

# Digest



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

This month's edition contains details of proposed legislation announced in the Queen's Speech that relate to policing and the general criminal justice system, including details of further amendments to the Criminal Justice and Immigration Bill.

Several issues relating to national security are also covered this month, including the Prime Ministers statement on security; the UK Border Agency; the Law Lords rulings in relation to Control Orders; the IPCC Stockwell One report; and the introduction of provisions to require passenger and crew information before their arrival or departure from the UK.

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

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On 6 November, HM The Queen outlined the Government's plans for new legislation in her annual speech at the State Opening of Parliament. Those that relate to the criminal justice system, policing, crime and security or that may impact on policing in some way are briefly set out below:

### **Counter Terrorism Bill**

A Counter Terrorism Bill is to be introduced to address short-comings identified by the Government in existing legislation. The Government's intention to introduce such a Bill was first announced in the Queen's Speech in November 2006. Since then, the Government has made a number of announcements on the intended provisions that would be included in such a Bill (see July and August editions of the *Digest*). It is expected that the main provisions in the Bill will include:

- ◆ Measures to ensure that full use can be made of DNA in terrorism investigations.
- ◆ Changes to enable post-charge questioning of terrorist suspects and the drawing of adverse inferences from a refusal to say something later relied on in court.
- ◆ A requirement for convicted terrorists to provide the police with personal information on their release from prison and to notify any changes to this information.
- ◆ Introduction of a foreign travel order that will enable convicted terrorists to be banned from travelling overseas.
- ◆ Funding arrangements for protecting key sites.
- ◆ An extension of the pre-charge detention period in terrorist cases.

The issues of post-charge questioning, drawing of adverse inferences and the extension of the pre charge detention period are all expected to be the subject of wide consultations prior to being set out in the Bill. It appears, from various comments, made by Ministers that the Government are seeking to extend the current period of 28 days up to 56 days. (See also report on Liberty survey of pre-charge detention periods on page 51).

### **Criminal Justice and Immigration Bill**

The Criminal Justice and Immigration Bill is being carried over from the previous Parliamentary session. It has been covered widely in several issues of the *Digest*. In the last session of Parliament, the Bill reached the Public Bill Committee stage. On 7 November, the Justice Secretary, Jack Straw, presented the Bill to Parliament, it was read the First and Second time without Question put, and stood committed to a Public Bill Committee in respect of clauses 10 to 129 and Schedules 5 to 23, pursuant to Standing Order No. 80A (Carry-over of bills). See article on page 22 on further amendments to the Bill.

## Employment Bill

This Bill was not specifically mentioned in the Queen's Speech but appeared in the background notes. The intended aim of the Bill will be to simplify, clarify and build a stronger enforcement regime for key aspects of employment law. Provisions in the Bill are expected to include ones to:

- ◆ Repeal rules, including statutory dismissal and grievance procedures, to pave the way for the outcome of the Dispute Resolution Review.
- ◆ Clarify and strengthen the enforcement framework for the National Minimum Wage, and strengthen the employment agency standards enforcement regime by making offences under the Employment Agencies Act each way offences and clarifying investigative powers.
- ◆ Support vulnerable workers.
- ◆ Amend trades union law and ensure compliance with the European Court of Human Rights judgement in *Asleft v UK*. This will give trades unions clearer rights to determine their membership, and expel members on the basis of their membership of a political party.
- ◆ Following further consultation - to extend the right to request flexible working. (See also article on Work-Life Balance Employer Survey on page 21.)

## EU Reform Treaty Bill

The EU Reform Treaty Bill will transpose the provisions of the agreement reached at October's meeting of the European Council into UK law. The Reform Treaty will streamline the EU's governance structures appropriate to the Union's enlarged membership, create a permanent President of the European Council and extend qualified majority decision-making for Council decisions. The Government has stated that there will be no transfer of power away from the UK and, in particular, that:

- ◆ There is nothing in the new Treaty which requires us to change our existing labour and social legislation.
- ◆ Our common law system and our police and judicial processes have been protected.
- ◆ Our independent foreign and defence policy is maintained.
- ◆ Our tax and social security system is protected.

## Housing and Regeneration Bill

The Housing and Regeneration Bill will establish a new Homes and Communities Agency to maximise the use of spare public sector and brownfield land. It will liberalise powers to create 'eco towns' and also implement a European Court of Human Rights ruling on Gypsies and Travellers.

Although not directly affecting police, the Bill is intended to support the delivery of the three million new homes by 2020 that Government estimations have shown will be needed to meet growing demand, so it may well impact on police forces in respect of changes to local infrastructures.

## **Regulatory Enforcement and Sanctions Bill**

The Regulatory Enforcement and Sanctions Bill will create an independent body: the Local Better Regulation Office (LBRO) within the Department of Trade and Industry. The LBRO would have three key functions:

- ◆ Helping environmental health and trading standards services to plan, by setting out priorities to target inspections at a local level.
- ◆ Supporting and encouraging new practices to reduce burdens on business, for example by agreeing consistent approaches to regulation for businesses across all local authorities.
- ◆ Improving the performance of trading standards and environmental health services, by encouraging better risk-based targeting to focus resources on rogue trading.

## **Draft Bills announced**

### **Draft Citizenship and Immigration Bill**

The purpose of the Draft Immigration and Citizenship Bill will be to take forward any recommendations emerging from the Goldsmith Review of Citizenship requiring primary legislation. This review was launched on 5 October 2007.

The review will seek to clarify the legal rights and responsibilities associated with British citizenship, and will consider the differences associated with different categories of British nationality. The incentives for long term residents to become British citizens will be examined, alongside the role of citizens and residents within civic society. Further details on the review can be found at <http://www.justice.gov.uk/reviews/citizenship.htm>

### **Draft Constitutional Renewal Bill**

The content of this Bill will be determined by the consultation process coming out of the Green Paper, "Governance of Britain". Possible clauses that may feature in the Bill include:

- ◆ Placing Parliament's role in ratifying international treaties on a statutory footing.
- ◆ Changing the role of the Attorney General. This would probably mean that in future the Attorney General would retain the role of government legal adviser, but only play a part in prosecution decisions in a limited number of prosecutions involving the public interest (e.g. such as the BAE Systems case). In respect of the majority of criminal offences, decisions by the Director of Public Prosecutions would be final.
- ◆ Placing the Civil Service on a statutory footing in order to strengthen its independence.

When published, the aforementioned Bills will appear at <http://www.publications.parliament.uk/pa/pabills.htm>

## Prime Minister's Statement on National Security

On 14 November, the Prime Minister made a statement on national security to Parliament.

The Prime Minister announced a number of proposals intended to protect the strategic infrastructure of railway stations, ports and airports, and other crowded places. The measures to be introduced are based on recommendations in a report by Lord West, who conducted a review on the protection of strategic infrastructure of the UK's stations, ports and airports, and other crowded places. It is understood that Lord West's report will not be published in full, due to its sensitive nature.

Government proposals include:

- ◆ The installation of robust physical barriers as protection against vehicle bomb attacks.
- ◆ The nomination of vehicle exclusion zones to keep all but authorised vehicles at a safe distance.
- ◆ Making buildings blast-resistant.

To help achieve this:

- ◆ Companies responsible for crowded places will be given detailed and updated advice on how they can improve their resilience against attack, by both better physical protection and greater vigilance in identifying suspicious behaviour.
- ◆ New guidance will be sent to thousands of cinemas, theatres, restaurants, hotels, sporting venues and commercial centres, and all hospitals, schools and places of worship, and it will include advice on training staff to be more vigilant.
- ◆ Up to 160 counter-terrorism advisers will train civilian staff to identify suspect activity and to ensure premises have secure emergency exits, that CCTV footage is used to best effect, and that there are regular searches and evacuation drills.
- ◆ Local authorities will be required, as part of their performance framework, to assess the measures they have taken to protect against terrorism.
- ◆ Architects and designers will be encouraged to "design-in" protective security measures to new buildings, including safe areas, traffic control measures and the use of blast-resistant materials.

In respect of the building of extra barriers and barricades, the Prime Minister's official spokesman has stated that there will be a process of consultation with the relevant organisations, and that responsibility of installation would be dependent on who owned the sites. In respect of funding, there will be more tailored and specific advice, although the owners of such sites will be responsible for the costs of their security. Decisions will be made on a case-by-case basis regarding which sites would be subject to the new measures,



but the Government will not yet announce exactly what buildings and measures would be included.

In advance of the national security strategy, which will be published in the next few weeks, and the forthcoming Counter Terrorism Bill, to be introduced shortly, the Prime Minister also announced that:

- ◆ The security budget, which is £2.5 billion this year, will rise to £3.5 billion in 2011.
- ◆ The size of the Security Service (which was under 2,000 in 2001) will rise to over 4,000.
- ◆ From now until 2011, an additional £240 million will finance counter-terrorism policing, which will be focused as much on preventing the next generation of terrorists as on pursuing current targets. This figure will include additional funding for further training of the 3,500 neighbourhood police teams to deal with radicalisation in their local communities.
- ◆ Around £400 million in the next three years will be invested through the Foreign Office, the Department for International Development and the British Council to tackle radicalisation and promote understanding overseas.
- ◆ To process terrorist cases more efficiently and reduce the time between arrest and trial, 14 new specially protected courtrooms will be built, a single senior judge will manage all terrorism cases and a single senior lead prosecutor in the Crown Prosecution Service will be appointed to be responsible for cases relating to inciting violent extremism.
- ◆ A new unit, bringing together police and security intelligence and research, will be set up to identify, analyse and assess the inner circle of extremist groups, as well as those at risk of falling under their influence.
- ◆ Work commissioned by the Economic and Social Research Council, King's College and the Royal Society for Arts, which is presently being conducted on how best to deal with radicalisation at home and abroad, will be drawn upon in future Government initiatives.
- ◆ Further funding is to be made available through the Youth Justice Board, the National Offender Management Service and voluntary agencies that work with young people, to support young people who may be targeted for recruitment by extremist groups.
- ◆ The Secretary of State for Innovation, Universities and Skills and the Minister for Lifelong Learning, Further and Higher Education are to invite universities to lead a debate on how we maintain academic freedom while ensuring that extremists can never stifle debate or impose their views. Consultation will also take place on how to support further education colleges as well as universities.
- ◆ The restrictions on hand baggage on aircraft, i.e. the one-bag-per-passenger rule, will be progressively lifted.

The Prime Ministers statement can be viewed in full at <http://www.number-10.gov.uk/output/Page13757.asp>

## UK Border Agency

In July this year, the Prime Minister announced the Government's decision to integrate the work of HM Revenue and Customs (HMRC), the Border and Immigration Agency, and UKvisas, both overseas and at the main points of entry to the UK, and establish a unified border force. The Prime Minister then asked the Cabinet Secretary to conduct a review to establish and report on implementation of the integration and the case for going further.

The Government has now published a report, 'Security in a Global Hub - Establishing the UK's new border arrangements' which details how it proposes to establish the new border organisation, to be known as the UK Border Agency.

The development, agreement and delivery of an overarching strategy for the UK border will be given to a Minister, appointed to both the Home Office and HM Treasury. This work will be supported by a governance structure in the form of the Domestic Affairs (Migration) sub-committee (DA(M)), whose remit will be revised to reflect this. The DA(M) is chaired by the Home Secretary.

The report recommends that the new organisation should be an agency of the Home Office, but with a dual and symmetrical reporting line to the Chancellor and Home Secretary in respect of its frontier work. Its board will include a Commissioner of HMRC, a senior official of the Foreign and Commonwealth Office (FCO) and a senior police officer.

It is expected that a single executive team, led by a chief executive, will be appointed to translate the relevant parts of the border strategy into a business plan and then deliver it.

It is also envisaged that there will be a single command and control structure for each location, responsible for management and deployment of staff and resources and the interface with delivery partners such as port operators and the police.

The Independent Police Complaints Commission will be made responsible for overseeing the handling of serious complaints against the new organisation.

The Government's view is that significant steps can be taken towards the establishment of the UK Border Agency in shadow form, on the basis of existing legislation, but recognises that new legislation will be required in due course.

Further legislation is also likely to be introduced to permit the controlled designation of customs, immigration and police powers to officers of the new organisation.

The report covers in detail the case for wider integration of other agencies into the agency, including border work carried out by the police. Although at this stage the report concludes that such a merger should not take place, it does not rule it out in the longer term. The position of Special Branches is also looked at and the merits of different options in respect of them, including giving SB officers more of a national identity and the National Coordinator Ports Policing more control over their deployment.

It also rules out at this stage the new agency taking take on some or all of SOCA's work.

Further specific recommendations in the report which impact on policing include:

- ◆ That the new organisation should give specific consideration to controls at small ports and airports, working closely with the police.
- ◆ That the Home Office, on behalf of the Government, should lead a process with ACPO, the Scottish devolved administration and ACPOS to seek further views on potential integration and also the position in relation to Special Branches in order to assess the best use of police resource at the border.
- ◆ The establishment, on a statutory footing, of a single framework for policing and protective security that can be applied across different transport modes and different sized facilities.

Although a detailed timetable for creation of the new organisation will be set by its new management, a number of major milestones that need to be met in order to ensure implementation momentum has been set by Government. These include:

By end of December 2007

- ◆ Lead Home Office and HM Treasury Minister takes on new responsibilities and the new Cabinet sub-committee is in place.
- ◆ A single executive team of the new organisation is in post, with a clear reporting line to the Home Office and the Treasury.
- ◆ The appointment of a senior police officer to the executive board.
- ◆ The establishment of a programme board to oversee implementation.
- ◆ Lead officials are in place for all airports and Eurostar, on an interim basis initially, responsible for management and deployment of staff and resources and the interface with delivery partners such as port operators and the police.

By March 2008

- ◆ The establishment of short to medium term objectives should be achieved.
- ◆ A detailed implementation plan should be prepared, covering governance, management and operations, corporate support, legal considerations and branding.
- ◆ An action plan should be agreed and initiated to provide front line officers with shared information, skills, powers and incentives, to underpin conferral of powers.
- ◆ The Home Office should establish a process with ACPO, the Scottish devolved administration and ACPOS to seek further views on the case for a national police force and the position of Special Branch.

By June 2008

- ◆ A fully costed HR integration plan, supported by a staffing protocol, should be agreed and implementation begun.
- ◆ Other corporate support services plans, such as IT, estates and finance, should also have been agreed and be underway.
- ◆ UKvisas should be fully integrated into the new shadow organisation.
- ◆ Rollout of UK Border signage and instructions to passengers should have been rolled out at all major passenger arrival points.
- ◆ An integrated national watchlist for all border targets should be in place.

By December 2008

- ◆ The long term strategy for the UK border should have been agreed, in association with agencies in related areas of work such as the police and the Transport Security and Contingencies Directorate.
- ◆ The new arrangements for passport control and customs should have been rolled-out nationally.
- ◆ New legislation to allow for the sharing of immigration, customs and police powers should have been introduced.
- ◆ Access to the Interpol Lost and Stolen Passport Database should have been established.

During the course of the review, a number of specific proposals for further improving the effectiveness of the UK border were identified. The full list of these is set out in an annex to the report. These are to be considered by the management team of the UK Border Agency and built into future arrangements as appropriate. They include:

- ◆ Reviewing the data collected by UKvisas to ensure that it meets requirements of the police, SOCA and HMRC.
- ◆ Rolling out Airwave radio communication to improve operational communication between the agency and the police.
- ◆ Introducing cameras at the primary line and at arrival gates to improve targeting and to help to establish the travel identities of asylum applicants.

The full report can be found at [http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/publications/reports/border\\_review.pdf](http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/publications/reports/border_review.pdf)

## Electronic Border Security System

The Government has awarded a £650million contract for an electronic border security system to the consortium Trusted Borders. Trusted Borders is made up of Raytheon Systems Limited (prime), Accenture, Detica, Serco, QinetiQ, Steria, Capgemini, and DAON. The system will screen all passengers before they travel to the UK against immigration, customs and police watch lists.

## Creating Strong, Safe and Prosperous Communities Statutory Draft Guidance

The Department for Communities and Local Government has published for consultation a draft document, which provides guidance to local authorities and their partners on creating strong safe and prosperous communities, specifically relating to new legislation introduced in the Local Government and Public Involvement in Health Act 2007. The guidance covers, Local Strategic Partnerships, Sustainable Community Strategies, the new duty to involve, Local Area Agreements, the revised best value regime and commissioning.

Schedule for introduction of legislation is as follows:

Early 2008 - Statutory Local Area Agreements and associated Duties, (namely a duty to cooperate in determining LAA targets and a duty to have regard to targets). This applies to all 'Responsible authorities' and 'Statutory Partner Authorities'

Section 103 of the Local Government and Public Involvement in Health Act 2007 lists the responsible authorities as:

- ◆ County Councils.
- ◆ Unitary District Councils.
- ◆ London Boroughs.
- ◆ Council of the Isles of Scilly.
- ◆ Common Council of the City of London.

Section 104 of the Local Government and Public involvement in Health Act 2007 lists the bodies and persons, which are defined as partner authorities. It includes:

- ◆ Chief Officer's of Police.
- ◆ Police authorities.
- ◆ Local Probation Boards.
- ◆ Fire and rescue authorities.
- ◆ Probation Trusts and other providers of probation services.
- ◆ Youth Offending Teams.

1 April 2008 - Deregulation of the Best Value Regime- This applies to all Best Value Authorities.

1 April 2009 - Duty to involve local representatives – this applies to all Best Value Authorities excluding police authorities.

The draft guidance document and associated consultation papers can be found in full at <http://www.communities.gov.uk/documents/localgovernment/pdf/550804>

## New Chair of Joint Intelligence Committee

Senior civil servant Alex Allan, who is currently the permanent secretary at the Ministry of Justice, has been appointed chairman of the Joint Intelligence Committee (JIC). Following an announcement by the Prime Minister earlier this year, the chairman of the JIC will no longer be the security and intelligence co-ordinator to the Government.

## Review of Access to Historical Records

A review of when historical records are transferred to the National Archives, which are then largely open to public access, has been commissioned by the Government. Part of the review will look at the issue of whether the current period of records being transferred to the archive 30 years after an event should be reduced. The review team are expected to put forward their proposals in spring 2008. The terms of reference for the review can be viewed at <http://www.nationalarchives.gov.uk/documents/tor-30year-rule.pdf>

## Alcohol, Entertainment and Late Night Refreshment Licensing Statistics

The Department for Culture, Media and Sport has published a statistical report in relation to licences for the sale of alcohol, licences required to put on regulated entertainment or provide late night hot food and drink.

The following results are based only on completed returns received from 86% of local authorities and therefore will be an underestimate of the full picture in England and Wales. These results show:

- ◆ On 31 March 2007 there were 176,400 licences and certificates in force in England and Wales. 161,300 were premises licences and 15,100 were club premises certificates.
- ◆ There were also over 250,000 personal licences.
- ◆ 122,900 licences and certificates in force were authorised to sell alcohol.
- ◆ 2,600 premises licences were authorised for off-sale of alcohol only.
- ◆ 27,900 licences authorised on-sale of alcohol only, of which 4,800 were club premises certificates, and 62,400 allowed both on and off sales, of which 7,200 were club premises certificates.

- ◆ Fewer than 50,000 premises were licensed for late night refreshment.
- ◆ 72,300 premises licences and 9,000 club premises certificates were authorised for any form of entertainment.
- ◆ Over 260,000 regulated entertainment activities were authorised, the most common types of which were playing of recorded music and the staging of live music.
- ◆ There were 5,100 premises with 24-hour licences, of which 3,300 were hotel bars, 3,910 supermarkets, 460 pubs, bars and nightclubs, and 420 other premise types.
- ◆ There were just over 14,600 new applications for premises licences and around 98% of outcomes resulted in the licence being granted. New premises licences granted in the year to 31 March 2007 made up 9% of the total number of premises licences.
- ◆ 360 applications were made for club premises certificates, with 6 refused. Also 58,500 applications were made for new personal licences, with 56,900 granted.
- ◆ Around 670 reviews were completed in this reporting period. In around 110 of these cases, the operating hours for the licence were modified following the review; and 390 reviews resulted in other conditions being added or modified.
- ◆ Following a completed review, 91 licences or certificates were suspended and 90 premises licences were revoked or club premises certificates withdrawn.
- ◆ Over 6,500 applications went to a committee hearing in 2006/07.
- ◆ There were over 100,000 Temporary Event Notices in the year to March 2007.

Data tables have also been made available at individual licensing authority level. The statistical report and data tables can be found at [http://www.culture.gov.uk/Reference\\_library/rands/statistics/alcohol\\_entertainment\\_licensing\\_statistics.htm](http://www.culture.gov.uk/Reference_library/rands/statistics/alcohol_entertainment_licensing_statistics.htm)

## Alcohol Disorder Zones

The Government has announced that the final ratification, by affirmative resolution, of the statutory instrument in respect of alcohol disorder zones will be progressed during the next two months.

## Draft CPS Policy for Prosecuting Crimes against the Older Person

The Crown Prosecution Service has launched a consultation on its draft policy for prosecuting crimes against the older person. The CPS intends to introduce the policy statement by March 2008. It will then have in place policy statements covering all six 'equality strands', namely race, religion, disability, gender, sexuality and age.

The policy of prosecuting crimes against the older person will focus on:

- ◆ Abuse or neglect of an older person where there is a relationship and an expectation of trust (whether by family members, friends or paid workers).
- ◆ Abuse or neglect of an older person living either temporarily or permanently in an institution.
- ◆ Crimes which are specifically targeted at older people because they are perceived as vulnerable or potentially easy to steal from (for example, muggings of older people, doorstep theft or rogue traders, financial fraud).
- ◆ Crimes against older people which are not initially related to their age but may later become so (for example, a burglary where the burglar does not know the age of the householder but later exploits the situation when discerning that the householder is an older person).
- ◆ Crimes against older people which are partly or wholly motivated by hostility based on age.

The consultation period closing date is 31 January 2008. The draft policy statement and the associated consultation documents can be found at [http://www.cps.gov.uk/consultations/cop\\_index.html#02](http://www.cps.gov.uk/consultations/cop_index.html#02)

## European Network against Racism Report on Racism and Discrimination in the UK

The European Network against Racism (ENAR) has published a shadow report which looks at the issues of racism and discrimination in the UK, at both legislative and local levels, from policy to practice, during 2006.

The ENAR produces Shadow Reports for each country within the EU. These are intended to offer a non-governmental organisational perspective on the realities of racism with the EU and its Member States.

Section 3 of the report highlights those who have been particularly vulnerable to racism in 2006: asylum seekers, Roma and Traveller groups and Muslim communities. It also calls attention to the emergence of new minorities and EU migrant workers.



Section 4 takes a close look at manifestations of racism and religious discrimination in various areas of public policy. It provides an analysis of the situation of ethnic and religious minorities in the fields of employment, housing, education, health and criminal justice, and looks at the role of media in racism.

Section 5 focuses on the key policy developments that have taken place domestically over 2006 in the areas of anti-discrimination, integration and immigration, criminal justice and social inclusion. It offers a flavour of the key debates taking place, including current changes in the structure of the anti-discrimination framework and the move towards single equality legislation, as well as recent discussions on integration and what that dialogue means for communities living in the UK.

Section 6 outlines the main recommendations arising from the report. These are that:

- ◆ Recognition of the experiences and needs of smaller groups of black and minority ethnic (BME) communities should be taken into account in policy.
- ◆ The move towards the Commission for Equality and Human Rights should be followed as soon as possible with single equality legislation that is comprehensive and does not bring the existing standards of protection down.
- ◆ More thought should be given to enhancing the awareness of rights of migrant workers, who are currently vulnerable to exploitation, due to lack of knowledge of their rights.
- ◆ There is a need for an overarching strategy in the UK to integrate migrants.
- ◆ The integration strategy should not focus only on 'cultural values' but should also pay attention to ways in which barriers to integration can be overcome.
- ◆ Migrant workers, asylum seekers and undocumented migrants should not be excluded from an integration strategy.
- ◆ The Government should recognise and use the EU Common Basic Principles on Integration as a framework for developing a progressive integration strategy.
- ◆ More efforts are needed from the Crown Prosecution Service to prosecute cases of racially and religiously aggravated crimes.
- ◆ More collaborative work is needed between the police and Muslim communities to combat terrorism. The use of racial profiling and enforcement actions need to be monitored closely and the outcomes of such policies assessed regularly to measure their effectiveness, in particular in view of the effect it has on detrimental relations between Muslim communities and the rest of British society.

- ◆ Social inclusion policies should go beyond employment and should take into account other financial services (such as pensions) and how they impact on BME communities.

The report can be found in full at [http://www.enar-eu.org/en/national/uk/UK\\_2006.pdf](http://www.enar-eu.org/en/national/uk/UK_2006.pdf)

## Race and Violent Crime in the Media

The Runnymede Trust, the independent and voluntary funded policy research organisation, is currently undertaking an analysis of print media and the ways in which violent crime is reported according to the ethnicity of both victim and perpetrator. The report is intended to engage the media in a constructive dialogue on how British society thinks about the complex relationship between race and crime. The final report is expected to be published in January 2008 and will be available at <http://www.runnymedetrust.org/>

## The Journal of Homicide and Major Incident Investigation

The latest edition of the Journal of Homicide and Major Incident Investigation has been published by the National Policing Improvement Agency (NPIA) on behalf of the Association of Chief Police Officers (ACPO) Homicide Working Group. The latest edition focuses entirely on papers concerned with passive data in investigations. These papers include:

- ◆ CCTV and Major Incident Investigation: Professionalising the Police Approach by DCC Graeme Gerrard, Cheshire Constabulary.
- ◆ Follow the Money: The Use of Financial Information in Major Crime Investigations by DS Kevin Smart, Investigative Practice Team, NPIA.
- ◆ The Legal Framework for Acquiring and Using Passive Data for Policing Purposes by Giles Herdale, Head of Professional Practice, NPIA.
- ◆ Think Crime, Think Car, Think ANPR: The Use of ANPR in Major Crime Investigations by DCS Stuart Kirby, Lancashire Constabulary, and Det. Supt. George Turner, Thames Valley Police.
- ◆ Stealing Time: The Use of Passive Data During Operation Nuthatch by DI Andy Tennet and Sergeant Hugh Dixon, Northamptonshire Constabulary.
- ◆ Do They Know More Than We Do? What Opportunities Are To Be Gained From Data Held by Other Organisations? by Ray Green, Director, Focus Data Services Ltd.
- ◆ Are We Killing the Goose? by John Fox, Consultant SIO trainer, NPIA

The Journal can be found on the police Genesis extranet site.

## ACPO Personal Safety Manual of Guidance 2007

A revised ACPO Personal Safety Manual of Guidance 2007 has been prepared by the NPIA on behalf of the Association of Chief Police Officers and sent out to all forces in CD-ROM format. Further copies of the Manual, if required, can be obtained from NPIA at Harrogate.

The Manual is designed to provide both police officers and staff with detailed information on self-defence techniques, together with supporting information on the medical implications of their use, coupled with details of the relevant legislation and legal implications when using force.

It is proposed that the Manual will be replaced next year by a new version which will be the product of a comprehensive project and national consultation. Further details of this are contained within the CD-ROM sent out to forces.

## Manual of Guidance – Managing Illicit (Methamphetamine and Other) Drug Laboratories

The final version of the 'Manual of Guidance – Managing Illicit (Methamphetamine and Other) Drug Laboratories' has been approved by ACPO Cabinet. The restricted document is available on the ACPO Intranet site under the Guidance/Advice Section.

## Practice Advice on Police Use of Digital Imaging 2007

The National Policing Improvement Agency on behalf of ACPO has produced a practice advice document on police use of digital images as part the National Digital Imaging Project for the Police Service. It is intended to run alongside HOSDB (2007) Storage, Replay and Disposal of Digital Evidential Images and ACPO/Home Office (2007) Digital Imaging Procedure v2.0 which are also part of the project.

Copies of all three documents are available from the Genesis website at <http://www.genesis.pnn.police.uk> and the Home Office Scientific Development Branch (HOSDB) website at <http://www.hosdb.homeoffice.gov.uk>

## Work-Life Balance Employer Survey 2007

The Department for Business, Enterprise and Regulatory Reform has published a Work-Life Balance Employer Survey. The survey was a follow-up of two earlier studies, conducted in 2000 and 2002/3.

The survey found:

- ◆ The availability of flexible working arrangements has increased since 2003 and is now available in 92% of workplaces (compared to 81% in 2003).
- ◆ There have been particularly large increases in the availability of reduced hours working for a limited period and compressed hours working.
- ◆ Job sharing and flexitime have also increased substantially (59%, up from 39% cent; and 55%, up from 38%, respectively).
- ◆ That 92% of employers believe that people work best when they can balance their work and the other aspects of their lives.
- ◆ 92% of employers (covering 96% of employees) said they would consider a request to change a working pattern from any employee.

An executive summary of the survey can be found at <http://www.berr.gov.uk/files/file42220.pdf>

## Law Lords Ruling on Control Orders

On 31 October, the Law Lords delivered judgements on a number of cases in relation to the legality of control orders. Overall, the Law Lords upheld the legality of control orders, meaning that the orders can continue to be issued largely as they have been. However, they did rule that the Government should review those orders that include an 18-hour curfew, commenting that such a period was too long and was in breach of the human right to liberty; but they held that a 12-hour curfew was acceptable.

In addition, the Law Lords ruled that evidence procedures were unfair, pointing to two of the cases in which this had been breached by so-called "special advocate procedures"; the judges referred these back to court to be re-considered.

In response to the decisions, the Home Secretary, Jacqui Smith, stated that she was pleased that the Law Lords had upheld the control orders regime, but was disappointed that they had found against the control orders containing 18-hour curfews. She stated her intention to consider imposing curfews of up to 16 hours.

Summaries of each of the following cases can be found in the Case Law section:

- ◆ Secretary of State for the Home Department (Appellant) v. JJ and others (FC) (Respondents) [2007]
- ◆ Secretary of State for the Home Department v. MB (FC) (Appellant)[2007]
- ◆ Secretary of State for the Home Department Respondent v. E and another (Appellant)[2007]

The judgements can also be found in full at <http://www.publications.parliament.uk/pa/ld/ldjudgmt.htm>

## Further Amendments to the Criminal Justice and Immigration Bill

A full list of amendments to the Criminal Justice and Immigration Bill has been published in the House of Commons, for consideration in Public Bill Committee. Amendments of particular interest that have not been covered in previous editions of the *Digest* include submission of the following new clauses:

### **Hatred on the grounds of sexual orientation**

This clause amends Part 3A of the Public Order Act 1986 (POA 1986) (hatred against persons on religious grounds) to make provision about hatred against a group of persons defined by reference to sexual orientation.

The meaning of "hatred on the grounds of sexual orientation" is set out in a new Section 29AB to be inserted into the POA 1986. It means:

- ◆ Hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both).

The effect of this clause would be to extend the offences listed in Part 3, that currently apply to acts intended to stir up racial hatred, to acts intended to stir up hatred on the grounds of sexual orientation.

### **Sexual offences committed outside the United Kingdom**

This clause replaces the current Section 72 of the Sexual Offences Act 2003 (SOA 2003) with a new Section 72 which states that:

- ◆ If a United Kingdom national does an act in a country outside the United Kingdom, and the act, if done in England or Wales or Northern Ireland, would constitute a sexual offence to which this section applies, the United Kingdom national is guilty in that part of the United Kingdom of that sexual offence.
- ◆ If a United Kingdom resident does an act in a country outside the United Kingdom, the act constitutes an offence under the law in force in that country, and the act, if done in England or Wales or Northern Ireland, would constitute a sexual offence to which this section applies, the United Kingdom resident is guilty in that part of the United Kingdom of that sexual offence.
- ◆ If a person does an act in a country outside the United Kingdom at a time when the person was not a United Kingdom national or a United Kingdom resident, the act constitutes an offence under the law in force in that country, the act, if done in England or Wales or Northern Ireland, would have constituted a sexual offence to which this section applies, and the person meets the residence or nationality condition at the relevant time, proceedings may be brought against the person in that part of the United Kingdom for that sexual offence as if the person had done the act there.

The new clause goes on to explain in further detail the definitions of a UK national, the residence or nationality condition, and also makes amendments to Schedule 2 of the SOA 2003, which contains a list of sexual offences to which Section 72 applies, by adding further offences.

### **Review of violent offender orders in respect of young offenders**

This clause applies where a violent offender order has been made in respect of an offender who was under 17 at the time when the order was made ('the young offender').

If the young offender will be under 18 at the end of a review period and will be subject to the violent offender order at the end of that period, the appropriate chief officer of police must, before the end of that period, carry out a review of the operation of the order. However, this would cease to apply if the order is discharged under Section 87 before the end of that period.

The 'review periods' are either:

- ◆ The period of 12 months beginning with the day on which the order was made, or if one or more supplemental orders were made during that period, the date on which the supplemental order (or the last supplemental order) was made.
- ◆ A period of 12 months beginning with the day after the end of the previous review period, or, if one or more supplemental orders were made during that period, the date on which the supplemental order (or the last supplemental order) was made.

Reviews under this clause will have to include consideration of:

- ◆ The extent to which the young offender has complied with the violent offender order.
- ◆ The adequacy of any support available to the young offender to help the young offender to comply with it.
- ◆ Any matters relevant to the question whether an application should be made under Section 87 for the violent offender order to be varied, renewed or discharged.

A chief officer of police carrying out a review would be allowed to invite any person to participate in the review, but would have to have regard to any guidance issued by the Secretary of State when considering which persons to invite.

Those carrying out or participating in reviews will have to have regard to any guidance issued by the Secretary of State when considering:

- ◆ How the review should be carried out.
- ◆ What particular matters should be dealt with by the review.
- ◆ Which persons should be sent a copy of the findings of the review or extracts from or a summary of those findings.
- ◆ What action (if any) it would be appropriate to take in consequence of those findings.

#### **Disclosure of information about convictions etc of child sex offenders to members of the public**

This clause inserts after Section 327 of the Criminal Justice Act 2003 the following sections:

- ◆ Section 327A (Disclosure of information about convictions etc of child sex offenders to members of the public)

This states that the responsible authority for each area must, in the course of discharging its functions under arrangements established by it under Section 325, consider whether to disclose information in its possession about the relevant previous convictions of any child sex offender managed by it to any particular member of the public.



It sets out that, where the responsible authority for the area has reasonable cause to believe that a child sex offender managed by it poses a risk in that or any other area of causing harm to children generally or any child, and the disclosure of information about the relevant previous convictions of the offender to the particular member of the public is necessary for the purpose of protecting children generally or any child from harm caused by the offender, it should disclose information in its possession about the relevant previous convictions of the offender to the particular member of the public. It goes on to state that this should happen whether or not the person to whom the information is disclosed requests the disclosure, and whether or not the responsible authority making the disclosure has reasonable cause to believe that the risk is posed in relation to a member of that person's family.

The section allows the responsible authority making such a disclosure under this section to disclose such information about the relevant previous convictions of the offender as it considers appropriate to disclose to the member of the public concerned, and allows it to impose conditions for preventing the member of the public concerned from disclosing the information to any other person.

The section requires that the responsible authority for each area must compile and maintain a record about the decisions it makes in relation to the discharge of its functions under this section; and sets out the information that must be included in such a record.

Nothing in this section requires or authorises the making of a disclosure which contravenes the Data Protection Act 1998.

This section is not to be taken as affecting any power of any person to disclose any information about a child sex offender.

#### ◆ Section 327B (Section 327A: interpretation)

This section sets out the meaning of certain terms in relation to how they apply for the purposes of Section 327A.

This clause will also insert, as Schedule 34A to the Criminal Justice Act 2003, a list of child sex offences for purposes of Section 327A.

#### **Sexual offences prevention orders: relevant sexual offences**

This clause adds the following subsections to Section 106 of the SOA 2003 (supplemental provisions about sexual offences prevention orders):

- ◆ Subsection 106(13) - Subsection (14) applies for the purposes of section 104 and this section in their application in relation to England and Wales or Northern Ireland.
- ◆ Subsection 106(14) - In construing any reference to an offence listed in Schedule 3, any condition subject to which an offence is so listed that relates to the way in which the defendant is dealt with in respect of an offence so listed or a relevant finding (as defined by section 132(9)), or to the age of any person, is to be disregarded.

### **Meeting a child following sexual grooming**

This clause substitutes paragraphs (a) and (b) in Section 15(1) of the Sexual Offences Act 2003 (meeting a child following sexual grooming etc), in effect expanding the circumstances under which the offence can be committed.

Under the clause, Section 15 would read:

A person aged 18 or over (A) commits an offence if:

- (a) A has met or communicated with another person (B) on at least two occasions and subsequently —
  - (i) A intentionally meets B,
  - (ii) A travels with the intention of meeting B in any part of the world or arranges to meet B in any part of the world, or
  - (iii) B travels with the intention of meeting A in any part of the world,
- (b) A intends to do anything to or in respect of B, during or after the meeting mentioned in paragraph (a)(i) to (iii) and in any part of the world, which if done will involve the commission by A of a relevant offence,
- (c) B is under 16, and
- (d) A does not reasonably believe that B is 16 or over.

### **Adoption**

This clause makes amendments to certain pieces of legislation in relation to adoption. These include amending Section 64 (sex with an adult relative: penetration) and Section 65 (sex with an adult relative: consenting to penetration) of the Sexual Offences Act 2003, so that, for the purposes of those sections, the term 'parent' includes an adoptive parent and the term 'child' includes an adopted person within the meaning of Chapter 4 of Part 1 of the Adoption and Children Act 2002.

### **Notification requirements: prescribed information**

This clause will add 'any prescribed information' to the list of information in Section 83 of the SOA 2003 that a relevant offender must notify to the police, within the period of 3 days beginning with the relevant date.

Such 'prescribed information' will be set out in regulations made by the Secretary of State.

This clause also amends Section 84 of the SOA 2003 (notification requirements: changes) by adding a requirement that a relevant offender must, within the period of 3 days, notify the police of any prescribed change of circumstances in relation to any 'prescribed information' as outlined above.

### **Persistent sales of tobacco to persons under 18**

This clause will amend the Children and Young Persons Act 1933 by inserting four new Sections intended to address persistent sales of tobacco to persons under 18.

Section 12A will introduce a 'Restricted Premises Order', which is an order prohibiting the sale, on the premises to which it relates, of any tobacco or cigarette papers to any person.

Such orders will be made by magistrates' courts, upon a complaint being laid by the person who brought the proceedings for an offence under Section 7 (Sale of tobacco, etc, to persons under eighteen), against a person in respect of the premises in relation to which that offence was committed.

A court may make an order if (and only if) it is satisfied that, on at least two occasions within the period of 2 years ending with the date on which the relevant offence was committed, the offender has committed other tobacco offences in relation to the relevant premises, and that the applicant, after making reasonable enquiries, gave notice of the application to every person appearing to the applicant to be a person affected by it.

Orders will have effect for the period specified in the order, but that period may not exceed one year.

Section 12B will introduce a Restricted Sale Order, which is an order prohibiting the person to whom it relates from:

- ◆ Selling any tobacco or cigarette papers to any person.
- ◆ Having any management functions in respect of any premises, in so far as those functions relate to the sale on the premises of tobacco or cigarette papers to any person.
- ◆ Keeping any cigarette machine on any premises for the purpose of selling tobacco or permitting any cigarette machine to be kept on any premises by any other person for that purpose.
- ◆ Having any management functions in respect of any premises, in so far as those functions relate to any cigarette machine kept on the premises for the purpose of selling tobacco.

Applications for such orders will be made in the same way as for Restricted Premises Orders. Any reference to a cigarette machine is a reference to an automatic machine for the sale of tobacco.

Section 12C creates offences of:

- ◆ Selling, on any premises, any tobacco or cigarette papers in contravention of a restricted premises order.
- ◆ Failing to comply with a restricted sale order.

The penalty on summary conviction for the above offences is a fine not exceeding £20,000.

Section 12 D deals with interpretation in relation to the above Sections.

### **Purchase of tobacco by or on behalf of children**

This clause will insert a further Section into the Children and Young Persons Act 1933 after Section 12D. This creates offences of:

- ◆ A person aged under 18 buying or attempting to buy tobacco or cigarette papers.
- ◆ A person buying or attempting to buy tobacco on behalf of an individual aged under 18.

It provides a defence for the offence of buying or attempting to buy tobacco or cigarette papers when under 18, if the individual buys or attempts to buy the tobacco or cigarette papers at the request of a constable or of a weights and measures inspector who is acting in the course of his duty.

### **Unlicensed on-street racing**

This clause will amend the Police Reform Act 2002, by inserting after Section 59(2) a new subsection 59(2A). This subsection will give a constable in uniform, where he has reasonable grounds for believing that a motor vehicle is acting with others in a way which appears to have involved, or is likely to involve, unlicensed on-street racing, and is causing, or is likely to cause, alarm, distress or annoyance to members of the public, the power to exercise the powers under 59(3). Those powers are:

- ◆ If the motor vehicle is moving, to order the person driving it to stop the vehicle.
- ◆ Power to seize and remove the motor vehicle.
- ◆ Power, for the purposes of exercising the two previous powers, to enter any premises on which he has reasonable grounds for believing the motor vehicle to be.
- ◆ Power to use reasonable force, if necessary, in the exercise of any of the above powers.

### **Detention of persons believed to have committed an immigration offence**

This clause will require a constable, if he has reasonable grounds to believe that a person ("P") has committed an offence under the Immigration Acts, and has not taken reasonable steps to regularize his immigration status with the Border and Immigration Agency, to immediately detain P in custody.

It will allow P to be detained until the Border and Immigration Agency has assumed responsibility for P, or until the period of 48 hours has elapsed, whichever is the earlier.

The clause requires that the constable must, immediately after detaining P, inform the Border and Immigration Agency of the circumstances.

It requires that the Border and Immigration Agency must ensure that an officer of the Agency meets P, and take all other reasonable steps to determine P's immigration status, within 48 hours of P being detained.

The Bill can be found at <http://services.parliament.uk/bills/2007-08/criminaljusticeandimmigration.html>

## The Immigration, Asylum and Nationality Act 2006 Provisions to Require Passenger and Crew Information

Certain provisions in the Immigration, Asylum and Nationality Act 2006 are being brought into force on 5 November and 31 December this year (see SI 3138/2007 in SI section). Some of the provisions being brought into force create new powers for the police and create new criminal offences. These provisions have been outlined in previous editions of the *Digest* (see June 2005 and April 2006 editions).

This article will concentrate on the provisions that affect the police, HM Revenue and Customs (HMRC) and other law enforcement agencies.

The provisions to be brought into force on 5 November, in the main, allow secondary legislation to be made in the form of an Order or in a Code of Practice relating to the provisions being brought into force on 31 December. Such Orders and Codes of Practice will set out details specifying: the type of information to which the provisions apply; governing use of information; the extent to which, or form and manner in which, shared information is to be made available with those sections; the time at which or period during which information is to be provided. One such Order has already been prepared in draft form and is covered in the following article.

On the 31 December the following provisions will be brought into force:

- ◆ Section 34 (offence: failure to provide information).
- ◆ Section 35 (power of Revenue and Customs to obtain information).
- ◆ Section 39 (disclosure to law enforcement agencies).

And, to the extent to which they are not already in force:

- ◆ Section 31 (Provision of information to immigration officers).
- ◆ Section 32 (Passenger and crew information: police powers).
- ◆ Section 36 (Duty to share information).
- ◆ Section 37 (Information sharing: code of practice).
- ◆ Section 38 (Disclosure of information for security purposes).

Section 31 amends Paragraph 27 of Schedule 2 to the Immigration Act 1971, to enable immigration officers to collect information on passenger lists and crew information, on or before the arrival of a ship or aircraft into the United Kingdom. It also introduces a new power to request passenger lists or crew information from a ship or aircraft which is leaving or is expected to leave the United Kingdom.

Section 32 provides information-acquisition powers for the police in respect of ships and aircraft arriving (or expected to arrive) in or leaving (or expected to leave) the UK. It allows a constable of the rank of superintendent or above to request passenger, voyage or flight and crew information from an owner or agent of a ship or aircraft travelling to or from the United Kingdom.

(These powers could also be extended in the future by the introduction of Section 14 of the Police and Justice Act 2006, which would extend the above provision to include internal UK journeys).

It should be noted that, at this time, the provision in Section 33 which creates a new power to enable a constable of the rank of superintendent or above to also request freight information from an owner or agent of a ship or aircraft, an owner or hirer of a vehicle, or any other person responsible for the import or export of freight, has not been brought into force.

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

Section 35 amends Section 35(2) and (3) of the Customs & Excise Management Act 1979 to mean that the report provisions which these sections empower the Commissioners to direct, apply to every ship and aircraft arriving or expected to arrive in the UK. The effect of this change is to allow the Commissioners' Directions made under Section 35 to be amended to require the provision of the passenger data they direct to be made in advance of the arrival of the means of transport.

Section 36 introduces a new power which provides for information obtained or held by the border agencies (Border and Immigration Agency, police service and HM Revenue and Customs) in the course of their functions to be shared, to the extent that the information is likely to be of use for immigration, police or Revenue and Customs purposes (which are terms defined in Sections 20 and 21 of the Immigration and Asylum Act 1999).

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

Section 38 introduces a discretionary power which supports the disclosure of information relating to travel or freight for security purposes; and defines the actors and purposes to whom the provision applies. It provides that the Secretary of State (in so far as he has functions under the Immigration Acts), a chief officer of police and HMRC may disclose information which is obtained or held by them in the course of their functions to the security and intelligence agencies to the extent that the information is likely to be of use for a purpose specified in Section 1 of the Security Service Act 1989 and Sections 1 or 3 of the Intelligence Services Act 1994 (namely, national security, economic well-being of the UK and support in combating serious crime).

Section 39 provides a power for a police service to disclose information obtained in accordance with Sections 32 or 33 to the police services in Jersey, Guernsey, the Isle of Man and a foreign law enforcement agency. A foreign law enforcement agency is defined as a person outside the UK with functions similar to a police force in the UK or SOCA.

The Act can be found in full at [http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga\\_20060013\\_en.pdf](http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060013_en.pdf)

## Update on Provisions in Road Safety Act 2006 not Currently in Force

In relation to the provisions in the Road Safety Act 2006 that have not yet been implemented, we have been informed by the Department for Transport that, due to many of these requiring major consultations and substantial secondary legislation, the Department is currently working on the timetable for their implementation, as part of its business planning process. It expects that decisions from this should emerge in January 2008. The following are the provisions which are not yet in force:

- ◆ Section 2 - Application of surplus income from safety camera enforcement.
- ◆ Section 3 - Graduated fixed penalties.
- ◆ Section 4 - Graduated fixed penalty points.
- ◆ Section 5 - Giving of fixed penalty notices by vehicle examiners.
- ◆ Section 6 - Goods vehicles operator licensing.
- ◆ Section 7 - Public passenger vehicle licensing.
- ◆ Section 8 - Driving record.
- ◆ Section 9 - Unlicensed and foreign drivers.
- ◆ Section 10 - All drivers.
- ◆ Section 12 - Prohibition on driving: immobilisation, removal and disposal of vehicles.
- ◆ Section 13 - High risk offenders: medical enquiries following disqualification.
- ◆ Section 15 - Alcohol ignition interlocks.
- ◆ Section 17 - Penalty points.
- ◆ Section 18 - Speed assessment equipment detection devices.
- ◆ Section 19 - Exemptions from speed limits.
- ◆ Section 20 - Causing death by careless, or inconsiderate, driving.
- ◆ Section 21 - Causing death by driving: unlicensed, disqualified or uninsured drivers.

- ◆ Section 22 - Offence of keeping vehicle which does not meet insurance requirements.
- ◆ Section 34 - Penalty points.
- ◆ Section 35 - Reduced disqualification period for attendance on course.
- ◆ Section 37 - Disqualification until test is passed.
- ◆ Section 38 - Granting of full licence.
- ◆ Section 39 - Compulsory surrender of old-form licences.
- ◆ Section 45 - Registration plates.
- ◆ Section 46 - Extension to Scotland and Northern Ireland.
- ◆ Section 47 - Particulars to be included in vehicles register.
- ◆ Section 48 - Records of goods vehicle examinations.
- ◆ Schedule 1 - Giving of fixed penalty notices by vehicle examiners etc.
- ◆ Schedule 2 - Endorsement: unlicensed and foreign drivers.
- ◆ Schedule 3 - Endorsement: all drivers.
- ◆ Schedule 5 - New Schedule 2A to the Road Traffic Act 1988.
- ◆ Schedule 6 - Driving instruction.

It was reported in The Times on 9 November that the Department for Transport will publish a consultation document before Christmas, which will invite comment on options in relation to penalty points for speeding, which may include a lower penalty for a slight breach of the limit on faster, nonresidential roads where there are few or no pedestrians and cyclists.

However, Jim Fitzpatrick, the Road Safety Minister, apparently told The Times that introducing a lower penalty of two points would undermine the Government's message that even small breaches of the limit can kill, and that such a provision would be counter-productive and against everything the Government is saying about the dangers of speeding.

Section 17 of the Road Safety Act 2006 amends Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988 with respect to the entry relating to Section 17(4) of the Road Traffic Regulation Act 1984 (traffic regulation on special roads) and the entry relating to Section 89(1) of that Act (speeding offences other than those on special roads), so as to change the entry in column 7 (penalty points).

Special roads are, broadly, roads in England and Wales provided under a scheme made under Section 16 of the Highways Act 1980, and include motorways.

If enacted, Section 17 will extend the range of penalty points which may be given in respect of these two speeding offences from 3-6 or 3 (fixed penalty) to 2-6 or appropriate penalty points (fixed penalty).

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



## The Immigration, Asylum and Nationality Act 2006 (Duty to Share Information and Disclosure of Information for Security Purposes) Order 2007

This Order is currently in draft form awaiting Parliamentary approval. It makes provision in respect of information which is to be, or may be, shared by the Secretary of State (in so far as he has functions under the Immigration Acts), a chief officer of police and Her Majesty's Revenue and Customs under Sections 36 and 38 of the Immigration, Asylum and Nationality Act 2006 (as outlined in the previous but one article). It is expected that this Order will be brought into force on 31 December 2007. The draft Order can be found in full at <http://www.opsi.gov.uk/si/si2007/draft/20078927.htm>

## Section 68 Clean Neighbourhoods and Environment Act 2005 Stray Dogs

It has been announced that Section 68 of the Clean Neighbourhoods and Environment Act 2005 is expected to be commenced on 6 April 2008. Section 68 removes the power of the police to seize stray dogs and the associated responsibilities of the police for dealing with stray dogs by repealing Section 3 of the Dogs Act 1906 (except in the circumstances explained below). It also removes the responsibility of the police to receive stray dogs handed in by the public, by amending Section 150 of the Environmental Protection Act 1990.

The circumstances in which a police officer will still have powers to seize a dog are set out in Section 2 of the Dogs (Protection of Livestock) Act 1953. If a police officer has reasonable cause to believe that a dog found on any land has been worrying livestock on that land, and the land appears to him to be agricultural land, and no person is present who admits to being the owner of the dog or in charge of it, then, for the purpose of ascertaining who the owner of the dog is, the police officer may seize it and may detain it until the owner has claimed it and paid all expenses incurred by reason of its detention. Subsections (4) to (10) of Section 3 of the Dogs Act 1906 still apply in relation to dogs seized under Section 2 of the Dogs (Protection of Livestock) Act 1953.

The police will still be responsible for dealing with dangerous dogs.

Responsibility for all functions on stray dogs will pass to local authorities in England and Wales. Local authorities' statutory duties on stray dogs are contained in Sections 149 and 150 of the Environmental Protection Act 1990, and the Environmental Protection (Stray Dogs) Regulations 1992.

Currently, local authorities typically provide stray dog services during 'office hours', including providing a place to which a stray dog can be taken if found by a member of the public and a collection service where a report of a stray dog is made to the authority. Local authorities in England and Wales will be funded a total of £4 million a year through the Revenue Support Grant. This funding is intended to cover the additional costs of providing an out-of-hours service for stray dogs. Daytime arrangements remain as they have been, and new funding is not being provided for a daytime service.

A guidance document has been produced by the Department for Environment, Food and Rural Affairs for local authorities, including persons contracted to work on their behalf, and other organisations or people working in partnership with local authorities, in connection with the collection or detainment of stray dogs. This guidance comprises two parts. Part 1 sets out what is required by authorities and any third parties (e.g. contractors such as private kennels) when discharging their duty. Part 2 covers ancillary issues, including partnership working, training, contracts and other sources of general information.

The guidance document points out that local authorities are not expected to provide a round-the-clock call-out service. It recommends:

- ◆ That local authorities supply their local police stations with relevant details such as phone numbers and addresses of acceptance points, especially those that operate outside office hours. This is particularly due to the fact that the public will continue to contact the police in relation to stray dogs.
- ◆ That the police advertise in police stations any information given to them by local authorities, such as locations where strays may be taken and any phone numbers for officers or information, with particular reference to out-of-office hours contact and the cover provided.
- ◆ Authorities and the police should maintain a working relationship with regard to dealing with dangerous dogs and dogs found to be worrying livestock, so that such issues can be dealt with effectively.

The guidance document can be found at <http://www.defra.gov.uk/environment/localenv/dogs/pdf/straydogs-guidance.pdf>

## The Criminal Justice System Strategic Plan (2008-2011)

The Government has published, 'The Criminal Justice System Strategic Plan (2008-2011)'. The document outlines the Government's vision for the future of the criminal justice system (CJS). It sets out four particular areas of focus:

- ◆ Improving effectiveness in bringing offences to justice, especially serious offences.
- ◆ Engaging the public and inspiring public confidence.
- ◆ Putting victims needs at the heart of the CJS.
- ◆ Introducing simple and efficient processes.

The plan establishes the framework for Local Criminal Justice Boards (LCJBs) and requires them to put more focus on tackling more serious crime, reducing re-offending and addressing the priorities identified by local communities. It is also intended to give LCJBs greater freedom to design and implement improvements in the system that make sense locally, based on the views of local people. Local people will be able to list the types of crimes to be prioritised by the police and the court and identify the sorts of tasks for offenders on unpaid work to carry out.

The document can be found in full at [http://www.cjsonline.gov.uk/downloads/application/pdf/1\\_Strategic\\_Plan\\_ALL.pdf](http://www.cjsonline.gov.uk/downloads/application/pdf/1_Strategic_Plan_ALL.pdf)

## Consultation on Sentencing for Corporate Manslaughter

The Sentencing Advisory Panel (SAP) has issued a consultation paper on sentencing for the offence of corporate manslaughter under the Corporate Manslaughter and Corporate Homicide Act 2007 and also under the Health and Safety at Work etc Act 1974. The paper seeks views on the SAP's proposals for assessing of the seriousness of these offences and also the way the various sanctions available could be used in sentencing for both types of offence.

The Panel concludes that the primary factor in assessing the seriousness of an offence of corporate manslaughter or of a Health and Safety at Work etc Act 1974 offence that has resulted in death, is the extent to which the conduct of the offender fell below the appropriate standard of care. It lists a number of aggravating or mitigating factors that it considers relevant:

Aggravating factors increasing the level of harm

- ◆ More than one person killed.
- ◆ Serious injury to one or more person(s).

Aggravating factors affecting the degree of culpability

- ◆ Failure to act upon advice, cautions or warning from regulatory authorities.
- ◆ Failure to heed relevant concerns of employees or others.

- ◆ Carrying out operations without an appropriate licence.
- ◆ Financial or other inappropriate motive.
- ◆ Corporate culture encouraging or producing tolerance of breach of duty.

Mitigating factor

- ◆ Employee acting outside authority or failing in duties.

Offender mitigation

- ◆ Ready co-operation with authorities.
- ◆ Good safety record.

In respect of sentencing, the Panel proposes that for an offence of corporate manslaughter the starting point should be:

- ◆ The imposition of a publicity order and a fine of 5% of the offender's average annual turnover. The court will take into account any aggravating and/or mitigating factors as set out above, imposing a fine that will fall within a range of 2.5-10% of average annual turnover.

When sentencing for an offence under the HSWA involving death, the Panel proposes that the starting point should be:

- ◆ A fine of 2.5% of the offender's average annual turnover. Taking into account any aggravating and/or mitigating factors as set out above, the fine will normally fall within a range of 1 - 7.5% of average annual turnover.

Responses to the consultation are requested by 7 February 2008. The consultation paper can be found in full at [http://www.sentencing-guidelines.gov.uk/docs/SAP%20\(07\)K3%20-%20Corporate%20manslaughter%202007-10-31-v%203.10.AR.pdf](http://www.sentencing-guidelines.gov.uk/docs/SAP%20(07)K3%20-%20Corporate%20manslaughter%202007-10-31-v%203.10.AR.pdf)

## Guidance on Interviewing Victims and Witnesses and Using Special Measures

A revised edition of 'Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures' has been produced on behalf of the Ministry of Justice, the Home Office, the Crown Prosecution Service (CPS), the Department for Children, Schools and Families, the Department of Health, and the Welsh Assembly government.

The guidance has been updated to take account of legislative developments since it was initially issued in January 2002, including the law on evidence on bad character, hearsay evidence, the Code of Practice for Victims of

Crime, which came into force in April 2006 and the introduction of police/CPS Witness Care Units.

This guidance describes good practice in interviewing witnesses, including victims, in order to enable them to give their best evidence in criminal

proceedings. It considers preparing and planning for interviews with witnesses, decisions about whether or not to conduct an interview, and decisions about whether the interview should be video-recorded or whether it would be more appropriate for a written statement to be taken following the interview. It covers the interviewing of witnesses both for the purposes of making a video-recorded statement and also for taking a written statement, their preparation for court and any subsequent court appearance. It applies to both prosecution and defence witnesses and is intended for all persons involved in relevant investigations, including the police, adults and children's social care workers, and members of the legal profession. It can be found in full at [http://www.cps.gov.uk/publications/docs/achieving\\_best\\_evidence\\_final.pdf](http://www.cps.gov.uk/publications/docs/achieving_best_evidence_final.pdf)

## Witness Guidance

Her Majesty's Courts Service (HMCS) has developed an interactive, multilingual and animated DVD entitled 'Going to Court: A step by step guide to being a witness' intended to help witnesses and victims understand their crucial role in the court process.

It can be viewed in English (with subtitles), Welsh (with subtitles), Arabic, Bengali, Cantonese, Gujarati, Hindi, Urdu, Punjabi and British Sign Language.

HMCS have initially distributed around 200,000 copies of the DVD nationwide, to Witness Care Units and defence solicitors and the court-based Witness Service in England and Wales. The animation can also be viewed online, where it is also available in Polish. <http://video.direct.gov.uk/goingtocourtvideo>

## Consultation on the High Court's Jurisdiction in Relation to Criminal Proceedings

The Law Commission has published a consultation paper in relation to the circumstances in which it ought to be possible to appeal against a judge's legal ruling as soon as it is made, whether this be before the trial starts, during the course of the trial or after the jury has returned its verdict.

At present, the High Court has the power to judicially review decisions made in the Crown Court, except in "matters relating to trial on indictment" (Section 29(3) Supreme Court Act 1981). The rationale for the exclusion is that judicial review should not be used as a means of delaying trials and clogging up the criminal justice process. However, the problem has been in locating the boundary of the exclusion, which has given rise to lengthy, time-wasting and expensive litigation.

The Commission's main aim is to ensure that trials are not delayed or interrupted except when a person's liberty or rights under the European Convention on Human Rights are at stake, or where the advantages of allowing an appeal outweigh the detrimental effects of delaying or interrupting the trial. The paper also considers the implications for magistrates' courts and the court martial.

The consultation will close on 22 February 2008. It can be found at [http://www.lawcom.gov.uk/docs/cp184\\_tso.pdf](http://www.lawcom.gov.uk/docs/cp184_tso.pdf)

## Statistics on Race and the Criminal Justice System 2006

The Ministry of Justice has published a statistical report which provides details of how members of the black and minority ethnic (BME) community in England and Wales were represented in the criminal justice system during the year 2005/06.

Findings from the report include:

- ◆ The latest British Crime Survey (BCS) estimates that there were around 139,000 racially motivated incidents in 2005/06. This compares with a total of 179,000 incidents reported by the 2004/05 BCS.
- ◆ During 2005/06, 60,407 racist incidents were recorded by the police, a rise of 4% over 2004/05.
- ◆ There were 41,382 racially or religiously aggravated offences in 2005/06, a 12% increase from the previous year. 62% of these were offences of harassment.
- ◆ The clear-up rate for racially or religiously aggravated offences has improved over the last three years (34% in 2003/04, 37% in 2004/05, and 38% in 2005/06).
- ◆ The police recorded 2,327 homicides in the three-year period ending 2005/06. 23 of these were recorded as being racially motivated.
- ◆ 10% of homicides in 2005/06 were of black people, 7% of Asian people and 4% of 'other' minority ethnic groups.
- ◆ The police recorded 878,153 stop and searches under Section 1 of the Police and Criminal Evidence Act 1984 and other legislation in 2005/6. The main reason for conducting a stop and search under these powers, across all ethnic groups, was for drugs.
- ◆ Of the searches carried out in 2005/6, 15% were of black people, 8% of Asian people and 2% of people of 'other' ethnic origin.
- ◆ Relative to the general population, black people were seven times more likely to be stopped and searched under these powers than white people.
- ◆ Relative to the general population, Asian people were twice as likely to be stopped and searched as white people, a similar rate to the previous year.
- ◆ In 2005/06, 1,429,785 arrests for notifiable offences took place (an increase of just under 6% on the previous year). Of these arrests, 9% were recorded as being of black people, 5% Asian and 1% 'other' ethnic origin. Compared with 2004/05, the number of arrests of Asian people increased by 11% and for black people by 10%.

- ◆ The police cautioned 285,116 persons for notifiable offences in 2005. Of these, 6% were recorded as black people, 4% Asian and 1% of 'other' ethnic origin.
- ◆ In 2005/6, there were 301,860 offences involving young offenders. Of these, 85% of offenders identified themselves as white, 6% as black, 3% as Asian, 3% as mixed and 0.3% as Chinese or other.
- ◆ The police recorded 26,880 complaints in 2005/6; 7% of complaints made against the police were from black people, 5% from Asian people and 1% from 'other' minority ethnic groups.
- ◆ In 2005/6, five of the 28 deaths of people who had been arrested or otherwise detained by the police involved people from BME groups.
- ◆ There was large variation amongst CJS agencies in the proportion of BME staff employed. The Serious Fraud Office had the highest BME representation at 22%; members of the judiciary had the lowest proportion at only 3% but there are no Lord Justices of black or other minority ethnic membership.

The report can be found in full at <http://www.justice.gov.uk/docs/race-and-cjs-stats2006.pdf>

## Motoring Offences and Breath Test Statistics for England and Wales 2005

The Ministry of Justice has published a bulletin which contains statistics on motoring offences and breath tests dealt with by the police in England and Wales in 2005 and earlier years. The bulletin also includes statistics on penalty charge notices issued by local authority parking attendants from 1995.

The bulletin is based on data obtained from the 43 police force areas and criminal courts within England and Wales. The information on penalty charge notices was supplied by the Association of London Government and other local authorities.

Findings in the report show:

- ◆ The number of motoring offences dealt with by official police action or penalty charge notice in 2005 was 13 million (down 3% on 2004).
- ◆ The number of offences dealt with by motoring fixed penalty notices issued by the police (including traffic wardens) in 2005 was 3.2 million (down 4% on 2004).
- ◆ 7.6 million penalty charge notices were issued by local authority parking attendants in 2005.
- ◆ The proportion disqualified for more than one year for offences of 'driving etc. after consuming alcohol or taking drugs' has steadily increased from 59% in 1995 to 69% in 2005.

- ◆ Cameras provided evidence for 2 million offences dealt with in 2005. Overall, these cameras provided evidence for 88% of speeding offences dealt with.

More detailed information is provided in a further document, "Offences relating to motor vehicles, England and Wales 2005, Supplementary tables".

Both documents can be found at <http://www.justice.gov.uk/publications/motoringoffences.htm>

## Youth Justice Unit Launched

The Ministry of Justice has launched a Joint Youth Justice Unit, merging the responsibilities of the former Ministry of Justice Youth Justice and Children Unit and those of the Young Offender Education Team of the Offenders Learning and Skills Unit of the former Department for Children Schools and Families. The new unit will have two aims:

- ◆ To contribute to the protection of the public by developing policy and law in relation to children and young people who offend and are at risk of offending.
- ◆ To ensure that children and young people in contact with the criminal justice system achieve all five outcomes of "Every Child Matters", i.e. to be healthy, stay safe, enjoy and achieve, make a positive contribution and achieve economic well-being.

The Unit's role will include:

- ◆ Sponsoring the Youth Justice Board for England and Wales (the executive non-departmental public body that oversees the youth justice system).
- ◆ Overseeing early intervention and prevention programmes delivered via the Youth Justice Board through youth offending teams.
- ◆ Responsibility for policy in relation to children and young people in the out-of-court system, those on community sentences and in custody.
- ◆ Overseeing policy on resettlement and reducing youth re-offending.
- ◆ Responsibility for education of youth offenders in custody.

## Consultation on CPS Violence against Women Strategy

The Crown Prosecution Service has launched a public consultation on its Violence against Women Strategy and Action Plans. The Strategy aims to coordinate and improve the prosecution response to a range of crimes that fall under the umbrella of 'violence against women'. Responses are required by 28th January 2008. The consultation paper can be found at [http://www.cps.gov.uk/consultations/vaw\\_index.html](http://www.cps.gov.uk/consultations/vaw_index.html)



## Parole Board Annual Report and Accounts for 2006/07

The Parole Board has published its Annual Report and Accounts for 2006/07, reporting on its performance against business plan targets, statistics for determinate sentence and indeterminate sentence prisoners and accounts for the year.

Copies of the Report can be found at <http://www.paroleboard.gov.uk>

## IPCC Stockwell One Report

The Independent Police Complaints Commission (IPCC) has published a report of its investigation into the fatal shooting of Jean Charles de Menezes by officers of the Metropolitan Police Service on 22 July 2005.

The report contains a foreword, written since the health and safety trial (see following article), which explains its structure, purpose and background. The health and safety trial does not mark the end of the legal processes concerned with this incident. An Inquest still has to be held and, at the appropriate time, decisions have to be made on whether any of the senior officers involved in the incident should face a disciplinary tribunal. The trial and these other processes all provide opportunities to deepen understanding of what happened and to develop the learning about what needs to happen to prevent similar incidents occurring in future.

The report is in three parts:

- ◆ The main investigation report, that was completed and submitted within six months, by 19 January 2006.
- ◆ The operational recommendations arising from the incident, that were completed and submitted by 14 March 2006.
- ◆ A short addendum to the main report that sets out the results of further enquiries requested by the Crown Prosecution Service (CPS) which was submitted in June 2006.

The 16 recommendations made by the IPCC were addressed to Her Majesty's Inspectorate of Constabulary (HMIC), Home Office, ACPO and the Metropolitan Police Service (MPS). The recommendations were:

That HMIC

- ◆ Review existing policy and guidance in relation to the command and control of firearms operations to ensure there is absolute clarity of role and responsibility within the chain of command, particularly when a Designated Senior Officer is deployed. This should include deployments conducted under the auspices of Operations Kratos and Operation C.
- ◆ Review existing guidance and practice to ensure Gold, Silver and Bronze commanders have a clear and common understanding of the circumstances surrounding future firearms operations, the overall strategy and the key tactical options under consideration.
- ◆ Review existing practice to ensure that, at a corporate level, robust and appropriate facilities and mechanisms exist to maintain the effective command and control of future operations of a similar nature. Particular attention should be paid to ensuring that key briefings, strategic and tactical decisions are fully recorded or documented and in any event capable of audit.

- ◆ Review the existing mechanisms and policy for ensuring that sufficient and robust channels of communication exist that provide commanders with 'real-time' updates on intelligence, operational and resourcing issues that could adversely impact the successful implementation of the overall strategic parameters and the identified tactical options, and that robust procedures are in place to ensure that the necessary fast-time action is taken in the early stages of an incident to achieve this.
- ◆ Review existing procedures and training for carrying out assessments for operations of this nature, incorporating lessons learnt from this incident
- ◆ Review existing policy and practice to ensure that when, in pursuance of an armed operation, it is necessary to stop or otherwise detain potential subjects of a surveillance operation, appropriate firearms support is in place to expedite a prompt and safe resolution of the encounter.
- ◆ Review existing policy and guidance to ensure absolute clarity exists in the use of operationally specific terminology. Particular attention is to be paid to ensuring the terminology used for deployments under the auspices of Operations Kratos and Operation C are entirely consistent with the common language of command for regular firearms deployments in response to serious crime operations.
- ◆ Review existing policy and operational capability in relation to the deployment of surveillance teams on firearms operations, to ensure that deployment fully complements and supports rapid armed intervention should such subsequently become necessary.
- ◆ Review existing policy and practice to ensure joint firearms and surveillance operations are fully integrated and that channels exist to ensure salient developments, such as doubts over a target's identity, can be swiftly communicated to relevant strategic and operational commanders.
- ◆ Review existing policy and practice to ensure that, at a corporate level, robust facilities and processes exist to demonstrate the integrity of evidence gathered during the course of surveillance operations. Particular attention should be paid to the continued utility of surveillance logs.
- ◆ Review existing guidance and practice to ensure that appropriate and robust mechanisms exist to secure an accurate and auditable record of 'hot' and team/group debriefs.
- ◆ The MPS, HMIC, ACPO, NPIA, Home Office and other relevant agencies should revise planning, exercises and training provided for those involved in anti-terrorist policing to ensure such processes fully incorporate all the learning from the events of 22 July. As soon as legal procedures permit, the experiences of those officers directly involved, including staff from the IPCC, should be fed into those reviews.
- ◆ The good practice in place in Lambeth which ensured effective community reassurance should be noted by the MPS and HMIC. Steps should be taken to ensure that, where appropriate, this good practice is replicated in other BCUs.

That the Home Office

- ◆ Amend the Police (Complaints and Misconduct) Regulations 2004 accordingly, so that all mandatory referrals to the IPCC should occur, particularly in the case of death or serious injury, as soon as possible but in any event not later than the end of the day following the incident, complaint or misconduct.

That ACPO

- ◆ Review efficacy of existing post-incident management policy, guidance and practice to ensure that an appropriate balance exists between being rightly held to account for one's actions whilst discharging the office of constable and the rights of the principal officers. Particular attention should be paid to the need to ensure that individual accounts are obtained in a proximate and transparent manner that is consistent with the rules of evidence, the duty of care to staff and the need to secure public confidence. Post-incident procedures should be revised to ensure that officers do not write up their notes together.

That MPS

- ◆ In collaboration with partners in Transport for London and British Transport Police, undertake to ensure that communications are harmonised and facilitate the command and control of operations conducted within the London Underground network.

In respect of the aforementioned recommendations, the IPCC reports that an HMIC review into the progress that has been made by the Metropolitan Police in implementing these recommendations reveals that significant progress has been made. Of the 16 recommendations, 10 have been implemented, 4 have been partially implemented or await further considerations, and 2 await changes to national guidance.

The 170 page report can be found at [http://www.ipcc.gov.uk/index/resources/evidence\\_reports/investigation\\_reports/ipcc\\_resources\\_stockwellone.htm](http://www.ipcc.gov.uk/index/resources/evidence_reports/investigation_reports/ipcc_resources_stockwellone.htm)

## Metropolitan Police - Health and Safety Trial Result

On 1 November 2007, the Metropolitan Police was found guilty of failing to discharge a duty under Section 3 of the Health and Safety at Work etc Act 1974 in relation to the circumstances leading up to the death of Jean Charles de Menezes at Stockwell Underground Station in July 2005. The court heard that there had been 19 key failings during the incident in July 2005 and a critical breakdown in communications.

The force has been fined £175,000 and ordered to pay £385,000 in costs

When delivering the verdict, the jury foreperson stated that the jury attached no personal culpability to Deputy Assistant Commissioner (then Commander) Dick.

## IPCC Recommendations Following Custody Death Investigation

The Independent Police Complaints Commission (IPCC) has made a number of recommendations following its investigation into the circumstances surrounding the death of David John Battison in March 2007.

The investigation established that Mr Battison consumed toxic liquid from a bottle left in his possession whilst he was under arrest and was being transported in the back of the police vehicle. The bottle had been obtained when he had been allowed to return, unsupervised, into his home following his arrest. Whilst travelling in the police vehicle, he became unwell and was transferred to the Queen's Medical Centre in Nottingham, where he subsequently died on Tuesday 13 March.

The investigation found that the arrest was appropriate, that enquiries made by the officers in the area prior to the arrest were both proportionate and reasonable, and there was no evidence or intelligence to suggest Mr Battison would attempt to take his own life. It did, however, highlight a number of areas of concern surrounding the manner in which the arrest was undertaken. As a result, it made the following recommendations, which it intends to share through its new national Learning the Lessons Committee, on which police national bodies are represented:

- ◆ Persons arrested at their home address should not be left unsupervised at any time until they are safely detained at the police station.
- ◆ Persons who have been arrested should not be allowed to drink any liquid until they are safely in custody at a police station, where there is some control of the drinks they consume.
- ◆ During transportation, the person in custody should not sit behind the driver and an officer should sit in the rear of the vehicle with the detainee.

Current guidance contained in the document 'Guidance on the Safer Detention and Handling of Persons in Police Custody 2006', which was produced on behalf of the Association of Chief Police Officers and the Home Office by the National Centre for Policing Excellence, does already state, in Section 5 on Transportation that:

- ◆ 5.5 DETAINEE AND STAFF SAFETY - Detainees should not be left alone and unsupervised in vehicles; an officer must be able to observe and monitor the person and react to any situation which may arise.
- ◆ 5.6 PLACEMENT OF DETAINEE - In unmodified cars detainees must be placed in the rear of the vehicle in the seat furthest from the driver.
- ◆ 5.7.1 RESPONSIBILITY FOR SUPERVISING AND MONITORING THE DETAINEE - Single crewed officers must be satisfied that they can perform this role. An escorting officer may be responsible for more than one detainee. Where appropriate, the escorting officer should accompany them in the rear of the vehicle or in the cage; the escort must be able to communicate with the driver at all times.

Current guidance in the Initial Police Learning and Development Programme includes the following:

#### Placing of prisoners in vehicles

- ◆ OP1 Personal Safety Programme – In respect of placing in vehicles, the Programme makes it clear that if it is necessary to place a subject into a police car (not a van), then this should only be attempted in the rear nearside seat of a 5-door vehicle.
- ◆ OP7 - Arrest and Detention and OP8 - Escort and Present to Custody, also looks at health and safety issues in relation to transportation of prisoners. Although it does not directly state where they should be positioned, the exercises are left for the trainer to explore all issues.

#### Arrested persons at a house - maintain observation

- ◆ OP7 and OP8 do make references to the fact that officers have a duty of care to the individual to maintain their safety and well-being, also that of any property, personal and connected in relation to the detained person and being alert to them trying to dispose of property, but it does not make it explicit re keeping them in sight at all times.

#### Drinking liquid

- ◆ Is not specifically mentioned anywhere in the programme, with the exception of the drink-drive procedure which is in a different context.

The Learning the Lessons Committee is a multi-agency committee that has been established to disseminate and promote learning across the police service. Its members are:

- ◆ Association of Chief Police Officers.
- ◆ Association of Police Authorities.
- ◆ Home Office.
- ◆ Independent Police Complaints Commission.
- ◆ Her Majesty's Inspectorate of Constabulary.
- ◆ National Policing Improvement Agency.

The committee has recently published its second bulletin, the purpose of which is to summarise reports on recommendations for improving policing practice which has arisen out of conduct investigations carried out by the IPCC, police forces, the Serious Organised Crime Agency, or Her Majesty's Revenue and Customs. The bulletin can be found at [http://www.ipcc.gov.uk/learning/learning\\_the\\_lessons\\_bulletin\\_nov2007.pdf](http://www.ipcc.gov.uk/learning/learning_the_lessons_bulletin_nov2007.pdf)

The committee has its own website pages at <http://www.ipcc.gov.uk/learning/index.htm>

## HOC 32/2007

### The Introduction of the Police Federation (Amendment) Regulations 2007 and Dates of the Police Federation Central Conferences 2008

This Home Office Circular publicises:

- ◆ The introduction of the Police Federation (Amendment) Regulations 2007.
- ◆ Dates of the Police Federation Central Conferences 2008

The Police Federation (Amendment) Regulations 2007 were brought into force on 15 October. (See SI 2751/2007 in October *Digest*).

The Central Conferences of the Police Federation of England and Wales for 2008 are to be held in the Bournemouth International Centre from 20 – 22 May 2008.

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

## HOC 33/2007

### Standard Powers and Duties of Police Community Support Officers

This Home Office Circular advises of the commencement on 1 December of the Police Reform Act 2002 (Standard Powers and Duties of Community Support Officers) Order 2007 (see SI 3202/2007).

The list of standard powers as set out in SI 2007/3202 are intended by the Government to ensure that all PCSOs have appropriate powers to support the delivery of Neighbourhood Policing and deal with low-level antisocial behaviour and disorder.

Chief Officers retain the ability to designate PCSOs with any of the remaining discretionary powers that may be designated upon a PCSO under Schedule 4 to the PRA.

The full list of powers (broken down into standard powers, discretionary powers and powers to issue Penalty Notices for Disorder under Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001) and further guidance on implementation can be found in the Annex to the Circular.

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

## Plans on Standardisation of the Recruitment, Role, Powers, Uniforms and Equipment of Police Community Support Officers

In addition to the list of standard powers for Police Community Support Officers (PCSO's) set out in the Police Reform Act 2002 (Standard Powers and Duties of Community Support Officers) Order 2007 (see previous article) the Home Secretary has announced that work is being carried out looking at standardising procedures in respect of PCSO's with a view to introducing a common code of practice for forces.

ACPO have commissioned the National Policing Improvement Agency (NPIA) to lead the project. The project involves the Home Office, ACPO, NPIA and the APA it is expected to report back in January 2008.

The project is intended to help establish greater, appropriate standardisation across all forces on areas such as recruitment, training, role, powers, uniforms and equipment, career development, supervision of PCSO's and the consideration of a new volunteer scheme for PCSOs as recommended by Sir Ronnie Flanagan in his interim report.

It has been suggested that the new standardised rules will include

- ◆ A new minimum age of recruitment for a PCSO being set at 18 years.
- ◆ The role of PCSOs being defined including areas where the use of PCSOs is not to be considered.
- ◆ The introduction of a national uniform for PCSOs that ensures the difference between PCSOs and sworn officers is visibly apparent.
- ◆ Issue of Personal Protective Equipment.

## Police Complaints: Statistics for England and Wales 2006/07

The Independent Police Complaints Commission (IPCC) has published statistics on complaints against the 43 Home Office police forces in England and Wales during 2006/07.

The statistics reveal that, in 2006/07:

- ◆ A total of 28,998 complaint cases were recorded across England and Wales (an increase of 10% on the previous year).

The report cannot identify one single factor to account for this increase, which has continued over the last three years to increase but lists a number of factors that may contribute to the increased figures, including the legislative changes included in the Police Reform Act 2002 which widened the types of people who can make a complaint about the police and be the subject of a complaint; the ability to make direct complaints to the IPCC; the increased awareness and accessibility of the police complaints system; and improvements in how police forces record complaints.



- ◆ A total of 45,883 allegations were recorded in 2006/07 (an increase of 4% on 2005/06). (A complaint case may consist of one or more allegations).
- ◆ Three categories made up 60% of all allegations made about police conduct; Other Neglect or Failure in Duty (24%); Incivility, Impoliteness and Intolerance (21%); and Other Assault (15%).
- ◆ A total of 41,584 individual allegations were completed in 2006/07. This figure includes allegations recorded in previous years and represents an increase of 9% (on 2005/06) in the actual number of allegations which were closed.
- ◆ 47% of closed complaints were dealt with local resolution, 30% by an investigation, 10% were dispensed with from the requirement to be investigated, and the remainder were withdrawn by the complainant.
- ◆ 89% of complaints that were formally investigated were found to be unsubstantiated.
- ◆ 88% of complainants were those directly affected by the action of the police.
- ◆ The remainder of complaints were made by: those adversely affected accounted (8%); witnesses to incidents (2%); and representatives (2%).
- ◆ 63% of complainants were male.
- ◆ 61% of complainants were recorded as white, 5% Asian, 7% black and 2% of another ethnicity. Details on ethnicity were missing in 25% of cases.
- ◆ 32,574 people working in the police service were subject to a complaint in 2006/07. Of those whose occupational status was identified, 93% were police officers, 5% were police staff including traffic wardens and community support officers, 1% were special constables and 1% were other contracted staff.
- ◆ 79% of those complained of were male.

The report contains breakdown tables on complaints in relation to each force area.

The report also contains statistics on complaints recorded by the following non-Home Office forces and organisations:

- ◆ British Transport Police.
- ◆ Ministry of Defence Police.
- ◆ Civil Nuclear Constabulary.
- ◆ Her Majesty's Revenue and Customs.
- ◆ Serious Organised Crime Agency.

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

## Report on the Results of a Prospective Mapping Project

The results of a prospective mapping project conducted in the East Midlands area which sought to develop an accurate way of forecasting where burglary is most likely to next occur, and to decide whether the resulting system had potential for use in operational policing has been published by the Home Office.

The report concludes that the burglary forecasting (prospective mapping) tool developed during the project yielded risk predictions for small clusters of homes which were significantly more accurate than offered by alternative approaches. It also found that despite the initial scepticism of police officers, most came to see the system as useful. The report suggests that the system should be extended to other crime types, such as vehicle crime and violence.

The report, 'Prospective crime mapping in operational context' can be found in full at <http://www.homeoffice.gov.uk/rds/pdfs07/rdsolr1907.pdf>

## New ACPO Head of Roads Policing

The Association of Chief Police Officers has announced that Steve Green, Chief Constable of Nottinghamshire Police, is to take over as head of the ACPO roads policing business area.

## Study of Terrorist Pre-Charge Detention Powers

The human rights group Liberty has published the results of a comprehensive study of terrorist pre-charge detention powers in 15 countries, including the United States, Spain, Russia, France and Turkey.

The study shows that the UK pre-charge detention, currently 28 days, exceeds equivalent limits in comparable democracies.

The report acknowledges that not all countries have an exact concept of “pre-charge detention” in their legislative processes, but has based its findings on advice from lawyers qualified in those jurisdictions against the closest equivalent provisions.

It finds:

- ◆ Turkish criminal law only permits 7.5 days’ detention before charge.
- ◆ The pre-charge detention system in Spain is limited to five days.
- ◆ In Italy, pre-charge detention is permitted for a maximum of four days.
- ◆ The US constitution limits pre-charge detention to 48 hours.

The report, which argues against the extension of the pre-charge detention period in the UK, can be found in full at <http://www.liberty-human-rights.org.uk/issues/pdfs/pre-charge-detention-comparative-law-study.pdf>

## Report on Control of Police Forces

The independent think tank New Local Government Network (NLGN) has issued a report entitled, ‘Your Police or Mine? Delivering local police leadership’, which looks at the issue of the control of police forces.

The report argues that the modern police force has become detached from society, bogged down with bureaucracy and responsive to central policy rather than local need. It claims that the changes it makes in the report would save millions of pounds which could be pumped into front line policing, and would also give local people greater influence over local policing. It suggests that:

- ◆ Police Authority and/or Basic Command Unit boundaries be made coterminous with those of local authorities.
- ◆ Chief Constables be made directly accountable to Local leaders.
- ◆ Police Authorities be abolished and their functions taken on by upper-tier local authorities, led by local Leaders in consultation with community partners and a reformed Community Safety Partnership.

The Chair of the Association of Police Authorities, Bob Jones, has dismissed the proposals stating that the proposals are impractical and simply won’t work because local council leaders are too busy to devote the time and effort needed to such an important local service.

The report can be found in full at <http://www.nlgn.org.uk/public/wp-content/uploads/your-police-or-mine.pdf>

## Possible New Bullet Proof Vest Material

A research paper has been published by Professor Liangchi Zhang and Dr Kausala Mylvaganam from the Centre for Advanced Materials Technology, University of Sydney, Australia into the force-repelling properties of carbon nanotubes. This concludes that they could be used to make useful articles such as artificial muscles, reinforced materials, bulletproof vests, explosion-proof blankets, etc.

Currently bullet-proof jackets and explosion-proof blankets are usually made of multiple layers of Kevlar, Twaron or Dyneema fibres, which stop bullets from penetrating by spreading the bullet's force. Targets can still be left suffering blunt force trauma, perhaps severe bruising or, worse, damage to critical organs.

The researchers undertook experiments to find the optimum point of elasticity and found a way to use the elasticity of carbon nanotubes to not only stop bullets penetrating material but actually rebound their force, thereby negating the effect of blunt force trauma.

This study estimates, though based on a very strong assumption, that body armour of 600 micrometres or microns (a unit of length equal to one thousandth of a millimetre) in thickness, made from six layers of 100 micrometre carbon nanotube yarns, could bounce off a bullet with a muzzle energy of 320 joules.

The report can be found in full at [http://www.iop.org/EJ/article/-search=37711291.1/0957-4484/18/47/475701/nano7\\_47\\_475701.pdf?request-id=RMGSnC6R3BGlqii22wi7Kg](http://www.iop.org/EJ/article/-search=37711291.1/0957-4484/18/47/475701/nano7_47_475701.pdf?request-id=RMGSnC6R3BGlqii22wi7Kg)

## Case Law



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### Control Order can Amount to a Deprivation of Liberty

#### **SECRETARY OF STATE FOR THE HOME DEPARTMENT v JJ & ORS (2007)**

#### **HL (Lord Bingham of Cornhill, Lord Hoffmann, Baroness Hale of Richmond, Lord Carswell, Lord Brown of Eaton-under-Heywood)**

Human Rights - Criminal Law

Judicial Decision-Making: Non-Derogating Control Orders: Right To Liberty And Security: Terrorism: Control Orders: S.3(12) Prevention Of Terrorism Act 2005

A control order which, among other things, imposed an 18-hour curfew and prohibited social contact with anybody who was not authorised by the Home Office, amounted to a deprivation of liberty. The court had not erred in quashing the order (as opposed to amending it), since defects in such an order could not be cured by amending specific obligations and it would be contrary to principle to decline to quash an order, made without power to make it, which had unlawfully deprived a person of his liberty.

The Secretary of State appealed against the dismissal of his appeal ([ 2006] EWCA Civ 1141) against a decision that obligations imposed on the respondents (D) in control orders made pursuant to the Prevention of Terrorism Act 2005 violated the European Convention on Human Rights 1950 Art.5. D were six respondents in four appeals heard by the instant court at the same time. D were subject to non-derogating control orders. It was common ground that none of the cases in the instant appeal fell within any of the exemption classes listed in Art.5(1)(a) to Art.5(1)(f). As a result of the orders, D, who were all single men, were confined to their one-bedroom flats save for between the hours of 10.00 and 16.00, and even then, had limited movement in restricted urban areas; visitors had to be authorised by the Home Office and D were prohibited from meeting anybody who did not have Home Office clearance; the residences were subject to spot searches by the police, and D were electronically tagged and forbidden to use or possess any communications equipment apart from a single fixed telephone line in their flat. At first instance, the length of the curfew period, the extent of the obligations and their intrusive impact on the ability to lead a normal life had been likened to detention in an open prison. At a subsequent hearing, the Court of Appeal had agreed that the facts of the cases amounted to a deprivation of liberty. The Secretary of State repeated the assertions submitted to the Court of Appeal and

- (1) stressed the imperative duty of democratic governments to do what could lawfully be done to protect the public against the grave threat presented by the criminal activity of terrorists;
- (2) maintained that even if the court had been correct to find that the control orders wrongly deprived D of their liberty, s.3(12) of the Act supported a view that only some of the individual obligations ought to have been quashed, rather than the entire control order.

#### HELD

(Lord Hoffman and Baroness Hale of Richmond dissenting)

- (1) Neither the judge at first instance nor the Court of Appeal had erred in their legal reasoning and the instant court would have reached the same conclusion as they did. The effect of the 18-hour curfew, coupled with the effective exclusion of all but the most brave of social visitors meant that D were practically in solitary confinement for an indefinite duration. The area open to them during their six non-curfew hours was not objectionable, but they were located in an unfamiliar area, devoid of social contacts and their lives were wholly regulated by the Home Office, *Guzzardi v Italy* (A/39) (1981) 3 EHRR 333 and *Engel v Netherlands* (A/22) (1979-80) 1 EHRR 647 applied.
- (2) The Secretary of State had had no power to make an order that was incompatible with Art.5 and any such order was, on well-known principles, a nullity. Defects could not be cured by amending specific obligations and it would be contrary to principle to decline to quash an order, made without power to make it, which had unlawfully deprived a person of his liberty.
- (3) (Per Lord Hoffman) It was clear from the unqualified nature of the right to liberty and its place in the scheme of the other qualified Convention rights, that it dealt with literal physical restraint. In order to preserve the key distinction between the unqualified right to liberty and the qualified rights of freedom of movement, communication and association and so forth, it was essential not to give an over-expansive interpretation to the concept of deprivation of liberty, *A v Secretary of State for the Home Department* (2004) UKHL 56, (2005) 2 AC 68 considered. D's situation could not be compared with that of somebody who was in prison. Even if it was accepted that the control order violated D's right to liberty, there was no conceptual reason why the court could not modify the order so as to make it lawful, and the judge's failure to accept that he had such power had been an improper exercise of his discretion.

#### APPEAL DISMISSED



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### **SECRETARY OF STATE FOR THE HOME DEPARTMENT v (1) MB (2) AF (2007)**

**HL (Lord Bingham of Cornhill, Lord Hoffmann, Baroness Hale of Richmond, Lord Carswell, Lord Brown of Eaton-under-Heywood)  
31/10/2007**

Human Rights

Closed Material: Non-Derogating Control Orders: Right To Fair Trial: Terrorism: Art.5 European Convention On Human Rights: S.3(12) Prevention Of Terrorism Act 2005: Pt 76 Civil Procedure Rules 1998: Sch.1 Para.4(3)(D) Prevention Of Terrorism Act 2005

Where the justification for the making of a non-derogating control order lay wholly within closed material that could not be disclosed to the controlled person, the Prevention of Terrorism Act 2005 Sch.1 para.4(3)(d) had to be read and given effect "except where to do so would be incompatible with the right of the controlled person to a fair trial".

In conjoined appeals the appellants (M and F) appealed against decisions ((2007) EWHC 651, Times, April 18, 2007 and (2006) EWCA Civ 1140, (2007) QB 415) that the procedures contained in the Prevention of Terrorism Act 2005 s.3 were not incompatible with the European Convention on Human Rights 1950 Art.6. The respondent secretary of state cross-appealed against a decision that the obligations contained in a non-derogating control order imposed on F amounted to a deprivation of his liberty. Non-derogating control orders had been imposed on both M and F. In both cases the secretary of state's application had been supported by open and closed statements. In M's case, the open statement asserted that he was an Islamist extremist who intended to travel to Iraq to fight against coalition forces. The basis for those assertions was contained in the closed material. The open case against F was simply that he had links with Islamist extremists. The control order to which F was subject imposed on him, among other things, a 14-hour curfew and the requirement that he wear an electronic tag. The issues for determination were (i) whether the impact of the obligations imposed on F amounted to a deprivation of his liberty within the meaning of Art.5 of the Convention; (ii) if it did, whether it was a proper exercise of the court's discretion under s.3(12) of the Act to order that the control order be quashed as a whole and ab initio rather than to quash individual obligations or direct the secretary of state to modify individual obligations; (iii) whether a non-derogating control order constituted a criminal charge for the purposes of Art.6; (iv) whether the procedures provided for by s.3 of the Act and CPR Pt 76 were compatible with Art.6 in circumstances where they resulted in the cases being made against M and F being in their essence entirely undisclosed to them, with no specific allegation of terrorism-related activity contained in open material.

**HELD**

(Lord Hoffman dissenting on the issue of whether the procedures provided for by s.3 of the Act and Part 76 of the CPR were compatible with Art.6 of the Convention)

- (1) The effect of the control order was not such as to deprive F of his liberty, Secretary of State for the Home Department v JJ (2007) UKHL 45 and Secretary of State for the Home Department v E (2007) UKHL 47 applied.
- (2) In the light of the conclusion on the first issue, the second issue did not arise. Had it done so, the judge's decision to quash the control order would have been upheld for the reasons given in JJ.
- (3) Non-derogating control order proceedings did not involve the determination of a criminal charge: there was no assertion of criminal conduct, only a foundation of suspicion; no identification of any specific criminal offence was provided for; the order was preventative rather than punitive or retributive in purpose; and the obligations imposed had to be no more restrictive than was judged necessary to achieve the preventative object of the order, A v Secretary of State for the Home Department (2002) EWCA Civ 1502, (2004) QB 335 applied. However, in any case in which a person was at risk of an order containing obligations of the stringency found in F's case, the application of the civil limb of Art.6(1) entitled him to such measure of procedural protection as was commensurate with the gravity of the potential consequences, Engel v Netherlands (A/22) (1979-80) 1 EHRR 647 considered and R (on the application of McCann) v Manchester Crown Court (2002) UKHL 39, (2003) 1 AC 787 applied.
- (4) Although Strasbourg had not dealt with a case exactly on all fours, a number of principles could be derived from the authorities. Even in criminal proceedings there were competing interests; evidence could only be withheld if strictly necessary; any difficulties caused to the defence had to be sufficiently counterbalanced by the measures taken by the court; what was sufficient was specific to each case; there was a difference between background information not essential to the outcome of the defence and evidence which was crucial to its determination; and in none of the Strasbourg cases did the court have the assistance of a special advocate. Whilst the court was not confident that Strasbourg would hold that every control order hearing in which the special advocate procedure was used would be sufficient to comply with Art.6, with strenuous effort it should usually be possible to accord the controlled person a substantial measure of procedural justice. The best judge of whether the proceedings afforded a sufficient measure of procedural protection was the judge who conducted the hearing. If, despite all efforts, it was not possible to afford sufficient protection, Convention rights required that the judge be in a position to quash the order. However, that would not be so in every case. In the instant case it was not appropriate to make a declaration of incompatibility. Rather, Sch.1 para.4(3)(d) of the Act had to be read and be given effect "except where to do so would be incompatible with the right of the controlled person to a fair trial". The cases of both M and F were to be remitted for consideration in the light of the Appellate Committee's conclusions. (Per Lord Hoffman) The special advocate procedure provided sufficient safeguards to satisfy Art.6.





## Condition Precedents to the Making of Non Derogating Control Orders

### **SECRETARY OF STATE FOR THE HOME DEPARTMENT v (1) E (2) S (2007)**

#### **HL (Lord Bingham of Cornhill, Lord Hoffmann, Baroness Hale of Richmond, Lord Carswell, Lord Brown of Eaton-under-Heywood) 31/10/2007**

Criminal Procedure - Human Rights

Conditions Precedent: Curfew Requirements: Non-Derogating Control Orders: Right To Liberty And Security: Secretaries Of State: Terrorism: Conditions Precedent To Making Of Non-Derogating Control Order: Secretary Of State's Continuing Duty To Review Prospects Of Prosecution: S.8(1) Prevention Of Terrorism Act 2005: S.8(2) Prevention Of Terrorism Act 2005: S.2(1) Prevention Of Terrorism Act 2005

[Neither compliance with the duty under the Prevention of Terrorism Act 2005 s.8\(2\) nor the absence of a realistic prospect of prosecution was a condition precedent to the making by the Secretary of State of a non-derogating control order.](#)

The appellant (E) appealed against a decision ((2007) EWCA Civ 459, (2007) 3 WLR 1) that his rights under the European Convention on Human Rights 1950 Art.5 were not infringed by the non-derogating control order to which he was subject, and that the control order should not have been quashed as a result of the respondent secretary of state's breach of his duty under the Prevention of Terrorism Act 2005 s.8(2) to take reasonable steps to ensure that the prosecuting authorities were keeping the prospects of prosecution under review. The Court of Appeal had found that the secretary of state had breached his continuing duty of review by omitting to provide the police with judgments of the Belgian court in cases in which associates of E were successfully prosecuted, so as to prompt and facilitate a reconsideration of the prospects of prosecuting E. E submitted that (1) the effect of the control order was to deprive him of his liberty; (2) it was a fundamental premise of the 2005 Act that where there were realistic prospects of prosecuting an individual against whom it was proposed to make a control order, he would indeed be prosecuted; (3) compliance by the secretary of state with his duty under s.8(2) was a condition precedent to his power to make an order in a case falling within s.8(1); (4) the absence of a realistic prospect of prosecution was a condition precedent to the making by the secretary of state of a non-derogating control order. Thus the secretary of state must not only consult under s.8(2), but must be given to understand that it was not feasible to prosecute with a reasonable prospect of success. Unless that was so, it could

not be “necessary” to impose obligations under a control order, since it would not be shown that the public could not be protected by arresting, charging and prosecuting the individual.

#### HELD

- (1) The obligations imposed on E under the control order differed from those imposed in the case of *Secretary of State for the Home Department v JJ* (2007) UKHL 45 in certain material respects. The curfew to which he was subjected was of 12 hours’ duration; the residence specified in the order was his own home, where he had lived for some years, and he was also allowed access to his garden; he lived at home with his wife and family; five members of his family lived in the local area and had been approved as visitors; he was not subject to any geographical restriction during non-curfew hours; he was free to attend a mosque of his choice and was not prohibited from associating with named individuals. The Court of Appeal was right to regard E’s case as distinguishable from the case of JJ, JJ distinguished. The starting point in any consideration of deprivation of liberty was the core element of confinement. The length of curfew in E’s case was within the range which Strasbourg had accepted as merely restricting liberty.
- (2) There could be no doubt about the governing principle behind the 2005 Act nor about its importance. It was implicit that if there was evidence that justified the bringing of a criminal charge, a suspect would be prosecuted rather than made the subject of a control order, *Secretary of State for the Home Department v MB* (2006) EWCA Civ 1140, (2007) QB 415 applied. The secretary of state accepted that premise.
- (3) Section 2(1) prescribed the circumstances in which the secretary of state could make a non-derogating control order, and compliance with the s.8(2) duty was not included as a qualifying condition. However, it was true that s.8(2) was expressed in strong mandatory terms. The duty under s.8(2) was to be taken seriously.
- (4) The absence of a realistic prospect of prosecution was not a condition precedent to the making by the secretary of state of a non-derogating control order. Section 2(1) of the Act did not include that element as a qualifying condition. To require the secretary of state not only to consult on whether there was a realistic prospect of prosecution but to obtain a clear answer would emasculate what was clearly intended to be an effective procedure and could not be taken to represent the intention of Parliament.
- (5) Once it was accepted that there was a continuing duty to review, the correct approach was for the secretary of state to do what he reasonably could do to ensure that the continuing review was meaningful, and to provide the police with material in his possession that was or might be relevant to any reconsideration of prosecution. It was regrettable that the Belgian judgments were not made available promptly to the appropriate authorities. However, the Court of Appeal’s reasoning on the effect of the secretary of state’s breach of duty could not be faulted. The Court of Appeal was correct to hold that the control order should not have been quashed.



## Proceeds of Crime – Court is Entitled to Take a Global Approach to Decide Whether Property Has Been Obtained Through Unlawful Conduct

**DIRECTOR OF THE ASSETS RECOVERY AGENCY v (1) FABIAN FERNANDO AL KURT JACKSON (AKA FABIAN BRISSET, FABIEN BRISSEL, FABIAN JACKSON BRISSET, FABIEN BRISSET, FABIAN BROWN, FABIEN FERNANDO, AL FONS, FABIEN JACKSON, AL KURT) (2) CHERYL DAVINA SMITH (AKA CHERYL DAVINE SMITH, CHERYL DEVINA SMITH) (2007)**

**QBD (King J) 9/11/2007**

Civil Procedure - Civil Evidence

Assets Recovery: Civil Recovery Proceedings: Proceeds Of Crime: Sufficiency Of Evidence: Global Approach To Proof: Sufficiency Of Evidence To Show Assets Illegally Obtained: Proceeds Of Crime Act 2002

[Taking a global approach to the issue of proof under the Proceeds of Crime Act 2002 the Director of the Assets Recovery Agency had satisfied the court, on the balance of probabilities, that property had been obtained through unlawful conduct and was recoverable.](#)

The claimant Director of the Assets Recovery Agency sought a civil recovery order under the Proceeds of Crime Act 2002 against the first respondent (J). J had been convicted of a number of drug offences over a five-year period, with the first conviction occurring when J was 17 years old. Three years later the police had arrested him at a property that he shared with the second respondent (S). A large quantity of property including cash totalling £97,865 and items of jewellery and valuable watches valued at almost £25,000 were found on the premises in addition to a number of boxed electronic, camera and computer items such as DVD recorders, digital cameras and video games. Further searches and seizures were made both at J's home and at other properties connected with J. In particular cash in the sum of £50,000 and jewellery to the value of £80,000 was recovered from three safety deposit boxes. The respondents were charged with money laundering but were acquitted. The director contended that the property seized from J and other real property that he owned represented profits accrued through either drug dealing or money laundering the proceeds of drug dealing. J contended that the property seized from him had been acquired through legitimate trading in six different businesses; in particular selling jewellery and clothes and trading on an internet website.

**HELD**

The court was entitled to take a global approach to the issue of proof that the property in issue was recoverable within the meaning of the Act. The question was whether J had obtained the property in question through the unlawful conduct alleged or whether the property in J's hands was representative of property so obtained. The test was whether it was more probable than not that such was the case. It was not essential to consider each property transaction on an item by item basis and it was sufficient for the director to particularise the unlawful conduct in general terms, *Director of the Assets Recovery Agency v Green* (2005) EWHC 3168 (Admin), Times, February 27, 2006 and *Director of the Assets Recovery Agency v Olupitan* (2007) EWHC 162 (QB), (2007) 157 NLJ 258 applied. In applying the test the court was entitled to take a common sense approach to the inferences to be drawn from the manner in which J had chosen to store his accumulated cash and from J's failure to keep any business records in the context of the evidence as a whole. J's account of his asserted legitimate trading businesses conducted over the years material to the instant claim was wholly lacking in credibility. It was not credible to assert that J had been a successful businessman running six profitable businesses given his failure to keep any business records, or his inability to trace any customer or produce any other evidence in support of an actual sale or supply of services made by him. Whatever limited trading there might have been in any particular field was insufficient to have been the source of the means whereby J was able to acquire the assets that were the subject of the claim. That finding of "unexplained wealth" was insufficient on its own to sustain the director's claim to recoverable property, but J had offered explanations that had been rejected as untrue. On the evidence, as at the time of J's arrest, he could not have been conducting any legitimate trade of any significance, but rather unlawfully dealing in drugs or money laundering so that the assets that were the subject of the claim fell to be recovered by the director.

#### JUDGMENT FOR CLAIMANT



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## Attendance of Others at Police Disciplinary Review Meetings Falls within the Discretion of the Reviewing Officer

**R (on the application of INDEPENDENT POLICE COMPLAINTS COMMISSION) v CHIEF CONSTABLE OF WEST MIDLANDS POLICE (2007)**

**QBD (Admin) (Burton J) 5/11/2007**

Police - Civil Procedure

Attendance: Disciplinary Procedures: Discretionary Powers: Hearings: Police: Private Hearings: Review Officers: Attendance Of Others At Review Meeting: Existence Of Provision That Meetings Held In Private: Reviewing Officer's Automatic Discretion: Reg.40 Police (Conduct) Regulations 2004: Reg.41 Police (Conduct) Regulations 2004: Reg.41(2) Police (Conduct) Regulations 2004

A reviewing officer had erred in his conclusion that he was precluded by law from allowing a representative of the Independent Police Complaints Commission to attend a review meeting as there was nothing in the Police (Conduct) Regulations 2004 reg.41 that provided that such meetings should be held in private and there was therefore an automatic discretion on the part of the reviewing officer.

The claimant Independent Police Complaints Commission applied for judicial review of a decision of a reviewing officer in the defendant police force that he had no discretion to allow the presence of a representative of the commission at a disciplinary review meeting held in respect of the third and fourth interested party police officers (X and Y). The first and second interested parties had brought a complaint against X and Y that led to their being sanctioned. X and Y exercised their right under the Police (Conduct) Regulations 2004 reg.40 to request that a review meeting be held in respect of the sanctions imposed upon them. The reviewing officer held that he had no jurisdiction to allow the commission or the first and second interested parties to attend the meeting. He further held that a provision in the relevant Home Office Guidance, namely the Police Unsatisfactory Performance, Complaints and Misconduct Procedures 2005, which provided that any other person could be present at the meeting at his discretion, was ultra vires. The commission submitted that the matter was at the discretion of the reviewing officer and that there was nothing in reg.41 that provided that the meeting had to be held in private. The police submitted that reg.41 did provide for the meeting to be held in private and that there was no room in the regulation for an implication of discretion. The police further submitted that there was a distinction between a full hearing and a review meeting, the latter suggesting something more private than the former. X submitted, relying upon the principle of "expressio unius est exclusio alterius", that the express provision in reg.41(2) that an officer might be accompanied at the meeting by another police officer or by legal counsel excluded any other party from attending.

HELD

- (1) It was the reviewing officer, not the commission, who was reading into reg.41 a provision that was not there, namely an express provision that a review meeting be held in private. The meeting had not been expressed to be private so there was therefore automatic room for discretion. Accordingly, the commission was correct in its assertion that there was no bar on the attendance of other parties: the matter was at the discretion of the reviewing officer. Further, the relevant provision in the Home Office guidance was not ultra vires.
- (2) The review meeting was not, as might be the case in other contexts, held off the record or in pursuit of a compromise; it was a meeting that might lead to the overturning or varying of a decision to impose sanctions. It had the same effect as an appeal and in that context it was important, subject to the discretion of the reviewing officer, that all parties had an opportunity to participate.
- (3) Regulation 41(2) was misunderstood if it was relied upon for the proposition that the provision, by expressly stating who might accompany an officer, excluded the attendance of all other parties. The effect of the provision was that the reviewing officer's discretion to allow or disallow the attendance of any particular party could not be exercised to exclude a representative of the police officer concerned.

#### APPLICATION GRANTED



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## Meaning of 'Control' under the Sexual Offences Act 2003

### **R v STEVEN JOHN MASSEY (2007)**

#### **CA (Crim Div) (Toulson LJ, Gibbs J, Judge Wide QC) 19/10/2007**

Criminal Law - Criminal Procedure

Controlling Prostitutes: Jury Directions: Living On Prostitution: Statutory Definition: Statutory Interpretation: Meaning Of Control Within S.53 Sexual Offences Act 2003: S.53 Sexual Offences Act 2003: S.49 Sexual Offences Act 2003

"Control" within the meaning of the Sexual Offences Act 2003 s.53 should be given its ordinary dictionary meaning of directing a relevant activity and included, but was not limited to, individuals that used force on another to make them carry out a relevant activity. Therefore there had been no need to prove that a complainant had been forced, coerced or compelled to work as a prostitute, merely that she had been directed to do so.

The appellant (M) appealed against convictions for living on the earnings of prostitution contrary to the Sexual Offences Act 1956 s.30 and controlling prostitution for gain contrary to the Sexual Offences Act 2003 s.53. M had met the complainant (C) when she was 19 years old and already working as a prostitute. A relationship developed and they lived together for approximately 10 years. The relationship broke down and C eventually left M, reporting him to the police as having controlled her work as a prostitute. C alleged that when she initially moved in, M made her work on the streets but realised that her earning potential increased if clients were allowed to visit her at home. She asserted that M controlled which clients she saw, the acts that she was expected to perform and that he noted them down in a logbook. C stated that she had not wanted to do certain things but that M had been domineering and violent towards her. M asserted that he had tried to dissuade C from continuing her prostitution but that she had insisted on continuing as she earned decent money. M admitted logging clients in a notebook but stated that it was at C's request. Due to the offences occurring over a long period of time, it was agreed between the parties that to avoid confusion relating to coming into force dates, M should be charged under both the 1956 Act and the 2003 Act. M submitted that the judge had given insufficient guidance to the jury as to what was meant by "control" within the meaning of s.53 of the 2003 Act and that his convictions were unsafe as a consequence. M further argued that as a matter of law the Crown needed to demonstrate that there was some coercion or that C was compelled to act as a prostitute.

#### **HELD**

It had been agreed that the two offences stood or fell together in line with the agreement reached prior to trial that it was prudent to charge M under both Acts to avoid confusion arising over coming into force dates. In statutory interpretation context was crucial and the social mischief at which s.53 of the 2003 Act was aimed had to be considered. "Control" occurred not only in s.53, under the heading "Controlling prostitution for gain" but also in s.49 of the

2003 Act, under the heading "Controlling a child prostitute or a child involved in pornography". Those headings were not definitive but were pointers towards what social mischief the sections were aimed at. Explanatory notes were often a helpful way to determine the reasoning behind a particular section. The explanatory note to s.53 stated that an offence contrary to its provisions required the same conduct as that in s.49 of the 2003 Act. The explanatory note to s.49 detailed the type of conduct that might be considered to be controlling and included the charging of a particular price, the use of a certain hotel and the particular client that had to be entertained. "Control" included, but was not limited to, individuals that used force on another to make them carry out a relevant activity. It could be exercised in a variety of ways including physical violence and emotional blackmail. However if, for example, a group of young women were recruited overseas and put to work as prostitutes in the United Kingdom, the Crown would not have to prove that there was an absence of free will to show that there was control of the women for gain. Therefore control should be given its ordinary dictionary meaning as directing an activity. It did not, in the strict sense submitted by M, need the Crown to demonstrate that an individual was coerced, compelled or forced to work, although they would undoubtedly be forms of control. In the circumstances the judge had directed the jury adequately and M's convictions were safe.

#### APPEAL DISMISSED



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## Duty to Tell Prison Officers about a Prisoner's History of Violence

**DAVID GLYN LLOYD v MINISTRY OF JUSTICE (2007)**

**QBD (Judge Foster QC) 26/10/2007**

Negligence - Health And Safety At Work - Personal Injury

Damages: Duty Of Care: Prison Officers: Reasonable Precautions: Safe Systems Of Work: Violence: Failure To Provide Safe System Of Work

A prison officer who was forced to leave the prison service due to injury following an attack on him by a prisoner would have taken further precautions if he had been alerted about the prisoner's history of violence and assaults on prison officers and therefore the Ministry of Justice was negligent in failing to inform him accordingly and thereby failed to provide him with a safe system of work.

The claimant prison officer (L) claimed damages for the negligence of his employer (M). L had been part of a team sent on a planned intervention to open a cell that had been barricaded by a prisoner on remand for robbery. Following the successful intervention, L and another officer had taken the prisoner to the segregation unit without a history sheet recording recent incidents and other relevant information. The prisoner was not aggressive or violent during the breaking of the barricade or during the transfer. The following morning L attended the prisoner's cell in the segregation unit. Following the prisoner's refusal to get up and strip his bed, L took a step towards him whereupon the prisoner leapt forward and struck a heavy blow to L's left eye, causing injury and thus ending L's career in the prison service. It later transpired that the prisoner had previously been subjected to 20 adjudications for violent incidents, 14 of which involved assaults or attempted assaults on prison officers. L submitted that he did not know that the prisoner had a long history of violence including violence to prison officers and that if he or those with him had known, further precautions would have been taken. M submitted that L knew of the prisoner's disposition to violence from the previous day and that in any event it was L's responsibility to make relevant enquiries.

### HELD

It was the duty of M to keep L reasonably safe. The prisoner's history sheet could and should have included the simple warning that he had a history of assaulting prison officers and further it was never brought down from the wing to the segregation unit. In addition, the internal computer system that should have brought up the prisoner's adjudications did not hold all the relevant information or hold it in an understandable form. It was the duty of the senior officer present, who was in charge, to ensure that the procedure was appropriate, and if he felt that more information was required then it was his responsibility to obtain it. Had the senior officer or the rest of the team known of the prisoner's violent disposition they would have handled things differently and taken extra precautions that would have prevented the incident and L's

injury. As a result, M were negligent in failing to inform the senior officer or the prison officers, including L, of the prisoner's history of violence and assaults on prison officers and thereby failed to provide him with a safe system of work and exposed him to a foreseeable and unnecessary risk. Such negligence was a material cause of the incident and L's injury.

#### JUDGMENT FOR CLAIMANT



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## Guidance on what Constitutes Harassment under the Protection from Harassment Act 1997

### **CONN v SUNDERLAND CITY COUNCIL (2007)**

#### **CA (Civ Div) (Ward LJ, Buxton LJ, Gage LJ) 7/11/2007**

Employment - Local Government

Conduct: Criminal Conduct: Harassment: Incidents Of Threatening Behaviour Amounting To Course Of Conduct: Protection From Harassment Act 1997: S.7(3) Protection From Harassment Act 1997: S.1 Protection From Harassment Act 1997

A judge had erred in holding that two incidents of threatening behaviour by one employee of a local authority against another amounted to a course of conduct and harassment under the Protection from Harassment Act 1997 as one of the incidents fell short of conduct that required a criminal sanction as required by the Act.

The appellant local authority appealed against a decision that it was liable for damages for the harassment of the respondent employee (C) by his foreman (F). C had worked for the local authority as a paviour. He claimed he had been harassed and threatened by F on several occasions. He left work and issued proceedings claiming damages for a breach of the Protection from Harassment Act 1997. The judge found that on two occasions F had lost his temper, acted in an aggressive manner and threatened violence. The judge ruled that on one occasion F had demanded to know who had left work early and when C refused to tell him he shouted and threatened to smash a window and on another occasion had approached C to ask why he was not talking to him and had then threatened to hit him. He held there had been a course of conduct that F knew, or ought to have known, amounted to harassment.

#### HELD

For an offence of harassment to be made out there had to be a course of conduct, which, under s.7(3) of the Act had to be at least two incidents. A civil claim for harassment was only available for conduct that amounted to a breach of s.1. The basis for deciding whether the conduct complained of could amount to a civil claim was whether the incidents were of such gravity as to justify the sanctions of the criminal law, *Majrowski v Guy's and St Thomas's NHS Trust* (2006) UKHL 34, (2007) 1 AC 224. In the instant case the judge had been wrong to hold that the two incidents amounted to a course of conduct. Whilst the second incident crossed the line into oppressive conduct, the first did not: it was not conduct that was unlawful, there was no physical threat, merely a threat to property. Whilst the incident was unpleasant it fell below the line of conduct that justified a criminal sanction and could not amount to harassment.

#### APPEAL ALLOWED



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### **SI 3011/2007 The Magistrates' Courts Warrants (Specifications of Provisions) (Amendment) Order 2007**

In force **3 December**. This Order makes provision for the execution of Community Order Breach Warrants issued under the Schedule 8 of the Criminal Justice Act 2003 (where the offender has failed to comply with any requirement of a community order).

This Order amends the Magistrates' Courts Warrants (Specification of Provisions) Order 2000 so that warrants for breaches of Community Orders made under the Criminal Justice Act 2003 are included within the provisions specified for the purposes of Section 125A of the Magistrates' Courts Act 1980. Section 125A, 125B and 125D explicitly authorise the execution of warrants by a Civilian Enforcement Officer, an Approved Enforcement Agent and any person entitled to execute it e.g. a police officer even though it is not in his possession at the time, provided that the warrant is issued under a provision so specified.

### **SI 3064/2007 The Serious Organised Crime and Police Act 2005 (Commencement No 10) Order 2007**

In force **12 November**. This Order brings Section 163(2) of the Serious Organised Crime and Police Act 2005 into force insofar as it relates to Sections 113B(10)(a), (b), (c) and (d) of the Police Act 1997. The effect is to make the Royal Navy Regulating Branch, the Royal Marines Police, the Royal Military Police and the Royal Air Force Police, police forces for the purpose of Section 113B of the Police Act 1997. Police forces under that section may be prescribed or determined as relevant police forces for the purpose of obtaining information to be disclosed in an enhanced criminal record certificate under Part V of the 1997 Act.

### **SI 3073/2007 The Police and Justice Act 2006 (Commencement No 5) Order 2007**

In force **19 November**. This Order brings into force the following provisions of the Police and Justice Act 2006 in Wales:

- ◆ Section 22 and Schedule 9 (amendments to the Crime and Disorder Act 1998).
- ◆ Section 52 (amendments and repeals) in so far as it relates to the entries in Part 3 of Schedule 15 (repeals: crime and anti-social behaviour) that relate to: the Crime and Disorder Act 1998; the Police Reform Act 2002; and the Clean Neighbourhoods and Environment Act 2005.

## **SI 3076/2007 The Crime and Disorder (Formulation and Implementation of Strategy) (Wales) Regulations 2007**

In force **19 November**. These Regulations make further provision as to the formulation and implementation of the strategy to reduce crime and disorder that Community Safety Partnerships (CSPs) in Wales are obliged to formulate under Section 6 of the Crime and Disorder Act 1998.

Regulation 3 provides that a CSP shall set up a strategy group. The role of the strategy group is to prepare a strategic assessment, in accordance with Regulations 5 to 7, and a partnership plan, in accordance with Regulations 8 and 9. The strategic assessment is an analysis of the levels and patterns of crime and disorder in the area and the priorities that the CSP should adopt to address those matters. The partnership plan sets out a strategy for meeting those priorities and how that strategy should be implemented by the CSP.

The Regulations also include provisions to facilitate information-sharing within CSPs and Regulations to ensure that, when preparing strategic assessments and partnership plans, the CSPs engage with their local communities. Regulation 13 makes provision for the responsible authorities to have regard to any guidance issued by the Welsh Ministers and the Secretary of State.

## **SI 3138/2007 The Immigration, Asylum and Nationality Act 2006 (Commencement No. 7) Order 2007**

This Order brings into force the following provisions of the Immigration, Asylum and Nationality Act 2006.

In force **5 November** (in some cases for the purposes of making secondary legislation only):

- ◆ Section 15 (penalty for employment of adult subject to immigration control) for the purposes of making an order under subsections (2), (3) and (7).
- ◆ Section 16 (objection to penalty for employment of adult subject to immigration control) for the purposes of making an order under subsections (3) and (5).
- ◆ Sections 20 (orders) and 25 (interpretation).
- ◆ Section 31 (provision of information to immigration officers) for the purposes of making an order under paragraphs 27(2) and 27B of Schedule 2 to the Immigration Act 1971 as amended by that provision.
- ◆ Section 32 (passenger and crew information: police powers) for the purposes of making an order under subsection (5)(a).
- ◆ Section 36 (duty to share information) for the purposes of making an order under subsection (4).
- ◆ Section 37 (information sharing: code of practice) for the purposes of laying a draft code before Parliament and making an order under subsection (2).

- ◆ Section 38 (disclosure of information for security purposes) for the purposes of making an order under subsection (4).
- ◆ Section 50(4) and (5) (amendment to nationality and immigration procedure).

In force **31 December**:

- ◆ Section 34 (offence: failure to provide information).
- ◆ Section 35 (power of Revenue and Customs to obtain information).
- ◆ Section 39 (disclosure to law enforcement agencies).
- ◆ Sections 31, 32, 36, 37 and 38, to the extent to which they are not already in force.
- ◆ In Schedule 3 (repeals) the entry relating to Section 27 of the Immigration Act 1971 (offences by persons connected with ships or aircraft or with ports).

See article on these provisions on page 29.

### **SI 3155/2007 The Gambling Act 2005 (Commencement No 7) Order 2007**

In force **1 December**. This Order brings into force Sections 214 to 234 of the Gambling Act 2005. These sections provide for the giving of temporary use notices to authorise premises to be used for providing facilities for gambling during the period specified in the notice.

### **SI 3157/2007 The Gambling Act 2005 (Temporary Use Notices) Regulations 2007**

In force **1 December**. These Regulations make provision in connection with temporary use notices under Part 9 of the Gambling Act 2005.

### **SI 3166/2007 The Finance Act 2007 (Sections 82 to 84 and Schedule 23)(Commencement) Order 2007**

This Order brings in to force the following provisions of the Finance Act 2007.

In force on **8 November**:

- ◆ Section 82 (criminal investigations: powers of Revenue and Customs).
- ◆ Section 83 (Northern Ireland investigations).
- ◆ Section 84 (sections 82 and 83: supplementary), other than subsection 4.

In force on **1 December**:

- ◆ Section 84(4).
- ◆ Schedule 23.

Basically, Section 82 amends Section 114 of the Police and Criminal Evidence Act 1984 (PACE), firstly by substituting references to 'Revenue and Customs' for 'Customs and Excise' within PACE; and , secondly, by allowing an officer of

Revenue and Customs to make an application under Schedule 1 of PACE for the delivery of, or access to, certain documents, if the officer thinks that an application under Schedule 1 would not succeed because the material required does not consist of or include special procedure material.

Those documents are ones that relate to:

- ◆ Section 20BA of, and Schedule 1AA to, the Taxes Management Act 1970 (serious tax fraud).
- ◆ Paragraph 11 of Schedule 11 to the Value Added Tax Act 1994 (VAT).
- ◆ Paragraph 4A of Schedule 7 to the Finance Act 1994 (insurance premium tax).
- ◆ Paragraph 7 of Schedule 5 to the Finance Act 1996 (landfill tax).
- ◆ Paragraph 131 of Schedule 6 to the Finance Act 2000 (climate change levy).
- ◆ Paragraph 8 of Schedule 7 to the Finance Act 2001 (aggregates levy).
- ◆ Part 6 of Schedule 13 to the Finance Act 2003 (stamp duty land tax).

This Order should be read in conjunction with SI 3175/2007.

### **SI 3175/2007 The Police and Criminal Evidence Act 1984 (Application to Revenue and Customs) Order 2007**

In force **1 December**. This Order, made by the Treasury in exercise of the powers conferred by Section 114 (2) and (3) of the Police and Criminal Evidence Act 1984 (PACE), applies certain provisions of PACE, subject to specified modifications, to relevant investigations conducted by officers of Revenue and Customs and to persons detained by such officers.

A relevant investigation is a criminal investigation conducted by officers of Revenue and Customs which relates to a matter in relation to which Her Majesty's Revenue and Customs have functions, apart from certain specified former Inland Revenue matters.

The provisions of PACE to be applied to the relevant investigations are:

- ◆ Section 8 (power of justice of the peace to authorise entry and search of premises).
- ◆ Section 9 (special provisions as to access) and Schedule 1 (special procedure).
- ◆ Section 15 (search warrants-safeguards).
- ◆ Section 16 (execution of warrants).
- ◆ Section 17(1)(b), (2), (4) (entry for purpose of arrest etc.).
- ◆ Section 18 (entry and search after arrest), subject to the modification that the power is restricted to entry and search after arrest for relevant

indictable offences if the officer has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates to that offence or to some other indictable offence which is connected with or similar to that offence.

- ◆ Section 19 (general power of seizure etc.).
- ◆ Section 20 (extension of powers of seizure to computerised information).
- ◆ Section 21 (access and copying), subject to the modification that this section shall not apply shall not apply to any thing seized as liable to forfeiture under the Customs and Excise Acts.
- ◆ Section 22(1) to (4) (retention).
- ◆ Section 24(2) (arrest without warrant: constables), subject to the modification that this does not does not limit powers under Section 138(1) of the Customs and Excise Management Act 1979; Section 20 and paragraph 4 of Schedule 3 to the Criminal Justice (International Co-operation) Act 1990; or any other enactment, including any enactment contained in subordinate legislation, for the time being in force which confers upon officers of Revenue and Customs the power to arrest or detain persons.
- ◆ Section 28 (information to be given on arrest).
- ◆ Section 29 (voluntary attendance at police station etc.).
- ◆ Section 30(1) to (4) (a) and (5) to (11) (arrest elsewhere than at police station).
- ◆ Section 31 (arrest for further offence).
- ◆ Section 32(1) to (9) (search upon arrest), subject to the modification that an officer of Revenue and Customs shall have the same power notwithstanding that the thing found is not evidence of an offence which relates to a matter in relation to which Her Majesty's Revenue and Customs have functions and any thing lawfully seized by a person under any enactment can be accepted and retained by an officer of Revenue and Customs.
- ◆ Section 34(1) to (5) (limitations on police detention).
- ◆ Section 35(1), (2), (3) and (4) (designated police stations), subject to the modification that requires the Director of Detection to designate offices of Revenue and Customs which are to be the offices to be used for the purposes of detaining arrested persons.
- ◆ Section 36(1) to (10) (custody officers at police stations), subject to the modification that Revenue and Customs custody officers are to be designated by the Director of Detection or by such other officer of Revenue and Customs as the Director of Detection may direct.
- ◆ Section 37 (duties of custody officer before charge).
- ◆ Section 39 (responsibilities in relation to persons detained).



- ◆ Section 40 (review of police detention).
- ◆ Section 41(1), (2), (4) and (6) to (9) (limits on period of detention without charge), subject to the modification in relation to 'the relevant time' in the case of a person arrested outside England and Wales, shall be: the time at which that person arrives at the office of Revenue and Customs in England and Wales in which the offence for which he was arrested is being investigated; or the time 24 hours after the time of that person's entry into England and Wales.
- ◆ Section 42(1), (2) and (4) to (11) (authorisation of continued detention).
- ◆ Section 43(1) to (12) and (14) to (19) (warrants of further detention).
- ◆ Section 44 (extension of warrants of further detention).
- ◆ Section 50 (records of detention), subject to the modification that it will be the responsibility of the Revenue and Customs Commissioners to keep such records.
- ◆ Section 51(d) (savings).
- ◆ Section 54 (searches of detained persons).
- ◆ Section 55 (intimate searches), subject to the modifications that a Higher Officer in Revenue and Customs can only authorise an intimate search of a person who has been arrested and is in Revenue and Customs detention if he has reasonable grounds for believing that the person may have concealed on him anything which he could use to cause physical injury to himself or others; and which he might so use while he is in police detention or in the custody of a court.
- ◆ Section 56(1) to (9) (right to have someone informed when arrested).
- ◆ Section 57 (additional rights of children and young persons).
- ◆ Section 58(1) to (11) (access to legal advice).
- ◆ Section 62 (intimate samples).
- ◆ Section 63 (other samples).
- ◆ Section 64, except (6B), (destruction of fingerprints and samples), subject to the modification that the responsibilities under this section will be down to the Director of Risk and Intelligence or a person authorised by him or on his behalf for the purposes of this section.
- ◆ Section 66 (codes of practice).
- ◆ Section 67 (codes of practice-supplementary).
- ◆ Section 77 (confessions by mentally handicapped persons), subject to the modification in PACE that an 'independent person' for the purposes of this section does not include an officer of Revenue and Customs or any other person acting under the authority of the Commissioners.
- ◆ Section 107 (police officers performing duties of higher rank).

The Order also contains substitute terms applicable to Revenue and Customs for certain words and phrases in the Act; and sets out equivalent Revenue and Customs grades for specified ranks of constable.

The Order also ensures that officers of Revenue and Customs do not have powers to charge a person, release a person on bail or to detain a person after charge.

The Order inserts Section 14A into PACE, which provides that material acquired or created in the course of a trade or business is not excluded or special procedure material for the purposes of any enactment mentioned in Section 9(2) of the Act.

It also brings into force Section 14B (covered in SI 3166/2007 above).

The Order also provides that, where any provision of the Act applied to Revenue and Customs confers a power on an officer of Revenue and Customs (and does not provide that the power may only be exercised with the consent of some person other than the officer), the officer may use reasonable force in the exercise of the power.

### **SI 3184/2007 The Traffic Management Act 2004 (Commencement No 6) (England) Order 2007**

This Order brings into force, as respects England, the provisions of Part 3 (Permit Schemes) of the Traffic Management Act 2004 on the following dates:

In force **1 December**:

- ◆ Section 32 - Meaning of 'permit scheme'.
- ◆ Section 37 - Permit regulations.
- ◆ Section 39 - Interpretation of Part 3.

In force **1 April 2008**:

- ◆ Section 33 - Preparation of permit schemes.
- ◆ Section 34 - Implementation of local highway authority permit schemes.
- ◆ Section 35 - Implementation of other permit schemes.
- ◆ Section 36 - Variation and revocation of permit schemes.
- ◆ Section 38 - Crown application.

### **SI 3202/2007 The Police Reform Act 2002 (Standard Powers and Duties of Community Support Officers) Order 2007**

In force **1 December**. This Order applies the provisions of Part 1 of Schedule 4 to the Police Reform Act 2002 listed in the Schedule to every person who is designated as a community support officer under Section 38 of that Act. The powers and duties contained within these provisions are known as the standard powers and duties of a community support officer.

It sets out the offences which a community support officer is designated to enforce under paragraph 1 of Part 1 of Schedule 4 to the Police Reform Act 2002 (powers to issue fixed penalty notices). See previous article in November *Digest*.

### **SI 3203/2007 The Police and Justice Act 2006 (Commencement No 6) Order 2007**

This Order brings into force the following provisions of the Police and Justice Act 2006 to the extent they are not already in force:

In force **1 December**:

- ◆ Section 7 (standard powers and duties of community support officers). (See also SI 3202/2007).
- ◆ Section 9 (exercise of police powers by civilians) in so far as it relates to paragraphs 1 to 6, apart from paragraph 5(11) in Schedule 5 (exercise of police powers by civilians).
- ◆ Schedule 5 (exercise of police powers by civilians) paragraphs 1 to 6, apart from paragraph 5(11).
- ◆ Section 52 (amendments and repeals) in so far as it relates to the entry in Part 1(B) relating to Schedule 4 of the Police Reform Act 2002 in Schedule 15 (repeals and revocations).
- ◆ Schedule 15 (repeals and revocations), the entry in Part 1(B) relating to Schedule 4 of the Police Reform Act 2002.

In force **31 December**:

- ◆ Section 5 (power to merge schemes).
- ◆ Schedule 3 (power to merge police pension schemes).

### **SI 3287/2007 The Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2007**

In force **15 December**. This Order amends the meaning of a business in the regulated sector and the meaning of a supervisory authority for the purposes of Part 7 of the Proceeds of Crime Act 2002 (money laundering) by substituting new Parts 1 and 2 of Schedule 9 to that Act.

The amendments to the meaning of a business in the regulated sector provided by the new Part 1 of Schedule 9 reflect the changes to the scope of the regulated sector made by the Directive. Two major changes are the expanded definition of a trust or company service provider and the exemption for financial activity on an occasional or very limited basis.

The amendments to the meaning of a supervisory authority provided by the new Part 2 of Schedule 9 reflect the requirement of the Directive for all sectors within its scope to be effectively monitored for compliance, and the provision made by the Directive for accountants, auditors, legal professionals and tax advisers to be monitored by a self-regulatory body.

## **SI 3288/2007 The Terrorism Act 2000 (Business in the Regulated Sector and Supervisory Authorities) Order 2007**

In force **15 December**. This Order amends the meaning of a business in the regulated sector and the meaning of a supervisory authority for the purposes of Part 3 of the Terrorism Act 2000 (terrorist property) by substituting new Parts 1 and 2 of Schedule 3A to that Act. The new provisions implement in part Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

The amendments to the meaning of a business in the regulated sector provided by the new Part 1 of Schedule 3A reflect the changes to the scope of the regulated sector made by the Directive. Two major changes are the expanded definition of trust or company service provider and the exemption for financial activity on an occasional or very limited basis.

The amendments to the meaning of a supervisory authority provided by the new Part 2 of Schedule 3A reflect the requirement of the Directive for all sectors within its scope to be effectively monitored for compliance, and the provision made by the Directive for accountants, auditors, legal professionals and tax advisers to be monitored by a self-regulatory body.