.5 Road Traffic Act 1988: S.8(2) Road Traffic Act 1988: Art.6 European Convention On Human Rights: S.8(1) Road Traffic Act 1988

Courts were entitled to presume that the procedure laid down for the preparation of kits used in the taking of blood samples from motorists suspected of driving having consumed an excess of alcohol had been carried out correctly, unless there was something in the matter before a court to suggest to the contrary.

The appellant (C) appealed by way of case stated against the decision of a district judge sitting in a magistrates' court to convict him for driving having consumed excess alcohol. C had been stopped by the police and had tested positive in a roadside breath test. C then undertook a further breath test at a police station, provided a sample of blood for a blood alcohol test that indicated a level above the prescribed limit, and was charged under the Road Traffic Act 1988 s.5. Before trial, C indicated that he would take issue with the police station procedure and the analysis of the blood sample, so the officer who administered the procedure at the station, and the blood analyst, attended trial. C gave evidence that he had only consumed four pints of lager shandy, and his expert gave evidence that if that consumption was correct there would have been no alcohol remaining in C's body when the blood sample was taken. The police officer and the analyst gave evidence as to the breath and blood testing procedure. In the course of that evidence, the analyst stated that he was unable to say whether the phial into which C's blood sample had been placed contained preservative, and that the absence of preservative could affect the proportion of alcohol in the blood sample. C submitted that the district judge could not be satisfied so as to be sure that the blood analysis was accurate, given the analyst's evidence and his inability to state whether or not the phial into which the sample had been placed contained preservative. The district judge held that it was not necessary for the prosecution positively to prove the presence of preservative in the phial in the absence of C's raising it as an issue, which he had not done, and that she was satisfied from the evidence adduced as to the procedures in place for the taking and analysis of the sample that the prosecution was entitled to rely on a presumption of fact as to the presence of preservative, unless challenged evidentially. The district judge further held that she was entitled to have regard to the results of the breath tests in rejecting C's evidence as to the amount of alcohol that he had consumed. On appeal, issues arose as to whether the district judge was entitled to (i) rely on a presumption of fact from the evidence of the police officer and the analyst as to the presence of preservative in the blood sample, unless challenged evidentially; (ii) take into account that there had been a positive reading on the evidential breathalyser machine sufficient to trigger the option to provide a sample of blood under s.8(2) of the Act in her determination of C's credibility. C contended that (1) the moment that the analyst accepted that if there was no preservative in the phial into which the blood was placed any blood analysis could be rendered inaccurate, the prosecution was required to establish that there was preservative in the phial, as otherwise there would be a doubt as to the accuracy of the analysis that justified an acquittal.

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HELD

(1) In the instant case, there was no evidence to sustain the proposition that the sample was anything other than in analysable condition, untainted by alien substances, Collins v Lucking (1983) RTR 312 considered. The courts had to bear in mind that the motorist had the opportunity himself to have a sample analysed; that was the real defence to any alleged mistakes, errors or omissions. Unless there was something in the material before the court to suggest the contrary, the court was entitled to presume that the procedure laid down for the preparation of kits such as that used in the blood sample in question had been carried out correctly, Dhaliwal v DPP (2006) EWHC 1149 (Admin) applied. Accordingly, the judge was entitled to come to the conclusion that she did, based on the evidence of the police officer and the scientist. Further, as far as any infringement of the European Convention on Human Rights 1950 Art.6 was concerned, the presumption appropriate in the instant case was based on commonsense and was proportionate as it was available to a motorist to have his own blood sample analysed, and a motorist was afforded the opportunity to raise proper questions that could undermine the presumption that everything was in accord.

(2) Section 8(1) and s.8(2) of the Act had to be read together. The word "used" appeared rather than the sort of word one would expect if the court was required to treat certain evidence as inadmissible in proceedings. It was inevitable that reference had to be made to the breath test taken at the police station if there was a subsequent procession to a blood sample, as the initial breath test formed part of the facts of a case. The word "used" in s.8(1) and s.8(2) of the Act was essentially concerned with the process of proof of the reliability of the sample. The district judge did not purport to use the evidence of the breath test in the police station as some support by way of comparison for the correctness of the blood analysis. She used it as a means of determining whether C's evidence was capable of belief, which was a proper use, Smith v Geraghty (1986) RTR 222 considered and Yhnell v DPP (1989) RTR 250 applied.

APPEAL DISMISSED

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Chief Constable not Liable for Criminal Acts of Off-Duty Police Officer

N v CHIEF CONSTABLE OF MERSEYSIDE (2006)

[2006] EWHC 3041 (QB)

QBD (Liverpool) (Nelson J) 29/11/2006

Torts - Employment - Police

Indecent Assault: Police Officers: Rape: Vicarious Liability: Vicarious Liability For Acts Of Off Duty Police Officer: Acting In Purported Performance Of Duty: Ostensible Use Of Authority As Police Officer: Close Connection Between Tort And Tortfeasor's Employment

A chief constable was not liable for the tortious and criminal acts of an off-duty police officer since the officer had been on a "frolic of his own" when committing the acts.

On a trial of a preliminary issue it fell to be determined whether the defendant chief constable was liable for the tortious and criminal acts of a police officer (T). T, whilst off duty and outside his working area, had been wearing his police uniform and sitting in his own car near a nightclub when the claimant (N) had been carried out of the club severely intoxicated. After a first aider, employed by the club, expressed his concern about N's condition, T informed him that he would take N to a police station. T then informed N that he was a police officer, invited her into his car and showed her his police badge. T drove past a few police stations and took N to his house where he raped and indecently assaulted her and made a video film and computer stills of the assaults. T pleaded guilty to rape and indecent assaults. N submitted that T had been acting in the purported performance of his duty as a police officer and therefore the chief constable was vicariously liable for his acts. The chief constable argued that T had been using his uniform and position as a police officer as a camouflage to achieve his desire to assault vulnerable women. Further, the fact that T had been a police officer and had the uniform and a warrant card simply gave him the opportunity to commit the assaults and T had not been performing any police function but had been "on the prowl" for his own purpose.

HELD

The chief constable was not vicariously liable for T's tortious and criminal acts. The facts were not consistent with T initially intending to help N. The use of the uniform and the warrant card to persuade the first aider and N to place trust in him was an apparent or ostensible use of his authority as a police officer, but that, combined with the fact that he had been a police officer at the time, did not render the chief constable vicariously liable in itself. None of what had followed after N had entered T's car could be regarded as in any sense being within the scope of his employment, though that was not decisive in itself, as the whole of the circumstances had to be considered. T had been merely using his uniform, warrant card, and position as a police officer as an opportunity to commit the assaults on N. Although T had owed a general duty to the public to protect potential victims, he had not owed a specific duty to care for N. Nor had he been purporting to perform a police function such as arrest or enforcing police authority, Bernard v Attorney General of Jamaica (2004) UKPC 47 , (2005) IRLR 398 and Weir v Bettison (sued as the Chief Constable of Merseyside Police) (2003) EWCA Civ 111 , (2003) ICR 708 distinguished. T had been "on the prowl" looking for a vulnerable victim, off duty, not in his working area and sitting in his own private car. In the circumstances he had been "on a frolic of his own", Attorney General of the British Virgin Islands v Hartwell (2004) UKPC 12 , (2004) 1 WLR 1273 applied. T's torts were not so closely connected with his employment that it

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would be fair and just to hold the chief constable vicariously liable, Lister v Hesley Hall Ltd (2001) UKHL 22 , (2001) 2 WLR 1311 applied.

PRELIMINARY ISSUE DETERMINED

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SI 3144/2006 The Nationality, Immigration and Asylum Act 2002 (Commencement No 12) Order 2006

In force **21 December**. This Order brings into force Section 10(5) of the Nationality, Immigration and Asylum Act 2002, which relates to the definition of 'certificate of entitlement'.

Paragraph (a) of Section 10(5) is excluded from the commencement of that provision. This is because it repeals part of a provision (Section 3(9) of the Immigration Act 1971) which is replaced in its entirety by an amendment made by Section 30 of the Immigration, Asylum and Nationality Act 2006. That Section was brought into force by the Immigration, Asylum and Nationality Act 2006 (Commencement No. 1) Order 2006.

SI 3145/2006 The Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) Regulations 2006

In force **21 December**. These Regulations provide the procedure under which a person can apply for and obtain a Certificate of Entitlement to Right of Abode in the United Kingdom.

Regulation 3 sets out the authority to which an application for a certificate must be submitted. The authority varies according to where the applicant for the certificate is located.

Regulation 4 provides that an application must be accompanied by certain documents and Regulation 5 defines what is required in order for a passport to be valid for the purposes of an application.

Regulations 6 and 7 provide when and how a certificate will be issued.

Regulations 8 and 9 provide for when a certificate will expire and the circumstances in which a certificate can be revoked.

Regulation 10 provides a saving for certificates that have been issued prior to these Regulations coming into force.

SI 3148/2006 The Controlled Drugs (Supervision of Management and Use) Regulations 2006

In force **1 January 2007** as they apply to England, **1 March 2007** as they apply to Scotland). These Regulations contain measures relating to arrangements underpinning the safe management and use of controlled drugs in England and Scotland.

Part 1 outlines preliminary matters.

Part 2 relates to accountable officers. A number of health care bodies are prescribed as designated bodies (Regulation 3), and these are required to appoint accountable officers (Regulation 4). There are limitations on who may act as accountable officers (Regulation 5) and a duty on designated bodies to establish arrangements for their removal from office in specified circumstances (Regulation 6). Designated bodies are required to ensure that their accountable officers are sufficiently resourced (Regulation 7).

Accountable officers are given a number of functions relating to the safe management and use of controlled drugs. Essentially, these require the establishment by the accountable officer of a number of sets of arrangements which relate to the safe management and use of controlled drugs. These include:

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- The basic arrangements (Regulation 9).
- Safe disposal arrangements (Regulation 10).
- Auditing arrangements (Regulation 11).

As well as being given functions in relation to their own designated bodies, accountable officers are given functions in relation to health care professionals and others whose work involves the management and use of controlled drugs, for which their designated body is responsible. These responsibilities include:

- Maintaining records of and investigating concerns (Regulations 15 and 16).
- Taking appropriate action where there are well-founded concerns (Regulation 17).

Accountable officers for Primary Care Trusts and Health Boards also have particular responsibilities for setting up local intelligence networks, relating to the management and use of controlled drugs, for their area (Regulation 18).

Part 3 contains arrangements in relation to periodic inspections of premises used for the management and use of controlled drugs, where these issues would not be dealt with as part of other health and social care inspections, and other measures in relation to powers of entry.

Part 4 deals with co-operation between a number of listed health care bodies and other organisations (Regulation 22), and in particular contains detailed arrangements with regard to the disclosure of information between the bodies that are required, by the Regulations, to co-operate with each other in connection with the identification of cases where action may need to be taken against individuals (Regulations 24 to 27). There are record keeping requirements (Regulation 28), and duties with regard to occurrence reports, which are quarterly statements that accountable officers must make about details of concerns that their designated body has (Regulation 29). Accountable officers have duties to take action with regard to concerns that they have (Regulation 30), and persons acting in good faith under the arrangements for sharing information under this Part are protected from damages claims (Regulation 31).

SI 3168/2006 The Safety of Sports Grounds (Designation) (No 4) Order 2006

In force **20 December**. This Order designates the Keepmoat Stadium in Doncaster, occupied by Doncaster Rovers Football Club, as a sports ground requiring a safety certificate under the Safety of Sports Grounds Act 1975.

SI 3189/2006 The Disability Rights Commission Act 1999 (Commencement No 3) Order 2006

In force **4 December**. This Order brings into force the whole of the Disability Rights Commission Act 1999, so far as it is not already in force. The practical effect is to bring into force the repeal of a few minor and obsolete provisions of the Disability Discrimination Act 1995 relating to codes of practice prepared by the (former) National Disability Council and the Secretary of State. Codes of practice are now prepared by the Disability Rights Commission under Section 53A of the Disability Discrimination Act 1995.

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SI 3200/2006 The Fraud Act 2006 (Commencement) Order 2006

In force **15 January 2007**. This Order brings into force Sections 1 to 14 and Schedules 1 to 3 of the Fraud Act 2006. Sections 15 and 16 came into force on Royal Assent on 8 November 2006.

SI 3217/2006 The Criminal Justice Act 2003 (Commencement No 14 and Transitional Provision) Order 2006

In force **1 January 2007**. This Order brings into force in England and Wales, subject to the transitional provision in article 3, Sections 14 and 15(1) and (2) of the Criminal Justice Act 2003 in relation to certain offences specified in article 2(a). See article on page 32.

SI 3220/2006 The Gambling Act 2005 (Commencement No 5) Order 2006

In force **5 December**. This Order brings into force paragraph 23 of Schedule 7 to the Gambling Act 2005 (relevant offences: power to amend Part 1). Paragraph 23 contains a power for the Secretary of State to amend by Order the provisions of Part 1 of Schedule 7 (the offences).

SI 3243/2006 The Armed Forces (Entry, Search and Seizure) Order 2006

In force **1 January 2007**. Powers of search and seizure of the service police and other individuals in relation to the investigation of service offences are set out in Part 2 of the Armed Forces Act 2001 and in subordinate legislation made under that Part.

The main provisions of this Order are as follows:

- Article 3 of this Order permits material to be removed from premises being searched where there are reasonable grounds for believing that the material is, or contains, material which a service policeman would be entitled to seize. It also permits the seizure of material which the service policeman would be entitled to seize, but it is not reasonably practicable for it to be separated on the premises from other material. The article does not apply to searches of premises being carried out under the authority of a commanding officer under Section 7 of the Armed Forces Act 2001 (other searches of premises require the authority of a judicial officer).
- Article 4 makes broadly equivalent provision in relation to material found by a service policeman when lawfully searching an individual.
- Under article 5, where material is seized in exercise of the power under article 3, a notice must generally be given to the occupier of the premises or (if the occupier is absent) to the person in charge of the premises. If no such person is present, a notice must be attached prominently to the premises. The notice must state what has been seized and other specified information.
- Article 6 requires that where material is seized under articles 3 or 4, it must be examined as soon as reasonably practicable and property whose retention is not authorised must be returned as soon as reasonably practicable.
- Under article 7, seized property which is subject to legal privilege and (under article 8) seized property which consists of or includes excluded or special procedure material, must, subject to limited exceptions, be returned as soon as reasonably practicable. Article 11 provides for the person to whom property must be returned. This will be the

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person from whom the property was seized, unless the person obliged to return the property is satisfied that someone else has a better right to the property.

- Article 9 provides for the retention of seized property where there are reasonable grounds for believing either that it is the proceeds of an offence or evidence of an offence and (in either case) it is necessary to retain it to prevent its being concealed, lost, damaged, altered or destroyed.
- Article 12 permits a person with an interest in property seized under a power under armed forces legislation (including under article 3 or 4 of this Order) to apply to a judicial officer for its return. Article 12 does not apply seizures under Section 7 of the Armed Forces Act 2001 (under Section 8 of that Act such seizures are subject to automatic review by a judicial officer). Where an application is made under article 12 stating that the property is, or contains, property subject to legal privilege, special procedure material or excluded material, a duty generally arises to secure the seized material from being examined, copied or used (articles 13 and 14). There are exceptions where the applicant consents or a judicial officer so directs. Under article 15, a similar exclusion of examination, copying and use applies (subject to the consent of the person from whom it was seized) to seized property which would have to be returned but for the fact that it is not reasonably practicable to separate it from property which can be retained.

SI 3244/2006 The Armed Forces (Entry, Search and Seizure) (Amendment) Order 2006

In force **1 January 2007**. The Armed Forces (Entry, Search and Seizure) Order 2003 supplements the entry, search and seizure powers conferred by the Armed Forces Act 2001 on service policemen and on those authorised by a commanding officer to search certain premises. The main changes made by this Order are to amend the 2003 Order to take account of certain changes in the equivalent powers of civilians in the Police and Criminal Evidence Act 1984 made by the Criminal Justice Act 2003 and the Serious Organised Crime and Police Act 2005.

The changes made by this Order include:

- Paragraphs 1, 2 and 3 of the Schedule make provision to enable service policemen to apply, on grounds to be stated in the warrant, for search warrants allowing entry to and search of named premises on more than one occasion.
- Paragraph 4 requires the warrant to specify whether the maximum number of entries allowed is unlimited or limited to a specified maximum.
- Paragraph 5 of the Schedule permits the making of as many copies of multiple entry warrants as may be required.
- Paragraph 6 of the Schedule gives a person accompanying a service policeman on a search of premises the same powers of search and seizure as the service policeman.
- Paragraph 7 requires entry and search to be within 3 months of the issue of a warrant.
- Paragraph 8 requires approval to be obtained from a senior policeman of a specified minimum rank for the execution of multiple entry warrants.

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SI 3257/2006 The Countryside and Rights of Way Act 2000 (Commencement No 9 and Saving) (Wales) Order 2006

In force **6 December**, apart from Article 3, which is in force 1 April 2007. This Order brings into force further provisions of the Countryside and Rights of Way Act 2000 in relation to Wales, and clarifies the effect of previous commencements of other provisions.

Article 2 of the order brings into force:

- Section 57 of the Act insofar as it gives effect to paragraphs 1, 6 and 9(5) of Schedule 6 to the Act.
- Section 57 of the Act insofar as it gives effect to paragraph 26 of Schedule 6 to the Act.
- The guidance-issuing powers under Section 69(1) and (3) of the Act.
- Section 102 of the Act insofar as it gives effect to the entry relating to Section 193(2) of the Law of Property Act 1925 contained in Part I of Schedule 16 to the Act.
- Section 102 of the Act insofar as it gives effect to the repeal of paragraph 9 of Schedule 15 to the Wildlife and Countryside Act 1981 contained in Part II of Schedule 16 to the Act.

Article 3 of this Order commences Section 69 of the Act insofar as it is not already in force and insofar as it is not commenced by article 2 of this Order.

SI 3275/2006 The Asylum (Designated States) (Amendment) (No 2) Order 2006

In force **13 December**. This Order removes Sri Lanka from the list of States in Section 94(4) of the Nationality, Immigration and Asylum Act 2002, which concerns appeal rights for unfounded human rights or asylum claims.

SI 3277/2006 The Immigration (Designation of Travel Bans) (Amendment) Order 2006

In force **13 December**. This Order amends the Immigration (Designation of Travel Bans) Order 2000 by substituting the Schedule set out in the Schedule to this Order for the Schedule to the 2000 Order (which was last substituted by the Immigration (Designation of Travel Bans) (Amendment) Order 2005).

Any person named by or under an instrument listed in the new Schedule or falling within a description in such an instrument will be excluded from the United Kingdom (subject to the exceptions specified in article 3 of the 2000 Order).

The effect of substituting the Schedule set out in the Schedule to this Order for the Schedule to the 2000 Order is to add to, and delete from, the list of designated instruments, and to make some minor technical amendments to the list.

Article 3 of this Order revokes the Immigration (Designation of Travel Bans) (Amendment) Order 2005.

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SI 3285/2006 The Gambling (Personal Licence Fees) Regulations 2006

In force **1 January 2007**. These Regulations prescribe application, maintenance and other fees relating to personal licences issued under Part 6 of the Gambling Act 2005.

Regulation 2 defines terms used in the Regulations. Regulation 2(3) provides that a reference to a section of the Act in Regulations 3, 5 or 6 is a reference to that section as applied to personal licences by Section 128(1) of the Act.

The definitions of "personal management licence" and "personal functional licence" divide personal licences into two categories for the purposes of prescribing fees in respect of them.

Regulation 3 prescribes different application fees payable in respect of each category of personal licence. Regulation 3(2) provides for a discounted application fee where an application for a personal licence is made through the Gambling Commission's website. Regulation 3(3) provides that an application shall not be regarded as being made via the Commission's website unless it contains specified information or documents (to the extent that such information or documents can be transmitted via the website), namely:

- Information as to the activities to be authorised by the licence.
- An address in the United Kingdom at which a document issued under the Act may be served on the applicant.
- Information as to whether the applicant has been convicted of a relevant offence (as defined in Section 126 of and Schedule 7 to the Act).
- Information as to whether the applicant has been convicted of any other offence.
- Such other information or documents as the Gambling Commission may direct.

Regulation 4 prescribes different maintenance fees payable in respect of each category of personal licence. These fees are prescribed pursuant to Section 132(2) of the Act. The first maintenance fee is payable to the Gambling Commission within 30 days of the fifth anniversary of the date on which the licence was issued (Regulation 4(1)). Thereafter, maintenance fees are payable every five years (Regulation 4(2)).

Regulation 5 prescribes the fees payable in respect of an application to vary a personal licence under Section 104 of the Act (as applied to personal licences by Section 128(1)). Variation fees are not subject to any reduction where the application is made via the Commission's website. The fee differs depending on the whether the application is made under:

- Section 104(1)(a), to add or amend a licensed activity (Regulation 5(1)(a)).
- Section 104(1)(a), to remove a licensed activity (Regulation 5(1)(b)).
- Section 104(1)(b), to amend another detail of the licence (Regulation 5(2)).
- Section 104(1)(c), to add, amend or remove a condition attached to the licence (Regulation 5(3)).

Regulation 6 prescribes the maximum fee payable on application for a copy of a personal licence under Section 107 (as applied to personal licences by Section 128(1)).

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SI 3287/2006 The Gambling Appeals Tribunal Fees Regulations 2006

In force **1 January 2007**. These Regulations provide the fee that will be payable when bringing an appeal to the Gambling Appeals Tribunal under Section 141 of the Gambling Act 2005. The level of fee will depend on whether the licence is an operating licence or a personal licence; and also on the type of operating or personal licence that is the subject matter of the appeal. An appeal can also be brought against an order by the Gambling Commission to void a bet.

The Regulations provide that no fee will be payable when a person is in receipt of a qualifying benefit listed in Regulation 3. A fee can also be reduced or waived when the Tribunal is satisfied that undue hardship would be caused to the appellant. An appellant can apply to the Tribunal to have any fee paid by him refunded in accordance with the grounds stated in Regulation 5.

SI 3290/2006 The Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment No 2) (England and Wales) Order 2006

In force **7 December**. This Order amends articles 3(k) and 4(n) of, and paragraph 23 of Schedule 3 to, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

Those three provisions of the 1975 Order provide exceptions to the Rehabilitation of Offenders Act 1974, where the Football Association or the Football Association Premier League assesses the suitability of and approves a person as able to undertake certain activities as a football steward without a licence issued by the Security Industry Authority, in accordance with an exemption granted by regulations made under section 4 of the Private Security Industry Act 2001.

Article 3(k) of the 1975 Order provides an exception to Section 4(2) of the 1974 Act (questions which relate to spent convictions) and article 4(n) of the 1975 Order provides an exception to Section 4(3)(b) of the 1974 Act (spent convictions not to be a proper ground for dismissal or for prejudicing a person in any occupation or employment). Paragraph 23 of Schedule 3 to the 1975 Order provides an exception to article 4(1) of the 1974 Act (spent convictions not to be considered in proceedings) in relation to proceedings in which a refusal by the Football Association or the Football Association Premier League to so approve a person is challenged.

This Order extends the exceptions to the 1974 Act which are in articles 3(k) and 4(n) of, and paragraph 23 of Schedule 3 to, the 1975 Order, to cover the activities of the Football League as well as the Football Association and the Football Association Premier League. The exemption enabling football stewards to undertake licensable conduct without a licence issued by the Security Industry Authority has been granted by amendment to Section 4 of the 2001 Act rather than by regulations made under that provision, and in consequence this Order also amends the 1975 Order to enable the exceptions to the 1974 Act to apply in these circumstances.

SI 3293/2006 The Gambling Appeals Tribunal Rules 2006

In force **1 January 2007**. These Rules regulate the procedure for appeals to the Gambling Appeals Tribunal, established under Section 140 of the Gambling Act 2005.

- Part 1 (rules 1 to 3) introduces the Rules and includes interpretation of terms used in the Rules.
- Part 2 (rules 4 to 20) contains preliminary matters, which take place prior to the appeal hearing.
- Part 3 (rules 21 to 29) applies when the appeal hearing has commenced.

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- Part 4 (rules 30 to 32) makes provision for appeals from the Tribunal to the High Court in England and Wales or, in Scotland, the Court of Session.
- Part 5 (rules 33 to 42) makes provision for general matters such as the register kept by the Tribunal and the rules that apply to the sending of notices.

Copies of all SI's can be found at **http://www.opsi.gov.uk/si/si-2006-index.htm**

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Notes

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