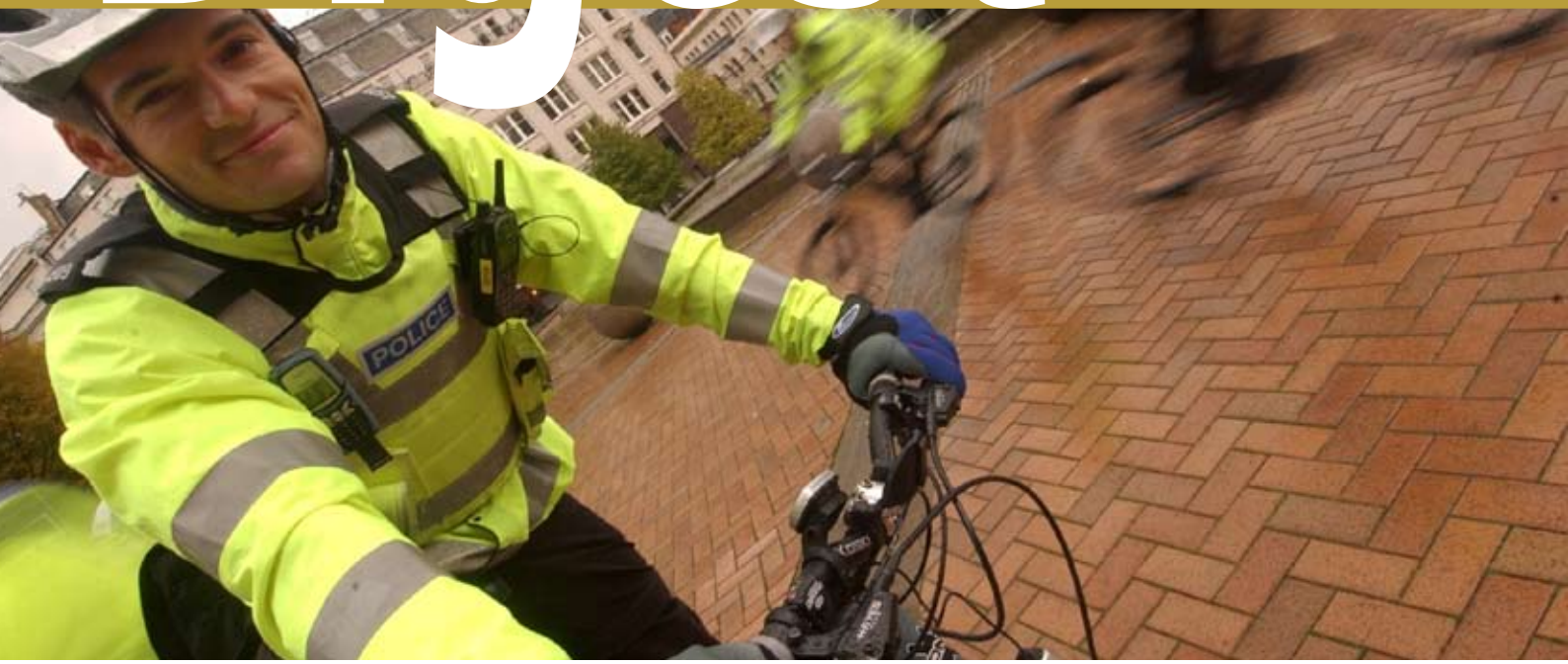
NPIA
National Policing Improvement Agency

Digest

DECEMBER 2009



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The NPIA Digest is a journal produced each month by the Legal Services Team of the Chief Executive Officer Directorate. The Digest is a primarily legal environmental scanning publication intended to capture and consolidate topical and key issues, both current and future, impacting on all areas of policing. During the production of the Digest, information is included from Governmental bodies, criminal justice organisations and research bodies. As such, the Digest should prove an invaluable guide to those responsible for strategic decision making, operational planning and police training.

This edition contains a summary of new legislation and proposals and reviews of issues relating to policing practice including: the Policing and Crime Act 2009; the Coroners and Justice Act 2009; details of the Bills included in the draft legislative programme for 2009/10; the latest Seizures of Drugs Statistics; the Department for Transport Advice on Use of Mobile Data Terminals in Vehicles; the Joint Thematic Report on the implementation of POCA in Scotland; ACPO Guidance on the Deployment of Armed Officers; ACPO Guidance on Investigating Child Abuse and Safeguarding Children 2009 and the ACPO Facial Identification Guidance 2009.

There are also a number of articles outlining recently published Government and Parliamentary reports and initiatives including: details of new measures to tighten the use of the Regulation of Investigatory Powers Act 2000; the Home Affairs Committee report on the work of SOCA; details of consultations on the Sentencing Guidelines Council on Corporate Manslaughter; the Penalties for Serious Breaches of the Data Protection Principles and the responses to the DNA Database consultation and a Report that recommends that Justice must be redefined in terms of Victims.

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

The Case law is produced in association with lawtel From Sweet & Maxwell

Contents

EHRC Launches Human Rights Strategy

The Equality and Human Rights Commission published its human rights strategy which sets out its plan to preserve the rights in the Human Rights Act 1998 and to protect and promote respect for human rights principles.

One of the core principles in the Commission's three-year strategy is for any future legislative developments, such as a proposed Bill of Rights, to have the rights and remedies of the Human Rights Act 1998 at their heart, so that the protection it provides is retained.

The Commission's strategy aims to create a climate of respect for human rights by promoting understanding, demonstrating the value of human rights law in people's everyday lives and using its legal powers. It intends to promote widespread and accurate understanding of human rights and help to translate the law into practical action by public, private and voluntary organisations.

The Commission will develop innovative ways to measure the performance of government and public authorities on human rights and work to strengthen the degree of accountability of the UK Government to the United Nations in relation to torture, race discrimination and disability rights.

In July this year, the Commission published its Human Rights Inquiry. With evidence gathered from more than 2,800 people, it is the most comprehensive research to date into the first ten years of the Human Rights Act 1998 and how human rights principles have been adopted by public institutions. The Inquiry found that eight in ten people in Britain want human rights protection enshrined in the law and recognise the importance of human rights in creating a fair and equal society. It also revealed that where a human rights approach is incorporated into the delivery of public services, both users and providers benefit.

The Commission is inviting feedback on the strategy and will be discussing the most effective way to implement its aims, objectives and proposed actions with interested parties.

The EHRC Human Rights Strategy 2009/12 is available at http://www.equalityhumanrights.com/human-rights/our-human-rights-strategy/

ACPO Facial Identification Guidance 2009 Published

On 20 October 2009 the ACPO Facial Identification Guidance 2009 was released. This guidance has been published by the NPIA on behalf of the ACPO Working Group for Facial Identification.

The new guidance contains the following chapters:

- Glossary of terms;
- Facial imaging techniques;
- Training;
- Working practices;
- Witness considerations; and
- Legal framework.

In pursuit of the best evidence it is the responsibility of the officer in charge (OIC) of an investigation to pursue every reasonable line of enquiry. In circumstances where a witness can provide a description of an offender whose identity is unknown, a facial imaging officer can advise the OIC on best practice. They can help the OIC to make an informed decision on facial imaging techniques and, where appropriate, the construction and further use of any composite image produced. The guidance manual contains recommendations and assistance on using facial imaging techniques.

A list of regional contacts within the ACPO Working Group for facial identification is available from the NPIA Specialist Operations Centre (Telephone: 0845 000 5463). The regional contacts are available to help with any issues or advice relating to this guidance and to the general remit of the Working Group.

The ACPO Facial Identification Guidance 2009 is available on the Genesis website.

ACPO Guidance on Investigating Child Abuse and Safeguarding Children 2009 Available

The second edition of the ACPO Guidance on Investigating Child Abuse and Safeguarding Children 2009 was released by the NPIA on 29 October 2009.

This edition replaces the first edition published in 2005 and incorporates additional information from ACPO (2005) Practice Advice on Investigation Indecent Images of Children on the Internet.

This guidance is in two parts:

- Part one of the guidance relates to general issues on the investigation of child abuse; and

- Part two relates to the investigation of complex abuse and is a revised version of ACPO (2002) The SIO Handbook - The Investigation of Historical Institutional Child Abuse.

The ACPO Guidance on Investigating Child Abuse and Safeguarding Children 2009 is available in PDF format only via the Genesis Extranet.

Policing and Law Enforcement Incremental Review Consultation

On 12 November 2009 Skills for Justice announced a period of consultation for the development of new draft National Occupational Standards (NOS). Skills for Justice and the NPIA have been working together to develop new National Occupational Standards to cover gaps identified in the Policing and Law Enforcement suite. The consultation process affords everyone an opportunity to view the draft documents and contribute to the development of the NOS to ensure its fitness for purpose through completion of the relevant questionnaire.

The new draft NOS are in the following areas:

- **Police Criminal Investigation and National Search (Police Search)**
  A national skills audit highlighted skills gaps within the searching function for criminal investigation. NPIA and Skills for Justice have developed 8 new NOS which are ready for consultation.
- **Critical Incident Management (CIM)**
  1 new NOS has been developed around critical incident management to ensure that front line leaders are best equipped to provide quality of service to the community.
- **Public Order**
  The UK hosts major events and 4 new NOS have been developed in relation to public order to ensure that police officers are developed and trained appropriately.
- **Disaster Victim Identification (DVI) and Casualty Bureau (CB)**
  The UK Police are called upon to recover and identify victims of mass fatality incidents (DVI). They also ensure that the Casualty Bureau provides a central contact point for records and data relating to people who have or are believed to have been involved in a mass casualty incident. New NOS are being developed and will be available for consultation soon.

The consultation period ends on 18 December 2009.

More information is available at
http://www.skillsforjustice.com/template01.asp?pageid=727

If you have any questions please contact Deborah Snook via email at
deborah.snook@skillsforjustice.com

Home Office Circular 18/2009: Forfeiture of Police Pensions

On 4 November 2009 the Home Office published Circular 18/2009: Forfeiture of Police Pensions which replaces Circular 26/2006 and Circular 56/1998 both entitled 'Forfeiture of Police Pensions'. The purpose of this circular is to draw attention to an update to previous guidance issued in Circular 26/2006.

Paragraph 8 of Annex B has been amended in order to clarify that there is no minimum limit on forfeiture, only a maximum of 65%.

Annex D includes a transcript of the judgment in the case of Harrington v Metropolitan Police Authority which Police Authorities may find useful when assessing whether a case merits an application for a pension forfeiture certificate:

- Annex A describes the legislation;
- Annex B explains the procedures;
- Annex C provides guidance on what should be included in an application to the Home Secretary for a certificate; and
- Annex D is a transcript of the Harrington judgment.

Any applications for certificates should be addressed to the Policing Powers & Protection Unit, 4th floor, Peel Building, 2 Marsham Street, London SW1P 4DF.

The Home Office Circular 18/2009: Forfeiture of Police Pensions and annexes can be found at
http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2009/018-2009/

Home Office Circular 20/2009: Amendments to Determinations under the Police Regulations 2009 - Annexes F & U

The Home Office published on 4 November 2009 a circular which publicised amendments to the Secretary of State Determinations under the Police Regulations 2003. The amendments have been made to Annex F & Annex U of those Determinations. The effective dates are set out below.

Annex F

- 2009 Police Officer Pay Award
  Annex F is amended to set out the 2009 pay award. The amended Determinations reflect the second year of the police officer three year pay agreement for Federated Ranks, Superintendents, Chief Superintendents and Chief Officers. The 2009 pay award has effect from 1 September 2009.

  A Home Office Circular was issued on 3 September publishing the Home Secretary's decision to implement the pay award with effect from 1 September 2009. As is usual, the rates of London Weighting, competence related threshold payments and dog handlers allowance are also uprated following the 2009 pay award. The details of these changes are set out below:
- London Weighting
  The effective date of the increased rate for London Weighting is 1 July 2009.

- Competence Related Threshold Payments
  The effective date of the increased rates for Competence Related Threshold Payment is 1 September 2009.

Annex F, Part 8 (i) and (ii)

- Removal of Scottish and Northern Ireland Salaries
  Since the Determinations under the Police Regulations 2003 only relate to England and Wales police officers, the salaries for Scottish and Northern Ireland Chief Officers since the 2003 Police Officer pay award are removed from Determinations. These salaries are already included in equivalent determinations relating to Scottish and Northern Irish officers.

Annex U

- Dog Handlers Allowance
  The effective date of the increased rates for Dog Handlers Allowance is 1 September 2009.

- Special Priority Payment Schemes (SPPs)
  The amended Determination implements an agreement giving Chief Officers and Police Authorities, in consultation with the local staff associations, the ability to determine that SPP payments are made on a monthly basis.

  A Home Office Circular was issued on 1 May publishing the Home Secretary's approval of the amendment to the SPP Schemes with effect from 23 January 2009.

Home Office Circular 20/2009: Amendments to Determinations under the Police Regulations 2009 - Annex F & U is available at http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2009/020-2009/

Bills before Parliament 2008/09 - Progress Report

The following Bills from the 2008/09 session have progressed as follows through the parliamentary process:

Public Bills

- **Policing and Crime Act 2009** - this Act received Royal Assent on 12 November 2009 (see more detailed article below);
- **Coroners and Justice Act 2009** - this Act received Royal Assent on 12 November 2009 (see more detailed article below); and
- **Equality Bill** - this Bill is now part of the Draft Legislative Programme for 2009/10 (see below).

The Policing and Crime Act 2009

Following agreement by both houses, the Policing and Crime Bill received Royal Assent on 12 November 2009. This Act draws together a number of issues relating to both policing and crime, including protecting vulnerable people, improving the effectiveness and accountability of the police, stopping crime in our communities, and making airports safer.

The Act consists of 9 parts, namely:

- Part 1: Police reform;
- Part 2: Sexual offences and sex establishments;
- Part 3: Alcohol misuse;
- Part 4: Injunctions: Gang-related violence;
- Part 5: Proceeds of crime;
- Part 6: Extradition;
- Part 7: Aviation security;
- Part 8: Miscellaneous; and
- Part 9: General.

Part 1: Police Reform

This part of the Act seeks to address issues of police accountability, collaboration and efficiency. Section 1 inserts into the Police Act 1996 a requirement for police authorities, when discharging any of their functions, to have regard to the views of the public about policing in that area. In addition, section 1 provides Her Majesty's Inspectorate of Constabulary with the power to carry out an inspection of, and report to the Secretary of State on, the extent to which authorities are reflecting the views of the public in the exercise of all their functions.

Under section 2 provision is made for the establishment of a statutory Police Senior Appointments Panel, to consist of an independent chair and members appointed by the Secretary of State as well as representative members nominated by the Secretary of State, the APA and ACPO.

Section 5 replaces section 23 of the Police Act 1996 with nine new sections, providing for the creation of agreements between police forces for the joint discharge of functions by members of police forces, for members of a police force to discharge functions in another force's area and for members of a police force to be provided to another force. In addition, section 5 provides for the creation of agreements between two or more police authorities for support to be provided jointly by two or more authorities, for support to be provided for two or more authorities or forces jointly and for an authority to provide support to another authority or to a force maintained by another authority.

Part 1 also amends the procedure for obtaining a grant of authorisation to interfere with property by amending section 93 of the Police Act 1997 so that an authorising officer may grant an authorisation to interfere with property on an application made by a member of his own police force or by a member of another police force if the chief officers of the forces in question are parties to a police force collaboration agreement and the agreement provides for such authorisations to be granted.

Section 7 of the Act amends Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act (RIPA) 2000 with regard to the acquisition and disclosure of communications data. Section 9 amends section 33 of RIPA with regard to the rules for the grant of authorisation of directed surveillance or covert human intelligence sources. With regard to both, a designated person within a police force may grant an authorisation for persons holding offices, ranks or positions with another police force if the chief officers of those forces are parties to a police force collaboration agreement and the agreement provides for such authorisations to be granted.

Sections 3 and 4 of the Act amend the Police Act 1996 so as to enable regulations to make provision for payments to be made to senior officers who cease to serve before the end of their fixed term appointment. As well as to give the Commissioner a formal role in appointments to the ranks of Assistant Commissioner, Deputy Assistant Commissioner and Commander in the Metropolitan Police by requiring that the police authority consult with the Commissioner before making such an appointment.

Section 10 amends the current approach to relevant service of police officers outlined in section 97 of the Police Act 1996, under which amendments are made on a case by case basis to list the particular types of service that are to constitute relevant service. Section 10 provides for an order-making power to amend section 97 to add further types of service which would constitute relevant service.

This section also amends the Police Pensions Act 1976 to include an order-making power to make the necessary related amendments to that Act, so as to ensure that when a police officer is on relevant service, he will remain within the scope of his police pension scheme.

Section 11 contains provisions which clarify the definition of police equipment for the purposes of regulations made under section 53 of the Police Act 1996 regarding the standards of police equipment. Such regulations cannot be made unless the Secretary of State considers it necessary to do so for the purpose of promoting the efficiency and effectiveness generally of police forces (section 53(1B)). The amendments clarify that the definition of police equipment includes software and also enable the section to be used in respect of one or more forces, rather than all forces.

Section 12 amends section 53A of the Police Act 1996 so that the Secretary of State has the power to make regulations requiring one or more police forces in England and Wales, as opposed to all police forces, to adopt particular procedures or practices, subject to the satisfaction of Her Majesty's Chief Inspector of Constabulary of various matters set out subsection (7). These matters are that the adoption of the procedure or practice in question is necessary in order to facilitate the carrying out by members of any two or more police forces in joint or coordinated operations; that the making of the regulations is necessary for securing the adoption of that practice and procedure and that securing the adoption of that procedure or practice is in the national interest.

Part 2: Sexual Offences and Sex Establishments

Section 14 amends the Sexual Offences Act 2003 with the insertion of section 53A which introduces a new strict liability offence of paying or promising to pay for the sexual services of a prostitute subjected to force, threats or coercion.

An example of this is as follows: A person (A) commits an offence if he makes or promises payment for the sexual services of a prostitute (B), and a third person (C) has engaged in exploitative conduct of a kind likely to induce or encourage B to provide the sexual services for which A has made or promised payment, and C engaged in that conduct for or in the expectation of gain for C or another person (apart from A or B). C engages in exploitative conduct if he uses force, threats (whether or not relating to violence) or any other form of coercion, or practises any form of deception. It is irrelevant where in the world the sexual services are to be provided, whether they are provided or whether A is, or ought to be aware, that C has engaged in exploitative conduct.

The maximum penalty on conviction of an offence under this section is a fine not exceeding level 3 (currently £1,000) on the standard scale.

Section 16 amends the offence of loitering or soliciting for the purposes of prostitution contained in the Street Offences Act 1959, under which it was an offence for a 'common prostitute' (whether male or female) to loiter or solicit in a street or public place for the purpose of prostitution. The 2009 Act removes the term 'common prostitute' from section 1 of the 1959 Act and introduces a need for the person to act 'persistently' in order to commit the offence. Under section 16 conduct is persistent if it takes place on two or more occasions in any period of three months. In determining whether a person's conduct is persistent, section 16(5) provides that any conduct that took place before the commencement of this section will be disregarded.

Section 16(4) repeals section 2 of the Street Offences Act 1959 under which a person cautioned for an offence under section 1 of that Act could apply to a magistrates' court to have the caution removed from the police record.

Section 1 of the Street Offences Act 1959 is amended by section 17 of the Policing and Crime Act 2009 which introduces a new penalty for those convicted of loitering or soliciting for the purpose of prostitution, whereby the court may make an order, requiring the offender to attend three meetings, as specified in the order, with the purpose of such an order being to assist the offender to address the causes of the conduct constituting the offence and to find ways to cease engaging in such conduct in the future. Under section 17 if the court makes such an order, it may not impose any other penalty in respect of the offence.

Section 19 inserts a new single offence of soliciting through section 51A of the Sexual Offences Act 2003 to replace both sections 1 and 2 of the Sexual Offences Act 1985. These sections cover offences for kerb-crawling in a street or public place and persistent soliciting in a street or public place for the purposes of prostitution respectively. Both activities require an element of persistency in relation to the person kerb-crawling or soliciting in order for an offence to have been committed or, in the case of kerb-crawling, for the soliciting to be shown to be likely to cause nuisance or annoyance to the person solicited or others in the neighbourhood. These requirements are removed by section 19, so that kerb-crawling or soliciting is punishable on the first occasion and in the case of kerb-crawling there is no requirement for the soliciting to be shown to cause nuisance or annoyance to others. The maximum punishment for an offence under Section 19 is a fine not exceeding £1,000.

Section 21 and Schedule 2 insert a new Part into the Sexual Offences Act 2003 under which the courts have the power to close, on a temporary basis, premises being used for activities relating to certain sexual offences. Service of a closure notice by the police will prevent anyone from entering or remaining on the premises, unless they regularly reside or own the premises, until a magistrates' court decides whether to make a closure order. If the court is satisfied the relevant conditions are met, the court can make a closure order for a period of up to three months. An application can be made for the closure order to be extended but the maximum period for which a closure order has effect is six months.

Schedule 2 sets out who may authorise the issue of a closure notice and on what grounds such a notice can be authorised. A member of a police force not below the rank of superintendent may authorise the issue of a closure notice in respect of any premises if three conditions are met. These conditions are as follows:

1. That the officer has reasonable grounds for believing that either subsection (3) or (4) (or both) applies. Subsection (3) applies if, during the relevant period, the premises were used for activities related to one or more specified prostitution offences. However, this does not apply if only one person obtained all of the sexual services in question (whether or not on a single occasion). Subsection (4) applies if, during the relevant period, the premises were used for activities related to one or more

specified pornography offences. In both, 'the relevant period' means the period of 3 months ending with the day on which the officer is considering whether to authorise the issue of the notice.

2. That the officer has reasonable grounds for believing that the making of a closure order is necessary to prevent the premises being used for activities related to one or more specified prostitution or pornography offences.

3. That the officer is satisfied:

   (a) that the local authority for the area in which the premises are situated has been consulted, and

   (b) that reasonable steps have been taken to establish the identity of any person who resides on the premises or who has control of or responsibility for or an interest in the premises.

The introduction of two other new sections, namely sections 136M and 136N allow the court to make an order that the owner of the premises subject to a closure order must reimburse the police or local authority for the costs incurred in clearing, securing, repairing or maintaining the premises. Section 136N creates a partial exemption from liability in damages for the police, or any authorised person carrying out their functions under these provisions.

Section 23 addresses foreign travel orders and amends any reference to children under 16 in sections 115 and section 116 of the Sexual Offences Act 2003 to under 18. This has the effect of raising the age of a child that must be at risk in order for a foreign travel order to be made, and also alters the criteria determining which offenders qualify for a foreign travel order, to include those that have committed sexual offences against children under 18, rather than those under 16.

The duration of foreign travel orders as set out in section 117(1) of the Sexual Offences Act 2003 is extended from 6 months to 5 years. In addition section 25 inserts section 117A into the Sexual Offences Act 2003 under which an offender subject to a foreign travel order must surrender his passport to a specified police station.

With regard to the regulation of sex establishments, section 27 inserts a new category of sex establishment entitled 'sex encounter venue' into Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. This will have the effect of bringing the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the 1982 Act, which is currently used to regulate establishments such as sex shops and sex cinemas.

Section 27 defines a 'sex encounter venue' as a premises where certain entertainment is provided, or permitted to be provided, by or on behalf of the organiser in front of a live audience for the financial gain of the organiser or entertainer. The entertainment may take the form of a live performance or live display of nudity and must reasonably be assumed to have been provided solely or principally for the purpose of sexually stimulating any member of the audience. An audience can consist of just one person.

Part 3: Alcohol Misuse

Part 3 of the Act contains provisions which relate to alcohol misuse and introduces amendments to certain alcohol related offences.

Section 28 amends the offence of persistently selling alcohol to children contained in section 147A(1)(a) of the Licensing Act 2003 so that 2 or more different occasions is sufficient for the purpose of establishing persistence.

Section 29 amends section 1 of the Confiscation of Alcohol (Young Persons) Act 1997 under which the police have the power to confiscate alcohol from young people in a public place by removing the requirement that a constable must reasonably believe that the person is, or has been, consuming, or intends to consume, alcohol in any relevant place. In addition under section 29 a young person must give their name and address to the police. Furthermore, under this amendment, where a constable reasonably suspects that the person is under the age of 16 he may return the person to their home or to a place of safety.

Section 30 introduces a new offence of persistently possessing alcohol in a public place. A person under the age of 18 can be prosecuted for this offence if they are caught with alcohol in a public place three times within a 12 month period. The maximum punishment for this is a level two fine (currently £500).

Section 31 extends police powers by amendment of section 27(1) of the Violent Crime Reduction Act 2006, so they are able to issue directions to individuals aged 10-15 to leave an area where they represent a risk of disorder. Similarly, where a constable who gives a direction under this section reasonably suspects that the individual to whom it is given is aged under 16, he may remove the person to a place where the person resides or a place of safety.

Finally, section 32 introduces Schedule 4 which makes provision about mandatory licensing conditions relating to alcohol. Schedule 4 amends the Licensing Act 2003 so as to allow the Secretary of State to set out, in secondary legislation, both mandatory and permitted licensing conditions relating to alcohol.

Part 4: Injunctions: Gang-related violence

Section 34 provides the power for a court to grant an injunction to prevent gang-related violence if 2 conditions are met, namely that:

1. The court is satisfied on the balance of probabilities that the respondent has engaged in, or has encouraged or assisted, gang-related violence; and

2. That the court thinks it is necessary to grant the injunction for either or both of the following purposes:

   (a) to prevent the respondent from engaging in, or encouraging or assisting, gang-related violence;

   (b) to protect the respondent from gang-related violence.

Section 34 defines 'gang-related violence' as violence or a threat of violence which occurs in the course of, or is otherwise related to, the activities of a

group that consists of at least 3 people, uses a name, emblem or colour or has any other characteristic that enables its members to be identified by others as a group, and is associated with a particular area.

A power of arrest may be attached to an injunction whereby a constable may arrest without warrant a person whom the constable has reasonable cause to suspect to be in breach of the provision (section 43).

Part 5: Proceeds of Crime

Part 5 of the Act contains provisions which give the police and other law enforcement agencies, along with prosecutors, additional powers which aim to improve the process of recovery of criminal assets.

Section 52 amends the restraint order provisions of the Proceeds of Crime Act 2002 (POCA) so that an appropriate officer may detain property seized under a restraint order.

Sections 47A-F are introduced into POCA by section 55 which provide for search and seizure powers in England and Wales to prevent the dissipation of personal property. The property may be seized in anticipation of a confiscation order being made. The seizure power is subject to judicial oversight. If a confiscation order is made, the property may be sold in order to satisfy the order.

Section 62 of the Act increases the limitation period for the civil recovery of property received through unlawful conduct from 12 to 20 years, by amendment to sections 27A(2) and 27B(2) of the Limitation Act 1980.

Section 63 of the Act amends section 289 of POCA by inserting provisions to enable an officer to require the search of a vehicle where he has reasonable grounds for suspecting there is cash in the vehicle which is recoverable property or intended for use in unlawful conduct and that it is not less than £1,000. The power to search can only be exercised where there is an identifiable person in control of the vehicle and that person (the suspect) is in or in the vicinity of the vehicle.

This provision does not contain a power to force entry into a vehicle, instead, new section 289(1D) provides that the officer can require the person accompanying the vehicle to permit entry and allow a search of that vehicle. New subsection (1C) provides that the power is not exercisable where the vehicle is on certain categories of private property.

The period of detention for cash seized under section 294 POCA is initially 48 hours (section 295 POCA), however this can be extended by a magistrate if there are reasonable grounds for the officer's suspicion and the continued detention is justified for the purposes of investigating its origin or intended use. Under section 64 of the 2009 Act the period of extension is increased from three months to six months.

Section 65 amends section 297 of POCA so that law enforcement agencies may forfeit detained cash without a court order in uncontested cases. Section 65 inserts sections 297A-G into POCA with the effect that an officer of at least the rank of Inspector may give a forfeiture notice to any person where a cash detention order has been made under section 295(2) POCA.

Part 6: Extradition

Part 6 of the Act contains provisions to improve judicial co-operation in relation to extradition and to streamline the processes that are currently in place.

Sections 67 and 68 are designed to ensure that the UK is in a position to deal with alerts transmitted via the second generation Schengen Information System (SIS II) which request the arrest of a person for extradition purposes following the issue of a European Arrest Warrant in the relevant member state. The intention is that the UK will begin sending and receiving data via SIS II from April 2010.

Under sections 22 and 88 of the Extradition Act 2003, a judge must adjourn an extradition hearing if he is informed, after the hearing has begun, that the person subject to the extradition has committed an offence in the UK. Part 6 amends the 2003 Act so that the appropriate judge is required to adjourn extradition proceedings on the basis of a domestic prosecution where he is informed of this fact at any time *before* the extradition hearing has begun.

Similarly, extradition proceedings may be adjourned on the basis that the individual concerned is serving a sentence of imprisonment or other form of detention in the UK if the judge is informed of this before the start of the hearing (section 69). Any such hearing may be adjourned until after the sentence has been served.

The Act inserts two further new sections, sections 206A and 206B into the Extradition Act 2003. These sections make it possible for a judge to give a live link direction in extradition hearings other than the extradition hearing itself and other than any extradition proceedings which post date surrender. Such a direction may only be given if the judge is satisfied that it is not contrary to the interests of justice and once the parties to the proceedings have been given the opportunity to make representations.

Part 7: Aviation Security

Part 7 of the Act relates to airport security and policing.

Section 79 of the Act inserts a new Part 2A into the Aviation Security Act (ASA) 1982 which deals with arrangements for the protection of aircraft, aerodromes and air navigation installations from acts of violence. A new process is introduced which is designed to improve airport security by the establishment of risk advisory groups, consisting of various members including the chief officer of police for the relevant police area and a representative of the relevant police authority, which must prepare a risk report for the aerodrome containing an assessment of each threat to the security of the aerodrome. In relation to each such threat, the risk report must also contain an assessment of the effectiveness of any security measures that are being taken in relation to the aerodrome in response to the threat, and set out the recommendations of the group as to the security measures that should be taken, or continue to be taken, in response to the threat. Part 2A of the ASA also requires that an Aerodrome Security Plan is in place at qualifying aerodromes. If that Security Plan specifies that policing measures are required at the aerodrome then the aerodrome must prepare a Police Service Agreement (PSA), specifying the level of policing to be provided for the aerodrome, the payments to be made

by the manager of the aerodrome in connection with that policing and the accommodation and facilities (if any) that are to be provided by the manager in connection with that policing.

Schedule 6 of the Act amends Part 3 of the ASA 1982 and addresses PSAs and the policing of aerodromes.

Part 8: Miscellaneous

Part 8 of the Act amends provisions in the Safeguarding Vulnerable Groups Act 2006 to change the name of the Independent Barring Board to the Independent Safeguarding Authority.

Under section 82, provision is made to enable the Criminal Records Bureau to supply criminal convictions certificates to employers, as well as information on a persons 'right to work'.

Under section 98, the Customs and Excise Management Act (CEMA) 1979 is amended enabling an officer of Revenue and Customs to require a person entering or leaving the UK to produce their passport or travel documents and answer questions about their journey. In addition, provision is made to search for cash and to intercept mail with a view to the prevention of money laundering by means of movement of cash into and out of the UK.

Section 101 prohibits the importation or exportation of false identity documents and section 102 amends the Criminal Justice Act 1988 to prohibit the importation of offensive weapons, subject to certain exceptions.

In relation to football spectators, Part 7 extends a number of provisions of the Football Spectators Act 1989, so they apply across the United Kingdom rather than being limited to England and Wales (section 103).

In addition, where an individual is directed to report to police by a court or an enforcing authority, section 104 sets out that the specified police station can be anywhere in the UK.

Section 108 amends the Crime and Disorder Act 1998 so that the remit of Crime and Disorder Reduction Partnerships and Community Safety Partnerships is extended to explicitly include the reduction of re-offending.

Part 9: General

This part of the Bill sets out supplementary provisions about orders and regulations, commencement, extent and repeals.

The Policing and Crime Act 2009 can be found at
http://www.opsi.gov.uk/acts/acts2009/pdf/ukpga_20090026_en.pdf

The Coroners and Justice Act 2009

Following agreement by both houses, the Coroners and Justice Act received Royal Assent on 12 November 2009. The purpose of this Act is to establish more effective, transparent and responsive justice and coroner services for victims, witnesses, bereaved families and the wider public. It seeks to achieve this by:

- Updating parts of the criminal law to improve its clarity, fairness and effectiveness;
- Providing improved protection to vulnerable and intimidated witnesses,
- Introducing a more consistent and transparent sentencing framework; and
- Reforming the Coroner system.

The Act consists of 9 Parts:

- Part 1: Coroners;
- Part 2: Criminal offences;
- Part 3: Criminal evidence, investigations and procedure;
- Part 4: Sentencing;
- Part 5: Miscellaneous criminal justice provisions;
- Part 6: Legal aid and other payments for legal services;
- Part 7: Criminal memoirs;
- Part 8: Data Protection Act 1998; and
- Part 9: General.

A summary of each part of the Act follows:

Part 1: Coroners

The legislative changes in the Act are part of a package of reform aimed at addressing the weaknesses in the present coroner and death certifications systems, identified in the reports of the *Fundamental Review of Death Certification and Investigation and the Shipman Inquiry*.

Chapter 1 to Part 1 sets out the duty of a senior coroner to investigate the death of those persons suspected to have died a violent or unnatural death, where the cause of death is unknown, or where the deceased died while in custody or otherwise in state detention. Section 5 clarifies that the purpose of an investigation under Part 1 into a person's death is to ascertain who the deceased was, how, when and where the deceased came by his or her death and to establish the details needed to register the death.

Section 6, where a senior Coroner conducts an investigation under this Part into a person's death he must, as part of the investigation, hold an inquest into the death. Section 7 sets out when an inquest is to be held with and without a jury.

Chapter 2 of Part 1 deals with notification, certification and registration of deaths. Under section 21 the Secretary of State may appoint a person as National Medical Examiner, with the function of issuing guidance to medical examiners with a view to securing that they carry out their functions in an effective and proportionate manner.

Chapter 4 provides for the powers of the coroner with regard investigations concerning treasure.

Chapter 5 provides an appeal route for bereaved persons and other interested people (as defined in section 47) to the Chief Coroner against a decision made by a senior coroner that falls within section 40(2), for example a decision not to request a post-mortem examination or a decision whether there should be a jury at an inquest. Previously no simple route of appeal existed this and replaces the existing statutory procedure of application to the High Court with the Chief Coroner having powers to compel a Coroner to hold an inquest, or to quash a verdict from a previous inquest (from the same Coroner or a different Coroner).

Part 2: Criminal Offences

Section 52(1) amends the Homicide Act 1957 by replacing subsection (1) of section 2 of the Homicide Act 1957 with new subsections (1) to (1B).

This provides that a person is not to be convicted of murder if he or she was suffering from an abnormality of mental functioning which meets the three conditions set out in new section 2(1)(a) to (c), namely:

- That the abnormality of mental functioning has to arise from a recognised medical condition (new Section 2(1)(a));
- That the abnormality of mental functioning must have impaired the defendant's ability to do one or more of the things mentioned in new section 2(1A). These are the ability of that person to understand the nature of his or her conduct, to form a rational judgement or to exercise self-control. This contrasts with the existing definition of the partial defence which requires a person's mental responsibility to be substantially impaired but does not specify in what respects this must be so (new section 2(1)(b));
- That the abnormality of mental functioning must provide an explanation for the defendant's involvement in the killing (new section 2(1)(c)). New section 2(1B) clarifies that this will be the case where the abnormality was at least a significant contributory factor in causing the defendant to carry out the conduct.

As now, under section 2(2) of the 1957 Act, the person will be convicted of the offence of manslaughter instead of murder.

Section 54 sets out the partial defence to murder of loss of control, under which a defendant who would otherwise be guilty of murder will be guilty of manslaughter if he or she was provoked by things said or done (or both) ('a qualifying trigger') to lose self-control, and in the opinion of the jury the provocation was enough to make a reasonable person do as the defendant did. Under section 54(2), it does not matter whether the loss of self-control was sudden.

This defence does not apply if, in doing or being a party to the killing, the defendant (D) acted in a considered desire for revenge.

Section 55 sets what amounts to a qualifying trigger for the purposes of this section. Subsection (2) states that a loss of self-control had a qualifying trigger if D's loss of self-control was attributable to his fear of serious violence

from the victim (V) against D or another identified person, if D's loss of self-control was attributable to a thing or things done or said (or both) which constituted circumstances of an extremely grave character, and caused D to have a justifiable sense of being seriously wronged; or if D's loss of self-control was attributable to a combination of the two.

Under Subsection (6), D's fear of serious violence or sense or being seriously wronged is to be disregarded to the extent that it was caused by a thing which D incited to be done or said for the purpose of providing an excuse to use violence. In addition, the fact that a thing done or said constituted sexual infidelity is to be disregarded, the effect being that if a person kills another because they have been unfaithful, he or she will not be able to claim the partial defence.

The enactment of sections 54 and 55 has the effect of abolishing the common law defence of provocation.

Section 57 amends the Infanticide Act 1938 so that it is clear that the offence and defence of infanticide are available only in respect of a woman who would otherwise be found guilty of murder or manslaughter.

The combined effect of the two changes is that infanticide can apply "if the circumstances were such that but for the Infanticide Act 1938 the offence would have amounted to murder or manslaughter".

Section 69 of the Act amends the Suicide Act 1969 with the effect that an offence is committed if a person does an act which is capable of encouraging or assisting the suicide or attempted suicide of another person, and that act was intended to encourage or assist suicide or an attempt at suicide. An offence may occur under this section whether or not a suicide, or an attempt at suicide, occurs. The maximum sentence on conviction for this offence is 14 years imprisonment.

Subsection (4) inserts new sections 2A and 2B into the Suicide Act 1961. The former elaborates on what constitutes an act capable of encouraging or assisting suicide. The latter provides that an act includes a course of conduct.

Chapter 2: Images of Children

Section 62 introduces a new offence of possession of a prohibited image of a child. Under subsection (2) a prohibited image is an image which is pornographic, falls within subsection (6), and is grossly offensive, disgusting or otherwise of an obscene character. Subsection (6) provide that a prohibited image for the purposes of the offence is one which focuses solely or principally on a child's genitals or anal region or portrays any of a list of acts set out in subsection (7).

Proceedings for an offence under section 62(1) may not be instituted except by or with the consent of the Director of Public Prosecutions in England and Wales or the Director of Public Prosecutions for Northern Ireland.

Under section 63, the offence under Section 62(1) does not apply to 'excluded images', namely an image which forms part of a series of images contained in a recording of the whole or part of a classified work. Such an image is not an

'excluded image' if it is contained in a recording of an extract from a classified work, and it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal (section 63(3)). The effect of the exclusion is that a person who has a video recording of a film which has been classified by the British Board of Film Classification (BBFC), and which contains images that, despite their context, might amount to a 'prohibited image of a child' for the purposes of the section 62 offence, will not be liable for prosecution for the offence. Section 64 sets out defences to an offence charged under section 62(1) and section 66 sets out the penalties on conviction.

Under section 67 the powers of entry, search and seizure and forfeiture of photographs under the Protection of Children Act 1978 apply in relation to prohibited images of children.

Chapter 3 of Part 2 has the effect of amending the International Criminal Court Act 2001 by providing for retrospective application of certain offences and well as the modification of penalties.

Under section 71, protection is provided to those subject to modern-day slavery, servitude and forced labour by the creation of a new offence which carries a maximum penalty of 14 years imprisonment.

Section 72 amends section 1A of the Criminal Law Act 1977 which sets out the conditions for the offence of 'conspiracy to commit offences outside the United Kingdom'. This change widens the scope of the first condition in section 1A(2) of the Criminal Law Act 1977, which currently applies only to agreements to pursue a course of conduct that would involve an act or event intended to take place in a country or territory outside the United Kingdom. This condition will now be satisfied where the act or event is intended to take place outside England and Wales and therefore will include acts or events in Scotland or Northern Ireland.

Under section 73 the following common law offences are abolished:

(a) The offences of sedition and seditious libel;

(b) The offence of defamatory libel; and

(c) The offence of obscene libel.

Part 3: Criminal evidence, investigations and procedure

This Part of the Act includes provisions regarding investigation anonymity orders and witness anonymity orders, measures concerning child witnesses, special provisions concerning sexual offences, provision for the use of live links in criminal proceedings as well as amendments to the granting of bail.

Chapter 1 of Part 3 addresses the issue of anonymity in investigations. Section 76 defines an investigation anonymity order as an order made by a justice of peace in relation to a specified person prohibiting the disclosure of information that identifies the specified person as a person who is or was able or willing to assist a specified qualifying criminal investigation, or that might enable the specified person to be identified as such a person. Section 74 defines a qualifying offence as murder or manslaughter in which the death was

caused by being shot with a firearm or injured with a knife. This section may be amended by order of the Secretary of State.

Under section 75 a qualifying criminal investigation is one conducted by either a police force in England and Wales, the British Transport Police, the Serious Organised Crime Agency or the Police Service of Northern Ireland with a with a view to ascertaining, wholly or in part, whether a person should be charged with a qualifying offence or whether a person charged with a qualifying offence is guilty of it.

Under section 76(10) it is an offence for a person to disclose information in contravention of an investigation anonymity order. The maximum sentence on conviction is a term of imprisonment of 5 years.

Section 76 sets out circumstances in which such an order is not contravened. Section 77 addresses the way in which an application for such an order must be made and section 78 sets out the conditions for making such an order. Under section 79 an applicant may appeal the refusal of an order to the crown court, provided that the application stated an intention to appeal a refusal. In such a case, a justice of the peace who refuses an application for an investigation anonymity order must make the order as requested by the applicant which has effect until the appeal is determined or disposed of.

Under section 86 a witness anonymity order is a court order that requires such specified measures to be taken in relation to a witness in criminal proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings. Subsection (2) sets out the kind of measures which maybe used, such as voice modulation or use of screens, subject to the requirement that he judge, magistrates and jury must always be able to see and hear the witness (subsection (4)).

Sections 87-89 set out the application process, the conditions to be satisfied and the relevant considerations to which the court must have regard. Under section 90 a warning must be given to the jury in a trial on indictment where evidence has been given by a witness to which a witness anonymity order applies. Sections 91-93 address discharge and variation of orders.

Nothing in this chapter affects the common law rules as to the withholding of information on the grounds of public interest immunity. The 2009 Act repeals sections 1 to 9 and 14 of the Criminal Evidence (Witness Anonymity) Act 2008, which provide for the making of a witness anonymity order under that Act.

Under Chapter 3 of Part 3 section 16(1)(a) of the Youth Justice and Criminal Evidence Act (YJCEA) 1999 is amended so that all persons aged under 18 will automatically qualify as witnesses eligible for assistance under Part 2 of that Act. Currently, only witnesses aged under 17 are automatically eligible for assistance.

Section 99 extends section 17 of the YJCEA 1999 and gives automatic eligibility for assistance to witnesses in proceedings related to ‘relevant offences’. The court does not need to be satisfied that the quality of the evidence given by the witness will be diminished. Relevant offences are specified gun and knife crimes which are listed in Schedule 12. A witness can inform the court that he or she does not wish to be eligible for assistance.

Section 100 addresses special measures for child witnesses so as to modify the 'primary rule' that applies to child witnesses, under which all child witnesses are to give evidence in chief by a video recorded statement and any further evidence by live link, unless the court is satisfied that to do so will not improve the quality of that child's evidence. In addition, section 100 removes category of child witnesses who are 'in need of special protection', which has the effect of placing all child witnesses on the same footing, regardless of the offence to which the proceedings relate.

Under subsections (4) and (5) a child witness may opt out of giving evidence by a combination of video recorded and live link evidence provided the court is satisfied, after taking into account certain factors, that not giving evidence in that way will not diminish the quality of the child's evidence.

If a child opts out of the primary rule and as such falls to give his or her evidence in court, a secondary requirement applies, under which a child witness is required to give evidence in court from behind a screen. This secondary requirement does not apply if the court considers it would not maximise the quality of the child's evidence. The child may also opt out of this secondary requirement, subject to the agreement of the court.

Section 101 inserts new section 22A into the JYCEA 1999 which makes special provision for complainants in respect of sexual offences tried in the Crown Court.

Section 102 amends section 24 of the 1999 Act to enable the court to make a direction allowing a witness to give evidence by live link. Section 103 amends section 27 of the 1999 Act so that the court may give a special measures direction that allows a video recorded statement to be admitted as a witness' evidence in chief.

Section 105 amends section 35 of the 1999 Act prevents the cross-examination of a 'protected witness' by an accused in person, with the effect that the definition of 'child' in section 35 means a person under the age of 18, as opposed to 17.

Section 106 amends section 57B of the Crime and Disorder Act 1998, which makes provision for courts to give live link directions for preliminary hearings where the defendant is in custody so that a single justice of the peace may give or rescind such a direction, thus removing the need to convene a full court for that purpose. Under subsection (3) the requirement for a defendant's consent to the use of a live link for a preliminary hearing in a magistrates' court where the defendant is at the police station, whether detained there in connection with the offence or having returned to answer live link bail, is removed.

Section 107 amends section 46ZA of the Police and Criminal Evidence Act 1984 (which sets out the circumstances in which a person answering live link bail may be treated as being in police detention), and section 46A(1ZA) of that Act, by making changes resultant from the removal of the consent requirement under section 106.

Section 108 amends the Police and Criminal Evidence Act 1984 by inserting new sections 54B and 54C giving the police the power to search defendants attending the police station for the purposes of answering live link bail.

A constable may seize and retain anything found on the defendant if the constable reasonably believes it may jeopardise the maintenance of order in the station, endanger anyone in the police station, or be evidence relating to an offence. New section 54B(4) provides that a constable may record any or all of the items seized and retained. Under new section 54C(1) anything seized and retained must be returned to the defendant when he or she leaves the police station.

However, retention is subject to subsections (2) and (3) of new section 54C which provide that items can continue to be retained by a constable in order to establish the lawful owner of the item, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence, or if the item is evidence of or relating to an offence, for use as evidence at trial for an offence or for forensic examination or investigation in connection with an offence unless a photograph or copy of the item would be sufficient for that purpose.

Section 108 inserts new subsection (1ZB) into section 46 of the Police and Criminal Evidence Act 1984 which extends the power of arrest for failure to answer to police bail to include defendants who attend the police station to answer live link bail but refuse to be searched under the new section 54B. Subsection (3) amends Schedule 4 to the Police Reform Act 2002, to ensure that designated detention officers, as well as constables, can use the powers in new sections 54B and 54C to search and seize. Where a detention officer exercises the power to seize things found pursuant to a search the officer must deliver the things seized to a constable as soon as practicable and in any case before the person from whom it was seized leaves the police station.

Section 109 inserts a new section 57F to the Crime and Disorder Act 1998 to permit a live link direction to be given in respect of hearings held to enforce a confiscation order, which will enable enforcement proceedings made against persons who are in custody to take place by live link between the prison and the magistrates' court.

Section 111 repeals section 138 of the Criminal Justice Act 2003 under which an eyewitness could not give further evidence in chief about a matter, if that witness' video recorded evidence had been admitted, where, in the opinion of the court, that matter was adequately covered in the recording.

Section 112 removes one of the conditions to be satisfied under section 120 of the Criminal Justice Act 2003 with regard to admitting the previous statement of a witness as evidence of the matter stated with the effect that the requirement that a complaint be made as soon as could reasonably be expected after the alleged conduct is removed.

Section 113 amends sections 71(1) and 72(1) of the Serious and Organised Crime Act 2005 so that the powers in respect of offenders who assist investigations and prosecutions can only be used where the assistance is provided in relation to the investigation or prosecution of an offence which is capable of being tried in the crown court.

Sections 114 and 115 have the effect of amending the Bail Act 1976. Paragraph 6ZA, stating that a defendant charged with murder may not be granted bail unless the court is of the opinion that there is no significant risk of

the defendant committing an offence, while on bail, that would, or would be likely to, cause physical or mental injury to any other person, is inserted into Schedule 1. In addition, it is provided that a person charged with murder may not be granted bail except by order of a crown court judge.

Section 117 amends section 36 of the Terrorism Act 2006 with regard to the review of the operation of the provisions of terrorism legislation with the insertion of subsection (2A) concerning the detention of persons under section 41 of the Terrorism Act 2000.

Part 4: Sentencing

This part of the Act establishes a Sentencing Council for England and Wales, with the power to prepare sentencing guidelines, which must be followed by every court in sentencing an offender, unless it would be contrary to the interests of justice to do so. Under section 135 both the Sentencing Guidelines Council and the Sentencing Advisory Panel are abolished.

Chapter 2 to Part 4 addresses other provisions relating to sentencing.

Part 5: Miscellaneous criminal justice provisions

Section 142 amends the Domestic Violence, Crime and Victims Act 2004 with regard to the status and functions of the Commissioner for victims and witnesses.

Under section 144 and Schedule 17 the Council of the European Union Framework Decision 2008/675/JHA is implemented to ensure that previous convictions in other European Union member States are taken into account in criminal proceedings in England, Wales and Northern Ireland, to the extent that previous United Kingdom convictions are taken into account in criminal proceedings.

Section 146 amends the Courts Act 2003 to provide a different procedure for the retention of all knives that have been surrendered to or seized by a court security officer.

Part 6: Legal aid and other payments for legal services

Part 6 amends the Access to Justice Act 1999 to give express power to pilot schemes as part of the Community Legal Service. The insertion of section 8A to the 1999 Act enables pilots to be carried out to explore possible changes to the Funding Code. In addition amendments are made with regard to the Criminal Defence Service and requests for information as well as enforcement of orders to pay the cost of representation.

Part 7: Criminal memoirs

Under section 155 a court may make an exploitation proceeds order in respect of a person if it is satisfied, on the balance of probabilities, that the person is a qualifying offender, and has obtained exploitation proceeds from a relevant offence.

Under the Act a person obtains exploitation proceeds from a relevant offence if the person derives a benefit from the exploitation of any material pertaining to

the relevant offence, or any steps taken or to be taken with a view to such exploitation.

Such order requires the qualifying offender (respondent) to pay an amount (the recoverable amount) in respect of exploitation proceeds obtained by the respondent from a relevant offence to the enforcement authority which applied for the order. An exploitation proceeds order must specify the recoverable amount, and identify the benefits derived by the respondent in respect of which it is made.

Section 156 defines the meaning of 'qualifying offender' as a person who falls within subsection (2) or (3). Subsection (2) states that a person is within this subsection if (whether before or after the commencement of Part 7) if the person has been convicted by a court in the United Kingdom of an offence, has been found not guilty by such a court of an offence by reason of insanity, or has been found by such a court to be under a disability and to have done the act charged in respect of an offence.

A person falls within subsection (3) if under the law in force in a country outside the United Kingdom (and whether before or after the commencement of Part 7) the person has been convicted of a foreign offence (as set out in subsection (4)), a court exercising jurisdiction under that law has made, in respect of a foreign offence, a finding equivalent to a finding that the person was not guilty by reason of insanity, or such a court has made, in respect of a foreign offence, a finding equivalent to a finding that the person was under a disability and did the act charged in respect of the offence. With regard to subsection (3) the person must be a United Kingdom national, be resident in the United Kingdom, or was resident in the United Kingdom at the time the act which constituted the offence was done.

Sections 159 and 160 define 'relevant offence' and 'deriving a benefit' respectively. An application under this Part must be made by an enforcement authority. Section 162 sets out those matters to which a court must have regard when considering such as the social, cultural or educational value of the activity or product, the seriousness of the relevant offence to which the activity or product relates and the extent to which any victim of the offence or the family of the victim is offended by the respondent obtaining exploitation proceeds from the relevant offence.

Section 163 places a limit on the amount that the court can order a person to pay. The recoverable amount cannot be exceed the total value of the benefits derived by the offender in respect of which the order is made, nor must the recoverable amount exceed the funds available to the offender.

Section 166 provides that an exploitation proceeds order ceases to have effect where the respondent's conviction for the relevant offence is quashed.

Part 8: Data Protection Act 1998

Section 173 inserts new sections 41A and 41B, into the 1998 Act to enable the Information Commissioner to carry out an assessment to determine whether a public body has complied or is complying with the data protection principles. The consent of the public authority is not required before this assessment can be undertaken. Under this subsection, the Information Commissioner will be

able to issue an assessment notice, which will require the subject of the notice to take certain action as set out in section 41A(3) of the Data Protection Act 1998.

Under new section 41C the Commissioner must prepare and issue a code of practice as to the manner in which the functions under and in connection with section 41A are to be exercised.

Section 174 inserts sections 52A-52E in to the 1998 Act with the effect that the Commissioner must prepare a code of practice with regard to data-sharing.

Further amendments to the Data Protection Act 1998 are contained in Schedule 20 to the Act.

Part 9: General

This part of the Bill sets out supplementary provisions about orders and regulations, commencement, extent and repeals.

The Coroners and Justice Act 2009 can be found at http://www.opsi.gov.uk/acts/acts2009/pdf/ukpga_20090025_en.pdf

HM Queen's Speech and Government's Draft Legislative Programme 2009/10

On 18 November 2009 HM The Queen outlined her Government's plans for legislation in her annual speech at the State Opening of Parliament. The 2009/10 session of Parliament includes a number of Bills drawn from the Government's Draft Legislative Programme which relate to the criminal justice system, policing, crime and security.

The Consultation for the Draft Legislative Programme for 2009/10 has now closed. The Leader of the House has published a summary of consultation comments and the Government's response.

The Government's Draft Legislative Programme for 2009/10 is set out under broad themes. The Draft Legislative Programme for 2009/10 includes the following Bills:

Equality Bill

Strengthening equality law and fighting discrimination by:

- Banning age discrimination by those providing services and public functions. The Bill would ban harmful discrimination but would not affect products or services for older people where age based treatment is justified or beneficial e.g. priority flu vaccinations for people aged over 65;
- Placing a new duty on Ministers, departments and key public bodies such as local authorities and NHS bodies to consider what action they could take to reduce the socio-economic inequalities people face;
- Placing a new Equality Duty on public bodies which would require them to consider the needs of diverse groups in the community when designing

and delivering public services so that people can get fairer opportunities and better public services;

- Using the power of public procurement to help achieve the Government's public policy objectives on equality. A common approach could reduce burdens on businesses applying for public sector contracts;
- Including a power to require reporting on the gender pay gap by private sector employers with more than 250 employees. This power would not be used before 2013 and would only be used if sufficient progress on reporting had not been made. The Bill also includes powers to require public authorities to report on equality issues. The Government is consulting on requiring public authorities with more than 150 employees to report annually on their gender pay gap and their ethnic minority and disability employment rates. The Bill would ban secrecy clauses that prevent employees discussing their pay with colleagues;
- Extending the scope to use positive action, by giving employers the choice to make their workforce more diverse when selecting between two job candidates who are equally suitable. It would also allow political parties to do more to increase diversity, for example by extending the use of all-women shortlists; and
- The Bill generally applies to England, Scotland and Wales. The socio-economic duty applies to England and Wales only.

A House of Commons Committee Stage Report on the Equality Bill was published on 13 November 2009 and is available at http://www.parliament.uk/commons/lib/research/rp2009/rp09-083.pdf

Policing, Crime and Private Security Bill

Backing communities in setting fair rules to tackle crime and anti-social behaviour through increasing protection against a range of threats, including violence, anti-social behaviour and financial exploitation by:

- Further cutting police officer red tape by reducing the reporting requirements on stop and search forms (whilst retaining important ethnicity monitoring oversight) so that police officers can spend more time tackling the crime and less time completing forms;
- Retrospectively adding to DNA database those convicted of serious violent or sexual offences before the 2004 change in the law which made it routine procedure to collect the DNA of offenders. Many of those offenders who were arrested before 2004 will now be back in the community. This new power, which is currently being consulted upon, would enable the police to take their DNA and continue to be able to tackle so-called 'cold' cases;
- Providing the police with powers to compel sexual and violent offenders who have been convicted and imprisoned abroad to provide a DNA sample on their return to the UK;
- Protecting women from violence through considering any recommendations for legislation from the response to the Violence Against Women and Girls consultation to be published in the Autumn;

- Providing greater support to struggling parents who cannot cope with a child's anti-social behaviour through ensuring that a parenting assessment is carried out on every child aged 10 to 15 who is considered for an ASBO and, for the same age group, will make a Parenting Order automatic upon breach of a child's ASBO;
- Introducing a compulsory licensing requirement for private wheel clamping businesses. The ongoing consultation proposes bringing clamping businesses under the regulation of the Security Industry Authority, which already vets and licences individuals, to ensure that known criminals are prevented from abusing positions of trust; and
- The Bill extends to England and Wales, with some provisions also applying to Scotland and Northern Ireland.

Bribery Bill

Modernising the law on bribery to support the highest ethical standards across business and public life and to equip prosecutors and courts to deal effectively with bribery by:

- Providing a new, modern and comprehensive scheme of bribery offences enabling a more effective response to bribery in the public and private sector, at home and abroad;
- Enabling the courts to consider evidence from proceedings in Parliament in the event of a prosecution for bribery of a Member of Parliament or Peer;
- Creating an offence of bribery of foreign public officials in order to obtain or retain business;
- Creating a new corporate offence where a business fails to prevent bribery being committed by those working on its behalf;
- Guaranteeing that foreign nationals who are resident in the UK are liable to prosecution for bribery committed abroad in the same way that UK nationals are already liable;
- Removing the existing requirement for the consent of the Attorney General to a prosecution for bribery; and
- The draft bill covers England, Wales and Northern Ireland. The reform of the law on bribery in Scotland is a matter devolved to the Scottish Parliament.

Constitutional Renewal Bill

Rebuilding trust in democratic and constitutional settlement by ensuring openness, transparency, and accountability by:

- Completing the process of removing the hereditary principle from the second chamber;
- Providing for the disqualification of Peers convicted of a serious criminal offence;
- Allowing Peers to resign;

- Placing the Civil Service Code, recruitment into the Civil Service and the role of the Civil Service Commissioners on a statutory footing;
- Creating a statutory basis for the Parliamentary scrutiny of Treaties, prior to their ratification;
- Limiting the circumstances in which the Attorney General can intervene in cases and a requirement to publish a protocol on how the Attorney General would work with the Directors of the prosecution services that the Attorney General oversees;
- Removing the Prime Minister from involvement in all judicial appointments in England and Wales;
- Repealing legislation that limits protests around Parliament; and
- Standardising the time limit within which legal action can be brought under the Human Rights Act 1998 across the UK.

Improving Schools and Safeguarding Children Bill

Creating world class standards in schools, listening to parents, giving them more information and acting to protect vulnerable children by delivering the commitments in the forthcoming Schools White Paper including:

- Clarifying the role of Ofsted and other inspectorates in inspecting Local Safeguarding Children Boards (LSCBs) and enable information sharing for LSCB purposes;
- Helping to tackle anti-social behaviour through powers of intervention with Youth Offending Teams that are considered to be failing - otherwise putting young people and/or local communities at risk; and
- Putting in place a new framework, based on the position in youth courts, to enable the media to report the substance of family proceedings whilst protecting the identities of families and providing the courts with discretion to disapply this safeguard where it is in the public interest and safe to do so.

Draft Bills 2009/10

The government also publishes each parliamentary session a number of Bills in draft form, before they are introduced in Parliament as formal Bills. This enables consultation and pre-legislative scrutiny before a Bill is issued formally.

The Government will introduce the following Draft Bill in this session of Parliament:

- Immigration Simplification Bill
  Replacing the many existing Immigration Acts with a single, simplified Act.

A transcript of HM The Queen's Speech 2009 can be found at http://www.commonsleader.gov.uk/output/Page2908.asp

The Government's Response and a Summary of the Consultation, was published on Wednesday 18 November 2009 and is available at http://www.commonsleader.gov.uk/files/pdf/803%20Cm%207739.pdf

The Government's Draft Legislative Programme for 2009/10 can be found at http://www.commonsleader.gov.uk/output/Page2826.asp

The progress of Bills in the Draft Legislative Programme for 2009/10 can be found at http://services.parliament.uk/bills/

Home Office Circular 19/2009: Commencement of the Identity Cards Act 2006 - Issue of Identity Cards and New Criminal Offences

On 4 November 2009 the Home Office published Circular 19/2009: Commencement of the Identity Cards Act 2006 - Issue of Identity Cards and New Criminal Offences. This Circular is an addendum to circular 15/2006: offences relating to possession of false identity documents etc.

The passing of SI 1439/2006 (c.49) instigated the commencement of sections 25, 26 and 30, schedule 2 and related sections of the Identity Cards Act 2006 on 7 June 2006.

The Identity Cards Act 2006 which received Royal Assent on 30 March 2006 made provision for:

- Establishment of a National Identity Register enabling a voluntary national scheme of registration of individuals including the powers to provide information from the Register with and without consent;
- The issue of identity cards to those individuals who chose to have them;
- New criminal offences relating to possession of false identity documents, unauthorised disclosure of information obtained under the Act, providing false information when making an application for an identity card (or to modify an existing entry on the National Identity Register) and tampering with the Register; and
- Amendments to the Football Spectators Act 1989 and the Criminal Justice and Police Act 2001 so that any requirement to surrender a passport now includes a requirement to surrender an identity card which could be used as a travel document within the European Economic Area instead of a passport. An identity card may also be surrendered as a condition of bail.

The Act also creates an obligation on an individual to keep their details up to date. A failure by an individual to notify any changes to their details on the Register or to surrender an identity card when required may result in the imposition of a civil penalty of up to £1000.

Finally, the Act establishes a new post of Identity Commissioner who will oversee the implementation of the National Identity Service including the issuing of identity cards and the establishment and maintenance of the National Identity Register.

The bulk of the Identity Cards Act 2006 came into force on 20 October 2009 from when identity cards may be issued to limited numbers of employees of the Identity and Passport Service and its contractors. Later in 2009 (a further commencement order will specify the precise date) identity cards will begin to

be issued on a voluntary basis to British citizens who hold a British passport, are aged 16 and over and resident in Greater Manchester, as well British citizens and European Economic Area nationals working at Manchester and London City airports.

From 2010, it is intended to extend the issue of identity cards on an entirely voluntary basis, expanding the geographical location to other parts of North West England. The rollout will then extend to other areas and from 2012 it is intended to start to enrol British citizens at high volumes across the United Kingdom offering everyone aged 16 and over who applies for a passport the choice of receiving a separate identity card or passport or both.

Some provisions of the Act, including those creating offences regarding possession of false identity documents have already come in to force (see Home Office Circular 15/2006). A full list of what is being commenced and what has been commenced already is set out in Annex A which also contains a link to the Identity Cards Act 2006 itself.

Criminal Offences

- Sections 25 and 26 create offences relating to manufacture and possession of false identity documents including documents which are genuine but improperly obtained, or which relate to another person. These sections are already in force and were commenced on 7 June 2006;
- Section 27 creates a criminal offence of unauthorised disclosure of information from the National Identity Register. This includes information obtained by carrying out functions under the Identity Cards Act 2006 where that information must be kept confidential and applies to people who are involved in the establishment or maintenance of the Register, the issue and manufacture of ID cards, or the carrying out of the Commissioner's functions. A person would have a defence if he can show that he believed, on reasonable grounds, that he had lawful authority to disclose the information. The maximum penalty for the offence is 2 years imprisonment or a fine or both;
- Section 28 creates a criminal offence of providing false information where a person provides false information for inclusion on the National Identity Register or in order to obtain an identity card. For the purposes of this section, 'false' includes information containing inaccuracies or omissions that tend to mislead. The maximum penalty for the offence is 2 years imprisonment, a fine or both; and
- Section 29 creates a criminal offence of tampering with the Register, including any conduct that causes an unauthorised modification of information in the Register including cases where an individual intends to do so as well as where they are reckless as to whether or not the conduct will cause such a modification. The maximum penalty for the offence is ten years imprisonment, or a fine, or both.

Section 27-29 offences are most likely to be identified by the Identity and Passport Service in the first instance, rather than coming to the notice separately of the police or prosecuting authorities and because the initial roll out of identity cards will be limited there will be very limited opportunity for

the commission of such offences at least until the high volume roll out of identity cards starts, as planned from 2012.

From 20 October 2009 Statutory Instrument 2565/2009 - The Identity Cards Act 2006 (Commencement No. 4) Order 2009 -brought into force some of the provisions of the Act (See p of this edition) and can be found at http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092565_en.pdf

Home Office Circular 19/2009: Commencement of the Identity Cards Act 2006 - Issue of Identity Cards and New Criminal Offences is available at http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2009/019-2009/

Home Office Circular 15/2006: Offences relating to possession of false identity documents etc. can be found at http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2006/015-2006/

New Measures to Tighten Use of Regulation of Investigatory Powers Act 2000

The Policing Minister David Hanson announced on 4 November 2009 that the level of authorisation required by local authorities to sign off investigatory techniques will be raised to prevent them being used for trivial matters.

Following a public consultation of the Regulation of Investigatory Powers Act 2000 (RIPA), a senior executive now has to approve how and when the techniques are used to protect the public and fight crime. Under the new measures, elected councillors in each local authority are also required to oversee the use of RIPA. In addition, training for local authority authorising officers and bespoke written guidance on how local authorities should use RIPA will be issued.

New codes of practice make it clear to all public authorities who can make authorisations under RIPA that they cannot be used for minor matters.

The Home Office received 222 responses to the consultation launched in April 2009 and will now bring forward legislation to implement the changes. The orders and the related codes of practice will include measures to:

- Clarify the test of necessity and proportionality so techniques will not be used to investigate dog fouling or people putting bins out a day early;
- Raise the rank of authorising officer for RIPA techniques in local authorities to senior executive at a minimum of 'Director' level;
- Give elected councillors a role in overseeing the way local authorities use covert investigatory techniques;
- Require constituents' communications with MPs on constituency business to be treated as confidential information, and therefore subject to authorisation by a higher rank of officer; and
- Treat covert surveillance of legal consultations as 'intrusive' rather than 'directed' surveillance; meaning it can only be carried out by a very limited number of public authorities.

The Policing Minister said "We made it clear that we would not tolerate the misuse of RIPA and these new measures show that we are taking the necessary action to stop the small number of cases where this has happened."

The Codes of Practice replace the existing Codes of Practice on Covert Surveillance and Covert Human Intelligence Sources. They provide greater clarity on when the use of RIPA techniques would be proportionate. They make it clear RIPA should not be used in relation to trivial offences and they provide examples so everyone can understand how and when these techniques should be used.

Further information about the Regulation of Investigatory Powers Act 2000 consultation and responses can be found at
http://www.homeoffice.gov.uk/documents/cons-2009-ripa/

DNA Database Consultation Response Published

On 11 November 2009 the Home Office released their response to the consultation on the DNA Database which asked for comments on DNA retention. The consultation received more than 500 responses and the Home Office has now published its response.

The Home Office acknowledges that DNA and the use of forensics play an essential role in fighting crime and providing justice for victims. For example, between April 1998 and September 2009 there were more than 410,589 crimes with DNA matches, providing the police with a lead on the possible identity of the offender.

The consultation paper 'Keeping the right people on the DNA database' suggested changes to the current guidance on how long DNA records should be kept. It aimed to provide the right balance between protecting our communities and protecting the rights of the individual.

The Government's response proposes to:

- Remove profiles of all adults arrested but not charged or convicted of any recordable offence after six years;
- Remove profiles of 16 and 17 year old juveniles arrested but not charged or convicted of serious offences after six years;
- Remove profiles of all other juveniles arrested but not charged or convicted of a recordable offence after three years, regardless of age at arrest;
- Retain DNA profiles of all juveniles convicted of all but the most serious recordable offences for five years, and indefinitely for any further convictions; and
- In addition, the proposals include plans to destroy all DNA samples, such as blood, urine or mouth swabs used to create the DNA profile that is added to the database.

The Government is also planning to give the police new powers to take DNA samples from anyone convicted abroad, or convicted before the creation of the DNA database in 1995. There are also plans to continue to retain the DNA profiles of all adults convicted of a recordable offence indefinitely, as well as the profiles of all juveniles convicted of the most serious offences, such as murder, rape, manslaughter and serious assault. Under the proposals, fingerprints will be retained for the same time periods as DNA profiles.

The Government response to the consultation and a written statement from the Home Secretary can be found at
http://www.homeoffice.gov.uk/documents/cons-2009-dna-database/

Department for Transport Advice on Use of Mobile Data Terminals in Vehicles

On 6 November 2009 the Department for Transport (DfT) issued a briefing note to inform police forces of the advice recently received on the use of Mobile Data Terminals (MDTs) within vehicles.

Background

The NPIA Mobile Information Programme (MIP) is aware that forces have taken differing stances on allowing the visibility of screens to drivers of vehicles, based on previous advice from the legal profession or subject matter experts.

As a result of a number of forces fitting MDTs to vehicles the MIP has sought to clarify the position by seeking guidance from the DfT on their interpretation of the legislation.

The Legislation

Regulation 109 of the Road Vehicles (Construction and Use) Regulations 1986 provides for the use of television sets or other monitors in motor vehicles. It states:

109(1) No person shall drive, or cause or permit to be driven, a motor vehicle on a road, if the driver is in such a position as to be able to see, whether directly or by reflection, a television receiving apparatus or other cinematographic apparatus used to display anything other than information:

(a) About the state of the vehicle or its equipment;

(b) About the location of the vehicle and the road on which it is located;

(c) To assist the driver to see the road adjacent to the vehicle; or

(d) To assist the driver to reach his destination.

Television Receiving Apparatus - in this regulation means any cathode ray tube carried on a vehicle and on which there can be displayed an image derived from a television broadcast, a recording or a camera or computer.

The DfT advice

The view of the DfT is that Regulation 109 applies to 'television receiving apparatus' or 'other cinematographic apparatus' which means it can be applied to any device that contains a display, including LCD. **However the definitive view would need to come from a court of law.**

There is no mention of moving images so even static images are not permitted unless they show information specified by the exemptions in sub paragraphs a, b, c or d of the Regulation (above).

There are no exemptions in terms of information or images relating to policing or law enforcement purposes. For the majority of in car MDT deployments this effectively only allows the Sat Nav type functionality to be visible to the driver whilst the car is being driven.

As the requirements apply when the vehicle is being driven options include ensuring the screens are only used when the vehicle is parked or, alternatively, position them so that only the passenger can see them.

Next Steps

Force project teams are encouraged to discuss the implications with other force projects or business areas that may be affected, (e.g. owners/users of the Automated Number Plate Recognition (ANPR) system) and where appropriate have previous legal advice reviewed.

Further information on the legislation is available at
http://pnld.westyorkshire.pnn.police.uk/docmanager/content/D2692.htm

If you have any further specific questions or would like advice on practical options available please contact the Mobile Information Programme via your Business Advisor or via:
Telephone +44 (0)208 358 5734
E mail MIP@npia.pnn.police.uk

Government Consultation on Penalties for Serious Breaches of Data Protection Principles

The Ministry of Justice launched a consultation on 9 November 2009 to seek views on the implementation of a maximum penalty of £500,000 for serious breaches of the data protection principles. The consultation document 'Civil Monetary Penalties: Setting the maximum penalty' asks whether such large fines will provide the Information Commissioner's Office (ICO) with a proportionate sanction to impose on those seriously contravening the data protection principles. The consultation closes on 21 December 2009.

The Justice Minister, Michael Wills, said "The government is committed to ensuring that personal data is handled and processed responsibly and lawfully. We want to ensure that the Information Commissioner's Office has the powers it needs and is able to impose robust penalties on those who commit serious breaches of data protection principles."

Following discussions with the ICO, the government proposes that a fixed maximum penalty will give the ICO the flexibility and discretion to deal effectively with a large number and range of data controllers.

The ICO's power to impose Civil Monetary Penalties was inserted into the Data Protection Act 1998 through section 144 of the Criminal Justice and Immigration Act 2008. Sections 55A to 55E of the Data Protection Act contain the provisions on civil monetary penalties.

The full consultation document 'Civil monetary penalties - setting the maximum penalty' is available at
http://www.justice.gov.uk/consultations/docs/civil-monetary-penalties-consultation.pdf

National Delivery Plan to Improve Health and Support Justice

The Minister of State for the Department of Health, Phil Hope, launched the Government's national delivery plan for health and criminal justice on 17 November 2009. The report 'Improving Health, Supporting Justice - a National Delivery Plan' was developed by the Health and Criminal Justice Programme Board, building on Lord Bradley's 2009 review of mental health and learning disability in the criminal justice system. This delivery plan contributes to Government initiatives around protecting the public, reducing health inequalities, reducing reoffending and health improvement and protection.

The Government accepted the directions set out by Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system and committed to developing a national delivery plan incorporating a full response to the report's recommendations. In particular, it aims to:

- Provide a strategic framework within which local services can deliver quality improvements and to communicate the framework to the relevant NHS and criminal justice organisations;
- Set out the actions the Government will take to support these improvements; and
- Develop a national approach, by building on the good work and good practice that is already underway in individual localities and maintain the significant impetus and enthusiasm created by Lord Bradley's report, to drive forward improvements in health and social care services for offenders.

The full report 'Improving Health, Supporting Justice - a National Delivery Plan' can be found at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_108606

Home Affairs Committee Publish Report on SOCA

On 19 November 2009 the House of Commons Home Affairs Committee (HAC) published their Fourteenth Report 'The work of the Serious Organised Crime Agency'. The HAC noted that criticisms of the Serious Organised Crime Agency (SOCA) had continued and recently resulted in a review of SOCA by the Prime Minister's Strategy Unit. A further development was a critical report by HM Inspectorate of Constabulary in April 2009 that noted the failures of SOCA and the various police forces in combating organised crime and estimated that 2,800 organised crime gangs were operating in the UK.

It was against the background of continuing concerns about SOCA's effectiveness that the HAC decided to hold a valedictory evidence session with Sir Stephen Lander on 23 June 2009, just before he retired, and followed this up by taking evidence from his successor, Sir Ian Andrews, on 16 September 2009. The evidence sessions ranged widely over the work of SOCA, including

some detailed exchanges about the Agency's role in combating the cocaine trade, subject of a forthcoming report.

The report identifies the following key facts:

- By the end of 2008/09, the number of serious organised criminals recorded by SOCA exceeded 5,000;
- SOCA has about 3,900 staff based in 49 locations in the UK and 42 countries overseas;
- On 1 January 2009, just under 70% of SOCA staff were deployed on criminal and civil justice casework, on the covert collection capabilities such as interception and surveillance, and on assisting other police and security staff at home and overseas with their casework;
- In 2008/9 SOCA received nearly £439m in resource funding and over £55m in capital funding;
- In 2008/9 SOCA made or contributed to a total of 2,343 arrests: 781 UK arrests, 775 international casework arrests, 683 on the basis of European arrest warrants (people wanted by other countries arrested in the UK) and 104 on the basis of European arrest warrants (people wanted by the UK);
- In 2008/9 SOCA experienced a conviction rate in the courts of 93% (266 convictions secured);
- In 2008/9, £175m assets were denied to UK criminals through a combination of cash seizure, cash forfeiture, civil recovery, restraint orders, and confiscation orders;
- Drug seizures in 2008/9 amounted to 85.1 tonnes of cocaine, 2.9 tonnes of heroin, 7.3 tonnes of opium and 38.8 tonnes of cannabis; and
- Over 25% of SOCA operations in 2008/09 involved overseas activity.

The House of Commons Home Affairs Committee's Fourteenth Report 'The work of the Serious Organised Crime Agency' is available at http://www.publications.parliament.uk/pa/cm200809/cmselect/cmhaff/730/73002.htm

Police Annual Performance Data Released

On 4 November 2009 the Home Office published information relating to the annual Assessment of Policing and Community Safety (APACS) Policing Performance data for 2008/09 for all 43 police forces in England and Wales.

Between 2004/05 and 2007/08, policing performance was measured using the Policing Performance Assessment Framework and from 2008/09, a new framework 'Assessments of Policing and Community Safety' was introduced.

For 2007/08 and 2008/09, following announcements in the Policing Green Paper, data has not been graded. The Green Paper sets out a change in the strategic direction of performance management, with a reduced role for the Home Office, and an increased role for Her Majesty's Inspectorate of Constabulary (HMIC) and, locally for Police Authorities.

The Green Paper announced that the Home Office will neither set nor maintain top-down numerical targets for individual police forces, with the exception of increasing public confidence, and will seek to reduce the data burdens placed on the police by the Home Office. PPAF and APACS were both developed by the Home Office, with support from HMIC, the Association of Police Authorities (APA), the Association of Chief Police Officers (ACPO) and other stakeholders.

The annual APACS Policing Performance data for 2008/09 can be found at http://police.homeoffice.gov.uk/performance-and-measurement/performance-assessment/apacs-2008-2009/

There is guidance available on how to interpret this data at http://police.homeoffice.gov.uk/performance-and-measurement/performance-assessment/how-to-interpret-the-data/
and a list of Frequently Asked Questions at http://police.homeoffice.gov.uk/performance-and-measurement/performance-assessment/faqs1/

ACPO and CPS Announce New Charging Developments

On 10 November 2009 the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS) announced the development of a nationwide programme to roll-out a successful CPS telephone charging advice service for police.

From January 2010 the existing CPS Direct service, which provides immediate advice to police when charging suspects out of hours, is being incrementally expanded across England & Wales to operate 24 hours a day. This is part of a commitment to 'Modernising Charging' by providing easier access for police to CPS lawyers, and more consistency and efficiency to the charging process.

This will ultimately give all police officers instant access, via phone or secure digital service, to CPS prosecutors when seeking advice and authorisation on less serious charging decisions. The charging decisions in all serious or complex cases will remain the subject of face to face consultations between police and prosecutors.

At the same time, a pilot scheme to test the return of some charging decisions from the CPS to the police will be implemented. Under the pilot, which is aimed at streamlining the current charging boundary, charging decisions for less serious cases which can only be heard in the magistrates' courts will be taken by police. The CPS will retain responsibility for charging decisions for more serious offences. A test period of six months will be followed by a thorough review of the impact of the pilot which will consider if roll-out of these provisions is appropriate.

These moves follow last year's Review of Policing report by Sir Ronnie Flanagan, the 2008 HMIC/HMCPSI Joint Thematic Review of the new Charging Arrangements and Jan Berry's interim report on Reducing Bureaucracy in Policing published in February this year. The pilot areas will be announced in due course.

Recommendations included considering whether the police should take responsibility for charging more summary-only offences, allowing the CPS to focus on more serious cases, and streamlining the charging consultation process by expanding CPS Direct. Discussions are ongoing between the CPS and ACPO to determine which additional offences the police will take responsibility for charging in the pilot areas.

The full press release can be found at
http://www.acpo.police.uk/pressrelease.asp?PR_GUID={CEE0F851-B305-4C1F-9102-336CEDA5FE98}

New ACPO Guidance on the Deployment of Armed Officers

On 1 November 2009 the Association of Chief Police Officers (ACPO) published its new guidance on the deployment of armed officers. The ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers replaces current guidance and will apply to all police forces in England, Wales, Scotland and Northern Ireland. The introduction of this guidance follows a recommendation by Sir Ronnie Flanagan in the Stockwell review that all forces across the UK apply the same guidelines to the use of firearms.

The manual provides guidance on the appropriate use of firearms and related less lethal options within the police service. It also provides a basis for the training of police officers in the use of firearms and guidance on command structures, tactical options and operational issues associated with the deployment of authorised firearms officers.

A summary of the chapters are as follows:

Chapter 1 - Legal Framework
Legislation and human rights principles that are relevant to the use of force and firearms by police officers.

Chapter 2 - Use of Force, Firearms and Less Lethal Weapons
General principles for the police use of force, firearms and less lethal weapons, the circumstances when weapons may be discharged, and the accountability of Authorised Firearms Officers (AFOs) and commanders for their use.

Chapter 3 - Weapons and Equipment
Guidelines on the selection of weapons and equipment that may be used when AFOs are deployed.

Chapter 4 - Operational Issue and Carriage of Firearms and Deployment of AFOs
Guidance on the operational issue and carriage of firearms and related equipment. This chapter also contains criteria for the deployment of AFOs.

Chapter 5 - Command
The command structure and supporting measures appropriate to the deployment of AFOs.

Chapter 6 - Armed Deployments
Principles relevant to decision making by commanders, AFOs and other staff involved in armed deployments.

Chapter 7 - Post Deployment
The post deployment process including issues associated with debriefing and organisational learning.

Simon Chesterman, Assistant Chief Constable of West Mercia and ACPO lead on armed policing said "This new manual takes a more strategic approach to the deployment of authorised armed officers and is entirely unrestricted which means it is easily accessible to the public. By making it unrestricted we hope to give the public greater confidence and reassurance about the way in which armed officers are deployed and operate."

The ACPO Manual of Guidance on the Management, Command and Deployment of Armed Officers can be found at
http://www.npia.police.uk/en/docs/MCD_Armed_Officers_Gen3_100709.pdf

HMICS Publish Annual Report 2008/09

Her Majesty's Inspectorate of Constabulary for Scotland (HMICS) published its annual report for 2008/09 on 5 November 2009. The HMICS's report states that police forces, common services and their partners must work to deliver more efficient services and help minimise the effect the recession has on their budgets.

The Annual Report also highlights improvements in policing such as:

- The creation of the Scottish Policing Board;
- The record number of Scottish police officers and the good work done by forces and the Scottish Police College in recruiting and training an increased number of new recruits;
- The progress made at encouraging forces to systematically assess and develop their own performance; and
- The identification of and work to progress national strategic priorities.

The report identifies that good progress has been made recently with the identification of strategic priorities and developments such as the ground-

breaking Serious and Organised Crime Group mapping project, the establishment of major national units and the on-going work on the Scottish Policing Performance Framework all show what forces in conjunction with partners can achieve when they work together.

The full Annual Report 2008/09 from Her Majesty's Inspectorate of Constabulary for Scotland is available at http://www.scotland.gov.uk/Publications/2009/10/30134012/0

HMICS and IPS Report on the Proceeds of Crime Act 2002 Published

A Joint Thematic Report on the Proceeds of Crime Act 2002 by Her Majesty's Inspectorate of Constabulary for Scotland (HMICS) and the Inspectorate of Prosecution in Scotland (IPS) was published on 28 October 2009. The joint review undertook to investigate how police forces and the Crown Office and Procurator Fiscal Service (COPFS) implemented the Proceeds of Crime Act 2002 in Scotland.

The report provided a detailed description of the current position regarding the implementation of the Proceeds of Crime Act 2002 in Scotland and a vision of the way ahead. The proposals for the development of the use of the Proceeds of Crime Act 2002 in Scotland are set out in the report's recommendations.

Summary of Recommendations:

- Recommendation 1 - That as a matter of routine, the use of the Proceeds of Crime Act 2000 be mainstreamed within the police service in Scotland and COPFS so that from intelligence gathering to investigation and prosecution:
  - All confiscation opportunities are considered and where appropriate brought into effect against the full spectrum of relevant crime as provided in the Proceeds of Crime Act 2002; and
  - Where it is clear that criminal proceedings are not appropriate, that civil recovery (and taxation) provisions are considered at an early stage of investigations and that a direct route is made available to the Civil Recovery Unit in clearly defined circumstances.
- Recommendation 2 - That the Serious Organised Crime Taskforce broaden its focus in relation to proceeds of crime and develop a Scottish Proceeds of Crime Strategy in order to co-ordinate action among partner criminal justice agencies including but not limited to ACPOS and COPFS. In particular the Strategy should focus upon:
  - Creating sufficient capability and capacity across partner agencies to address all levels of criminality and all crime types included within the provisions of the Act; and
  - Establishing a proactive rather than reactive approach to financial intelligence gathering and investigation in relation to all relevant crime.

- Recommendation 3 - That ACPOS and COPFS appoint leads (champions) to focus on mainstreaming POCA throughout their respective organisations.
- Recommendation 4 - That the current processes used in both policing and COPFS are reviewed to ensure their effectiveness in all aspects of POCA work (as more fully detailed in the suggested action points below) and, that COPFS and ACPOS assure themselves that these activities are taking place through their normal performance management regimes.

The full Joint Thematic Report on The Proceeds of Crime Act 2002 is available at http://www.scotland.gov.uk/Publications/2009/10/26113051/0

Latest Police Use of Taser Statistics Announced

On 12 November 2009 the Home Office released the latest statistics on the reported and recorded uses of Taser by police forces in England and Wales. The use of Tasers by specially-trained units slowed in the last quarter, according to the new figures.

Every police force in the country was this year given the right to issue Tasers to non-firearms officers with specialist training. The move followed a successful 12-month trial in ten forces across the country.

The latest statistics record the use of Tasers for the second quarter of 2009 and show they were used 169 times by specially trained units from April to June, down from 250 in the previous quarter. Officers discharged them 36 times over the period, compared to 62 for the preceding period.

Units have now used Tasers 1,267 times since the trial began in September 2007. They were discharged 226 times.

The latest statistics on the reported and recorded uses of Taser by police forces in England and Wales are available at http://scienceandresearch.homeoffice.gov.uk/images/106966/PTaser_figs_Nov_09.pdf

Police National Database Public Consultation

The NPIA's IMPACT Programme published a draft Code of Practice on the Operation and Use of the Police National Database (PND) on 12 November 2009. The aim of the Code is to promote consistent and lawful use of the PND across the Police Service.

The draft Code of Practice is open to public consultation and comments on the draft are invited by 1 February 2010.

The PND is a key deliverable of the Bichard Inquiry which was set up following the murders of Holly Wells and Jessica Chapman in Soham in 2002. A primary finding of the inquiry was that a national information sharing capability was urgently needed to safeguard the public. In particular this was to protect children and vulnerable adults, counter terrorism and prevent and disrupt crime.

More information on the consultation is available from the IMPACT Programme's Policy, Legal Compliance and Communications Manager, Dominic Smales via email at dominic.smales@npia.pnn.police.uk

The draft Code of Practice on the Operation and Use of the Police National Database can be found at http://www.npia.police.uk/en/docs/PN_General_Consultation_Letter_with_Code_attached.pdf

ACPO Review Identifies Ways to Tackle Serial Perpetrators of Violence Against Women

On 16 November 2009 the Association of Chief Police Officers (ACPO) released to government a review of new measures that could be taken to tackle serial perpetrators of violence against women. The review, which was undertaken over six months, was conducted by the ACPO lead on domestic abuse, Chief Constable Brian Moore, at the request of the former Home Secretary Jacqui Smith.

The review considered the following proposals:

- Persons at risk of violence have the 'right to know' about relevant information;
- Consideration of a new criminal offence whereby a prosecution may be brought on the basis of evidence of repeated violent behaviour (known as a 'Course of Conduct') against different victims of violence; and
- That the law should be changed to enable the police to issue a Domestic Violence Protection Order of up to 14 days duration, to prevent a suspected perpetrator of this form of violence from entering the address of the victim and/or to prevent contact with the victim.

The review was part of the Government's consultation 'Together we can end violence against women and girls' which asked ACPO to undertake a full review of what additional powers the CJS might need to control the activities of perpetrators of gender-based violence. This included domestic violence, stalking and harassment, honour-based violence, female genital mutilation, forced marriage, rape, sexual assault, sex trafficking, prostitution and elder abuse.

The full press release can be found at http://www.acpo.police.uk/pressrelease.asp?PR_GUID={A84B6E76-0776-4A9C-A71A-CAB62583C4C3}

Professionals 'Missing Opportunities' to Help Hidden Children Exploited for Sex and Forced Labour

On 2 November 2009 The Children's Society published a new research report 'Hidden Children - separated children at risk' which states that children and young people trafficked into the UK, or exploited after their arrival, are struggling to get help from authorities responsible for their welfare. Some children say that even when they do alert frontline professionals including the police, teachers and social workers, many are unwilling to help, disbelieve the seriousness of their situation or do not know where to refer them for advice.

Whilst recent media reports have claimed that the problem of trafficking has been overstated, this new report brings into startling perspective the very real problems faced by children separated from their carers and exploited and mistreated by those responsible for them in the UK.

The extent of child trafficking and the precise number of victims in the UK remains unknown and contested. However, The Children's Society's research, which highlights 34 case studies and provides direct input from a further 12 former hidden children, demonstrates the reality of the trauma faced by those young people trafficked into the UK.

It challenges the stereotype that portrays these children as being entirely hidden away from society. In reality many actually attend school, church, or GP clinics, but feel too afraid to admit the abuse. As a result the indications that they are being exploited are not picked up or acted upon by professionals.

Hidden Children provides a wake-up call to teachers, social workers, third sector organisations and the police. The report stresses that it is vital for the authorities to co-operate to help trafficked children get access to their rights and entitlements, and certainty about their immigration status.

It calls for multi-agency safeguarding training to be given to local agencies, including education, health, voluntary sector and social workers, police and representatives of faith communities. The training should be geared towards improving networks of communication between the agencies in order to increase the chances of helping hidden children to move away from abusive situations as quickly as possible.

The report includes the following recommendations:

- Once the young person has been discovered and settled in a stable placement with a specialised experienced foster carer, they should receive an explanation of their options for the future, including about their immigration status;
- Hidden children should be made aware of future risks of exploitation, as well as being made aware of their rights and entitlements; and
- They should be offered therapeutic support as well as peer group support.

The full report 'Hidden Children - separated children at risk' is available at http://www.childrenssociety.org.uk/resources/documents/media/18843_full.pdf

Latest Seizures of Drugs Statistics Published

The Home Office Statistical Bulletin (16/09) 'Seizures of Drugs in England and Wales, 2008/09' was published on 29 October 2009. This annual statistical bulletin contains figures for seizures of drugs made in 2008/09 by local police forces and the UK Border Agency (UKBA) within England and Wales. There are two main measures of drug seizures; number of seizures made and the quantity seized.

In 2008/09 there were 241,090 drug seizures made in England and Wales by the police and the UKBA, an increase of 6% since 2007/08 and the highest since electronic records began in 1973. There were increases in the number of Class B (which includes cannabis) and Class C seizures and a fall in Class A seizures when compared to 2007/08.

The bulletin's key findings include:

- Class A drugs seizures decreased by 1%;
  - Within Class A drugs, cocaine seizures increased by 15%, but crack and heroin seizures fell by 13% and 6% respectively;
  - Cocaine was the most commonly seized Class A drug, as last year;
- Class B drugs seizures increased by 9%;
  - Within Class B drugs, cannabis seizures rose by 7%;
  - Cannabis is included in Class B for both 2007/08 and 2008/09, even though it transferred from Class C to Class B on January 2009;
- Class C seizures increased by 37%;
  - Within Class C drugs, benzodiazepines rose by 40%, temazepam rose by 48%, and anabolic steroids rose by 53%.

The following quantities of drugs were seized in 2008/09:

- 2.9 tonnes of cocaine;
- 1.6 tonnes of heroin;
- 543,000 doses of ecstasy;
- 2.9 tonnes of amphetamines;
- 33.4 tonnes of herbal cannabis;
- 31.8 tonnes of cannabis resin; and
- 643,000 cannabis plants.

In addition to the report, tables providing a greater level of detail on drug seizures have also been published.

The Home Office Statistical Bulletin (16/09) 'Seizures of Drugs in England and Wales, 2008/09' and supplementary tables are available at http://www.homeoffice.gov.uk/rds/pdfs09/hosb1609.pdf

MAPPA Publish Annual Report

On 26 October 2009 the National Probation Service published the Multi-Agency Public Protection Arrangements Annual Reports 2008/09. The report states that the UK multi-agency teams that manage serious offenders in the community under Multi-Agency Public Protection Arrangement (MAPPA) are being seen as beacons of best practice in public protection by countries around the world.

The countries that have expressed an interest in learning more about MAPPA are America, Canada, South Korea, Jamaica, Norway and Latvia. In the last couple of years, both Scotland and Northern Ireland have introduced MAPPA following its success in England and Wales.

MAPPA teams in England and Wales were put in place eight years ago to provide more robust management systems for those offenders who live in our communities through the sharing of information and expertise. The teams, comprising police, prison, probation and other relevant agencies ensure joint working and enhanced communication to effectively manage risk to the public.

There are more offenders on the sexual offenders register which means more offenders subject by law to notification requirements and therefore being monitored by the police and other agencies.

In 2008, the Home Office began pilots to increase the amount of information about particular child sex offenders that is shared with the public. People can request information about an individual who has contact with their children. These pilots took place in four police areas and ended in September 2009. The pilots will now be evaluated with a view to considering a national roll out. Regardless of the outcome of that evaluation, there is a requirement in all cases of MAPPA-eligible offenders to consider, as a part of every review of the case, whether there is a need to disclose information about the offender. Information will be disclosed where this is required by the risk management plan.

The 42 MAPPA 2008/09 reports can be found at
http://www.probation.homeoffice.gov.uk/output/Page30.asp

MAPPA Guidance 2009 (Version 3.0) is available at
http://www.probation.homeoffice.gov.uk/files/pdf/MAPPA%20Guidance%202009%20Version%203.0.pdf

The National Statistics for Multi-Agency Public Protection Arrangements Annual Reports 2008/09 can be found at
http://www.probation.homeoffice.gov.uk/files/pdf/MAPPA%20National%20Figures%202009.pdf

The full report on the 'Public Protection Arrangements in Northern Ireland: The First Six Months - October 2008 to March 2009' was also published and is available at
http://newhorizondesigns.co.uk/ppani/images/Publications/ppaniintreport.pdf

EU Publish 2009 Organised Crime Threat Assessment

On 22 October 2009 Europol published the fourth European Union Organised Crime Threat Assessment (2009 OCTA). The OCTA is a core product of the intelligence-led law enforcement concept and its drafting is one of Europol's top priorities. OCTA 2009 looks at how organised crime affects the EU and the public, enabling authorities to prioritise matters and take appropriate action.

The 2009 OCTA assesses the threat of organised crime in the EU through the analysis of:

- The organised crime groups (OCGs);
- The criminal markets, and
- Their interaction both within and outside territorial entities denominated as criminal hubs.

The report identifies that the most significant criminal sectors are drug trafficking, trafficking in human beings (THB), illegal immigration, fraud, counterfeiting and money laundering. The report also explores developments in each of those areas and considers the impact of other factors as well, such as criminal activities originating in the following external locations: Western Africa analysed in a dedicated chapter, but also Belarus, the Middle East, Moldova, Russia, Ukraine, Turkey and the Western Balkans.

The full report 'European Union Organised Crime Threat Assessment 2009' can be found at
http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_(OCTA)/OCTA2009.pdf

Latest Journal of Homicide and Major Incident Investigation Published

The latest version of the Journal of Homicide and Major Incident Investigation (Volume 5, Issue 2) was published on 1 November 2009. The journal is published twice a year by the NPIA on behalf of the ACPO Homicide Working Group. It contains papers based on operational experience, professional practice, procedure, legislation and developments relevant to those involved in investigating homicide and major incidents.

This edition contains the following articles:

- Review of Undetected Historic Serious Crime: 'Why Bother?';
- Effective Investigation of Intra-familial Child Homicide and Suspicious Death;
- Derbyshire Constabulary Child Exploitation Investigation Unit Intervention Strategies;
- National Ballistics Intelligence Service Update;
- Media: A useful Investigative Tool;

- Forensic Science Support to Critical and Major Incident Investigations: A service-based approach; and
- Focus on the National Injuries Database.

Ideas for future issues?

If you are an investigator or an academic and have worked on or researched an interesting case with identified learning points that you would like to share with the Senior Investigator Officer (SIO) community via the journal please email homicide.journal@npia.pnn.police.uk

The journal team is always looking for case studies to be included in future issues and authoring an article for the journal can be counted as credit towards the requirement for evidence of Continued Professional Development (CPD) at PIP Level 3. Articles go to the PIP Registrar for allocation of CPD credit prior to publication and authors will then receive a letter confirming the number of hours CPD awarded.

The Journal of Homicide and Major Incident Investigation (Volume 5, Issue 2) is now available on the Genesis Extranet.

Report Urges Greater Use of Restorative Justice to Reduce Reoffending

The Prison Reform Trust (PRT) published on 29 October 2009 its report on the use of restorative justice in Northern Ireland. The PRT study recommends that the Youth Justice Board should adopt an approach to restorative justice similar to that used in Northern Ireland. The authors claim that youth crime will fall dramatically if all young offenders in England and Wales face their victims, creating greater confidence in the criminal justice system.

The report 'Making Amends: Restorative Youth Justice in Northern Ireland' found that 38% of children aged 10 to 17 years involved in Northern Ireland's restorative justice process in 2006 reoffended within a year. This compares to a 71% reoffending rate for those sent to prison that year. The reoffending rate for young people sentenced to custody in England and Wales currently runs at around 75%.

Since the introduction in 2003 of the Youth Conference Service in Northern Ireland, more than 5,500 referrals have been made to the service. There are two types of youth conference:

- Diversionary - where a young person is referred prior to conviction; and
- Court-ordered - where a young person is referred post-conviction.

The report's key findings include:

- In 2006, the combined reoffending rate for youth conferencing was 37.7% - this compared to 52.1% for community sentences and 70.7% for custodial sentences;
- Between 2003 and 2005, a quarter of all referrals were for violence against the person offences;
- Victims were present in two-thirds of all conferences held in 2008/09 and 89% expressed satisfaction with the conference outcome, and 90% said they would recommend it to a friend;
- The number of children sentenced to immediate custody in Northern Ireland dropped from 139 in 2003 to 89 in 2006;
- In addition, the percentage of convicted young offenders sentenced to custody fell from 10% in 2004 to 7% in 2006, whilst the percentage receiving a youth conference order increased from 1% to 23%;
- The ratio of the 10-17 year old population in Northern Ireland who were sentenced to custody in 2006 was 1:2265 compared to England and Wales where the equivalent ratio sentenced to custody in 2006/07 was 1:760;
- Nearly two-thirds of children in the Juvenile Justice Centre (JJC), the main secure facility for children, are on remand. This despite a Youth Justice Board commitment to placing restorative justice at the heart of the youth justice system, its use in England and Wales has so far been limited.

The Northern Ireland approach is based on offenders meeting their victims, recognising the consequences of their actions and making amends. This takes the form of structured meetings called youth conferences where offenders and victims are helped to discuss the offence and its impact. They are then encouraged to work together to agree an action plan for the offender.

The PRT argues restorative justice approaches in England and Wales are limited as they are used for first-time and minor offenders. A PRT spokeswoman said "We can learn from the work in Northern Ireland that a structured system of restorative justice cuts youth crime and satisfies victims."

A Youth Conference Action Plan can include:

- An apology - either verbal or written;
- Doing something for the victim or community to make up for the harm caused (reparation);
- Activities to address offending such as engagement in mentoring, an offender behaviour programme, education or diversionary activity;
- Unpaid work;
- Preventing the young person from undertaking activities or going to certain places; this can entail electronic monitoring; and
- Payment of compensation to the victim or a charity.

The full report 'Making Amends: Restorative Youth Justice in Northern Ireland' is available at
http://www.prisonreformtrust.org.uk/uploads/documents/making_amends.pdf

Justice Secretary Announces Tougher Sentences for Killers Using a Knife

On 10 November 2009 the Justice Secretary Jack Straw announced that those who commit murder with a knife should face significantly longer in jail than they currently do. This announcement will mean that the minimum prison term set by a court which knife killers must serve before they are considered for release by the Parole Board could increase by a decade, going up to 25 years from 15 years. This is more closely aligned to that for murder using a firearm, where the starting point is 30 years.

The announcement follows a detailed review of the starting point from which courts set the minimum prison term for murder using a knife, as announced to Parliament on 16 June 2009.

The full press release can be found at
http://www.justice.gov.uk/news/newsrelease101109a.htm

Report Recommends that Justice Must be Redefined in Terms of Victims

On 5 November 2009 an independent study by the Victim's Champion Sara Payne was published setting out how the frontline services currently provided should be improved to support victims' needs. The study 'Redefining justice: addressing the individual needs of victims and witnesses' finds that justice should be as much about supporting victims as catching and punishing offenders.

The independent study sets out the results of a nine-month review of how the frontline services currently provided meet the needs of victims and witnesses. The findings are based on meetings with around 1,000 people including victims, witnesses and staff in organisations that support them.

The report says that justice is currently defined as "catching the criminal and protecting the public" with victims and witnesses often feeling that they are included simply to 'aid' that process. The report recommends that in future delivering justice should be about supporting the victim to overcome the impact of the crime so they can get on with their lives. There is also a call for greater transparency in sentencing so that victims know exactly how long offenders will serve in prison.

The main findings of the report include:

- Victims need to be considered in terms of the total impact of the crime committed against them and their individual needs arising from this impact;
- Victims need joined-up support;
- Service delivery must improve; and
- More effective use of the special measures provided by the Youth Justice and Criminal Evidence Act 1999.

The full report 'Redefining justice: addressing the individual needs of victims and witnesses' can be found at http://www.justice.gov.uk/about/docs/sara-payne-redefining-justice.pdf

Sentencing Guidelines Council Consultation on Corporate Manslaughter

On 27 October 2009 the Sentencing Guidelines Council published its draft guideline 'Draft guideline: Corporate manslaughter and health and safety offences causing death' which proposes that companies and organisations that cause death through gross breaches of care should face punitive and significant fines. Fines for organisations found guilty of the new offence of corporate manslaughter may be measured in millions of pounds and should seldom be below £500,000.

The sanction of Publicity Orders forcing companies and organisations to make a statement about their conviction and fine introduced under the Corporate

Manslaughter and Corporate Homicide Act 2007 should be imposed in virtually all cases.

The consultation guideline proposes that the publicity should be designed to ensure that the conviction becomes known to shareholders and customers in the case of companies and to local people in the case of public bodies, such as local authorities, hospital trusts and police forces. Organisations may be made to put a statement on their websites.

The guideline also deals with health and safety offences in the workplace that cause death. Fines in these cases should seldom be less than £100,000 and may be measured in hundreds of thousands of pounds or more, the Council proposes.

In deciding the level of fine, the Council says that a court should not be influenced by the impact on shareholders and directors but the effect on the employment of the innocent may be relevant. Also, the effect on provision of services to the public should be considered. The draft guideline proposes that public organisations and commercial companies are to be treated the same in relation to the standards of behaviour expected and punitive fines for breaches will follow although a different approach to determining the level of fine may be justified.

The consultation closes on Tuesday 5 January 2010.

The draft guideline 'Draft guideline: Corporate manslaughter and health and safety offences causing death' is available at http://www.sentencing-guidelines.gov.uk/docs/corporate_manslaughter/consultation_guideline_corporate_manslaughter.pdf

Smarter Sentences to Address Youth Crime

In a joint statement by the Justice Secretary Jack Straw, and the Secretary of State for Children, Schools and Families Ed Balls, it was announced on 12 November 2009 that new, smarter punishments will be used to tackle the underlying causes of youth crime and to prevent reoffending in order to help make neighbourhoods safer and better places to live. A new sanction called a Youth Rehabilitation Order (YRO) was introduced by section 1 of the Criminal Justice and Immigration Act 2008 which will came into effect in England on 30 November 2009.

The use of YROs will provide judges and magistrates with a choice of 18 options from which they will be able to create a sentence specifically designed to deal with the individual circumstances of the young offender before them. The blend of punishment will also be aimed at helping the young offender to turn their backs on crime.

The YRO will replace the following community sentences:

- Action Plan Order;
- Attendance Centre Order;
- Community Punishment & Rehabilitation Order;

- Community Punishment Order;
- Community Rehabilitation Order;
- Curfew Order;
- Drug Treatment and Testing Order;
- Supervision Order; and
- Exclusion Order.

More information about Youth Rehabilitation Orders can be found at http://www.yjb.gov.uk/en-gb/practitioners/CourtsAndOrders/CriminalJusticeandImmigrationAct/#yro

Watchdog Report Warns of Increased Threat from Republican Dissidents

The Twenty-Second Report of the Independent Monitoring Commission (IMC) was presented on 4 November 2009 to the Governments of the United Kingdom and Ireland under Articles 4 and 7 of the International Agreement establishing the Independent Monitoring Commission. The report covers paramilitary activity in the six month period 1 March to 31 August 2009.

The latest report has found that dissident republicans in Northern Ireland are working more closely together to heighten their violent threat to the political process. The IMC warn that dissident republican groups pose a major challenge to security forces. The report states that the overall level of dissident activity was markedly higher than when the IMC began their work in 2003.

The IMC report that individual members of these groups were working together to increase their threat and that early devolution of policing and justice powers to Stormont could provide a potent intervention, because these issues would no longer be a point of contention across the divide.

The Twenty-Second Report of the Independent Monitoring Commission is available at
http://www.independentmonitoringcommission.org/documents/uploads/Twenty-Second%20Report.pdf

UK Border Agency Given Statutory Duty to Safeguard and Promote Children's Welfare

On 2 November 2009 section 55 of the Borders, Citizenship and Immigration Act 2009 came into force. It places a duty on the Home Secretary to make arrangements for ensuring that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children.

This duty puts the UK Border Agency (UKBA) on the same footing as other bodies that work with children. It will be a driver for more effective inter-agency working, which is crucial if children are to be kept safe and given the opportunity to thrive. In particular, the duty will place greater emphasis on the UKBA's participation with local safeguarding children boards.

The duty does not give the UKBA any new functions or override its existing ones, but does require them to consider the needs of children as children and to take them into account in their work.

The UKBA has developed a training programme on safeguarding and promoting the welfare of children for its staff, tailored to the amount of involvement they have with children in their day-to-day work activities.

Statutory guidance to accompany the new duty has been issued jointly by the Minister of State for Borders and Immigration, Phil Woolas, and the Parliamentary Under-Secretary of State for Children, Young People and Families, Baroness Delyth Morgan.

The new guidance 'Every Child Matters - Change for Children: Statutory guidance to the UK Border Agency on making arrangements to safeguard and promote the welfare of children' can be found at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/legislation/bci-act1/

Case Law

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

Consistent Abuse of Person Who Chose to Come Within Defendant's Vicinity Did Amount to a Course of Conduct Under Protection From Harassment Act 1997

MARTIN JAMES v CROWN PROSECUTION SERVICE (2009)

DC (Elias LJ, David Clarke J) 4/11/2009

Criminal Law - Local Government

Course Of Conduct: Harassment: Local Authorities: Social Services: Necessary Elements Of Offence Of Harassment: Action Amounting To Course Of Conduct: Defendant Abusing Local Authority's Social Services Care Manager In Course Of Returned Telephone Calls: S.2(1) Protection From Harassment Act 1997: S.2 Protection From Harassment Act 1997: S.7(3)(A) Protection From Harassment Act 1997: S.2(2) Protection From Harassment Act 1997

Where an individual was consistently abusive to someone who came within his vicinity, that amounted to a course of conduct for the purposes of the Protection from Harassment Act 1997 s.2, even if the victim had chosen to come within his vicinity. A defendant's abuse towards a social services care manager who was returning his telephone calls amounted to a course of conduct under the Act.

The appellant (J) appealed by way of case stated against the Crown Court's decision that the necessary elements of the offence of harassment were made out so as to justify his conviction. J, who had been receiving care from his local authority's social services adult team, had his care package increased so as to provide 24-hour care. On November 8, 2007, J telephoned the social services department to complain about the adequacy of his care. As nobody was available to take his call immediately, the care team manager (T) returned his call later. In the course of their conversation, J swore, shouted and verbally abused T. A second, similar incident occurred later that day. On November 9, J called social services again to complain and, again, T returned his call. J repeated his abuse and threats. T was distressed and very upset by the content of the telephone calls and J was arrested. The magistrates' court subsequently convicted him of an offence of harassment under the Protection from Harassment Act 1997 s.2(1). J appealed and the Crown Court upheld the decision, having found the necessary elements of the offence present. The questions posed for the High Court were (i) whether the Crown Court was correct in law that the incidents of November 8 and 9 amounted to a course of

conduct; (ii) whether the court was correct in law in concluding that J knew or ought to have known that his conduct amounted to harassment. J contended that he had not pursued a course of conduct as the telephone calls complained of had been made by T, and he had not carried out a positive action himself. The respondent CPS submitted that, as J's case worker, T had been under a duty to speak to him and had been unable to ignore his calls.

HELD

By s.7(3)(a) of the Act, a course of conduct was defined as conduct in relation to a person. Whether incidents were related in type and context so as to amount to a course of conduct was a question of fact. In the instant case, there had been a number of incidents over a short period. The fact that J had not made the telephone calls himself was irrelevant. J had known that T was obliged, as manager of the adult care team, to return his calls. In any event, even if the calls had not been directly initiated by J, if an individual was consistently abusive to someone who came within his vicinity, that would still amount to a course of conduct, even if the victim chose to come within his vicinity. The magistrates and the Crown Court had made no error of law in finding a course of conduct on J's part. Further, J had plainly known or ought to have known that that amounted to harassment of T. The test in s.2(2) had been satisfied. The answer to both of the questions posed was, accordingly, in the affirmative.

APPEAL DISMISSED

Reduction of Retired Officer's Disability Pension Was Inappropriate Where Decision Impermissibly Revisited Cause of Retirement

R (on the application of LAWS) v POLICE MEDICAL APPEAL BOARD (2009)

QBD (Admin) (Cox J) 16/11/2009

Pensions - Police

Disabled Persons: Occupational Pensions: Police Officers: Assessment Of Police Officer Disablement Pension: Appropriateness Of Reconsideration Of Degree Of Disablement: Police (Injury Benefit) Regulations 2006: Reg.7(5) Police (Injury Benefit) Regulations 2006: Reg.30 Police (Injury Benefit) Regulations 2006

Where the Police Medical Appeal Board had not addressed the task imposed on it by the Police (Injury Benefit) Regulations 2006 in relation to a retired police officer's disability pension, and had impermissibly revisited the cause of the disability leading to the officer's retirement, its reduction of the officer's pension was inappropriate.

The claimant former police officer (L) applied for judicial review of a decision of the defendant Police Medical Appeal Board to reduce her disability pension. L had sustained a soft tissue injury whilst on duty and subsequently retired from the interested party police authority on medical grounds. L's condition was assessed by a selected medical practitioner who found that L was suffering severe neurological pain as a result of her injury and that the degree of her disablement was 60 per cent. That degree of disablement was subsequently increased by the board to 85 per cent and L was awarded a commensurate disability pension. L's pension was reviewed on two further occasions and on each occasion her degree of disablement was assessed as not having substantially altered and her pension was maintained at 85 per cent. At a later review a selected medical practitioner considered that L would be able to work for 30 hours per week and that her pension should be reduced from 85 per cent to 25 per cent. The board, considering L's appeal to it, determined that its task was to assess the impact upon L's earning capacity of the injury sustained by her. The board found that the degree of the reported functionality was inconsistent with L's injury and that the degree of L's disablement was 25 per cent.

HELD

(1) It was clear that the selected medical practitioner and the board had carried out a fresh assessment of L's injury rather than determine whether L's disability had substantially altered since her last review. That was not their function as it was clear that under the Police (Injury Benefit) Regulations 2006 a decision of a selected medical practitioner as to the degree of a pensioner's disablement was final and that the purpose of a review was to determine: whether the degree of disablement of a pensioner had altered since the last review; whether it had substantially altered, and to determine what changes should be made as a result of

that alteration, R (on the application of Pollard) v Police Medical Appeal Board (2009) EWHC 403 (Admin) and R (on the application of Turner) v Police Medical Appeal Board (2009) EWHC 1867 (Admin) applied.

(2) It was apparent that the board, in rejecting L's appeal to it, had had regard to the fact that L had completed a degree. L's degree, and any increase in her employability consequent on the degree, was not a matter that fell for consideration in assessing whether L's disability had altered, as reg.7(5) and reg.30(7)(d) required that an assessment of the alteration, if any, of L's disablement was limited to factors which resulted from the injury.

APPLICATION GRANTED

Section 22 of PACE 1984 Does Not Prevent the Use of Material Seized Under Warrant by a Private Prosecutor

(1) SCOPELIGHT LTD (2) ANTON BENJAMIN VICKERMAN (3) KELLY-ANN VICKERMAN v (1) CHIEF CONSTABLE OF NORTHUMBRIA (2) FEDERATION AGAINST COPYRIGHT THEFT LTD (2009)

CA (Civ Div) (Ward LJ, Wilson LJ, Leveson LJ) 5/11/2009

Police - Criminal Procedure

Copyright: Police Powers And Duties: Private Prosecutions: Public Interest: Retention: Seized Property: Websites: Retaining Seized Property After CPS Decision Not To Prosecute: Private Prosecution Instituted: S.107(2a) Copyright, Designs And Patents Act 1988: S.22(2)(A)(I) Police And Criminal Evidence Act 1984: S.22(2)(A)(Ii) Police And Criminal Evidence Act 1984: S.22(1) Police And Criminal Evidence Act 1984: S.22 Police And Criminal Evidence Act 1984: S.19 Police And Criminal Evidence Act 1984: S.20 Police And Criminal Evidence Act 1984

The Police and Criminal Evidence Act 1984 s.22 did not prevent the use by a private prosecutor of material seized pursuant to a warrant, but it did not mandate such use.

The appellants (P and F) appealed against a decision ((2009) EWHC 958 (QB), (2009) 2 Cr App R 22) that the police had no power to retain property under the Police and Criminal Evidence Act 1984 s.22 against the wishes of the person otherwise entitled to possession of it once a decision not to prosecute had been taken so that a private body could consider whether to bring a prosecution or whilst that private prosecution was being brought. S, a company and its owners, ran a video search engine website which had links to thousands of third party websites hosting videos. The site was not a file sharing site. Its revenue was derived from advertising on the site. F, which was a private commercial organisation representing the interests of the audio-visual industry and which regularly undertook prosecutions, complained to the Northumbria police (P) that S were hosting two internet "torrent" sites. P obtained and executed a search warrant. A number of items belonging to S were seized by P, including computers, mobile phones and financial paperwork. Some of that property was released by P into the possession of F as part of P's investigation. The Crown Prosecution Service decided not to commence a prosecution, since the legality of a similar linking website under the Copyright, Designs and Patents Act 1988 s.107(2A) was being tested in another case. The seized property was not returned because it was in the possession of F and F was considering whether to bring a private prosecution. S brought proceedings for delivery up of the property and F commenced a private prosecution. In S's proceedings the judge decided as a preliminary issue that retention of the property after the decision not to prosecute was wrongful. P and F argued that continued retention of the property was lawful under the Police and Criminal Evidence Act 1984 s.22(2)(a)(i) and s.22(2)(a)(ii) because it was being retained for use as evidence at a trial and/or for forensic investigation in connection with an offence, namely that being prosecuted by F.

S submitted that the 1984 Act conferred powers of seizure for public and not private purposes and once the CPS had decided not to institute a prosecution, it could not be in the public interest for the case to be prosecuted and thus it could not be "necessary" within s.22(1) for P to retain property for use in a prosecution.

HELD

(1) The phrase "so long as is necessary" in s.22 of the 1984 Act meant necessary for carrying out the purposes for which the powers given by s.19 and s.20 had been conferred, Marcel v Commissioner of Police of the Metropolis (1992) Ch 225 CA (Civ Div) considered. Marcel did not concern the prosecution of any crime but a claim to use the documents retained for civil litigation. Marcel did not address the use of information by private individuals for public purposes, namely to determine whether a criminal offence had been committed. Reference back to s.19 and s.20 only served to underline the power of the police to seize material evidence in relation to any offence not limited to the offence the police were investigating and without limitation as to whether such an offence would necessarily fall to the CPS to prosecute. On the face of it, that suggested that the limiting feature within the examples set out in s.22(2) of the principle described in s.22(1) was the investigation of any criminal offence and the use of the material in any criminal trial.

(2) There was no basis either in the statutory framework, the authorities or policy to justify the proposition that a decision by the CPS not to prosecute conclusively determined that a prosecution was not in the public interest, R v DPP Ex p Duckenfield (2000) 1 WLR 55 QBD considered. It was well recognised that, in addition to the CPS, many other bodies, public and private, investigated, instituted and prosecuted crime, R v Stafford Justices Ex p Customs and Excise Commissioners (1991) 2 QB 339 DC considered. If it was in the public interest that other bodies should be able to investigate and prosecute, it was difficult to see why such a prosecutor should not be able to use material seized by the police whether while investigating the offence to which the material was relevant or some other offence. The conclusion of the CPS as to the public interest was not determinative of what it was appropriate for the police to retain pursuant to s.22.

(3) In the circumstances s.22 did not preclude P from retaining the property seized from S for investigation in connection with an offence and for use as evidence at a trial for an offence, namely that being prosecuted by F. Section 22 did not prevent the use by a private prosecutor of material seized pursuant to a warrant, but it did not mandate such use.

APPEAL ALLOWED

Local Police Authority Liable for Compensation Following Riot Damage at Detention Centre Despite Claimant Sharing Responsibility for Order Within Centre

(1) YARL'S WOOD IMMIGRATION LTD (2) GSL UK LTD (3) CREECHURCH DEDICATED LTD (BEING THE SOLE MEMBER OF D J PYE SYNDICATE 962 AT LLOYD'S SUBSCRIBING TO THE CONTRACT OF INSURANCE POLICY NUMBER 0000014763) v BEDFORDSHIRE POLICE AUTHORITY (2009)

CA (Civ Div) (Rix LJ, Wall LJ, Aikens LJ) 23/10/2009

Police

Compensation: Damage To Property: Detention Centres: Police Authorities: Police Powers And Duties: Public Authorities: Riot: Riot At Immigration Detention Centre: Liability Of Police Authority For Riot Damage: Claim By Private Operator Of Centre: S.2(1) Riot (Damages) Act 1886: Riot (Damages) Act 1886: S.7(B) Riot (Damages) Act 1886

The private operators of an immigration detention centre were entitled to bring a claim against the local police authority for compensation under the Riot (Damages) Act 1886 in respect of riot damage within the detention centre.

The appellants (Y) appealed against a decision ((2008) EWHC 2207 (Comm), (2009) 1 All ER 886) that they were not entitled to claim compensation for riot damage under the Riot (Damages) Act 1886. Y were the private operators of an immigration detention centre and their insurers. A serious riot occurred at the detention centre and almost half of it was destroyed by fire. The damage was quantified at some £32 million. Y claimed to recover the cost of the riot damage from the local police authority under the provisions of the Riot (Damages) Act 1886 s.2(1) which provided that where a building in a police area had been injured or destroyed by a riot the police should pay compensation to any person who had sustained loss by such injury. The judge, deciding preliminary issues, accepted the police authority's argument that the statutory words "any person" did not apply to a person in the position of Y acting as a public authority with responsibility for order within the detention centre, even if that responsibility was shared with the police. Y submitted that the purpose of the 1886 Act was clear from its wording, namely to provide compensation on a basis of strict liability to any person who had sustained loss, without limitation or any concept of a "qualifying person"; the Act clearly contemplated compensation in the case of public buildings and public institutions and contained a proviso which enabled account to be taken of any fault or responsibility on the part of a claimant.

HELD

(1) The reference in s.2(1) to "any person" was on the face of it without exception. The limitations on the scope of the 1886 Act were to be found elsewhere. There had to be injury, theft or destruction, by persons riotously and tumultuously assembled together, of a house, shop or building or of property therein. The person who had sustained loss by reason of such injury, theft or destruction could claim compensation to be

paid out of the police fund of the police area in which the lost or damaged property was situated. Nothing whatsoever was said about the nature of the local police force's duties. It was common ground that the liability of the police fund to answer for the claim was strict. The assessment of quantum under the Act was not a mere matter of valuation of the lost or damaged property; it was a global assessment which could take account of the claimant's conduct under the proviso to s.2(1). Where a claimant was the Crown, the s.2(1) proviso would enable the assessing tribunal or court to take account of such factors as relative control and accountability, Pitchers v Surrey CC (1923) 2 KB 57 CA considered. The Act made special provision for public institutions and the detention centre was such a public institution within s.7(b). Section 7 contemplated that any person who was in control of that public institution or was the owner was entitled to claim under the Act.

(2) Neither authority nor principle supported the judge's conclusion that it was necessary to adopt a purposive construction of the statute excluding Y as a qualifying person. There was no obscurity or absurdity requiring a departure from the plain meaning, River Wear Commissioners v Adamson (1876-77) LR 2 App Cas 743 HL applied. In particular it was unnecessary and misguided to adopt a purposive approach to the jurisdiction of the statute when the proviso to s.2(1) contained language which would achieve, with much greater subtlety and attention to the facts and merits of a particular claim, everything which could be desired in order to mediate between the duties and behaviour of the claimant on the one hand and the notional responsibility of the police on the other. It followed that Y were not excluded from the term "any person" in s.2(1).

APPEAL ALLOWED

Disclosure in Control Order Cases Must be Sufficient to Allow Suspects to Give Effective Instructions to Those Representing Them

SECRETARY OF STATE FOR THE HOME DEPARTMENT v AS (2009)

QBD (Admin) (Collins J) 21/10/2009

Human Rights

Control Orders: Right To Fair Trial: Suspects: Terrorism: Disclosure Of Details Of Allegations Relating To Control Order: Minimum Requirements Of Disclosure To Enable Fair Trial For Suspect: Explanation Of Secretary Of State For The Home Department V F [2009] UKHL 28: Art.6 European Convention On Human Rights: S.2(1) Prevention Of Terrorism Act 2005

Where the Secretary of State for the Home Department brought proceedings to make control orders pursuant to the Prevention of Terrorism Act 2005 s.2(1) against terrorism suspects, he was required to disclose all information that was sufficient to enable the suspects to give effective instructions to those representing them in order to comply with the European Convention on Human Rights 1950 art.6.

The court was required to determine whether disclosure of further information to the respondent terrorism suspect (S) in control order proceedings brought by the applicant secretary of state was necessary to comply with the European Convention on Human Rights 1950 art.6. It had been alleged that S had attended a terrorist training camp in Afghanistan. He made a lengthy statement in his defence in which he stated that he had never attended a training camp. The secretary of state submitted that in light of S's defence statement, no further details of when S attended the camp had to be disclosed. He also argued that pursuant to the Secretary of State for the Home Department v F (2009) UKHL 28, (2009) 3 WLR 74, which was concerned with determining what were the minimum requirements of disclosure to enable a controlee to have a fair hearing under art.6, he was only required to disclose the allegations that went to the core or the essence of his case in such a way as to enable S to give effective instructions. S submitted that an individual had to be given sufficient detail of all allegations made against him to enable him to understand them and to be able to give effective instructions.

HELD

It was necessary for all significant material to be sufficiently disclosed, F explained. The judge would have to decide what was material having regard both to the establishment of reasonable suspicion that justified a control order and to the need to impose obligations under the control order as outlined in the Prevention of Terrorism Act 2005 s.2(1), and identify which part of the material could be regarded as essential in establishing either element of what was required for a particular control order. The evidence upon which an allegation was based did not necessarily have to be disclosed provided that the individual had sufficient information to enable them to give effective

instructions to those representing them. It was clear that, if particular disclosure was required to enable effective instructions to be given by the controlled person, the cogency of the undisclosed material was irrelevant. Even if the judge reasonably considered that there could be no answer to the material, if it needed to be disclosed to enable a defence to be put forward then it had to be. Although S had already given a lengthy statement that he had never attended a training camp, it was still necessary for the secretary of state to give details as to when he was supposed to have attended the camp, A v United Kingdom (3455/05) (2009) 49 EHRR 29 ECHR (Grand Chamber) considered. It could be possible for S to advance a positive alibi defence, that he could show that he was in custody somewhere over the relevant period or produce cogent evidence that he was employed or was living somewhere else. What mattered was whether material relied on against a controlled person was such as to require that they were given sufficient information to enable them to give effective instructions.

JUDGMENT ACCORDINGLY

Chief Officer of Police Must Give Proper Consideration to Right to Private Life When Using Discretion to Include Information on Enhanced Criminal Record Certificate

R (on the application of L) v COMMISSIONER OF POLICE OF THE METROPOLIS (2009)

SC (Lord Hope (Deputy President), Lord Saville, Lord Scott, Lord Brown, Lord Neuberger) 29/10/2009

Police

Disclosure: Enhanced Criminal Record Certificates: Right To Respect For Private And Family Life: Compatibility Of S.115(7) Police 1997 With Art.8 European Convention On Human Rights 1950: S.115(7) Police Act 1997: Art.8 European Convention On Human Rights: S.115 Police Act 1997

The Police Act 1997 s.115(7) was not incompatible with the European Convention on Human Rights 1950 art.8 as long as the words "ought to be included" were given their full weight, so that in exercising his discretion as to what information ought to be included in an enhanced criminal record certificate the chief police officer gave proper consideration to the applicant's right to respect for his private life.

The appellant (L) appealed against a decision of the Court of Appeal R (on the application of L) v Commissioner of Police of the Metropolis (2007) EWCA Civ 168, (2008) 1 WLR 681 upholding a decision of the respondent commissioner to include certain information about her in an enhanced criminal record certificate (ECRC) supplied pursuant to the Police Act 1997 s.115. L been employed as a midday assistant at a secondary school, supervising children in the lunchtime break both in the canteen and in the playground. An ECRC

obtained by her employer showed that she had no criminal convictions, but had included under the heading "other relevant information disclosed at the chief police officer's discretion" the information that her son had been placed on the child protection register under the category of neglect, she being alleged to have failed to exercise the requisite degree of care and supervision. As a result, L lost her job. She sought the quashing of the commissioner's decision to disclose the information that he did, together with a declaration that s.115(7) was incompatible with the European Convention on Human Rights 1950 art.8. Alternatively, she asked that s.115(7) be read down so as to avoid incompatibility. Her case was that the guidance given in R (on the application of X) v Chief Constable of the West Midlands (2004) EWCA Civ 1068, (2005) 1 WLR 65 as to the correct approach to disclosure gave insufficient weight to the interests of the applicant.

HELD

(1) It was not appropriate to make a declaration of incompatibility because it was possible for s.115(7) to be read and given effect in a way that was compatible with art.8. Moreover, the commissioner's decision in L's case would not be quashed. There was no doubt that the information disclosed was relevant for the purpose for which the ECRC was required, that it was true and that it bore directly on the question of whether she was a person who could safely be entrusted with supervising children in a school canteen or playground. The risk to children had to outweigh the prejudicial effects of the disclosure.

(2) Whether information was relevant for the purposes of an ECRC would depend on the facts of the case. In forming his opinion on relevance, the chief police officer had to ask himself whether the information might be true, and had to consider the degree of connection between the information and the purpose of the ECRC. He then had to consider, under s.115(7), whether the information "ought" to be included. In every case those decisions fell within the scope of art.8, R v Chief Constable of North Wales Ex p AB (1999) QB 396 CA (Civ Div), Rotaru v Romania (28341/95) 8 BHRC 449 ECHR, Segerstedt-Wiberg v Sweden (62332/00) (2007) 44 EHRR 2 ECHR and Cemalettin Canli v Turkey (2247/04) Unreported November 18, 2008 ECHR considered. The chief police officer had therefore to consider in every case whether there was likely to be an interference with the applicant's private life, and if so whether that interference could be justified. The issue was essentially one of proportionality. On the one hand there was a pressing social need that children and vulnerable adults should be protected against the risk of harm; on the other there was the applicant's right to respect for her private life. The guidance given in R. (on the application of X), that the chief police officer was under a duty to disclose if the information might be relevant, unless there was some good reason for not making such disclosure, did not strike the balance in the right place. The effect of that approach had been to tilt the balance against the applicant too far, encouraging the idea that priority had to be given to the protection of the vulnerable as against the applicant's art.8 right. The words "ought to be included" in section 115(7)(b) had to be given much greater attention and had to be read and given effect in a way that was compatible with the

applicant's art.8 right, together with that of any third party who might be affected by the disclosure. There was no need for the words to be read down or for other words to be added, they simply had to be given their full weight so that proper consideration was given to the applicant's art.8 right. R. (on the application of X) disapproved. The correct approach was that neither consideration had precedence over the other, and it was no longer to be assumed that the presumption was for disclosure unless there was a good reason for not disclosing. In cases of doubt, especially where it was unclear whether the position for which the applicant was applying really did require the disclosure of sensitive information; where there was room for doubt as to whether an allegation of a sensitive kind could be substantiated; or where the information indicated a state of affairs that might be out of date or no longer true; chief constables should offer the applicant an opportunity of making representations before disclosing the information.

APPEALS DISMISSED

Breath Tests Should Only be Delayed to Allow Consultation with a Solicitor in Exceptional Cases

CHALUPA v CROWN PROSECUTION SERVICE (2009)

DC (Elias LJ, Openshaw J) 30/10/2009

ROAD TRAFFIC - CRIMINAL PROCEDURE

BREATH TESTS: FAILURE TO PROVIDE SPECIMEN: RIGHT OF ACCESS TO LEGAL ADVICE: DELAY TO ALLOW FOR LEGAL ADVICE: ADMISSIBILITY OF BREATH TEST EVIDENCE: S.58 POLICE AND CRIMINAL EVIDENCE ACT 1984: S.78 POLICE AND CRIMINAL EVIDENCE ACT 1984

It was only in an exceptional case where a solicitor was immediately available to an individual that a breath test could be delayed to allow that individual to consult a solicitor as there was a public interest in breath tests being performed promptly.

The appellant (C) appealed by way of case stated against the decision of a Crown Court to uphold his conviction for an offence of failing to provide a breath specimen. After failing a roadside breath test C had been required to provide a breath specimen at a police station. C requested legal advice and the police contacted a national duty solicitor scheme 20 minutes after C's request. Two minutes later a duty solicitor contacted the police station. In the period after C had requested legal advice the police had attempted to administer a breath test, and had informed C that he could not delay the breath test in order to obtain legal advice. The police determined that the breath test procedure could not be performed due to C's manner and C failed to supply a specimen of breath. The Crown Court held that due to the delay in the police contacting a duty solicitor for C, after he had requested legal advice, there had been a breach of C's right to consult a solicitor under the Police and Criminal Evidence Act 1984 s.58. However, the Crown Court concluded that it was inappropriate for it to exercise its discretion so as to exclude the evidence of the breath test procedure under s.78 of the Act as there was a public interest in a breath test procedure being performed without delay and that the police had properly explained the law to C. The question posed for the opinion of the High Court was whether the Crown Court was entitled to refuse to exclude the evidence of the breath test procedure under s.78 of the Act.

HELD

It was clear from the authorities that it was only in an exceptional case where a solicitor was immediately available to an individual that a breath test could be delayed to allow that individual to consult a solicitor as there was a public interest in breath tests being performed promptly, DPP v Billington (1988) 1 WLR 535 QBD considered, DPP v Kennedy (2003) EWHC 2583 (Admin), (2004) 168 JP 185 and Gearing v DPP (2008) EWHC 1695 (Admin), (2009) RTR 7 applied. In the instant case, there was no evidence that a duty solicitor would have been in a position to promptly respond to C's request for legal advice when it was made. Accordingly, no breach of s.58 had occurred and s.78 had not been engaged. Even if a breach of s.58 had occurred it would not, in the circumstances of the case, have been appropriate to exclude the evidence of

the breath test procedure under s.78 as the admission of the evidence could not be prejudicial to C.

APPEAL DISMISSED

Notice of Intended Prosecution Not Properly Served Where Delivered After 14 Day Limit Due to Postal Strike

GIDDEN v CHIEF CONSTABLE OF HUMBERSIDE (2009)

DC (Elias LJ, Openshaw J) 29/10/2009

Criminal Procedure - Road Traffic

Notices Of Intended Prosecution: Postal Service: Service: Speeding: Time Limits: Rebuttable Presumption On Service By First Class Ordinary Post: Postal Strike Causing Notices To Be Delivered Outside Time Limit: Effectiveness Of Service: Road Traffic Offenders Act 1988: S.1(1)(C) Road Traffic Offenders Act 1988: S.1(1a)(C) Road Traffic Offenders Act 1988: S.1(3) Road Traffic Offenders Act 1988: S.1 Road Traffic Offenders Act 1988: R.4.10 Criminal Procedure Rules 2005: S.7 Interpretation Act 1978: S.1(2) Road Traffic Offenders Act 1988

Upon the proper construction of the Road Traffic Offenders Act 1988 s.1, a notice of intended prosecution sent to a defendant by first class ordinary post on a date that would normally lead to it being delivered within the requisite 14-day time limit was not properly served where the court was satisfied that it had actually been delivered after the 14-day time limit because of a postal strike. The defendant's conviction for speeding was, accordingly, quashed.

The appellant (G) appealed by way of case stated against a decision that service of a notice of intended prosecution in respect of a motoring offence had been properly effected by the respondent chief constable. Under the Road Traffic Offenders Act 1988, a notice of intended prosecution had to be served on a defendant within 14 days from the date of the alleged offence. It was common ground between the parties that the police had posted such a notice, referring to an alleged speeding offence on G's part, by first class post on a date which meant that it would ordinarily have been received within the 14-day limit. However, as a result of a postal strike, G did not receive the notice until 16 days after the alleged offence. He was subsequently convicted of speeding, fined and had his driving licence endorsed with a number of points. The Crown Court dismissed G's appeal against that decision, having held that service had been properly effected, notwithstanding receipt of the notice 16 days after the offence. The question posed for the determination of the High Court was whether, upon a proper construction of s.1(1)(c), s.1(1A)(c) and s.1(3) of the Act, a notice of intended prosecution should be regarded as having been properly served where the said notice was sent to the defendant by first class ordinary post on a date that would normally lead to it being delivered within the 14-day time limit but where the court was satisfied that it was actually delivered after the 14-day time limit.

HELD

Under the Criminal Procedure Rules 2005 r.4.10, there was a rebuttable presumption that, unless shown differently, a document sent by first class post was deemed to be received, and thereby served, on the second business day after it was despatched. Further, the Interpretation Act 1978 s.7 provided that service by post was deemed to be effective unless the contrary was proved. Whilst, under s.1(2) of the 1988 Act, an irrebuttable presumption existed in respect of the service of notices of intended prosecution sent by registered post or recorded delivery, that did not apply to deliveries by first class post. The words of the relevant legislation were clear and, as a matter of statutory construction, where a notice of intended prosecution sent by first class post had not been received in the normal way, there was no effective service. Although that conclusion might create problems, especially when a postal strike occurred, the authorities would then have to adopt other means of warning a defendant to avoid the risk of belated delivery. It would be for Parliament to address any loopholes in s.1(2) of the 1988 Act and not for the court to save inconvenience by reaching a different conclusion on statutory construction. The answer to the question posed was, accordingly, that a notice of intended prosecution sent by first class post would not be properly served if it was actually delivered outside the 14-day time limit. There had, accordingly, been no effective service of the notice in G's case and his conviction was quashed.

APPEAL ALLOWED

CORRECTION

In the November 2009 issue of the *NPIA Digest* the summary of **SI 2707/2009** (The Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2009) stated in error that this Order came into force on 8 November. The correct commencement date for this Order is 2 November 2009. The Digest team apologise for any inconvenience this error may have caused.

SI 2879/2009 The Criminal Justice Act 2003 (Commencement Order No. 23) Order 2009

In force **1 November**. This Order brings into force section 29(1) to (3), (5) and (6) (New method of instituting proceedings) and section 30 (Further provision about new method) of the Criminal Justice Act 2003 in relation to criminal proceedings instituted by specified public prosecutors. These sections allow a public prosecutor to institute criminal proceedings by issuing a written charge and requisition. For police purposes, the new method is brought into force for criminal proceedings instituted by a police force or a person authorised by a police force to institute proceedings in:

- Brent Magistrates' Court;
- Feltham Magistrates' Court;
- Havering Magistrates' Court; and
- South Western Magistrates' Court.

SI 2937/2009 The Magistrates' Courts (Drinking Banning Orders) Rules 2009

In force **30 November**. These Rules specify the manner in which an application for a Drinking Banning Order ('DBO') or an interim Drinking Banning Order should be made. DBOs can be made on application to a magistrates' court by a chief officer of police, the Chief Constable of the British Transport Police or a local authority under the Violent Crime Reduction Act 2006. DBOs can be made against a person aged 16 or over who has engaged in criminal or disorderly behaviour while under the influence of alcohol, where an order is necessary to protect others from such conduct in the future. DBOs allow prohibitions to be made against the subject to protect others and can include prohibitions on entering licensed premises.

SI 3021/2009 The Crime (International Co-operation) Act 2003 (Exercise of Functions) Order 2009

In force **9 December**. This Order enables the functions of a constable under sections 17 and 19 of the Crime (International Co-operation) Act 2003 to be performed by a general customs official or a customs revenue official in relation to offences which, if committed in the United Kingdom, would be either a general customs matter or a customs revenue matter, respectively. These functions apply where mutual legal assistance is sought in relation to criminal matters overseas, and include the powers enter and search premises under warrant, to seize and retain evidence and to forward evidence seized under a warrant to the relevant authority where mutual legal assistance is sought.

Notes