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Legal Validation and Research



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Digest

Legal Validation and Research Department

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

This edition contains a detailed article looking at the provisions contained within the Police and Justice Bill. The provisions cover several areas, including the National Policing Improvement Agency (NPIA), amendments to the Police Act 1996, Community Support Officers, police bail, conditional cautions, parenting contracts and orders, as well as new and amended powers in respect of computer misuse, aerodromes, indecent photographs of children and border control issues. Also covered this month is the recently published Emergency Workers (Protection) Bill.

Several articles are included this month on the subject of drugs, these include a review of the drug classification system, consultation on the quantity of a controlled drug in a person's possession which a court will presume was held with intent to supply others, reports into the use and possible harm in respect of Khat and further reports and studies into methamphetamine use.

Recently published guidance documents on: police working practices in relation to lost/stolen/misappropriated passports; the Management of Police Information; working with intimidated witnesses; the illegal use of motor vehicles on rights of way are also summarised.

An article on the affect that recent tax changes will have on the Police Pension Scheme is included which will be of particular interest to police officers who have just retired or about to retire.

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

Case law in association with



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IPCC Survey into Confidence in the Police Complaints System

The Independent Police Complaints Commission (IPCC) has published the findings of a survey it commissioned to measure trends in public confidence concerning the complaints system. The survey questioned a nationally representative sample of 4,000 adults in England and Wales in addition to an ethnic minority booster sample of 1,200 people.

The survey asked about:

- ◆ Contact with the police.
- ◆ Willingness to complain.
- ◆ Barriers against complaining.
- ◆ Ways in which members of the public may wish to complain.
- ◆ Awareness of the IPCC.

The survey found that

- ◆ Just over a quarter of respondents had either contacted or been contacted by the police in the previous 12 months.
- ◆ Older people, ethnic minorities and those living in London had lower levels of contact.
- ◆ The majority of respondents were happy or very happy with the way in which they were treated by the police, although females tended to be happier than men, and satisfaction increased with age.
- ◆ The majority of respondents felt that they would definitely or probably complain if they were really annoyed with a police officer. People from higher socio-economic groups were more likely to state that they would complain, whereas those who had a recent contact with the police, particularly where the contact was negative, were less likely.
- ◆ People were most likely to complain about an officer physically assaulting them or using racist or other offensive language. They were least likely to complain about an unfair stop and search, but this still amounted to half of all respondents.
- ◆ Just over a third of respondents believed complaining would not make a difference. A third also did not think they would be taken seriously if they complained.
- ◆ Almost a third of respondents said they did not know how to make a complaint.
- ◆ Those that had a recent negative contact with the police, lower socio-economic groups, young people, ethnic minorities and, to a lesser extent, men, were more likely to agree with the negative statements about complaining.
- ◆ Most people stated that they would be likely to go to a police station to complain. However, ethnic minorities were significantly less likely to want to complain at a police station than White people.
- ◆ Two-thirds of respondents stated that they would be more willing to complain if an organisation could help and support them. Young, female and Black respondents were more likely to state this than older, male and White respondents.

- ◆ Across the three questions asked about awareness, between 62% and 66% of respondents said that they had heard of the IPCC. Awareness of the IPCC was much lower amongst ethnic minorities compared to White people. Women, young people and those in lower socio-economic groups were also less likely to have heard of the IPCC.
- ◆ Of those who had heard of the IPCC, just under a third thought it was part of the police. Black people and Asian people were significantly more likely to think this than White people. Those from higher socio-economic groups were less likely to think this.
- ◆ Two-thirds of those who had heard of the IPCC believed that it dealt with complaints impartially.
- ◆ Those who had a recent negative police contact, young people, Black people and Asian people were less confident of the IPCC's impartiality.

The IPCC plans to repeat similar surveys in the future to try and ascertain whether progress is being made in improving confidence in the system and raising awareness of the function of the IPCC.

The survey 'Confidence in the police complaints system: a survey of the general population' can be found at <http://www.ipcc.gov.uk>

Overview Guidance for Disability Equality Duty

The Disability Rights Commission (DRC) has published a document which gives a good overview of the Disability Equality Duty (DED) and also sets out some questions and answers in relation to it.

The DRC have plans to produce further guidance, throughout 2006, both for specific sectors and also for specific aspects of the DED. These will cover:

- ◆ Evidence Gathering.
- ◆ Education (Further and Higher Education).
- ◆ Education (Schools).
- ◆ Highways.
- ◆ Planning.
- ◆ Housing.
- ◆ Local Government.
- ◆ Involvement of Disabled People.
- ◆ Health.
- ◆ Social Care.
- ◆ Guidance for Disabled People.
- ◆ Impact Assessments.
- ◆ Procurement.

As has been covered in previous editions of the *Digest* the deadline for the completion of Disability Equality Schemes is 4 December 2006.

The overview document and further information on the DED can be found at <http://www.drc-gb.org/businessandservices/disabilityequalityduty.asp>

HIV AIDS Digest

The Trades Union Congress (TUC) have compiled a newsletter, intended as a reference point for its members, interested in promoting greater understanding of HIV AIDS in the workplace. It is provided as a short cut and guide to information and resources, and contains brief reviews of some of the resources directly appropriate to trade unionists, useful web sites and contact details of organisations involved HIV AIDS matters. It can be found at <http://www.tuc.org.uk/learning/tuc-11349-f0.cfm>

Innovations in Police Recruitment

The results of a U.S. federally funded project aimed at developing recruitment and selection methodology, consistent with requirements of community policing, has been published.

The project entitled, 'Hiring in the Spirit of Service' (HSS) involved five law enforcement agencies enlisting their communities in helping them in the recruiting and hiring process of law enforcement personnel.

The report details the ways each law enforcement agency site involved citizens and how the communities influenced strategies and outcomes. It describes how the sites used community input to create new recruitment methods and marketing initiatives to reach candidates, particularly those from diverse communities, and how they revised selection procedures based on this input.

It contains a list of best practices that it claims could be explored by other law enforcement agencies that are seeking to implement recruitment and hiring practices to advance community policing missions.

The report can be found in full at <http://www.cops.usdoj.gov/Default.asp?Item=1655>

Police and Justice Bill

This article will take a closer look at the provisions contained in the Police and Justice Bill which was first reported on in the January edition of the *Digest*.

Part 1 of the Bill - provisions in relation to Police Reform.

Clause 1- National Policing Improvement Agency (NPIA)

Clause 1 and Schedule 1 establishes the National Policing Improvement Agency (NPIA) as a Non-Departmental Public Body. The NPIA will replace the Central Police Training and Development Authority (Centrex) and the Police Information Technology Organisation (PITO) which will be abolished.

The Bill sets out the objects of the NPIA as:

- ◆ The identification, development and promulgation of good practice in policing.
- ◆ The provision to 'listed police forces' of expert advice about, and expert assistance in connection with, operational and other policing matters.
- ◆ The identification and assessment of opportunities for, and threats to, police forces within the meaning given by Section 101 of the Police Act 1996 (police forces for police areas in England and Wales), and the making of recommendations to the Secretary of State in the light of its assessment of any opportunities and threats.
- ◆ The international sharing of understanding of policing issues.
- ◆ The provision of support to listed police forces in connection with information technology, the procurement of goods, other property and services, and training and other personnel matters.
- ◆ The doing of all such other things as are incidental or conducive to the attainment of any of the objects mentioned above.

The definition of 'listed police forces', as well as the 43 police forces in England and Wales, includes the:

- ◆ Serious Organised Crime Agency.
- ◆ Ministry of Defence Police.
- ◆ Royal Navy Regulating Branch.
- ◆ Royal Military Police.
- ◆ Royal Air Force Police.
- ◆ Royal Marines Police.
- ◆ British Transport Police Force, including its cadets and special constables.
- ◆ Civil Nuclear Constabulary.
- ◆ Scottish police forces.
- ◆ Police Service of Northern Ireland (PSNI).
- ◆ Police Service of Northern Ireland Reserve (PSNIR).
- ◆ States of Jersey Police Force.

- ◆ Salaried police force of the Island of Guernsey.
- ◆ Isle of Man Constabulary.

It also includes any person who is engaged outside the United Kingdom in the carrying on of activities similar to any carried on by a police force within the meaning given by Section 101 of the Police Act 1996. The Bill also provides that the Secretary of State may add any other person as being a 'listed police force' for this purpose by making an order.

NPIA activities which might or will relate to Scottish police forces or to the PSNI or PSNIR, must be the subject of consultation with the Scottish Police Services Authority and persons representing the interests of Chief Constables in Scotland or with the Secretary of State for Northern Ireland, respectively.

The NPIA will be required to produce an 'annual plan' prior to the beginning of each financial year. The plan must include:

- ◆ Any priorities that it has determined for the year.
- ◆ Any strategic priorities determined by the Secretary of State.
- ◆ Any performance targets it has established.
- ◆ A statement of financial resources that will be available to it over the course of that year.

Police officers who are appointed as a member of staff of the NPIA will retain the office of constable for the duration of their employment with the Agency. This applies whether the constable is seconded to the Agency or becomes an employee of the Agency.

Any person who is appointed as the Chief Executive of the NPIA, who immediately before holds the rank of Chief Constable will continue to hold that rank for the period they are the Chief Executive.

The Bill will allow the Secretary of State to make a scheme for the provision of transfer to the NPIA of the property, rights and liabilities of Centrex and PITO. This will include the provision of the transfer of rights and liabilities under contracts of employment to the NPIA. This means that staff of Centrex and PITO can be transferred to the NPIA, subject to the right of staff to object to the transfer. It would also allow staff on secondment to Centrex and PITO to continue their period of secondment with the NPIA, again subject to their agreement.

The Bill also contains a clause which makes the NPIA liable for unlawful conduct of seconded constables in the carrying out, or purported carrying out, of their functions as members of the NPIAs staff in the same manner as an employer is liable for unlawful conduct of his employees in the course of their employment. In the case of any such conduct by a seconded constable which is a tort, the Agency is accordingly to be treated as a joint tortfeasor.

Clause 2- Amendments to the Police Act 1996

Clause 2 introduces Schedule 2 of the Bill. Schedule 2 makes several amendments to the Police Act 1996.

Basic Command Units

Schedule 2 inserts Section 1A into the Police Act 1996. This new section sets out the provision that every one of the 43 police forces in England and Wales, except for the City of London police must be divided into two or more areas. The preferred term for these

areas in the legislation is a Basic Command Unit (BCU), but there is no requirement on forces to use this term, other regularly used terms to describe such areas are, 'Divisions' or 'Operational Command Units'.

It also inserts a new schedule, Schedule 1A into the Police Act 1996 which sets out the details of how the number and areas covered by a BCU are to be determined. The main points are that:

- ◆ BCUs must be co-extensive with a local authority area, or with two or more adjoining local authority areas taken together, or be one of two or more adjoining basic command units that, taken together, are co-extensive with a local authority area.
- ◆ The number and area covered by each BCU will be determined by the Chief Constable of a force, but he must consult the police authority, local authorities, and the constituent members of the Crime and Disorder Reduction Partnerships in the police area and of the Local Criminal Justice Board before doing so.

Any consideration of a Chief Constable to form a BCU outside the local authority areas outlined above could not be done without the consent of the Secretary of State.

Police Authorities

Schedule 2 makes new provision for the Secretary of State to introduce regulations regarding the membership of a police authority established under Section 3 of the Police Act 1996. These regulations will set out:

- ◆ The number of persons a police authority shall consist of.
- ◆ The numbers of the authority who are members of a relevant council or other persons, (but that the majority must be made up of members of a relevant council).

It should be noted that the places on existing police authorities that were reserved for magistrate members no longer will exist.

It also allows provisions detailing the selection and appointment of members, the appointment of a chairman and vice-chairman and the remuneration of members to be included in the regulations.

Schedule 2 also adds to the general functions of a police authority set out in Section 6 of the Police Act 1996. It inserts a new subsection (1)(b), which provides that it shall also be a duty of a police authority to hold the chief officer of the force to account for the exercise of his functions and those of the police officers and police staff under his direction and control.

Two new Sections 6ZA and 6ZB will be inserted into the Police Act 1996.

Section 6ZA confers a power on the Secretary of State to confer additional functions on police authorities by Order (subject to the negative resolution procedure). Examples of functions that may be included are requirements to:

- ◆ Monitor the performance of the force in complying with the duties imposed under the Human Rights Act 1998 or other enactments.
- ◆ Ensure that arrangements are in place by the force to co-operate with other forces (for example, to tackle cross-border organised crime).
- ◆ Promote diversity within the force and the authority.

Prior to making such an Order the Secretary of State is required under the Bill to consult with persons representing the interests of police authorities and chief officers i.e. at present the Association of Police Authorities (APA) and the Association of Chief Police Officers (ACPO) respectively.

Section 6ZB confers an order-making power (subject to the negative resolution procedure) on the Secretary of State to require police authorities to determine objectives, and to issue plans and reports, concerning the policing of their areas.

In the Police Act 1996, Sections 36A (under which the Secretary of State is under a duty to issue an annual National Policing Plan) and Section 37 (under which he may determine objectives for police authorities by order) are repealed and will be replaced with a new Section 37A. This new Section gives the Secretary of State the power to determine and publish the strategic priorities for police authorities (established by Section 3 of the Act and the Metropolitan Police Authority) after consultation with the APA and ACPO.

Power to give directions in relation to a police force and police authorities

Contained within Schedule 2 of the Bill are provisions which repeal Section 40 of the Police Act 1996 and replace it with new Sections 40,40A and 40B.

These new Sections widen the sources of information which the Secretary of State can draw upon in deciding whether to exercise powers for the making of directions where the whole or any part of a police force is considered to be under-performing or at risk of under-performing. They also bring under-performance by police Authorities within the scope of these powers.

Section 40 provides that the Secretary of State may direct the chief officer of the force, the police authority responsible for maintaining the force, or both of them to take specified measures for the purpose of remedying a failure of that police force to discharge any of its functions in an effective manner or for the purpose of preventing such a failure occurring where the Secretary of State is satisfied that the force will fail without remedial measures. A chief officer of police or police authority that is given a direction under this Section must comply with it.

In relation to this:

- ◆ Prior to making such a direction the Secretary of State is under a duty to put to the chief officer and police authority the evidence that the force or part of the force is failing, and afford them the opportunity to make representations and any such proposals for the taking of remedial measures that would make the giving of the direction unnecessary.
- ◆ If however the Secretary of State is satisfied that they were already aware of the matters and had had sufficient information to identify the remedial measures to address this without the need for a direction, and had a reasonable opportunity to take such measures, then the obligation on the Secretary of State to give the police authority and chief officer the opportunity to make representations will not apply.
- ◆ In cases where a police authority of a force requests the Secretary of State to make a direction under Section 40 to the chief officer of police of the police force for which that authority is responsible and the Secretary of State refuses to do so, the Secretary of State must give reasons to the police authority for his decision.
- ◆ The Secretary of State can require that an action plan be submitted to him setting out the measures to be taken to remedy the failure or to prevent the failure (as the case may be).

Section 40A is in similar terms to that of Section 40, providing the same ‘intervention trigger’ for directions in relation a police authority which failing to discharge any of its functions effectively, whether generally or in particular respects, or where the secretary of State is of the view that a police authority will so fail unless remedial measures are taken.

Section 40B reproduces much of existing Section 41B of the Police Act 1996, (which is repealed by paragraph 26 of Schedule 2). It provides the Secretary of State with a power to make further provision in regulations as to the procedure to be followed where a proposal is made for the giving of a direction under new Section 40A or 40B in relation to a police force or police authority.

Other amendments contained within Schedule 2 of the Bill include:

- ◆ Amendment to Section 15 of the Police Act 1996 to provide that only those persons who are employed by the police authority solely to assist its police force must be under the direction and control of the chief officer of that force.
- ◆ The addition of a new subsection (3A) to Section 24 of the Police Act 1996 which provides that, as is the case with constables provided in aid under Section 24 (this now also will include constables provided by the Metropolitan police force), people employed under Section 15 of the Act to assist the police force who are provided in aid under Section 24 shall be under the direction and control of the chief officer receiving the aid.
- ◆ An amendment to Section 30 of the Police Act 1996 which will allow special constables to use their constabulary powers (presently limited to their own force area) in forces throughout England and Wales.
- ◆ Confers an order-making power (subject to the negative resolution procedure) on the Secretary of State to require police authorities to make arrangements for obtaining the views of people in the police force area about the policing of that area, and for obtaining their cooperation in the prevention of crime and anti-social behaviour.

Clause 3- Police authorities as best value authorities

Clause 3 amends Section 1 of the Local Government Act 1999, limiting the extent to which the best value provisions of that Act apply to police authorities. The amendment will mean that a police authority will not be classed as a best value authority under that Act in respect of:

- ◆ Section 5, under which a best value authority must conduct best value reviews of its functions.
- ◆ Section 6, under which a best value authority must prepare a best value performance plan for each financial year.
- ◆ Sections 7 to 9, which require best value performance plans to be audited and place a duty on the best value authority to publish the auditor's report.
- ◆ Sections 10 to 15, which provide for the inspection by the Audit Commission of best value authorities' compliance with the best value requirements.

The other best value provisions in the 1999 Act will continue to apply to police authorities.

Clauses 4,5,6 - Community Support Officers

Clause 4 will insert provisions into the Police Reform Act 2002 to standardise the powers and duties of community support officers (CSOs). All CSOs designated under Section 38 of the Police Reform Act 2002 will hold the same standardised powers and duties. These will be set out in Schedule 4 of the Police Reform Act 2002 having been conferred in an order by the Secretary of State. Additional powers will also be included in such an order which can be conferred on CSOs by their Chief Officer.

The latest proposals on which powers will be standardised and others which can be designated by a chief officer can be found in the article on page 27 or via <http://www.homeoffice.gov.uk/documents/cons-cso-powers-310805/>

This Clause also places a responsibility on Chief Officers' to ensure that if any additional powers or duties are imposed on CSOs under his control, he must ensure they receive adequate training in the exercise of those powers.

Clause 5 inserts into Schedule 4 the power under Section 16 of the Crime and Disorder Act 1998 to deal with truants. This power would allow CSOs to remove young people of school age that they believe are absent from school without lawful authority from specified areas and to take them either to their school, or to a place which has been specified by the local authority. Under the latest proposals referred to above this power is not expected to be one of the standardised powers, but is expected to be one which could be designated by a chief officer.

Clause 6 introduces Schedule 3 of the Bill. This makes various consequential and minor amendments to provisions in the Police Reform Act 2002, one of the main amendments being to Section 42. This amendment requires that CSOs when exercising their powers or duties as a designated CSO, or are purporting to do so, must produce evidence of their designation if requested to do so. In cases where a CSO is exercising a standardised power, evidence that he/she is a designated CSO will be sufficient. When exercising a non-standardised power this evidence must include details that the non- standardised power has been conferred on him/her by their chief officer. Guidance from the Government suggests that these requirements could be satisfied by some form of document or card.

Part 2 of the Bill - Provisions in relation to police powers

Clause 7 introduces Schedule 4 of the Bill. Schedule 4 makes several amendments to the Police and Criminal Evidence Act 1984 in respect of bail granted elsewhere that at a police station and to bail granted at a police station.

Street Bail

One of the main amendments is to permit conditions to be attached to street bail. The conditions that can be imposed do not include, the taking of a recognizance, security or surety or a requirement to reside in a bail hostel.

Bail conditions may only be imposed by a constable if it appears to him that the conditions are necessary for:

- ◆ The persons own protection, or if the person is under 17, for the persons own welfare or is in the person's own interests.
- Or to secure that the person:
- ◆ Surrenders to custody.
 - ◆ Does not commit an offence while on bail.
 - ◆ Does not interfere with witnesses or otherwise obstruct the course of justice in relation to himself or any other person.

A notice must be given to a person granted street bail, which includes:

- ◆ The conditions of bail.
- ◆ The opportunities available to the person to vary those conditions.
- ◆ Details of the police station at which a request to vary those conditions can be made.

A custody officer may vary conditions attached to street bail on request and provide a written notice of any variation to the person concerned. Where a custody officer receives

a subsequent request to vary the conditions attached to bail he may only make a variation where that subsequent request is based on information which was not available when the previous request was considered.

A magistrates' court may, on request, vary the conditions of bail where a custody officer has received a request to vary those conditions and has either varied the conditions, refused to vary the conditions or has failed to respond within 48 hours of the request being made. When making an application to a magistrates' court, a ground may only be relied upon to make a variation where it has been relied upon in the relevant application to a custody officer or where it has arisen out of a change of circumstances that has occurred since the making of the application to the court. Conditions, as varied, must also be considered to be necessary for one of the purposes mentioned above.

The amendments also provide a power of arrest where a constable has reasonable grounds for suspecting that the person has broken any of the conditions of bail. A person arrested under this power must be taken to a police station as soon as practicable after the arrest.

Police bail granted at police station before charge

The Bill extends the provision for conditions to be attached to bail under:

- ◆ Section 37(2) of PACE (bail granted during the investigation stages of an offence).
- ◆ Section 37(7)(b) of PACE (bail before a decision has been taken to charge or to refer a case to the prosecutor for consideration of charge).

The Bill also extends the power of arrest under Section 46A of PACE to be used where a person is suspected of breaking any of the conditions of such pre-charge bail or of breaking any of the conditions of bail granted on breach of such pre-charge bail.

The Bill inserts Section 37CA into PACE which states that a person who is arrested on suspicion of breaking the conditions attached to bail granted under Section 37(7)(b) must be either charged or released without charge, with or without bail, this decision being that of the custody officer. Where bail is granted it must be subject to the same conditions as were applied to the previous bail which was granted.

Provisions in the Bill allow the Director of Public Prosecutions to issue guidance on how to deal with persons under this power.

An amendment to Section 37 PACE allows that a person who is released on bail under Section 37(7)(b) or new section 37CA of PACE who answers their bail at a police station or is otherwise in police detention can be detained at a police station to enable a decision to be taken under Section 37CA (as to whether to charge or to release, with or without bail) or under section 37D(1) of PACE (as to whether to appoint a different or additional time for the person to answer bail). If a person is not in a fit state to enable such a decision to be made he may be detained until he is.

A magistrates' court may vary the conditions attached to bail under Section 37(2), 37(7)(a), 37C and 37CA of PACE on request.

Power to stop and search at aerodromes

Clause 8 of the Bill inserts a new Section 24B in Part 3 of the Aviation Security Act 1982 (policing of airports). This Section enables a police constable to stop and search, without warrant, any person, vehicle or aircraft in any area of an aerodrome, whether designated or non-designated, for stolen or prohibited articles, where he has reasonable grounds to suspect that he will find such articles. A constable may seize any such article that he believes is stolen or prohibited. For the purpose of this offence an article is prohibited if it is either:

- ◆ Made or adapted for use in the course of or in connection with criminal conduct.
- or
- ◆ Intended by the person having it with him for such use by him or by some other person.

In order to conduct such a search a constable may:

- ◆ Enter any part of an aerodrome (except premises classed as a dwelling).
- ◆ Detain a person, vehicle or aircraft.
- ◆ Board an aircraft.

Extension of police powers to gather information relating to domestic flights and voyages

Clause 9 contains provisions that would allow a police officer of the rank of superintendent or above to request passenger, crew or service information from the owner or agent of a ship or aircraft which is:

- ◆ Arriving, or expected to arrive in the UK from elsewhere in the UK.
- ◆ Leaving or expected to leave from any place in the UK for elsewhere in the UK.

Clause 32 of the Immigration, Asylum and Nationality Bill which is presently before Parliament includes provision for a superintendent or above to request such information in relation to ships or aircraft travelling to or from the United Kingdom. Clause 9 if enacted would thereby extend this provision by amending the wording of that part of the Immigration, Asylum and Nationality Bill (if enacted).

Accreditation of weights and measures inspectors

Clause 10 of the Bill relates to the accreditation of weights and measures inspectors, commonly known as Trading Standards Officers (TSO). It inserts a new Section 41A into the Police Reform Act 2002 as well as a new Schedule 5A.

Section 41A provides for arrangements that allow a chief officer of police to grant accreditation to a TSO, similar to those for community safety accreditation schemes.

The powers that a chief constable may confer on a TSO are included in Schedule 5A and are:

- ◆ Power to issue penalty notices for disorderly behaviour under Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001.
- ◆ Power to require the name and address from a person he has reason to believe has committed a relevant fixed penalty notice offence.
- ◆ Power under Section 64A(1A) PACE to take a photograph, elsewhere than at a police station, of a person who he has issued a fixed penalty notice to.

These powers are only exercisable in the police area of the accrediting chief officer and only enable a TSO to exercise his/her accredited powers whilst in the course of his/her duty as a TSO.

Clause 11 of the Bill inserts a new Section 41B into the Police Reform Act 2002. This allows the Secretary of State to make an Order (subject to affirmative procedure) to add other types of persons to whom accreditation could be granted under Section 41A.

Changes relating to conditional cautions

Clause 12 of the Bill amends and adds further provisions to the Criminal Justice Act 2003 in relation to conditional cautions. These amendments and changes will:

- ◆ Extend the conditions that may be attached to a conditional caution to include conditions which have the object of punishing the offender.
- ◆ Conditions which have the object of punishing the offender may include the imposition of a financial penalty and/or a requirement for attendance at a specified place at a specified time (which might include completion of a specified activity).
- ◆ A condition which involves an attendance requirement is restricted to 20 hours in total. (N.B. This 20 hour limit does not apply to an attendance requirement for the purpose of facilitating the offender's rehabilitation e.g. drug or alcohol treatment).
- ◆ In relation to a financial penalty condition the amount must not exceed 25% of the maximum fine available for the offence in question on summary conviction in a Magistrates' Court or £500, whichever is the lower. The method of payment of any financial penalty imposed as a condition will be specified.

Clause 13 of the Bill introduces a power of arrest into the Criminal Justice Act 2003 at Section 24A.

This Section will give a constable a power of arrest without warrant if he has reasonable grounds for believing that the offender has failed, without reasonable excuse, to comply with any of the conditions of his/her conditional caution.

Upon arrest the offender must either be:

- ◆ Charged with the offence in question.
- ◆ Released without charge and on bail to enable a decision to be made as to whether he should be charged with the offence.
- ◆ Released without charge and without bail (with or without any variation in the conditions attached to the caution). This probably being the case if the prosecutor determined that the offender did not fail to comply with any of the conditions or the offender had a reasonable excuse for doing so.

Persons who have been arrested may be kept in police detention to allow for the above decision to be made, but this decision must be made as soon as is practicable. The detention time includes time to allow investigations to be conducted as to whether the offender failed without reasonable excuse to comply with any of the conditions. It is a prosecutor's decision as to whether an offender has failed to comply with any of the conditions.

Part 3 of the Bill - Provisions in relation to Crime and Anti-social behaviour

Crime and Disorder reduction

Clause 14 introduces Schedule 6 of the Bill. Schedule 6 makes amendments to the Crime and Disorder Act 1998 in relation to crime and disorder strategies and other matters. These include:

- ◆ Allowing the appropriate national authority (i.e. the Secretary of State or the National Assembly for Wales, or both jointly) to add to or otherwise change the list of responsible authorities.

- ◆ Extending the scope of the present strategies to include particular forms of crime and disorder that involve anti-social behaviour or other behaviour adversely affecting the local environment and the combating of substance misuse of drugs, alcohol and other substances.
- ◆ Extending the duty of specified agencies to share information, to include sharing depersonalised data that is already held in a depersonalised format for the purposes of reducing crime and disorder.
- ◆ Adding the London fire and Emergency planning Authority and all other fire and rescue authorities to the list of authorities required to share information.

Clause 15 inserts two new Sections 21A and 21B into the Local Government Act 2000. Provisions in the new sections:

- ◆ Extend the remit of local authority overview and scrutiny committees. The committees will have to review and scrutinise, or make reports or recommendations, regarding the functioning of the Community Safety Partnership.
- ◆ Place Ward councillors under a duty to respond to a call for action from anybody living or working in the area which they represent, on a crime and disorder matter and sets out actions he/she must take in response.

Parenting contracts and orders

Clause 16 inserts two new Sections 25A, 25B into the Anti-social Behaviour Act 2003.

These Sections set out the circumstances and procedures that enable a local authority or a registered social landlord to enter into a parenting contract with a parent in respect of anti-social behaviour by his or her offspring.

Clause 17 inserts three new Sections 26A, 26B and 26C into the Anti-social Behaviour Act 2003. These Sections enable a local authority or a registered social landlord to apply to a magistrates court for a parenting order against a parent in respect of anti-social behaviour by his or her offspring, and them to apply for such an order as an adjunct to certain proceedings in the county court.

Clause 18 relates to provisions which would allow a local authority to contract of functions with regard to parenting contracts and orders to a person or company to carry out this function on its behalf.

Clause 19 relates to the powers of certain social landlords to apply for injunctions in respect of anti-social behaviour.

Clarification of procedure for dealing with a person arrested for breaching a condition of a court injunction under Section 91 of the Anti-social Behaviour Act 2003

Clause 20 and Schedule 7 of the Bill clarify the procedure for dealing with a person who has been arrested for breaching a court injunction brought under Section 222 of the Local Government Act 1972 (injunction to stop anti-social behaviour). Section 91 of the Anti-social Behaviour Act 2003 provides that the court may attach a power of arrest to such an injunction in certain cases but contains no provision for what happens when a person is arrested.

Clause 20 will replace Section 91(which will be repealed). Clause 20 still includes the power to attach a power of arrest to the injunction, but also goes on to make new provision about what happens thereafter.

The new procedure will be:

- ◆ Upon arrest the constable must inform the local authority forthwith.
- ◆ The person arrested must then be brought before the court within 24 hours. (No account shall be taken of Christmas Day, Good Friday or any Sunday).
- ◆ If the court does not deal with him immediately, it must remand him either on bail, or in custody.
- ◆ If a person is remanded in custody for a period not exceeding three days they may be remanded to police custody.

Part 4 of the Bill - Her Majesty's Chief Inspector for Justice, Community Safety and Custody

This part of the Bill sets out the duties and responsibilities of the person to be appointed by HM the Queen to be the Chief Inspector for Justice, Community Safety and Custody.

It also includes the provision for the abolition of existing inspectorates - Her Majesty's Chief Inspector of Prisons; Her Majesty's Inspectors of Constabulary; Her Majesty's Chief Inspector of the Crown Prosecution Service; Her Majesty's Inspectorate of the National Probation Service for England and Wales; and Her Majesty's Inspectorate of Court Administration.

Part 5 of the Bill - Miscellaneous provisions

Computer Misuse

Clause 33 increases the penalty for the offence under Section 1 of the Computer Misuse Act 1990 (offence of unauthorised access to computer material), and making it a 'triable either way' offence. The increased penalties are:

- ◆ On summary conviction in England and Wales, imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.
- ◆ On summary conviction in Scotland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- ◆ On conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

The introduction of this provision will have the effect of giving a power of entry to arrest for the offence under Section 17 PACE, as well as powers of entry and search under Sections 18 and 32 PACE. Being a 'triable either way' offence will also allow for a warrant under Section 8 of PACE to be applied for in respect of the offence.

Clause 34 substitutes the existing offence of unauthorised modification of computer material, under Section 3 of the Computer Misuse Act 1990 with a newly worded Section 3 offence that relates to unauthorised acts with intent to impair operation of a computer, as opposed to unauthorised modification. This reads that, a person is guilty of an offence if he does any unauthorised act in relation to a computer; and at the time when he does the act he has the requisite intent and the requisite knowledge.

The penalty for this offence will also be increased from the existing Section 3 penalty and will be:

- ◆ On summary conviction in England and Wales imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

- ◆ On summary conviction in Scotland, imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- ◆ On conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine or to both.

The existing Section 3 offence is already 'triable either way' so this new provision will not affect police powers in relation to PACE.

Clause 35 contains two new offences that will be inserted as Section 3A in the Computer Misuse Act 1990.

Section 3A(1) states that:

A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article:

- (a) knowing that it is designed or adapted for use in the course of or in connection with an offence under Section 1 or 3; or
- (b) intending it to be used to commit, or to assist in the commission of, an offence under Section 1 or 3.

Section 3A(2) states that:

A person is guilty of an offence if he obtains any article with a view to its being supplied for use to commit, or to assist in the commission of, an offence under Section 1 or 3.

The penalty in relation to either of these offences is:

- ◆ On summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.
- ◆ On summary conviction in Scotland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.
- ◆ On conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Forfeiture of indecent photographs of children

Clause 37 provides a mechanism for the forfeiture of indecent photographs of children held by the police. At the moment the law allows for the forfeiture of such material following seizure under a warrant under the Protection of Children Act 1978 and in those cases all material must be brought before the Court irrespective of whether its owner consents to its forfeiture.

This clause replaces that power with one that allows forfeiture by the police irrespective of the power under which the material was seized. It allows forfeiture of such material and any other material that it is not possible to separate from it. It provides for forfeiture without the involvement of a Court unless the owner or some other person with an interest in the material objects.

Schedule 11 of the Bill inserts Schedule 1 into the Protection of Children Act 1978. This Schedule creates a mechanism whereby the police can forfeit indecent images of children and the devices that hold them. For example, computer hard drives that contain indecent images where deletion of the indecent images only is not technically possible. This new Schedule applies irrespective of the power the material is seized under, so will include indecent material inadvertently seized in investigations into other matters. For example, computers seized in a fraud investigation may on subsequent analysis be found to contain both the business records sought and child pornography.

Independent Police Complaints Commission remit

Clause 38 enables the remit of the Independent Police Complaints Commission (IPCC) to be expanded to provide oversight of certain personnel in the Immigration and Nationality Directorate (IND) exercising specified enforcement functions. Under Regulations made by the Secretary of State the IPCC will be allowed to investigate directly, to supervise or manage an investigation, or to determine that there be an investigation by the appropriate authority (the IPCC may determine that there should be an internal investigation and that the IPCC may supervise or manage it), depending on the circumstances.

Extradition

Clause 39 introduces Schedule 12 of the Bill. Schedule 12 Part 1 makes amendments to the Extradition Act 2003 and Part 2 makes other amendments concerning extradition.

The Bill can be found in full at <http://www.publications.parliament.uk/pa/pabills.htm>

Acts Given Royal Assent

On 16 February 2006 in accordance with the Royal Assent Act 1967, Her Majesty signified her Royal Assent to the following Acts, agreed upon by both Houses:

- ◆ Racial and Religious Hatred Act 2006
- ◆ European Union (Accessions) Act 2006
- ◆ Equality Act 2006
- ◆ Terrorism (Northern Ireland) Act 2006
- ◆ Transport (Wales) Act 2006

All these Acts can be found at <http://www.opsi.gov.uk/acts/acts2006.htm>

Although articles in relation to the Racial and Religious Hatred Act 2006 and Equality Act 2006 have appeared in previous editions of the *Digest* it is intended to publish further articles on these pieces of legislation in next months edition.

Emergency Workers (Protection) Bill

The Emergency Workers (Protection) Bill has been published following its second reading in Parliament on 24 February 2006. The primary purpose of the Bill is to introduce provisions to make it an offence to assault or impede persons who provide emergency services.

Clause 1 creates the offence of assaulting, obstructing or hindering a person acting in a capacity as:

- ◆ A constable.
- ◆ A fire-fighter who is an employee of a fire and rescue authority or who is discharging a function of such an authority under Section 15 or 16 of the Fire and Rescue Services Act 2004.
- ◆ A person acting for the Secretary of State in the provision of ambulance services.

For this offence to be complete it must be shown that the offender knew or ought to have known that the person was acting in that capacity.

Clause 2 creates an offence of assaulting or impeding certain emergency workers responding to emergency circumstances. For this offence to be complete it must be shown that the offender knew that the person was acting in the capacity as an emergency worker and was or might have been responding to emergency circumstances or as if there were emergency circumstances.

For the purposes of this clause an emergency worker is defined as:

- ◆ A prison officer.
- ◆ A prisoner custody officer within the meaning of Chapter II of Part VIII of the Criminal Justice and Public Order Act 1994.
- ◆ A member of Her Majesty's Coastguard.
- ◆ A member of the crew of a vessel operated by the Royal National Lifeboat Institution or any other person or organisation operating a vessel for the purpose of providing a rescue service on a body of water, or a person who musters the crew of such a vessel or attends to its launch.
- ◆ A registered medical practitioner.
- ◆ A registered nurse.
- ◆ A registered midwife.
- ◆ A social worker, within the meaning given by Section 55(2)(a) of the Care Standards Act 2000, while taking action required or permitted by a care order, a supervision order, a child assessment order; or an emergency protection order.
- ◆ An approved social worker within the meaning given by Section 145(1) of the Mental Health Act 1983.

A person will be deemed to be responding to emergency circumstances if the person is:

- ◆ Going anywhere for the purpose of dealing with emergency circumstances occurring there.
- Or
- ◆ Dealing with emergency circumstances or preparing to do so.

For the purposes of the provisions in the Bill, circumstances are classed as 'emergency' circumstances if they are present or imminent and

- ◆ Are causing or are likely to cause, serious injury to or the serious illness (including mental illness) of a person; serious harm to the environment (including the life and health of plants and animals and the fabric of buildings); a worsening of any such injury, illness or harm.
- Or
- ◆ Are likely to cause the death of a person.

Clause 3 creates an offence of assaulting or impeding persons assisting emergency workers. An emergency worker for the purposes of this offence is anyone working in the capacity as outlined in Clause 1 or 2. This offence again is subject to the proviso that the offender knew or ought to have known that the emergency worker was acting or might have been acting in that capacity as outlined in Clauses 1 or 2 and that the person being assaulted, obstructed or hindered was assisting the person acting in that capacity.

Clause 4 sets out some supplementary provisions to Clauses 1 to 3. These are:

- ◆ A person may be convicted of the offence under Clause 1, 2 or 3 of obstructing or hindering notwithstanding that it is either effected by means other than physical means; or effected by action directed only at any vehicle, apparatus, equipment or other thing or any animal used or to be used by a person referred to in that clause.
- ◆ A person who gives false information with the intention that a person acting in a capacity mentioned in Clause 1 or Clause 2 will act upon that information is to be regarded, for the purposes of those Clauses, as hindering the person acting in that capacity.
- ◆ For the purposes of Clauses 2 and 3 circumstances to which a person is responding are to be taken to be emergency circumstances if the person believes and has reasonable grounds for believing they are or may be emergency circumstances.
- ◆ Evidence from a single source is sufficient evidence to establish, for the purposes of Clauses 1, 2 or 3 of this Act, whether a person is acting in a capacity as referred to in those clauses.

Clause 5 creates an offence of assaulting or impeding health workers in hospital premises or persons assisting such workers.

For the purposes of this Clause health workers includes:

- ◆ Registered medical practitioners.
- ◆ Registered nurses.
- ◆ Registered midwives.
- ◆ Persons acting for the Secretary of State in the provision of ambulance services.

Hospital premises includes, as well as in a hospital, land adjacent to and used wholly or mainly for the purposes of a hospital.

Again for this offence it must be shown that the offender knew or ought to have known that the person assaulted, obstructed or hindered was acting in that capacity or, as the case may be, that the person being assisted is acting in that capacity and that the person who was assaulted, obstructed or hindered was assisting the person acting in that capacity.

Clause 6 deals with the penalties for the offences in the Bill. A person found guilty of any offence contained within the Bill will be liable, on summary conviction, to imprisonment for a period not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

These penalties will automatically change when Section 281 of the Criminal Justice Act 2003 is brought into force. This will then make an offender liable, on summary conviction, in respect of an offence which is committed on or after the day on which Section 281 is brought into force, to imprisonment for a period not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale or to both.

Clause 7 states that nothing in the Bill affects Section 89 of the Police Act 1996 (assaults on constables) or Section 44(3) of the Fire and Rescue Services Act 2004 (obstruction of fire-fighters in an emergency).

Clause 8 allows the Secretary of State, subject to certain provisos, to add or remove persons described in Clauses 1, 2 and 5.

Draft Proposals for Prescribed Amounts of a Controlled Drug for Purposes of Section 2 of the Drugs Act 2005

The Home Office has been seeking views from several legal, police, medical and drug related bodies on the quantity of a controlled drug found in a person's possession above which a court will presume that it was held with intent to supply others.

Section 2 of the Drugs Act 2005 (which is not yet in force) is intended to

- ◆ Help achieve a greater level of consistency in charging by providing firm guidance as to what circumstances merit a charge of possession with intent to supply under Section 5(3) of the Misuse of Drugs Act 1971.
- ◆ Set out in Statutory Regulations the point at which the quantity of drugs in a person's possession becomes above and beyond that which is reasonably held for personal use.
- ◆ Increase the success in convicting dealers and disrupting their activity.

Section 2 will amend Section 5 The Misuse of Drugs Act 1971 so that in any proceedings for an offence under Section 5(3) (possession of a controlled drug with intent to supply it) if it is proved that the accused had an amount of a controlled drug in his possession which is not less than the prescribed amount, the court or jury must assume that he had the drug in his possession with the intent to supply it.

This amendment in effect places an evidential presumption rather than legal burden of proof on the defendant. This presumption can be rebutted by evidence which raises an issue or arguable case that the defendant did not intend to supply the drugs in his possession. If such evidence is raised the prosecution will be required to prove beyond all reasonable doubt that the defendant intended to supply the drugs in his possession.

The Regulations which will set out the prescribed amount in relation to a given drug will be introduced under Section 31 of the Drugs Act 1971 (as amended by Section 2(3) of the Drugs Act 2005) by way of a Statutory Instrument.

It should be noted that possession of a lower than prescribed amount of a controlled drug will not prevent prosecution for the offence of intent to supply if other evidence demonstrates that the defendant had the necessary intent, for example the possession of dealing paraphernalia or test purchase evidence.

The Home Office draft proposals for prescribed amounts are:

- ◆ **Heroin** - Bulk quantities of 7 grams. "Wraps" – 10 or more "1 point wraps" (where a "1 point wrap" contains 0.1 grams of heroin.)
- ◆ **Crack Cocaine** - Bulk quantities of 7 grams. Wraps – 10 wraps of 0.1 gram.
- ◆ **Cocaine** - Bulk quantities of 7 grams. Wraps – 10 of 1gram.
- ◆ **Ecstasy** - Bulk quantities of 10 tablets.
- ◆ **Amphetamine** - Bulk quantities of 14 grams. Wraps – 10 times 1gram wraps.
- ◆ **Cannabis Resin** - Bulk quantities of 113 grams or 10 individual pieces/wraps or blocks
- ◆ **Cannabis Leaf** - 0.5 kilograms or above 20 individual 2" by 2" bags.

The Home Office has requested that consultees return their views on the proposed amounts by 3 March 2006. The finalised proposals are expected to be put before Parliament in the near future.

Further Challenge to the Holding of DNA Profiles

The MP for Welwyn Hatfield, Grant Sharps, has launched a campaign to have the DNA profiles, which have been taken from juveniles upon arrest who are subsequently not charged, cautioned or convicted, removed from the National DNA Database.

As covered in the January edition of the Digest, the latest Home office figures show that from the total number of persons arrested and from whom a DNA sample is obtained, 43% are not proceeded against and 'no further action' is taken. The figures show that at present the DNA profiles of 24,000 juveniles, who following their arrest were not charged, cautioned or convicted are held on the system.

There are provisions and procedures in place which allow a Chief Constable to decide whether to action the removal of a DNA profile. At present these are done on a case by case basis following receipt of a request for such removal.

Defra Statement on the Introduction of Legislation and Regulatory Changes in 2006

The Department for Environment, Food and Rural Affairs (Defra) has published a statement of forthcoming legislation which sets out when new regulations impacting businesses and the public at large will take effect. It is intended to assist businesses by allowing them to plan for changes to regulatory requirements. The statement will be updated in June 2006.

The majority of provisions listed in the document will not impact on police forces, but some may. The ones that may are scheduled to commence on 6 April 2006 and include Orders and Regulations in relation to the subjects of:

- ◆ Radioactive waste and Radioactive Substances.
- ◆ Gangmasters (Licensing) Act 2004.
- ◆ Clean Neighbourhoods and Environment Act 2005.

The full statement can be found in full at <http://www.defra.gov.uk/corporate/regulat/regulat.asp>

Corporate Manslaughter Legislation

The Home Affairs and the Work and Pensions Committees have released a joint report urging the Government to tighten up its draft Corporate Manslaughter legislation.

The Committees recommend that the Corporate Manslaughter Bill should be introduced before the end of this Parliamentary session. Discussions on such a Bill have been ongoing for several years. The Government first announced its intention to legislate 8 year ago. A draft Corporate Manslaughter Bill was published for consultation in May 2005 (see May 05 edition of the Digest).

In the report the Committees strongly criticize the proposed 'senior manager' test in the draft Bill, arguing that this will prove an obstacle to successful prosecution. Instead the Committees advise returning to the Law Commission's more general approach of 'management failure'.

They propose that juries should be required to consider whether there has been a serious breach of health and safety legislation and guidance or other relevant legislation when assessing whether a management failure has occurred. They also suggest that juries could "*consider whether a corporate culture existed in the organisation that encouraged, tolerated or led to that management failure.*".

The Committees also recommend:

- ◆ The introduction of secondary liability for corporate manslaughter to be included in the draft Bill.
- ◆ Tightening the exemptions provided in the draft Bill.
- ◆ The offence should not be based on a civil law concept of duty of care in negligence.
- ◆ There should also be a more innovative range of sanctions devised, and provision for companies to be forced to pay compensation.

The full report can be found at

http://www.parliament.uk/parliamentary_committees/home_affairs_committee.cfm

Proposed Standard Powers for CSOs

Provisions in the Police and Justice Bill (see article on page 13) legislate for the introduction of a standard set of powers that all community support officers designated under Section 38 of the Police Reform Act 2002 will hold.

As has been covered in previous articles in the *Digest*, the Home Office published a consultation document in respect of these powers and subsequently a summary of responses to the consultation document as well its own findings from the consultation, which included a proposed list of standardised powers.

The intended standardised powers are:

- ◆ Power to issue FPN for cycling on pavement: Power of a constable in uniform to give a person a fixed penalty notice under Section 54 of the Road Traffic Offenders Act 1988 in respect of an offence under Section 72 of the Highway Act 1835 (riding on a footway) committed by cycling.
- ◆ Power to stop cycles: Powers of a constable in uniform to stop a cycle under Section 163(2) of the Road Traffic Act 1988 when a CSO has reason to believe that a person has committed the offence of riding on a footpath.
- ◆ Power to stop vehicles for testing, power to escort abnormal loads and power to carry out road checks.
- ◆ Power to require name and address for road traffic offences: The Serious Organised Crime and Police Act 2005 allows CSOs to be designated with the power to require the name and address of a driver or pedestrian who fails to follow the directions of a community support officer or police officer.
- ◆ Power to direct traffic and to place traffic signs.
- ◆ Power to issue PND for throwing fireworks and trespassing on a railway and throwing stones on a railway.
- ◆ Power to stop and seize a vehicle which a CSO has reason to believe is being used in a manner which contravenes Sections 3 or 34 of the Road Traffic Act 1988 under Section 59 of the Police Reform Act 2002.
- ◆ Limited power to enter licensed premises: The Serious Organised Crime and Police Act 2005 allows CSOs to be designated with a power to enter licensed premises under Section 180 of the Licensing Act 2003 for the purposes of investigating relevant licensing offences.
- ◆ Power to require persons drinking in designated area to surrender alcohol: Power to require a person whom a CSO reasonably believes is, or has been, consuming alcohol in a designated public place or intends to do so, to not consume that alcohol and to surrender any alcohol or container for alcohol. Power to dispose of alcohol surrendered.
- ◆ Power to require persons aged under 18 to surrender alcohol: Power to require a person who he reasonably believes is aged under 18 or is or has been supplying alcohol to a person aged under 18 to surrender any alcohol in his possession and to give their name and address. Power to require such a person to surrender sealed containers of alcohol if the CSO has reason to believe that the person is or has been consuming or intends to consume alcohol. Power to dispose of alcohol surrendered.
- ◆ Power to search for alcohol and tobacco: Where a person has failed to comply with a requirement under paragraph 5 or 6 or has failed to allow a CSO to seize tobacco

under paragraph 7 of Schedule 4 to the Police Reform Act 2002 and a CSO reasonably believes that the person is in possession of alcohol or tobacco then a CSO may search them for it and dispose of anything found.

- ◆ Power to seize tobacco from a person aged under 16 and to dispose of that tobacco.
- ◆ Power to seize drugs and require name and address for possession of drugs: The Serious Organised Crime and Police Act 2005 allows CSOs to be designated with a power seize unconcealed drugs or drugs found when searching for alcohol, tobacco or dangerous items. The CSO must retain the drugs until a constable instructs them what to do with it.
- ◆ Power to issue PNDs for: sale of alcohol to a person under 18; purchase of alcohol for person under 18; delivery of alcohol to person under 18; drinking in designated area; consumption of alcohol by person under 18 or allowing such consumption; buying or attempting to buy alcohol by a person under 18 and sells or attempts to sell alcohol to a person who is drunk.
- ◆ Power to require name and address for anti-social behaviour: Power of a constable in uniform under Section 50 of the Police Reform Act 2002 to require a person whom he has reason to believe to have been acting, or to be acting, in an anti-social manner to give his name and address.
- ◆ Power to deal with begging: The Serious Organised Crime and Police Act 2005 makes offences under Sections 3 and 4 of the Vagrancy Act 1824 into relevant offences. It also gives CSOs a power to detain a person who they have required to stop committing an offence under Sections 3 and 4 of the Vagrancy Act and who has failed to comply with the requirement.
- ◆ Power to issue PND for breach of fireworks curfew; possession of a category 4 firework; possession by a person under 18 of an adult firework; supply of excessively loud firework.
- ◆ Power to require name and address for relevant offences: Power to require the name and address of a person whom a CSO has reason to believe has committed a relevant offence (Relevant offences are defined under subparagraph 2(6) of Schedule 4 of the Police Reform Act).
- ◆ Power to detain a person whom a CSO has reason to believe has committed a relevant offence who fails to comply with a requirement to give name and address or who gives an answer which the CSO reasonably suspects to be false or inaccurate for up to 30 minutes or until the arrival of a police officer (or to accompany that person to a police station if he or she elects to do so on request).
- ◆ Power to photograph persons away from a police station: The Serious Organised Crime and Police Act 2005 enables CSOs to be designated with the power to photograph a person who has been arrested, detained or given a fixed penalty notice away from the police station.
- ◆ Power to enter and search any premises for purposes of saving life and limb or preventing damage to property.
- ◆ Power to stop and search in authorised areas: Powers under the Terrorism Act 2000 in authorised areas to stop and search vehicles and pedestrians when in the company and under the supervision of a constable.
- ◆ Power to enforce cordoned areas: under section 36 of the Terrorism Act 2000.
- ◆ Power to issue FPNs for dog fouling. Power of an authorised officer of a local authority to give a notice under section 4 of the Dogs (Fouling of Land) Act 1996.
- ◆ Power to issue FPN for littering: Power of an authorised officer of a litter authority to give a notice under section 88 of the Environmental Protection Act 1990.

- ◆ Power to issue FPN graffiti/fly-posting: Power of an authorised officer of a local authority to give a notice under section 43(1) of the Anti-social Behaviour Act 2003.
- ◆ Power to remove abandoned vehicles under regulations made under section 99 of the Road Traffic Regulation Act 1984.

Additional powers not included in the set of standard powers but which will be available to be designated by Chief Constables are:

- ◆ Power to enforce byelaws: The Serious Organised Crime and Police Act 2005 provides that offences committed under relevant byelaws are relevant offences under paragraph 2(6) of Schedule 4 of the Police Reform Act 2002. A relevant byelaw is a byelaw from a list of byelaws that has been agreed between a chief constable and a relevant byelaw-making body.
- ◆ Power to search detained persons for dangerous items or items that could be used to assist escape: Serious Organised Crime and Police Act 2005 allows CSOs to be designated with the same powers as a constable under Section 32 of PACE to search detained persons for anything that could be used to cause physical injury or to assist escape.
- ◆ Power to use reasonable force to prevent a detained person making off: either when waiting for the arrival of a constable or when accompanying a detained person to a police station.
- ◆ Power to use reasonable force to transfer control of detained persons: Paragraph 2(4A) of Schedule 4 to the Police Reform Act 2002 places a duty on CSOs to remain with a police officer when transferring a detained person to his or her custody until the police officer has the person under control. Paragraph 2(4B) places a CSO accompanying a detained person to a police station under a duty to remain at the police station until the detained person is under control.
- ◆ Power to remove children in contravention of curfew notices to their place of residence: Power to remove a child to their place of residence if the CSO has reason to believe that the child is in contravention of a curfew notice under sub-sections 15(1), (2) and (3) of the Crime and Disorder Act 1998.
- ◆ Power to issue FPN for truancy: Power of a constable to give a penalty notice under Section 444A of the Education Act 1996.
- ◆ Power to remove truants to a designated place: where a local authority designates premises to which young person or child may be removed under this section, Powers of a constable in uniform to remove a child or young person that they have reasonable cause to believe is absent from school without lawful authority, back to the school or to designated premises. (see provisions in Police and Justice Bill).
- ◆ Power to issue PND for destroying or damaging property (under £500).
- ◆ Power to issue PND causing harassment, alarm or distress (Section 5 Public Order Act 1986).
- ◆ Power to issue PND for wasting police time, giving false report, using public network communications in order to cause annoyance; knowingly giving false alarm to a person acting on behalf of a fire and rescue authority.
- ◆ Power to disperse groups and remove persons under 16 to their place of residence: Powers which, by virtue of an authorisation under Section 30 of the Anti-social Behaviour Act 2003, are conferred on a constable in uniform by Section 30(3) to (6) of that Act (power to disperse groups and remove persons under 16 to their place of residence).

- ◆ Power to enforce certain licensing offences: The Serious Organised Crime and Police Act 2005 establishes a set of relevant licensing offences. These offences are sale of alcohol to a person who is drunk, obtaining alcohol for a person who is drunk, sale of alcohol to children, purchase of alcohol by or on behalf of children, consumption of alcohol by children and sending a child to obtain alcohol. Where these offences apply specifically to clubs they are not relevant licensing offences. CSOs may require name and address but may not detain for those relevant licensing offences that are most likely to be committed by license holders.
- ◆ Power to issue PND for drunk and disorderly behaviour; drunk in highway.

The summary of responses, Government findings and the list of proposed standardised powers and additional optional powers can be found at <http://www.homeoffice.gov.uk/documents/cons-cso-powers-310805/>

Review on the System of Classifying Illegal drugs

The Home Secretary has announced that in the next few weeks the Home Office is to publish a consultation paper with suggestions for a review of the drug classification system. The decision to conduct a review is based on the Government's present feeling that classification of a drug should be based on its wider harm to society and not only just as at present on a health assessment of the clinical evidence.

Under the present system the Home Secretary also announced that he has asked The Advisory Council on the Misuse of Drugs (ACMD), the independent expert body that advises Government on drug related issues in the UK, to look at toughening the classification of the 'date rape drugs' GHB and Rohypnol, presently both class C.

Decision on Classification of Khat

The Advisory Council on the Misuse of Drugs (ACMD) has published its report into the use and possible harm in respect of Khat.

The Khat plant (*catha edulis*) originates from Ethiopia and has been used for centuries in several countries in East Africa and the Arab Peninsular around the Red Sea. The leaves are chewed and have a stimulant effect similar to (mild) amphetamine. It is banned in the United States, Canada and several European countries.

In its report the ACMD have recommended that Khat is not controlled under the Misuse of Drugs Act 1971 and this recommendation has been accepted by the Government.

The report finds that the use of Khat is limited to specific communities within the UK, and has not, nor does it appear likely to, spread to the wider community. It did find that the use of Khat has some detrimental effects and recommends that its use should be discouraged.

The full report can be found at <http://www.drugs.gov.uk/publication-search/acmd/khat-report-2005/>

Report into Khat Use amongst Somalis in England

The results from a Home Office commissioned study into the use of Khat among Somali communities living in England have been published. Findings Report 266 was prepared jointly by the lead researcher for the study from the The National Association for the Care and Resettlement of Offenders (Nacro) and by the Home Office.

It presents an analysis of data on self-reported Khat use and attitudes towards Khat from interviews with Somalis living in London, Birmingham, Bristol and Sheffield.

Key points in the report show that:

- ◆ 34% of the 602 Somali interviewees reported using Khat in the month prior to interview. This represented 51% of the men and 14% of the women interviewed.
- ◆ Average frequency of use was three times a week, although 10% of them were using it daily at the time of interview.
- ◆ 75% of users reported experiencing at least one health symptom after use.
- ◆ The three symptoms most often described as being moderate or severe were sleeping difficulties, loss of appetite and the urge to chew Khat again.
- ◆ A small number of respondents reported experiencing social and family problems as a result of their own or someone else's Khat use. Most of these complaints related to a Khat-using partner spending time and money on chewing Khat rather than with their family.
- ◆ There was little association between alcohol or illicit drug use and Khat use.
- ◆ Attitudes to Khat were divided. Some considered it harmful and wanted it to be prohibited but a substantial number felt that Khat use helped maintain cultural identity and was alright when used in moderation.

The full findings report can be found at <http://www.homeoffice.gov.uk/rds/rfpubs1.html>

Consultation on Transitional Arrangements for Gambling Act 2005

The Department for Culture, Media and Sport has published a consultation paper seeking views on its proposals for the implementation of the Gambling Act from 1 September 2007. The consultation closing date is 2 May 2006.

The consultation paper is the first of a number of consultations the Government intends to publish. This and following proposals may well be of particular interest to those responsible for gaming machines in police social clubs, canteens etc. This first consultation explains how the Government proposes to move from the existing regulatory framework, to the new system of operating and premises licences and permits established by the 2005 Act.

The paper is divided into two main parts, the first part explains what existing operators will need to do to convert their current licences/permits to the relevant new licences/permits under the 2005 Act, if they wish to continue operating after 1 September 2007. The second part explains what people who wish to obtain a first licence/permit to begin operating in the run up to 1 Sept 2007 and beyond will need to do.

This paper does not cover the new system of personal licences created by the 2005 Act.

The consultation paper can be found in full at http://www.culture.gov.uk/gambling_and_racing/QuickLinks/consultations/

A copy of the Gambling Act is available at <http://www.opsi.gov.uk/acts/acts2005/20050019.htm>

Guidance on Enforcement Powers and Planning for Gypsy and Traveller Sites

The Office of the Deputy Prime Minister (ODPM) and the Home Office have published four new guidance documents on enforcement and planning for site provision to address the problem of Gypsy and Traveller sites in inappropriate locations. The four documents are:

- ◆ 'Planning for Gypsy and Traveller Caravan Sites'. This document is an ODPM Circular (01/2006) which replaces ODPM Circular 1/94, 'Gypsy Sites and Planning'. It contains updated guidance on the planning aspects of finding sites for gypsies and travellers and how local authorities and gypsies and travellers can work together to achieve that aim. The policies in this Circular apply throughout England.
- ◆ 'Gypsy and Traveller Accommodation Assessments: Draft Practice Guide'. This draft guide provides advice on carrying out an accommodation assessment of the accommodation needs of Gypsies and Travellers.
- ◆ 'Guide to effective use of enforcement powers - Part 1: Unauthorised encampments'. This guide gives step by step instructions on the powers to use against unauthorised encampments. It is intended that further guidance will be published later in the year, covering enforcement against unauthorised developments (where Gypsies and Travellers develop their own land without planning permission), as well as antisocial behaviour, such as verbal abuse and late-night noise, and environmental problems, such as fly-tipping.
- ◆ 'Local Authorities and Gypsies and Travellers: Guide to responsibilities and powers.' This information booklet provides a brief overview of the Government's policy framework in relation to Gypsies and Travellers and includes case studies on both site provision and effective enforcement.

The Government have also announced that they are to set up a new Task Group, which will consist of representatives from central and local government, the police and other agencies. The purpose of the Task group will be to act as expert advisers to the ODPM and the Home Office in relation to best practice and in respect of further strengthening enforcement measures.

One of the Task Groups first tasks will be to monitor the operation of Temporary Stop Notices, introduced in March 2005, which have been used successfully by some local authorities. Temporary stop notice provisions were introduced in Part 4 of the Planning and Compulsory Purchase Act 2004. The provisions give local planning authorities a discretionary enforcement power to be able to issue a temporary stop notice power at the start of unauthorised development, prior to an enforcement notice being served, thereby speeding up the process of enforcement.

The Circular is available at <http://www.odpm.gov.uk/planning-circulars>

The remaining guidance documents can be found at <http://www.odpm.gov.uk/gypsiesites>

Review of Crime Statistics Data Announced

Due to growing confusion and a lack of public confidence in Home Office crime statistics, the Government has set up a cross-party review group to look at how crime statistics are compiled and published. Their terms of reference are to:

- ◆ Examine the key issues concerning crime statistics raised by the Statistics Commission in its interim report "Crime Statistics: User Perspectives" published on 20 December 2005.
- ◆ Make practical recommendations to the Home Secretary as to what changes are needed to address those issues (taking into account changes to strengthen the system of official statistics announced by the Chancellor in November 2005, on which further detail will be published shortly).

The key issues raised by the Statistics Commission in its interim report that it found are of particular importance to those who need and use crime information were:

- ◆ Public trust in crime data.
- ◆ Measures of total crime.
- ◆ Measurement of the fear of crime.
- ◆ International comparisons.
- ◆ Getting the best from data held by local police forces.

At present crime figures published by the Government are covered mainly in two ways.

One is in form of the British Crime Survey (BCS), which measures the amount of crime in England and Wales by asking people about crimes they have experienced in the last year, it includes crimes which have for whatever reason not been reported to the police.

The other is by Recorded Crime Statistics, usually referred to as 'recorded crime'. These figures represent offences reported to the police which they are required to inform the Home Office about, (known as 'notifiable' offences). Not all criminal offences are 'notifiable' offences; the majority of minor summary offences are excluded.

The review group will comprise:

- ◆ Chair - Professor Adrian Smith, QMW and RSS, (statistician).
- ◆ Professor Tim Newburn LSE and President of the British Society of Criminology (criminologist).
- ◆ Dr Irwin Stelzer, Sunday Times Columnist and Fellow of the Hudson Institute (media).
- ◆ Robert Phillis, chief executive Guardian Media Group (media).
- ◆ Kate Flannery, Her Majesty's Inspectorate of Constabulary (police).
- ◆ Paul Evans, Director Police Standards Unit (police).
- ◆ Dr David Green, Director Civitas (Conservative Party nominee).
- ◆ Liberal Democrat Party nominee to be confirmed.
- ◆ Dame Helen Reeves, formerly chief executive of Victim Support (victims).

- ◆ Ian Beesley, Statistics Commission (statistician).
- ◆ Ian Johnston, Association of Chief Police Officers, Head of Crime (police).

The Statistics Commission interim report 'Crime Statistics: User Perspectives' can be found at http://www.statscom.org.uk/media_pdfs/reports/crime_stats_interim_report.pdf

Latest Crime Figures for England and Wales

The Home Office has published the latest crime figures for England and Wales in Home Office Statistical Bulletin 03/06, 'Crime in England and Wales: Quarterly Update to September 2005'.

The Bulletin presents the most recent figures on crime levels, from two different sources: the British Crime Survey (BCS) and police recorded crime. Both data sets represent the most up-to-date information, but they cover different time periods. The BCS results are from interviews conducted in the period October 2004 to September 2005; police recorded crime refers to the July to September 2005 quarter.

Some of the main points in the Bulletin include:

- ◆ The number of crimes recorded by the police fell by one per cent in July to September 2005 compared with the same period a year earlier.
- ◆ BCS interviews in the 12 months to September 2005 showed violent crime to be stable compared with the previous year.
- ◆ The number of domestic burglaries recorded by the police fell by 7%. The BCS also showed a statistically significant fall in domestic burglary.
- ◆ Both the BCS and police recorded crime figures showed a fall in the number of vehicle thefts.
- ◆ Recorded robbery figures showed an 11 % rise in July to September compared with a year earlier, continuing the upward trend seen in the April to June 2005 quarter.
- ◆ In the year to September 2005, the number of firearm offences increased by 1% compared with the previous year.

The full report can be found at <http://www.homeoffice.gov.uk/rds/index.htm>

Home Office Progress on Reducing Vehicle Crime

The House of Commons Committee of Public Accounts has published a report on Home Office attempts to reduce vehicle crime. The report finds that:

- ◆ The Home Office has worked in partnership with motor manufacturers, insurers, the police and others to reduce vehicle crime through improving vehicle security, increasing public awareness of those makes and models most likely to be stolen, encouraging safer car parks and tackling prolific offenders.
- ◆ Some limited progress has been made in improving vehicle security via partnerships but some of the most successful measures had to be imposed on manufacturers through legislation, for example the European Union requirement for immobilisers to be fitted.

- ◆ No separate data on the incidence of carjacking and similar serious car crime incidents is kept by the Home Office, although such crimes may increase as vehicle security improves.
- ◆ Only some 1,350 of the estimated 20,000 car parks in England and Wales have joined the Association of Chief Police Officers' (ACPO) Safer Car Parking Scheme despite the fact that 20% of all vehicle crime takes place in car parks. Take up from amongst hospital and station car park operators was particularly disappointing.
- ◆ Police detection rates for vehicle crimes are too low, with only 6% of thefts from vehicles and 13% of thefts of vehicles being resolved in 2003–04.
- ◆ Attempts to tighten controls over the disposal of vehicles are being jeopardised by the failure of some local authorities to establish a register of motor salvage operators as required by the Motor Salvage Operators' Regulations 2000.

The report makes numerous recommendations to the Home Office, including that it should:

- ◆ Take steps to raise public awareness of its Car Theft Index and other data on the relative security of different makes and models of vehicles, perhaps by developing a Home Office rating standard which could be displayed prominently in car showrooms.
- ◆ Promote, with manufacturers, the development and installation of new vehicle security measures arising from technological advances, and be ready to require their adoption.
- ◆ Collect data on the incidence of carjacking and similar serious car crime incidents from across the country to enable the police and Police Standards Unit to develop strategies for tackling such crimes.
- ◆ Encourage police forces to publicise those car parks in their area complying with the ACPO Safer Car Parking Scheme, and set a target and timetable for achieving greater take up.
- ◆ Work with the police to raise detection rates through a review and dissemination of best practice from across police forces including identifying the factors which lead to the most effective use of the ANPR technology.
- ◆ Facilitate the sharing of good practice in designing and implementing projects to tackle vehicle crime between Crime and Disorder Partnerships.
- ◆ Work with the Office of the Deputy Prime Minister and the Local Government Association to secure the compliance of local authorities to establish a register of motor salvage operators as required by the Motor Salvage Operators' Regulations 2000.
- ◆ Identify why so few prosecutions have been brought against unregistered motor salvage operators under the Vehicles (Crime) Act 2001 and take action as appropriate.

The report can be found in full at <http://www.publications.parliament.uk/>

Criminal Scams

The consumer magazine Which? has published details of research it has conducted that suggests that up to 5 million people may have been the victims of fraud scams. (Which? report Scams: don't get sucked in (January 2006)).

The Office of Fair Trading (OFT) and the Department of Trade and Industry (DTI) have launched a scams awareness campaign which is intended to give consumers the knowledge and skills to recognise and report mass-marketed scams to assist the authorities in investigating and prosecuting offenders.

The most commonly experienced types of fraud include:

- ◆ Premium rate phone calls.
- ◆ Deceptive prize draws and lotteries.
- ◆ Direct mail.
- ◆ Home working.
- ◆ Pyramid and matrix schemes.

The campaign is part of an international initiative organised by the International Consumer Protection Enforcement Network (ICPEN). The OFT has enlisted the support of Trading Standards Departments across the country, as well as Consumer Direct, Which?, the Advertising Standards Authority, ICSTIS and other consumer and industry bodies to help promote the campaign. The campaign will include:

- ◆ Nationwide radio advertising, features and competitions.
- ◆ Web advertising and online quizzes.
- ◆ Distribution of over half a million leaflets on how to spot a scam.
- ◆ A step-by-step guide on protecting yourself from scams.
- ◆ An international internet sweep to identify 'traps online'.

Results from an OFT research project being conducted into prevalence of scams are expected to be published in the spring.

From 1 April 2006, Consumer Direct, the telephone and online consumer advice service, supported by the Department of Trade and Industry, will provide the public with a single contact point for advice on recognising and avoiding scams. It will maintain a database to which the OFT and other law enforcement agencies will have access.

Further details can be found on the following sites

<http://www.oft.gov.uk/default.htm>

<http://www.consumerdirect.gov.uk/>

<http://www.which.net/>

Advice on Illegal Use of Motor Vehicles on Rights of Way

The Department for Environment, Food and Rural Affairs (Defra) has published a departmental enforcement circular which is also intended to act as a guidance document to share good practice with local authorities, the police, motoring clubs and local communities and encourage them to form local partnerships to tackle the illegal use of motor vehicles on rights of way. It also addresses the anti-social and environmentally damaging use of motor vehicles away from public highways both in the countryside and in urban areas.

The document sets out information on the existing legislation and provides a list of principles for Defra, based on case studies in the document, that are intended to help make best use of the existing powers that are available to the police and local authorities. These include:

- ◆ Developing a working relationship between local authorities, the local police and local motoring groups so as to improve coordination and use of the powers available.
- ◆ Establishing working groups to develop a local strategy for reducing illegal use of public rights of way. This could include local partnerships such as Local Access Forums, especially those where motoring interests are properly represented.
- ◆ Holding regular meetings of the working group to discuss the local strategy and take ideas forward.
- ◆ Targeting hotspots – i.e. a concentration of illegal off road activity or where an important area is being affected.
- ◆ Producing and distributing information leaflets, in collaboration with recreational driving user groups, garages and vehicle dealerships.
- ◆ Investigating what action might discourage illegal activity from taking place, considering e.g. accurate signs and signposts, the appropriate use of physical barriers and well maintained routes.

Defra has also published an updated version of, 'Making the Best of Byways' (originally published in 1998). This document provides practical advice, mainly to local highway authorities, on managing byways open to all traffic and other un-surfaced vehicular routes and includes examples of best practice and technical advice on surfacing.

Both documents can be found at

<http://www.defra.gov.uk/wildlife-countryside/cl/mpv/index.htm>

Access Management Measures on Motorway Sliproads

The Highways Agency has announced plans to expand the use of access management at slip roads to motorways across 30 further locations in England, starting with ten on the M6, M60 and M62 motorways in the North West.

The technique, also known as 'ramp metering', reduces congestion and improves traffic flows by managing the flow of vehicles joining at motorway junctions. Traffic lights are located on the motorway slip road and operate during congested periods to regulate the amount of traffic joining the motorway. Sensors are located along the slip road which enables the system to be turned off when necessary to prevent the build up of traffic on the adjacent road network.

Following the installation of equipment, the following sites are expected to begin operating in spring 2006:

- ◆ M62 J19 Eastbound.
- ◆ M6 J18 Northbound.
- ◆ M6 J22 Southbound.
- ◆ M6 J22 Northbound.
- ◆ M6 J23 Southbound.
- ◆ M6 J23 Northbound.
- ◆ M6 J24 Northbound.
- ◆ M6 J25 Southbound.

- ◆ M62 J11 Eastbound.
- ◆ M60 J2 Clockwise.

Consultation on Release of Vehicle Keeper Data from the UK Vehicle Registers

The Department for Transport has published a consultation paper seeking views on the release of data under Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002. The purpose of the review is intended to try and ensure that the system:

- ◆ Protects vehicle keepers from misuse of their information.
- ◆ Ensures that those who do have a good case can get the data they need.
- ◆ Balances the right to privacy of individuals whose data is held on the register with the rights of others to gain proper redress.
- ◆ Is cost effective, and is right in principle and works in practice.

Regulation 27 specifies who has rights to information from the vehicle register. These are presently:

- ◆ A local authority, but only for any purpose connected with the investigation of an offence or of a decriminalised parking contravention.
- ◆ The police.
- ◆ Officers of Customs and Excise.
- ◆ Any person who can show to the satisfaction of the Secretary of State that he has 'reasonable cause' for wanting the particulars to be made available to him.

The key options discussed in this paper are covered in three sections.

Section One: Granting access to the register: whether to introduce legislation to specify who has access to vehicle keeper data and for what reason, or whether to stick with a judgement based on 'reasonable cause'.

Section Two: Managing access to the register: whether to retain two tiers of access to the data: requests made on a case by case basis, and conditional access for approved groups or whether to require all requests to be made on a case by case basis.

Section Three: Auditing access to the register: what new audit arrangements should be put in place - including an assessment of the behaviour of those who have data released to them; and a formal mechanism for those whose data has been released to comment on the appropriateness of that release.

The closing date for the consultation is 31 March.

The consultation document can be found in full at <http://www.dft.gov.uk>

Manual on Working with Intimidated Witnesses

The Office of Criminal Justice Reform has designed and produced a manual for use by the Police, Witness Care Units, the Crown Prosecution Service and Voluntary Support Organisations, on working with intimidated witnesses.

A draft manual has been forwarded to ACPO, selected practitioners and policy makers as part of a consultation period.

It is primarily designed to help practitioners identify, manage and support witnesses experiencing the more common forms of intimidation i.e. where a witness is experiencing low-level harassment/intimidation or fears intimidation might occur at some point or is intimidated by the system/court procedure. It outlines strategies for effectively identifying, managing and supporting intimidated witnesses through the Criminal Justice System.

Further details will be published in the *Digest* when the publication is finalised.

DVD to Help Victims and Witnesses Prepare for Court

The Department for Constitutional Affairs in collaboration with other criminal justice service partners including Her Majesty's Courts Service, the Office for Criminal Justice Reform, Police, Victim Support and the judiciary have produced a DVD for victims and prosecution witnesses.

The DVD is intended to give victims and prosecution witnesses a better understanding of what's going to happen to them in court, thereby allaying fears and concerns that stop them attending court.

The DVD entitled, 'Going to Court: Witnesses' is presently being made available to victims and witnesses due to appear at the Crown, magistrates' and youth courts in Nottingham as part of a study running until May to test the use of television in delivering education and information, particularly for vulnerable people.

The DVD has been produced in both English and Hindi.

Affect of Tax Changes on Police Pension Scheme

As a result of recent tax simplification legislation contained within the Finance Act 2004 and Finance Act 2005 the Home Office has advised that in relation to the issue of the taxation of pensions, the time scales in which an officer can give notice of a 'pension commencement lump sum' (usually referred to as commutation) will change with effect from 6 April 2006.

From this date a 'pension commencement lump sum' must be paid within three months of the day on which the scheme member became entitled to it i.e. his date of actual retirement. The three month period after retirement is intended to allow for any administrative delay in actually paying the pension commencement lump sum, not to allow the scheme member to give notice.

Therefore:

- ◆ Any officer who retires or has retired before 6 April 2006 will have to give notice of commutation before 6 April 2006. The arising lump sum will have to be put into payment by 5 July 2006 at the latest.
- ◆ An officer who retires from 6 April 2006 onwards will have to give notice of commutation prior to their retirement, and have the 'pension commencement lump sum' paid within three months of their retirement.

Some concerns have been raised that forces may attempt to try to defer the payment of the lump sum for the 3 months thereby earning interest on money due to retiring officers, current advice from the Home Office is that the 3 month period is purely designed as an administrative back stop and they would not expect any deviation from current practice of immediate payment.

A 'pension commencement lump sum' is the lump sum that a scheme member would receive at retirement having opted to commute part of his or her pension.

The consequence of not having a lump sum paid within the three months (or not getting the notice of commutation recorded before 6 April for those who have retired by then) is that it would no longer be considered a 'pension commencement lump sum' and so becomes liable to a tax charge. The associated pension is also not then considered a scheme pension meaning that it too becomes liable to be taxed.

Detailed information in respect of the tax simplification legislation can be found via the HM Revenue and Customs' website at

<http://www.hmrc.gov.uk/pensionschemes/newsletter1.htm>

Guidance on the Management of Police Information

The final draft of the Guidance on the Management of Police Information developed by the National Centre for Policing Excellence on behalf of the Association of Chief Police Officers and the Home Office has now been approved and it is expected that the guidance will now be published and be ready for circulation in late March 2006.

The guidance describes the processes that support the principles set out in the statutory Code of Practice on the Management of Police Information, which came into force on 14 November 2005.

The guidance is designed to provide a common national framework for the management of police information, highlighting the importance of common standards in high risk areas of activity. It sets out the processes for managing police information that must be followed. It includes the following sections:

- ◆ The Purpose of Managing Police Information.
- ◆ The Process of Managing Police Information.
- ◆ Responsibilities.
- ◆ Collection.
- ◆ Recording.
- ◆ Evaluation and Actioning.
- ◆ Information Sharing.
- ◆ Review Retention and Disposal of Police Information.

The development of the guidance has been incorporated into the IMPACT programme insofar as the key areas for managing police information described in it are linked to those areas that will form the first phase of information being made available via IMPACT. This applies to records held in the business areas of:

- ◆ Crime.
- ◆ Intelligence.
- ◆ Domestic Violence.
- ◆ Child Abuse Investigation.
- ◆ Firearms Revocations and Refusals.
- ◆ Custody.

The emphasis for the first phase will be on the standards on infrastructure, policy, processes and procedures. Compliance for phase one should be achieved by 31 March 2007.

It is planned that further phases will follow to progressively raise standards across the whole area of police information management and acknowledged that the guidance will need to be reviewed as the process is expanded.

The Code of Practice on the Management of Police Information can be found at <http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/CodeofPracticeFinal12073.pdf>

Updated Guidance on Action to be taken by Police on Receipt of a Lost/Stolen/ Misappropriated Passport

As a result of a request from the UK Passport Service (UKPS) police working practices in relation to lost/stolen/misappropriated passports have been updated.

A passport remains the property of HM Government. In order to maintain the integrity of the British Passport, found passports must be returned to UKPS to be recorded as recovered and then destroyed. Details of stolen passports also must be forwarded to UKPS to be recorded. UKPS now share the Lost & Stolen passport data with other Law Enforcement Agencies, such as Interpol.

In relation to found British Passports:

- ◆ Under **NO** circumstances must a passport handed in to the Police as lost and found or a passport found by an Officer during the course of their duties, that has been outside of the control of the genuine holder, be returned to the rightful holder.
- ◆ No attempt should be made by Officers to try and trace the genuine holder to return the passport.
- ◆ In cases where a British passport is required as an exhibit and is being retained by the police a form R01 **MUST** be completed and forwarded, in its place, to the UKPS.
- ◆ Once passports, used as exhibits, are no longer required, they must then be returned to UKPS for recording and destruction.

The address to which found British passports and any completed R01s must be sent is: PO Box 654, Peterborough PE1 1WP (please note that an incorrect postcode is shown on the form R01)

Prior to sending any passports, the top right corner of the front and back cover and the person details page, of the passport, should be cut off to physically cancel the passport and to make it less attractive or useful to criminals. The corner removed from the details page should cut across the Machine Readable Code along the bottom to render the book useless.

It is also advised that in circumstances where a member of the public realises that the police have cancelled and returned their passport (and perhaps feel aggrieved that no action was taken to trace them) the person should be advised that the passport may have been in the hands of a third party and may have been used to further fraudulent activity, such as illegal entry to the United Kingdom or to obtain financial gain from the Financial Services sector and that the procedure is designed to help protect members of the public from identity fraud and other related criminality and is therefore in their best interest.

In relation to Lost/Stolen Passports:

- ◆ Where an officer or member of staff receives a report from a member of the public that their passport has been lost or stolen the person should be given a form LS01 which can be downloaded from the UKPS website. If this is not possible, the person should be given the details of the website in order that they may report it on-line at <http://www.passport.gov.uk> or call the UKPS Adviceline on 0870 521 0410.
- ◆ If an officer or member of police staff issues a form LS01, it is helpful to the UKPS if a station stamp is printed onto the form to indicate the issuing station.

- ◆ There is no requirement to include the report of a lost passport in a lost property register or system. However, in the circumstances where a lost passport is shown at some later stage to have been used in the commission of a criminal offence, it would be helpful to the UKPS to be able to cross reference the crime with the location of the original report of the loss.
- ◆ All reports of stolen passports **MUST** be recorded as a crime and referenced in accordance with the National Crime Recording Standards. The genuine holder will then be required to quote the crime reference number on their LS01 form. This information is then stored on UKPS records and is particularly useful to Law Enforcement Officers when they subsequently enquire about stolen passports used in the commission of a criminal offence. UKPS will be able to provide Officers with details about which Force the document was reported stolen to and the associated crime reference number.

In relation to Non UK Passports:

- ◆ **All** foreign national passports received by Police forces should be sent by secure means to the National Document Fraud Unit (NDFU).
- ◆ In cases where the non UK passport is required as an exhibit and is being retained by the police a form R01 can be used as a means for Police officers to supply detail to NDFU.

The NDFU address is: NDFU, PO Box 1000, Hayes, Middlesex, UB3 5WB

This practice of NDFU receiving these foreign passports will be subject to review, by NDFU, who will assess resourcing once quantities of returned books can be assessed.

Assistance with a non UK passport in a criminal enquiry can be obtained from local Immigration Enforcement teams.

Advice on the fraudulent use of a passport can be obtained from one of the seven UKPS Regional Fraud & Intelligence Units, situated at the passport offices in Belfast, Durham, Glasgow, Liverpool, London, Newport and Peterborough.

Electronic versions of the forms LS01/R01 have been forwarded to each force with the request that they be made available at police station front counters for issue to the public.

Guidance on Production of Local Policing Summaries

From 1 April 2006 there will be a statutory requirement on police authorities to produce annual local policing summaries (see SI 122/2006 in SI Section of *Digest*).

The Home Office has produced three documents which are intended to give guidance and aid authorities/forces in the production of local policing summaries. The three documents are:

- ◆ A sample report which gives authorities/forces an idea of what a local policing summary could look like.
- ◆ A practical guide to local policing summaries. This sets out the minimum standards which all summaries are required to meet and other information which may be included in the summaries. It also includes technical guidance on design and writing copy.

- ◆ A background report on local policing summaries. This explains the legislation and the background reasoning for its introduction.

The minimum standards, which all summaries **must** contain, are:

- ◆ A statement of the police authority's priorities for the year.
- ◆ An assessment of the extent to which the police force met the priorities set for the previous year.
- ◆ An assessment of the extent to which the police force has met the strategic policing priorities (if any) set by the Secretary of State.

The Home Office had originally planned to introduce a statutory requirement for the summaries to include the Police Performance Assessment (PPA) grades. It has now agreed that providing the summaries provide a robust appraisal of performance strengths and weaknesses of the force, the requirement to include the PPA grades is unnecessary. The inclusion of performance information will be evaluated and reviewed following publication by forces of their local policing summaries.

Inclusion of additional categories which it is suggested may be important to communicate in the summaries, but which will be a matter for local discretion, include:

- ◆ Details of how policing is organised and delivered locally.
- ◆ Information on how to contact the police or others responsible for addressing key community safety concerns.
- ◆ Inclusion of a map.
- ◆ A sense of comparative performance between the area and similar policing areas elsewhere.

The guidance documents can be viewed in full via

<http://police.homeoffice.gov.uk/police-reform/reform-programme/citizen-focus/Local-Policing-Summaries/>

Investigating Patient Safety Incidents Involving Unexpected Death or Serious Untoward Harm

A Memorandum of Understanding (MoU) between the Department of Health, Association of Chief Police Officers (ACPO) and the Health and Safety Executive (HSE) has been published in relation to serious patient safety incidents. It is intended that the protocols agreed to in the MoU will ensure that investigations into serious patient safety incidents are conducted in a consistent and well-coordinated manner, thereby reducing disruption to services and resulting in better safeguards for patients and the general public.

The protocol will apply to patients receiving care and treatment from the NHS in England. Although it focuses primarily on investigations in NHS Trusts, it is recommended that the principles and practices contained in it should apply to other locations where healthcare is provided and the NHS is required to investigate under its performance management and other duties, such as GP or dental practices.

The protocols will also apply, with modifications, to Wales, where a separate memorandum will be issued.

The protocol sets out the general principles for the NHS, police and HSE to observe when liaising with one another. It will take effect in circumstances of unexpected death or serious untoward harm, involving NHS patients being treated in either NHS or independent sector hospitals, requiring investigation by the police, HSE or the police and the HSE jointly. This will normally be the case if an incident has arisen from or involves criminal intent, recklessness and/or gross negligence or, in the context of health & safety, involves a work-related death or serious injury. By definition, these incidents will be serious and may have significant public safety implications.

Incidents will be co-ordinated by an Incident Co-ordination Group (ICG) involving the NHS, the police and the HSE. The purpose of the ICG is to provide strategic oversight of a patient safety incident.

The MOU can be found at

http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4129918&chk=P5hkFZ

A further MOU between the NHS Security Management Service and ACPO in relation to the prevention, detection, investigation and application of sanctions in respect of security matters within the NHS, is presently undergoing a consultation period. It is expected this may be published in April following final approval by both parties.

Knife Amnesty

The Government has announced that a nationwide knives amnesty is to be held between 24 May and 30 June. It will be run jointly in England and Wales by ACPO and the Home Office and in Scotland by ACPOS and the Scottish Executive.

A publicity campaign will be run urging people to hand in knives and similar type weapons and sharply bladed instruments during the five week period.

Advertising and publicity materials promoting the amnesty will be distributed to forces in advance of the start date.

Report on Impact of Measures Introduced to Combat Football Disorder

The Home Office has published a report it prepared for Parliament to assist it in assessing the impact of the measures introduced in the Football (Disorder) Act 2000 and associated football disorder strategy.

The report, the third in a series to Parliament concludes that the legislative changes introduced in the Football (Disorder) Act 2000 and the Football (Disorder) (Amendment) Act 2002, as well as the development of a comprehensive and sophisticated multi-agency football disorder strategy and the development of highly effective and co-ordinated partnerships, have all contributed towards the success in tackling English football disorder at home and abroad. It finds that:

- ◆ There has been no significant English football disorder overseas since the measures were introduced.
- ◆ The behaviour of England supporters has received wide acclaim and the number of troublemakers prevented from travelling to matches overseas has increased dramatically.

- ◆ The legislative gaps exposed by the disorder during Euro 2000 have been closed and the measures are being applied in a targeted and proportionate way.
- ◆ Host authorities are increasingly inclined to treat visiting England fans on the basis of their behaviour rather than reputation.
- ◆ English fans are demonstrating an increasing willingness to take responsibility for their behaviour.

The report also highlights further measures to combat football disorder which are contained within the Violent Crime Reduction Bill (covered in the July 2005 *Digest*) and comments on the impact these new measures will have. The report is available on the Home Office website at

<http://www.homeoffice.gov.uk/documents/Football-Disorder-2006.pdf?version=1>

The ACPO-APA Summer Conference and International Policing Exhibition

The ACPO-APA Summer Conference and International Policing Exhibition is to be held at ExCeL London, One Western Gateway, London E16 1XL. This is a new venue for the event and it is also being held in a new format.

The ACPO-APA International Policing Exhibition will run as a 2-day event from 24-25 May alongside the 3-day ACPO-APA Summer Conference from 23-25 May.

A comprehensive programme of 'free to attend' training seminars and discussion forums for all attendees will complement topics from the ACPO-APA Conference. The seminars will take place in presentation theatres within the exhibition hall and offer in-depth sessions on themes including homeland security, communications and interoperability, forensics, leadership skills and professional development.

Further details on the event can be found at
<http://www.acpo-apa.co.uk/home/index.htm>

Development of Facial Recognition Technology

The Police Information Technology Organisation (PITO) is developing a business case for the deployment of face recognition technology on a national basis for the police service.

PITO is currently working on a project called FIND (Facial Images National Database) which is intended to provide a national database of facial images to which still/video facial images, marks, scars and tattoos can be stored, retrieved and shared between forces. An initial FIND pilot is planned for early 2006 in some police forces in northern England.

Images of offenders, taken to agreed standards, will be linked to a person's criminal history record on the Police National Computer and used to support the identification and apprehension of persons arrested for, or convicted of, criminal offences.

PITO's Identification Directorate Biometrics team is currently evaluating the potential of facial recognition technology generally for future use in conjunction with FIND.

Further information can be found at <http://www.pito.org.uk/index.htm>

ACPO Methamphetamine Working Group

In December 2005 an ACPO methamphetamine working group was set up to look at the criminal abuse of the drug. Methamphetamine has been the subject of a recent review by the Advisory Council on the Misuse of Drugs (ACMD), which recommended the retention of methamphetamine's classification as a class B drug. The ACMD are also expected to conduct a further review of the methamphetamine issue at some time in 2006. There has also been growing media interest, reporting the rise of the illegal use of the drug. (See December 2005 *Digest*).

The ACPO working group has recognised that the police service does not yet have a full national understanding of the extent of the methamphetamine problem and is therefore seeking to put together a national problem profile, taking account of police experience throughout the UK, including Scotland.

The working group has requested that forces send details of problem profiles or intelligence products that refer to methamphetamine, for the year to date and 2005/06, as well as other relevant information in relation to:

- ◆ Seizures (including precursor materials, such as Ephedrine, Pseudoephedrine and Phenyl-2-Propanone [P2P]).
- ◆ Arrests.
- ◆ Initiatives.
- ◆ Other significant information or intelligence.

Combating Methamphetamine

The U.S. Department of Justice Office of Community Oriented Policing Services (COPS) has published a toolkit intended to help U.S. law enforcement agencies and communities combat methamphetamine and crimes related to the drug's use, production, and distribution.

The toolkit, 'Tools for Combating Meth', contains practical guidebooks that address issues such as clandestine drug labs, drug dealing in open-air markets and privately owned apartment complexes and identity theft. Other publications included in the toolkit address the environmental dangers involved in meth production and provide best practices for combating meth based on previous COPS funded meth programs.

The growth of the use of methamphetamine in the UK was covered in an article in the December 2005 edition of the *Digest*.

'Tools for Combating Meth' is available at <http://www.cops.usdoj.gov/>

Redesigned Bags in PACE and Volunteer DNA Sampling Kits

As a result of a review of PACE and Volunteer kits the bags contained within them have been redesigned and will be incorporated in kits issued by Scene Safe from March 2006 onwards.

All bags contained within the PACE and Volunteer kits will be transparent and all CJ samples have been removed.

The outer bags will have re-sealable tabs. This will allow DNA submission units to open the kits to check the contents and make amendments to the forms if required before kits are forwarded to the Forensic Science Provider.

The sample bag has retained its tamper evident seal and the expiry date has been removed with the agreement of CPS. As the sample bag is the only bag with a tamper evident seal it is important for continuity purposes that this bag is sealed correctly in the presence of the subject when the DNA samples have been enclosed.

The outer bag in the PACE kit also has a new tick box section printed on the front. This new section allows police officers to indicate whether the sample taken is a new sample because the arrestee does not already have a DNA profile on the National DNA Database or whether the sample has been taken for comparison purposes or an upgrade.

These changes have been introduced to make it easier and quicker for force personnel to assess and check the contents of kits before they leave the force, thereby reducing costs, as forces will no longer need to purchase additional outer bags if any amendments are required.

New Head of ACPO (TAM) Appointed

Assistant Commissioner Andy Hayman QPM MA has been appointed as the new head of the ACPO Terrorism and Allied Matters (TAM) business area. The appointment takes immediate effect and will run for up to three years.

Guide on Preventative Programmes to Promote Children's Wellbeing and Prevent Anti-Social Behaviour

The charity Communities that Care (CtC) has published a new revised edition of its guide, 'A Guide to Promising Approaches'. The publication is intended for use in planning new preventative strategies at local, regional or national level as well as assisting in the modification of existing programmes to increase their effectiveness. It could also be used as a benchmark to assess the effectiveness of existing provisions in the community.

The new edition includes updated information about evidence based practice across the United Kingdom and the Republic of Ireland. It contains:

- ◆ Descriptions of programmes that have been proven to reduce the risk factors and increase the protective factors that affect children's lives.
- ◆ Details of the research underpinning the programmes.
- ◆ Guidance notes on implementation and contact details for the organisations that provide training and support.

Headings in the guidebook that may be of particular interest from a policing perspective are:

- ◆ Preventing truancy and exclusion.
- ◆ Out of school activities.
- ◆ Mentoring.
- ◆ Community policing.

CtC has also published a new edition of 'Communities that Care', which is a guidebook written to give individuals, local leaders, agencies and organisations an overview of the Communities that Care programme in Britain.

Further details of these publications can be found at <http://www.communitiesthatcare.org.uk/publications.html>

DNA Profiling Development

The Forensic Science Service (FSS) has for some time been developing a technique which cuts the time and effort needed to match DNA profiles from crime scenes with those in DNA databases. The FSS has now been awarded £450,000 by the Government from its Public Sector Research Exploitation Fund to commercialise the technique.

CASE LAW



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Police Must Specify the Grounds of Authorisation for Dispersals under the Anti-Social Behaviour Act 2003

SIERNEY v DIRECTOR OF PUBLIC PROSECUTIONS (2006)

DC (Hallett LJ, Nelson J) 15/2/2006

POLICE

Anti Social Behaviour: Authorisation: Dispersal: Police Powers And Duties: Authorisation For Dispersal Orders: Requirement To Specify Grounds For Authorisation: Dispersal Orders: S.32(2) Anti-Social Behaviour Act 2003: S.30(2) Anti-Social Behaviour Act 2003: S.31(1)(C)(Ii) Anti-Social Behaviour Act 2003: Anti-Social Behaviour Act 2003.

An authorisation made under the Anti-social Behaviour Act 2003, that police powers under the Act were exercisable in a particular area, had to specify in the instrument of authorisation the grounds upon which the authorisation was made in order to comply with s.31(1)(c)(ii) of the Act.

The appellant (S) appealed by way of case stated against her conviction under the Anti-social Behaviour Act 2003 s.32(2) for failure to comply with a dispersal order. A police superintendent had given his authorisation pursuant to s.30(2) of the Act that the powers in s.30(3) to s.30(6) of the Act were exercisable by police officers in a specified area. The authorisation stated that the superintendent had reasonable grounds to believe that members of the public had been intimidated, harassed, alarmed or distressed as a result of the presence or behaviour of groups of two or more persons within the specified area and that anti-social behaviour was a significant and persistent problem in that area. Thereafter, S failed to comply with a dispersal order issued by a police officer under s.30(4) of the Act. The dispersal order was issued pursuant to the purported authorisation. The question stated for the opinion of the court was whether s.31(1)(c)(ii) of the Act required that the grounds upon which an authorisation was given appeared within the body of the instrument of authorisation. S contended that the authorisation in the instant case was a nullity due to the fact that it failed to particularise the grounds that led the superintendent to reach the conclusion that the authorisation for the exercise of powers under s.30 of the Act was proper.

HELD

Section 31(1)(c)(ii) of the Act required that the grounds upon which an authorisation was given appeared within the body of the instrument of authorisation. The words "must specify" contained in s.31(1)(c) of the Act were mandatory. The authorisation required a brief relevant, concise summary of the nature of material that gave rise to the issuing officer's belief that such an authorisation was required. There was no need for the evidence itself to be recited or for individuals complaining of anti-social behaviour in their

area to be named. An example of the extent of detail required in an authorisation for it to be compliant with the Act was one that informed a reader of the nature of the problem and the mischief at which the authorisation was aimed, *R (on the application of Singh) v Chief Constable of West Midlands* (2005) EWHC 2840 (Admin) referred to. In the instant case the authorisation was a nullity as it did not specify the grounds on which the superintendent based his belief and it was a mere recital of the section under which the authorisation was made.

APPEAL ALLOWED



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The Right to Free Speech Could Fall Within the Concept of Harassment

JENNIFER HOWLETT v TERRY HOLDING (2006)

[2006] EWHC 41 (QB)

QBD (Eady J) 25/1/2006

CIVIL PROCEDURE

Freedom Of Expression: Harassment: Injunctions: Reasonableness: Right To Respect For Private And Family Life: Surveillance: Campaign Of Harassment Over Four To Five Year Period: Flying Abusive Banners Above House: Unreasonable And Oppressive Conduct: Art.8 European Convention On Human Rights: Protection From Harassment Act 1997: Art.10 European Convention On Human Rights

The exercise of the right to free speech could fall within the concept of harassment for the purposes of the Protection from Harassment Act 1997 provided that other necessary ingredients such as unreasonable and oppressive conduct were present.

The applicant (J) applied for an injunction against the respondent (T) to restrain him from a campaign of harassment. Over a period of four to five years T had been flying banners, which referred to J in abusive and derogatory terms, from his aircraft, over the area where she lived. He had also dropped leaflets of a similar nature. The parties had been involved in two defamation actions and T had revealed that he wished to cause J "living hell" by way of retribution for speaking against him publicly. He had also arranged for surveillance to be conducted on J at various times and wished to retain his right to do so in the future. It appeared that T was determined to deprive J, if he could, of the benefits which she had been receiving in respect of a disability relating to a disorder of her spine. J contended that against the background of the European Convention on Human Rights 1950 Art.8 the court was obliged to ensure that there were adequate safeguards, when construing a statute such as the Protection from Harassment Act 1997, to protect an individual's right of privacy. T argued that an injunction would infringe his right of free communication, as protected by Art.10 of the Convention.

HELD

- (1) It was established that, in some circumstances, the exercise of the right to free speech could fall within the concept of harassment provided that other necessary ingredients such as unreasonable and oppressive conduct were present, *Thomas v Hughes* (2001) EWCA Civ 1233, (2002) EMLR 4 applied. It was clear that it was not appropriate to accord automatic precedence to one Convention right over another. Once such rights had been engaged, it was necessary to carry out a balancing exercise by bringing to bear an intense focus upon the circumstances of the individual case, *S (A Child) (Identification: Restrictions on Publication), Re* (2004) UKHL 47, (2005) 1 AC 593 applied. The closest regard also had to be paid to proportionality. The anguish that J had suffered as a result of T's activities over the four-year period was out of all proportion to the value to be attached to the exercise of his right to free speech by the methods he had chosen. She was therefore entitled to an injunction restraining his acts of aerial harassment.
- (2) In relation to the surveillance, J's anxiety about the prospect of future activity fell within the protection of the law. To keep someone on tenterhooks, knowing that she was likely to be watched as she went about her daily life, was remarkably cruel. It was irrelevant that J did not know, at any given instance, that surveillance was taking place

as the cause of her distress was the awareness that secret surveillance might be taking place, or was likely to take place at any moment. Furthermore, the surveillance came close to the concept of stalking and was part of the continuing campaign of making her life uncomfortable. In relation to the defences in s.1(3)(a) and s.1(3)(c) of the Act, an objective test had to be applied, *KD v Chief Constable of Hampshire* (2005) EWHC 2550 (QB) applied. In the instant case there had been no rational basis for the surveillance, as it had been merely carried out in the hope that something unlawful might be exposed. The intention of Parliament had been to prevent stalking and other forms of harassment and there was no reason for concluding that T's behaviour had been reasonable. In the circumstances, J was also entitled to an injunction in respect of the surveillance.

APPLICATION GRANTED



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The Disclosure Provisions Do Not Create Duties for Third Parties to Follow

DIRECTOR OF PUBLIC PROSECUTIONS v DEBRA JANE WOOD: DIRECTOR OF PUBLIC PROSECUTIONS v MICHAEL MCGILLICUDDY (2006)

[2005] EWHC 2986 (QB)

QBD (Admin) (Laws LJ, Ouseley J) 19/1/2006

CRIMINAL PROCEDURE

Abuse Of Process: Defence Statements: Disclosable Documents: Disclosure: Stay Of Proceedings: Prosecution Material: Material Held By Third Parties: Deficiencies In Defence Statement: Relevance Of Material Ordered To Be Disclosed: Third Parties: Disclosure Duties: Intoximeter: Non-Disclosure: Fair Trial: Service Of Defence Statement: S.3 Criminal Procedure And Investigations Act 1996: S.8 Criminal Procedure And Investigations Act 1996: S.7 Criminal Procedure And Investigations Act 1996: Criminal Procedure And Investigations Act 1996: S.5 Criminal Procedure And Investigations Act 1996

The duties of disclosure under the Criminal Procedure and Investigations Act 1996 and the code of practice issued under the 1996 Act created duties in respect of material that the prosecution or the police held and which the prosecution had inspected. The provisions were not directed to creating duties for third parties to follow.

The appellant DPP, in two joined cases, appealed by way of case stated against decisions ordering disclosure of material concerning intoximeters used for testing alcohol on the breath, and to stay proceedings against the respondents (W and M). W and M had been charged with driving whilst having consumed alcohol over the prescribed limit. In each case, the specimens of breath had been analysed on an intoximeter.

In M's case, the prosecution had sent him a letter pursuant to the Criminal Procedure and Investigations Act 1996 s.3 stating that the prosecution had no material that required disclosure. W and M had served defence statements alleging that the device was no longer of a type approved as it had been changed without the prior consent of the secretary of state. However, preliminary arguments had been raised about the adequacy of M's defence statement and whether the statement had been served out of time. The

judge had held that service was not out of time as time did not run until service of the schedule of unused material by the prosecution, and that the defence statement was adequate. W and M applied under s.8 of the Act for disclosure of material relating to the device. In each case, the district judge ordered disclosure of information about the device, including unedited printouts. The prosecution contacted the manufacturer who refused to provide the unedited printouts in its possession.

In W's case, the prosecution unsuccessfully applied to vary the order. In each case, the district judge held that there was a contract between the manufacturer and the police force for the supply of the devices and that the manufacturer was part of the investigating authority. The proceedings were stayed on the basis that the non-disclosure of the material sought was an abuse of process and that W and M could not fairly be tried without such information. The main issues were

- (i) whether the court had erred in ruling that disclosure was only effected on the date of service of the schedule of unused material as opposed to the date on which the letter pursuant to s.3 of the Act was sent;
- (ii) if no defence statement within the meaning of s.5 of the Act was served, whether the court had exceeded its jurisdiction by ordering disclosure;
- (iii) whether the court was *Wednesbury* unreasonable to hold that the manufacturer was the prosecutor for the purposes of s.7 and s.8 of the Act;
- (iv) whether the court was entitled to rule that the material that it ordered to be disclosed could reasonably be expected to assist M;
- (v) whether the court was entitled to rule that non-disclosure of the material resulted in an abuse of process such that M was denied a fair trial.

HELD

- (1) The court had erred in ruling that disclosure was only effected on the date of service of the schedule of unused material as opposed to the date on which the letter pursuant to s.3 of the Act was sent. The letter was obviously a written statement that there was no relevant material, and that was all that was required for s.5 of the Act to be triggered and for time to start running.
- (2) The problems of deficiencies in a defence statement used to ground an application for disclosure under s.8 could usually be resolved within the disclosure process. However, in M's case the request for disclosure did not satisfy s.8(2)(a) of the Act. Disclosure should have been refused, as the defence statement raised no issue as to which reliability or type approval was relevant.
- (3) It was *Wednesbury* unreasonable to hold that the manufacturer was the prosecutor for the purpose of s.7 and s.8 of the Act. The manufacturer did not become part of the prosecution because it had supplied the device to the police. The manufacturer was a third party. The provisions for disclosure under the 1996 Act and the code of practice were not directed to creating duties for third parties to follow. The disclosure duties were created in respect of material that the prosecution or the police had and which the prosecution had inspected. Material was not prosecution material under s.8(4) of the Act unless it was held by the investigator or by the disclosure officer. Accordingly, the material sought was not material that the disclosure officer was obliged to allow the prosecutor to inspect. He did not have it in order to allow that obligation to arise. Therefore, much of the disclosure should not have been ordered and the orders should have been varied as sought by the prosecution.
- (4) In the circumstances, the court was not entitled to rule that the material that it ordered to be disclosed could reasonably be expected to assist M. The material of which disclosure was sought had to have some potential for bearing on the issue in respect of which was raised.

- (5) The district judges were not entitled to rule that non-disclosure of the material resulted in an abuse of process such that M and W were denied a fair trial. There was no abuse of process as no proper order was breached. Accordingly, the stays of proceedings were unjustified.

APPEALS ALLOWED



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The “Right to Control the Operation or Use of the System” as Provided by the Regulation of Investigatory Powers Act 2000

R v CLIFFORD STANFORD (2006)

CA (Crim Div) (Lord Phillips LCJ, Cresswell J, Openshaw J) 1/2/2006

CRIMINAL EVIDENCE - INFORMATION TECHNOLOGY

Control: Electronic Mail: Interception Of Communications: Telecommunications Systems: Meaning Of Control: Emails: Intercepting Emails: Email Communications: Use Of Server: Networks: Servers: Assessability: Email Servers: S.1(2) Regulation Of Investigatory Powers Act 2000

The “right to control the operation or use of the system” as provided by the Regulation of Investigatory Powers Act 2000 s.1(6) was wider than the right to operate or use the system. The concept of control extended to controlling how the system was used and operated by others, and meant the right to authorise or forbid the operation of the system.

The applicant (S) applied to appeal against his conviction for unlawful and unauthorised interception of electronic mail communications to a public company contrary to the Regulation of Investigatory Powers Act 2000 s.1(2). S had pleaded guilty to the offence following a ruling by the trial judge on the construction of s.1(6)(a). The ruling was relevant to the facts that S had intended to advance by way of defence, which were in conflict with facts advanced by the prosecution. The facts that were in common were that S had been the deputy chairman of a company (C) but had resigned from that position following a falling out with another director. S had plotted to discredit the other director in order to force his resignation by making use of email communications sent within C’s mail server. The facts that S sought to advance at trial were that an employee of C (X) had been granted administrator access to usernames and passwords of the email server, and had set up a mirroring rule whereby emails of particular members of C would be automatically copied to a separate email server accessible by X and S. S’s case was that X had been lawfully given those usernames and passwords by a senior member of staff (Y). It was S’s case that because X, through Y’s authorisation, had been placed in a position to control the use of the system he was a person with a right to control the operation or use of the system under s.1(6)(a). The judge, interpreting s.1(6)(a), found that “right to control” meant more than merely the right to access or to operate the system, and meant the right to authorise or forbid the operation of the system. The effect of the judge’s ruling was that the facts sought to have been advanced by S would not have amounted to a defence at law, and on that basis S entered a plea of guilty. S argued that the judge’s interpretation of s.1(6)(a) was wrong because the effect of the judge’s ruling was to criminalise X even though the username and password X had been given gave him the ability to control the operation and use of the system and also the right to do so, since they had been knowingly given without any restrictions upon use.

HELD

The judge had been correct to hold that “control” meant “authorise or forbid”. That accorded with the verbal context in which control was set and produced a sensible result. The “right to control the operation or use of the system”, as provided by s.1(6)(a), was wider than the right to operate or use the system. The concept of control in this context extended to controlling how the system was used and operated by others. Further, the objective of s.1 was to protect the privacy of private telecommunications, and it would have undermined that objective if anyone with unrestricted ability to operate and use a telecommunications system was exempt from criminal liability for intercepting communications. Accordingly, the judge’s ruling was plainly correct and permission to appeal was refused.

APPLICATION REFUSED



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Conduct of Police Officers Undermining the Credibility of Case

R v JOHN LEWIS BROWN (2006)

[2006] EWCA Crim 141

CA (Crim Div) (Waller LJ, Gray J, Sir Michael Wright) 15/2/2006

CRIMINAL EVIDENCE - CRIMINAL PROCEDURE

Confessions: Credibility: Criminal Investigations: Guilty Pleas: Police Officers: Witnesses: Credibility Of Investigation: Tainted Evidence: Obtaining Confession By Threat: Conduct Of Police Officers: Improper Denial Of Access To A Solicitor: Informants: S.9 Criminal Appeal Act 1995

A conviction for robbery should be quashed despite a guilty plea in exceptional circumstances where the Crown had properly conceded that the credibility of the whole investigation into the robbery was undermined by the conduct of the police officers involved.

The appellant (B) appealed against his conviction for robbery by way of a reference under the Criminal Appeal Act 1995 s.9. B maintained that he had acted as an informant and had provided information linking his co-accuseds to the robbery. B alleged that he had been denied a solicitor and that the police officers interviewing him had threatened to expose his position as an informer to his uncles and cousin, who were also arrested in connection with the robbery, if he failed to sign a confession statement and provide names. B had subsequently pleaded guilty. Prior to the guilty plea, the Crown had relied on the evidence of two of the co-accuseds (M and X), who had named B as acting as “lookout” in respect of the robbery, and the evidence of the police officers who interviewed B. The Crown accepted that there had been an improper denial of access to a solicitor and that the conduct of the officers involved made it more than possible that threats were made. The Crown conceded that the evidence of M and X was tainted by virtue of the fact that the police officers who had handled their cases were wholly discredited by the courts in related proceedings and that the credibility of the investigation as a whole had been undermined.

HELD

In light of the concessions properly made by the Crown, there existed in the instant case very exceptional circumstances such that, despite his plea of guilty, B's conviction should be quashed, R v Togher (2001) 3 All ER 463 and R v Bhatti (Unreported September 19, 2000) applied.

APPEAL ALLOWED



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Claiming Damages for Psychiatric Injury against the Police

LAURENCE v COMMISSIONER OF POLICE OF THE METROPOLIS (2006)

CA (Civ Div) (Ward LJ, Latham LJ, Hooper LJ) 13/2/2006

CIVIL EVIDENCE

Pre Action Disclosure: Public Interest Immunity: Improperly Formulated Claim: Police Informers: Part 31 Civil Procedure Rules 1998

Where a police informer had indicated his intention to claim damages for psychiatric injury against the police force it was wholly inappropriate to apply to the court for pre-action disclosure as the issue could not be considered without a properly formulated claim.

The appellant police informer (L) appealed against the dismissal of his application for pre-action disclosure against the respondent commissioner (C). L had been a police informer for 12 years and had given information in relation to possible terrorist activities within the Muslim community at a significant risk of harm to himself. After he ceased to be an informer, L instructed solicitors who wrote to C stating that L was seeking to make a claim for significant damages for psychiatric injury, and sought disclosure of material documents before commencing any action. C refused to disclose any documents as they were protected by public interest immunity. L's subsequent application to the court for pre-action disclosure under CPR Part 31 was dismissed. L contended that the judge erred in concluding that public interest immunity precluded any disclosure of documents.

HELD

In the circumstances it was wholly inappropriate for the court to be asked for pre-action disclosure, as it was plain the issue could not properly be considered without a properly formulated claim. The difficulty L faced was that the letter of claim had not provided an appropriate platform from which to launch an application for disclosure. It was apparent from the way the allegations were set out that the claim could be perfectly properly pleaded without disclosure, and accordingly, disclosure was not necessary for proceedings to be launched.

APPEAL DISMISSED



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Excessive Speed Alone Not Sufficient to Found a Conviction for Dangerous Driving

DIRECTOR OF PUBLIC PROSECUTIONS v MILTON (2006)

DC (Hallett LJ, Owen J) 1/2/2006

ROAD TRAFFIC - POLICE

Dangerous Driving: Emergency Vehicles: Exemptions: Speeding: Excessive Speed: Police Exemptions: S.2a Road Traffic Act 1988: S.87 Road Traffic Regulation Act 1984

A judge had taken into account irrelevant matters in deciding whether the appellant police officer was guilty of dangerous driving or speeding. Excessive speed alone was not sufficient to found a conviction for dangerous driving as the question of speed had to be considered in the context of all the circumstances of a case.

The appellant DPP appealed against the decision of a district judge to acquit the respondent (M) of dangerous driving and speeding. M, a police officer and grade one advanced driver, had driven his police vehicle on a variety of road types at a speed in excess of the legal speed limits. In particular it was alleged that M drove at around 150 mph on a motorway and 90 mph in a built-up area. M drove his vehicle without using either its siren or flashing lights. M was charged with dangerous driving and an alternative offence of speeding. M contended that he had driven at speed in order to familiarise himself with a strange duty vehicle and to keep his driving skills honed. The judge accepted M's contention and found that at the time the alleged offences occurred the weather was fine, road visibility was good, that the roads were "more or less" deserted and that no other road user had been endangered. The judge concluded that the prosecution had failed to establish that the standard of M's driving had fallen below, let alone far below, that to be expected of a competent and careful driver as required by the Road Traffic Act 1988 s.2A and acquitted him of dangerous driving. The judge further held that M had driven the police vehicle for police purposes within the meaning of the Road Traffic Regulation Act 1984 s.87 so that he was not subject to any speed limit. The DPP contended that driving at the excessive speeds at which M had driven constituted dangerous driving regardless of the context in which he had driven.

HELD

The judge had erred in his assessment of the facts and had taken into account irrelevant matters. The judge had also erred in law by partially applying a subjective test for the offences rather than the correct objective test. The judge had failed to differentiate between the different classes of roads on which M had travelled and did not consider the effect that M's driving would have on other drivers. In particular the fact that M was travelling without a siren or warning lights meant that his driving differed from that of an emergency driver and other drivers would have been taken by surprise. The judge had further erred by having regard to the opinions of the witnesses at M's trial as to the quality of M's driving. Speed alone was not sufficient to found a conviction for dangerous driving as the question of speed had to be considered in the context of all the circumstances. To hold otherwise would expose any driver of an emergency vehicle to liability of prosecution for dangerous driving and force such a driver to rely on the Crown Prosecution Service exercising their discretion not to prosecute. Accordingly, the matter was remitted to a differently constituted court for reconsideration, R v Leslie Collins (1997) RTR 439 applied and R v Woodward (Terence) (1995) 1 WLR 375 considered.

APPEAL ALLOWED



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A Record Produced by a Device Prescribed by the Road Traffic Offenders (Prescribed Devices) Order 1999 Could Be Adduced as Real Evidence

DIRECTOR OF PUBLIC PROSECUTIONS v THORNLEY (2006)

DC (Hallett LJ, Owen J) 3/2/2006

ROAD TRAFFIC - CRIMINAL EVIDENCE

Documents: Pre Trial Disclosure: Proof: Real Evidence: Speeding: Record Of Excessive Speed: Proof Of Record: S.20(1) Road Traffic Offenders Act 1988: Road Traffic Offenders (Prescribed Devices) Order 1999: Road Traffic Act 1972

The Road Traffic Offenders Act 1988 s.20(8) was permissive and allowed a record produced by a device prescribed by the Road Traffic Offenders (Prescribed Devices) Order 1999 to be adduced as real evidence without the need of a witness to prove it.

The appellant DPP appealed by way of case stated against the decision of a magistrates' court that the respondent (T) had no case to answer to a charge of speeding. The DPP had at T's trial sought to rely, pursuant to the Road Traffic Offenders Act 1988 s.20(1), on a document that was a record produced by a device prescribed under the Road Traffic Offenders (Prescribed Devices) Order 1999. The record purported to show images taken of T's car travelling at excessive speed. The DPP failed to comply with the requirement in s.20(8) of the 1988 Act to serve the document on T not less than seven days before his trial. The DPP further sought to rely on a certificate, signed by a police officer, as to the circumstances in which the record had been produced. The magistrates' court acceded to a submission by T of no case to answer on the basis that the record was inadmissible because the service requirements in s.20(8) had not been complied with and because the police officer who had signed the certificate could not give direct evidence of the speeding offence. An issue arose as to whether production of the record was analogous to the production, under the Road Traffic Act 1972 s.10, of a record from an intoximeter so that the record in instant case was admissible as real evidence.

HELD

Section 20(8) of the Act was permissive and did not prevent the record from being adduced as real evidence in the usual way. The purpose and effect of s.20(8) of the 1988 Act was precisely the same as s.10 of the 1972 Act, namely to enable the record to be adduced as evidence without the need to call a witness to prove it. Accordingly the matter was remitted. *Garner v CPS Independent*, May 1, 1989 applied.



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SI 57/2006 The Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2006

In force **1 March**. This Order amends the Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2003 by extending reference to an accredited financial investigator in the provisions of the Proceeds of Crime Act 2002 that apply in England and Wales, to also include accredited financial investigators from the Serious Organised Crime Agency, the Royal Mail and the Home Office.

The Order also makes similar provision in respect of references that apply in Northern Ireland to accredited financial investigators to also include these agencies.

SI 99/2006 The Working Time (Amendment) Regulations 2006

In force **6 April**. These Regulations revoke Paragraph (2) of Regulation 20 (unmeasured working time) of the Working Time Regulations 1998. This provided an exemption from limits on the maximum weekly working time of workers and on the length of night work where a worker's working time was partly unmeasured or determined by the worker himself.

SI 100/2006 The Serious Organised Crime and Police Act 2005 (Delegation under Section 43) Order 2006

In force **1 March**. This Order prescribes the grade of Deputy Director of the Serious Organised Crime Agency (SOCA) as the prescribed level for the purposes of Section 44(1) of the Serious Organised Crime and Police Act 2005. This will allow a Deputy Director of SOCA to designate SOCA officers with law enforcement powers.

Upon the setting up of SOCA it is expected that in the majority of cases SOCA officers will be designated with the powers that they held in their previous posts. Any additional designation, and the designation of new officers who were not members of a precursor agency, can only happen after the officer in question has received appropriate training.

SI 122/2006 The Police Act 1996 (Local Policing Summaries) Order 2006

In force **1 April**. This Order specifies matters which must be included in local policing summaries issued by police authorities pursuant to Section 8A of the Police Act 1996. These are:

- ◆ A statement of the police authority's priorities for the year.
- ◆ An assessment of the extent to which the police force met the priorities set for the previous year.
- ◆ An assessment of the extent to which the police force has met the strategic policing priorities (if any) set by the Secretary of State.

See article on page 43 on guidance on producing local policing summaries.

SI 142/2006 The Motor Vehicles (EC Type Approval) (Amendment) Regulations 2006

In force **21 April**. These Regulations amend the Motor Vehicles (EC Type Approval) Regulations 1998 which set out the procedure and technical requirements for the type

approval of what the Road Traffic Act 1988 terms 'light passenger vehicles'. Generally speaking, these are passenger vehicles with less than 8 seats (not including the driver's seat) regardless of their maximum weight. The amendments under EC Directives 2005/39/EC, 2005/40/EC and 2005/41/EC amend the previous Directives relating to seat strength, seat belt and seat belt anchorage respectively.

SI 235/2006 The Armed Forces Act 2001 (Commencement No 6) Order 2006

In force **1 February**. This Order brings into force the provisions in Section 32(1) to (8); Section 32(9) so far as it is not already in force, Section 33 and Schedule 5 so far as it is not already in force, of the Armed Forces Act 2001.

Sections 32 and 33 grant powers to request a sample, to test for the presence of alcohol or drugs, after the occurrence of a serious incident. Section 32 enables the Defence Council to make Regulations as to such post incident testing and Section 33 makes provision for the interpretation of Section 32.

Paragraphs 1(2) and 5(2)(a) of Schedule 5 to the Act make minor amendment to the offence in the Service Discipline Acts of failing to provide a sample for compulsory drug testing. Paragraphs 1(3) and 5(3) of Schedule 5 specify who may require such a test to be taken and the purposes for which the results of such a test may be used.

SI 246/2006 The Transfer of Undertakings (Protection of Employment) Regulations 2006

In force **6 April**. This Order introduces The Transfer of Undertakings (Protection of Employment) Regulations 2006 which revoke the Transfer of Undertakings (Protection of Employment) Regulations 1981 (commonly known as the TUPE Regulations) and implement Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings or businesses.

The Regulations provide that the transferor's rights and obligations arising from a contract of employment or from an employment relationship shall by reason of a transfer be transferred to the transferee. They provide protection for employees from dismissal by the transferor or the transferee by sole or principal reason of the transfer itself. They allow a dismissal for a reason connected with the transfer where that reason is an economic, technical or organisational one entailing changes in the workforce.

SI 266/2006 The Railways Act 2005 (Commencement No 5) Order 2006

This Order brings into force provisions of the Railways Act 2005, some on **7 February**, others on **1 April**.

One of these provisions of note in policing terms is that as from 1 April sub sections 62(1)(m) and (n) of the Railways and Transport Safety Act 2003 are repealed. This removes the requirement for the British Transport Police Authority to obtain the opinion of

the HSE and the Health and Safety Commission regarding policing of the railways.

SI 308/2006 The Proceeds of Crime Act 2002 and Money Laundering Regulations 2003 (Amendment) Order 2006

In force **21 February**. This Order this Order amends Section 330(6)(b), (9A)(a) and (10) of the Proceeds of Crime Act 2002 to extend the defence which applies to a 'relevant professional adviser', to include a person who is employed by (or in partnership with) the professional legal adviser or other relevant professional adviser to provide assistance or support.

SI 353/2006 The Criminal Procedure (Amendment) Rules 2006

In force **3 April**. These Rules add new provisions to the Criminal Procedure Rules 2005. New parts included are:

- ◆ A new Part 15 (preparatory hearings in cases of serious fraud and other complex, serious or lengthy cases in the Crown Court), in substitution for the existing Part 15, which makes provision for applications for preparatory hearings on the ground that the prosecutor wants the court to order that the trial be without a jury under sections 43 or 44 of the Criminal Justice Act 2003.
- ◆ A new Part 18 (warrants), in substitution for the existing Part 18, which simplifies the existing rules on warrants.
- ◆ A new rule 39.2 (appeal against refusal to excuse from jury service or to defer attendance), which incorporates existing rule 25 of the Crown Court Rules 1982 into the Criminal Procedure Rules 2005.
- ◆ A new rule 57.15 (external requests and orders) which applies the rules in Parts 57, 59 to 61 and 71 to proceedings under the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005.
- ◆ A new rule 65.11 (appeal against order following discharge of jury because of jury tampering), which applies Part 65 to appeals under section 47 of the Criminal Justice Act 2003.

In addition, the following amendments are made:

- ◆ Rule 34.1 (hearsay evidence: when this Part applies) is amended to confine the application of Part 34 (hearsay evidence) to cases where the evidence is admissible on one or more of the following grounds, namely where (a) it is in the interests of justice for it to be admissible, (b) the witness is unavailable to attend, (c) the evidence is contained in a business or other document, or (d) the evidence is multiple hearsay.
- ◆ In Part 35, rule 35.2 (introducing evidence of non-defendant's bad character) is amended to provide that an application to introduce the previous convictions of a prosecution witness must be made within 14 days of the date when the prosecutor discloses those convictions. Rule 35.6 is amended to extend the time limit for a defendant's application to exclude evidence of his own bad character from 7 days to 14 days.
- ◆ Part 66 (appeal to the Court of Appeal against ruling adverse to prosecution) is amended to ensure that the Registrar is not required to give or serve notice to a defendant or an interested party in a "public interest ruling" case, unless a judge or the Court of Appeal otherwise directs.
- ◆ Part 68 (appeal to the Court of Appeal against conviction or sentence) and Part 74 (appeal to the House of Lords) are amended so that those rules will apply, where

appropriate, to appeals made under paragraph 14 of Schedule 22 to the Criminal Justice Act 2003.

SI 378/2006 The Serious Organised Crime and Police Act 2005 (Commencement No 5 and Transitional and Transitory Provisions and Savings) Order 2006

This Order brings into force numerous provisions in the Serious Organised Crime and Police Act 2005.

In force **1 March**:

Section 1(1) and (2) of, and Schedule 1 (except paragraphs 9(4), 12 and 13 and 15(5)) for the purposes of:

- ◆ Making appointments which take effect before 1st April 2006 of the chairman and other members of SOCA.
- ◆ SOCA exercising the powers in Section 6 (annual plans) of the Act.
- ◆ SOCA exercising the powers in paragraph 8(1)(b) and (2) of Schedule 1 to the Act in respect of appointments or secondments to take effect on or after 1st April 2006.
- ◆ SOCA exercising its power under paragraphs 15(1) and 16(1) of Schedule 1 to the Act in respect of committees and delegation to take effect on or after 1st April 2006.
- ◆ Making determinations under paragraph 17 of Schedule 1 to the Act.
- ◆ SOCA exercising functions under paragraph 21 of Schedule 1 to the Act, Section 26A of the Police Reform Act 2002 or Section 60ZA of the Police (Northern Ireland) Act 1998.
- ◆ The Director General of SOCA exercising the powers in Section 44(1) of the Act and paragraph 11 of Schedule 1 to the Act (delegation).
- ◆ The Director General of SOCA, or any employee of SOCA to whom functions under Section 43 of the Act have been delegated, exercising the functions in that section (designation of SOCA staff) to take effect on or after 1st April 2006.

Also in force **1 March** are:

- ◆ Section 6 (annual plans).
- ◆ Sections 43 and 44(1) (designation of SOCA staff).
- ◆ Section 55(1) and paragraph 8 of Schedule 2 (complaints and misconduct).
- ◆ Section 55(2) (introduction of Section 60ZA into Police (Northern Ireland) Act 1998).

In force **1 April**:

- ◆ Section 1(1) and (2), together with Schedule 1 (so far as not already in force).
- ◆ Sections 2 to 5 and 7.
- ◆ Sections 11 to 16.
- ◆ Sections 19 to 26.
- ◆ Sections 28 to 38.

- ◆ Sections 40, 41 and 45 to 51.
- ◆ Section 53.
- ◆ Section 55, together with Schedule 2 (so far as not already in force).
- ◆ Sections 56 and 57.
- ◆ Section 59, together with Schedule 4 (except paragraphs 42, 170, 171 and 172).
- ◆ Sections 76 and 78.
- ◆ Section 174(2) so far as it relates to the entries in Schedule 17 (see below).
- ◆ Certain entries in Part 2 of Schedule 17 (repeals).

SI 393/2006 The Anti-social Behaviour Act 2003 (Commencement No 6) (England) Order 2006

In force **6 April**. This Order brings Sections 48 to 52 of the Anti-social Behaviour Act 2003 into force, to the extent they are not already in force, in England. These Sections relate to Graffiti removal notices (Defacement removal notices) and the procedures of recovery of expenditure, guidance and appeals in relation to them. These Sections have been in force in Wales and some areas in England for some time, this extends these provisions to the whole of England.

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