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Digest

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Legal Validation and Research

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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 number of articles relating to Terrorism, which continues to create debate in all areas, these include the recently published UK Borders Bill, Lord Carlile's review of the Terrorism Act 2005, the new Extremism Pathfinder Fund , the EU PR/4m Convention, a report on terrorism by the Metropolitan Police Authority, an independent report on assessing the threat to the UK from CBRN weapons as well as a two recent cases on electronic data being articles within the meaning of the Terrorism Act 2000 and on control orders and their compatibility with the ECHR.

Also covered this month are the changes introduced by the Police and Justice Act 2006 relating to the removal of police authorities from certain best value requirements, guidance on body worn video, police pay review and the investigation and prosecution of rape offences.

Details of a number of consultations are also covered including, Consultation on Gaming in Clubs and Pubs, Regulation of Enforcement Agents, Use of the Power of Members of Staff to Search School Pupils for Weapons, Safeguarding Children from Abuse Linked to a Belief in Spirit Possession, Causing Death by Driving Offences.

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

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Improving Information for Disabled People

The Office for Disability Issues has published two documents from the first phase of its Information Needs project.

These documents are a report entitled, 'Improving Information for Disabled People' and a guide entitled 'Five principles for producing better information for disabled people'.

Both documents can be found at
http://www.officefordisability.gov.uk/projects/projects.asp#project

Human Rights: Common Values, Common Sense Campaign

The Department for Constitutional Affairs (DCA) has launched a campaign to encourage police and other public sector workers to adopt a common-sense approach to human rights. The DCA and Government ministers will work with a range of organisations, including police, probation, education and health, to ensure common-sense solutions to human rights problems.

In his speech when launching the campaign, Lord Falconer highlighted that there have been problems with how human rights and the Human Rights Act have been interpreted. He emphasised that the rights of the individual have to be balanced against the rights of the community and that, in the vast majority of cases of conflict between rights, common sense tells us the answer. He highlighted a number of recent cases, one involving the police, where initially common sense did not appear to have prevailed. He said that it was part of his responsibility and that of the DCA to make sure staff in key frontline services are properly informed about the legislation and how it is meant to work.

Lord Falconer's speech can be viewed in full at
http://www.dca.gov.uk/speeches/2007/sp070209.htm

Two DCA documents have also been published and these were featured in an article in the October 2006 *Digest*. These are 'Human rights: human lives - a handbook for public authorities' and 'Making sense of human rights: a short introduction', designed for officials in public authorities to assist them in working with the Human Rights Act 1998 and to raise their awareness of human rights.

These can be found at **http://www.dca.gov.uk/peoples-rights/human-rights/pdf/hr-handbook-introduction.pdf**

and

http://www.dca.gov.uk/peoples-rights/human-rights/publications.htm

Internet Child Safety

The University of Central Lancashire has launched a new certificate in internet child safety. It is a 14-week distance-learning course for teachers, education and child services professionals. The 'University Certificate in Child Safety on the Internet' has been validated by the Cyberspace Research Unit in tandem with the University of Central Lancashire. Further details can be found at **http://www.uclan.ac.uk/host/cru/**

HOC 3/2007
The Emergency Workers (Obstruction) Act 2006

This Home Office Circular provides guidance on the Emergency Workers (Obstruction) Act 2006, Sections 1 to 6 of which came into force on 20 February 2007 by virtue of Statutory Instrument 2007/153 (see SI section).

Articles on the Act were featured in the February and July 2006 editions of the *Digest*.

The Act does not cover police or prison officers in its definition of 'emergency workers', as they are already catered for in provisions in the Police Act 1996. Emergency workers are defined as firefighters, ambulance workers and those transporting blood, organs or equipment on behalf of the NHS, coastguards and lifeboat crews.

The Circular clarifies that 'emergency workers' include those working under contract and volunteers providing an ambulance service on behalf of the National Health Service, including air ambulances; and it includes those working for the fire and rescue services of local authorities, airports, the armed forces and private companies. This will encompass anyone who is responding to an emergency as part of a reciprocal arrangement with Fire and Rescue Services in England and Wales. Where reciprocal arrangements exist with Scottish Fire and Rescue Services, the law will cover workers from the Scottish service responding to an emergency situation.

The Act creates two new offences. The first of these is obstructing or hindering emergency workers who are responding to emergency circumstances, or who are preparing to do so, and those responding to circumstances when they believe there is or may be an emergency.

The guidance in the Circular explains that preparing to respond to emergency circumstances will include:

- Donning protective suits.
- Attaching hoses to fire hydrants.
- Other immediately preparatory activity.

But it will not include training in preparation for a potential incident, as this will not have the same potentially serious consequences as obstructing them when responding to an emergency or potential emergency.

The guidance also explains that obstruction includes obstructing emergency workers even when the emergency they are responding to does not materialise. It provides an example of this, stating that if a group of young people deliberately call out the fire and rescue service when there is no emergency, but then obstruct them, the young people will still be guilty of an offence, explaining that such behaviour can be damaging, and can prevent the fire and rescue service from reaching another emergency in time.

The second new offence is of obstructing or hindering those who are assisting emergency workers who are responding to emergency circumstances. The Circular's guidance explains that this covers:

- Voluntary and other organisations who are at an emergency, and who might otherwise not be covered.
- Individuals such as first-aiders, who may be helping at the scene of an accident.

- Those who are directing traffic in order to allow the emergency workers to deal with an incident.

The guidance sets out some examples of obstruction:

- Parking where an emergency vehicle cannot get by and refusing to move.
- Damaging an emergency vehicle or equipment.
- Giving false information at the scene of an emergency which would delay or mislead emergency workers.

It points out that it would not cover deliberate hoax calls, which should be dealt with under other legislation.

The Circular provides some background to the legislation, including information about sentencing. It notes that details of the fact that the offence was committed against those providing a service to the public and other factors, such as evidence of the offenders acting as part of a group or gang, or of the offence being planned and premeditated, should be drawn to the attention of the court. The reason for this is that these factors are included in the Sentencing Guidelines Council's guidelines on "overarching principles - seriousness" issued in December 2004, and, if present, should increase the severity of the sentence for any offence.

In addition, the guidance states that the Sentencing Guidelines Council will, in due course, issue sentencing guidelines for all violent crimes against the person, which, it is expected, will re-iterate that a victim serving the public is a serious aggravating factor in any offence of violence, and to explain that attacks on any victim serving the public can have a serious impact on the ability to deliver the public service.

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

HOC 5/2007
Amendments to Schedules 3 and 5 of the Sexual Offences Act 2003

This Home Office Circular covers the Sexual Offences Act 2003 (Amendment of Schedules 3 and 5) Order 2007, which was brought into effect by SI 296/2007 on 19 February 2007 (see SI section). Details of these changes were covered in detail in the January edition of the *Digest*. The only additional information contained in the Circular is that:

- In respect of the requirement to comply with the notification requirements of Part 2 of the Sexual Offences Act 2003, the amendments to Schedule 3 only apply to convictions, cautions and findings after the amendment to Schedule 3 takes effect (i.e. 19 February 2007).
- In respect of the possibility of a sexual offences prevention order (SOPO) or foreign travel order, the amendments to Schedules 3 and 5 apply to convictions, cautions and findings before as well as after the amendment takes effect.

An example of this is that someone who is convicted of causing or inciting child prostitution or pornography on 1 January 2007 cannot now be informed that they are (automatically) subject to the notification requirements of Part 2, even though it will be listed as a Schedule 3 offence. However, that offender would still be eligible for a SOPO where the other conditions for such an order are satisfied, or a foreign travel order, where the relevant conditions are met.

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

HOC 6/2007
Violent Crime Reduction Act 2006 - Details Of Commencement of SI 74/2007

This Home Office Circular draws attention to the contents of Statutory Instrument 74/2007 which came into force in England and Wales on 12 February 2007 (covered in January *Digest*) and brought into force Sections 42, 54, 55, 57 and Schedule 4 of the Violent Crime Reduction Act 2006.

Section 42: increase of maximum sentences for offences of having knives etc.

Section 42 amends Part XI of the Criminal Justice Act 1988, Sections 139 and 139A. The effect is to increase the maximum penalty on indictment from two years' imprisonment or a fine or both, to four years' imprisonment or a fine or both, for the offences of:

- Having an article with a blade or a sharp point in a public place without good reason or 'lawful authority'.
- Having an article with a blade or a sharp point on school premises without good reason or 'lawful authority'.

The penalties on summary conviction remain unchanged.

The new maximum sentences for the two knife offences will only apply to offences committed in England and Wales on or after 12 February 2007. For offences committed before 12 February 2007, the maximum sentence on indictment for both offences remains 2 years' imprisonment or a fine or both.

Section 54 and Schedule 4: Forfeiture and detention of vehicles etc.

Section 54 of and Schedule 4 to the Act amend the Sexual Offences Act 2003 by inserting new Sections 60A, 60B and 60C into that Act.

Section 60A enables the courts to order the forfeiture from a person convicted on indictment of an offence under Sections 57 to 59 of the Sexual Offences Act 2003, of a vehicle, ship or aircraft which was used or was intended to be used in connection with the offence. The offences under Sections 57 to 59 relate to the trafficking of persons into, within and out of the United Kingdom for sexual exploitation.

Section 60B enables a constable, or an immigration officer not below the rank of chief immigration officer, to detain a vehicle, ship or aircraft of a person arrested for an offence under Sections 57 to 59, if it is one which the constable or immigration officer concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under Section 60A.

Where a person has been arrested for an offence under Sections 57 to 59, a relevant vehicle, ship or aircraft can be detained:

- Until a decision is taken whether or not to charge him;
- After charge, until the proceedings are concluded or discontinued; or
- After conviction, until the court decides whether or not to order forfeiture of the vehicle, ship or aircraft.

The forfeiture provisions under Section 54 and Schedule 4 do not apply in relation to a person convicted of an offence committed prior to the commencement of the power (i.e. convicted prior to 12 February 2007).

Section 55: Continuity of sexual offences law

Section 55 of the Violent Crime Reduction Act 2006 closes a legal loophole and now allows offenders to be convicted under the Sexual Offences Act 2003 even when it cannot be proved when the offence took place, as long as what happened was also an offence under the Sexual Offences Act 1956 or other repealed offences, as set out below.

The loophole problem first came to light in 2005 when a judge at Stoke-on-Trent Crown Court ruled that there was no case to answer against a man accused of raping a boy. The victim could not remember the exact date, but said the assault had happened 'just before the bank holiday at the beginning of the month'. The bank holiday was on May 3 2004. Since that decision two further cases have been thrown out by judges and other prosecutions have been put on hold.

Section 55(1) states that where a person is charged in respect of conduct that is an offence under the Sexual Offences Act 2003 and that same conduct would have amounted to an offence under one of the repealed offences listed in s.55(2), and the only thing preventing the person being found guilty of an offence is that it cannot be proven beyond reasonable doubt whether the time the conduct took place was before or after the coming into force of the Sexual Offences Act 2003 (1 May 2004), then it shall be concluded that conduct took place under the offence which carries the lower penalty in terms of a custodial sentence.

The offences referred to in s.55(2) are:

- Any offence under the Sexual Offences Act 1956.
- An offence under Section 4 of the Vagrancy Act 1824 (obscene exposure).
- An offence under Section 28 of the Town Police Clauses Act 1847 (indecent exposure).
- An offence under Section 61 or 62 of the Offences against the Person Act 1861 (buggery etc.).
- An offence under Section 128 of the Mental Health Act 1959 (sexual intercourse with patients).
- An offence under Section 1 of the Indecency with Children Act 1960 (indecency with children).
- An offence under Section 4 or 5 of the Sexual Offences Act 1967 (procuring an man to commit buggery and living on the earnings of male prostitution).
- An offence under Section 9 of the Theft Act 1968 (burglary, including entering premises with intent to commit rape).
- An offence under Section 54 of the Criminal Law Act 1977 (incitement of girl under 16 to commit incest).
- An offence under Section 1 of the Protection of Children Act 1978 (indecent photographs of children).
- An offence under Section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of position of trust).
- An offence under Section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution).

Section 55(6) provides that Section 55 applies to any proceedings, whenever commenced, except for those cases where the defendant has been convicted or acquitted before 12 February 2007. This means that it applies to cases in progress at the time of commencement.

Section 57: Amendment of s.82 of the Sexual Offences Act 2003

Section 57 provides that individuals who have been sentenced to imprisonment for public protection under section 225 of the Criminal Justice Act 2003 for a sexual offence are required to notify their details for an indefinite period for the purposes of sex offender registration.

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

Violent Crime Reduction Act 2006 – Amendment to Sexual Offences Act 2003

On 9 February the Prime Minister's Official Spokesman said that the Prime Minister would be announcing the introduction of a new police power, to enter and search a registered sex offender's home for the purpose of assessing the risk posed to the community. This relates to the provision in Section 58 of the Violent Crime Reduction Act 2006.

Section 58 amends the Sexual Offences Act 2003 by inserting a new Section 96B into the Act. This Section will enable a magistrate, on application from a police officer of the rank of superintendent or above of the police force in whose area the premises are located, to issue a warrant to allow a constable to enter and search the home (using reasonable force if it is necessary to do so) of a 'relevant offender' for the purposes of assessing the risks that the offender may pose to the community. Such a warrant can authorise as many visits as the magistrate considers to be necessary (can be unlimited or limited to a maximum) for the purposes of assessing the risks posed by the offender.

A 'relevant offender' is a person who for the time being is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.

It also sets out the requirements that must be met before the warrant will be issued. These requirements set out that:

- The address must be one that the offender has notified to the police as his home address or one in respect of which there is a reasonable belief that the offender can be regularly found there or resides there.
- The offender must not be in custody, detained in a hospital or outside the United Kingdom at the time.
- A constable must have tried on at least two previous occasions to gain entry to the premises for the purpose of conducting a risk assessment and been unable to gain entry for that purpose.

Following communication with the Home Office, it has been established that it is their intention to introduce provisions in the Violent Crime Reduction Act 2006 on or around the 6 April. At the time of publication of this edition of the *Digest*, details of exactly which provisions from the Act will be introduced on this date are not available, but the likelihood is that it will include Section 58.

The Violent Crime Reduction Act 2006 can be found in full at **http://www.opsi.gov.uk/acts/acts2006a.htm**

UK Borders Bill

The UK Borders Bill was introduced into the House of Commons on 25 January 2007 to make provision about immigration and asylum. The Bill extends to the whole of the UK, except for Clauses 1-4, relating to powers of immigration officers at ports and Clause 21, relating to forfeiture of property. These extend only to England, Wales and Northern Ireland.

Detention at ports

The Bill is divided into 7 parts. The first deals with the issue of detention at ports. For the purposes of this Bill, a port includes an airport and a hoverport and places where an individual has gone to embark a ship or aircraft or has arrived there on disembarking from a ship or aircraft.

Clauses 1 and 2 enable the Secretary of State to designate individual immigration officers acting in a port in England, Wales or Northern Ireland as having the power to detain a person (for a maximum of three hours) where they consider that person to be:

- Someone whom a constable could arrest without a warrant under section 24(1), (2) or (3) PACE; or
- Someone for whom there is a warrant of arrest outstanding.

Where this power is exercised, a designated immigration officer must arrange for a constable to attend as soon as is reasonably practicable.

The officer will have the power to search the individual, using reasonable force if necessary, for anything that might be used to assist escape or to cause physical injury to the individual or another person, and power to retain any such item.

If the officer finds anything during the search which he thinks may be evidence of the commission of an offence he must retain it. Upon arrival of the constable, the officer must deliver to the constable the individual and anything retained from a search. Should the individual leave the port, the officer may pursue the individual and return them to the port.

Clause 3 creates new offences in relation to detention at ports. They are offences of:

- Absconding from detention.
- Assaulting a designated immigration officer in the course of exercising their power under Clause 2.
- Obstructing a designated immigration officer in the course of exercising their power under Clause 2.

The punishment for the first two offences shall be imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 5 or both, and it shall be imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 3 or both for the obstruction offence.

The Secretary of State may designate only those immigration officers who are fit and proper for the purpose and who are suitably trained.

Biometric registration

The second part of the Bill deals with biometric registration. Clause 5 enables the Secretary of State to make regulations requiring a person subject to immigration control to apply for the issue of a document recording information about his external physical characteristics. This document is known as a 'biometric immigration document' (BID). The regulations may require a BID to be used:

- For specified immigration purposes.
- In connection with specified immigration procedures.
- In specified circumstances, where a question arises about a person's status in relation to nationality or immigration.

The regulations may also provide that a person who produces a BID, pursuant to a requirement imposed under the regulations, may be required to provide information to enable a comparison to be made between that information and information provided in connection with the application for the document (e.g. fingerprints). The regulations may:

- Apply generally or to a specific class of persons subject to immigration control.
- Specify a period within which the person is required to apply for the biometric immigration document.
- Make provision about the issue and contents of a biometric immigration document, for a biometric immigration document to be combined with another document, and for a biometric immigration document to begin to have effect and cease to have effect.
- Make provision permitting or requiring the Secretary of State to suspend or cancel a biometric immigration document in specified circumstances, or to require the holder of the document to notify the Secretary of State in certain circumstances.
- Provide for the surrender of the biometric immigration document.
- Enable the Secretary of State to require the surrender of other documents on issuing a biometric immigration document.

Clause 6 makes supplementary provisions about the regulations including:

- Regulations amending or replacing earlier regulations may require a person who holds a biometric immigration document issued under the earlier regulations to apply under the new regulations.
- Fingerprints may not be taken from a person under 16 except in the presence of an adult who is the child's parent or guardian, or a person who takes responsibility for the child for the time being. An authorised person may not act as the responsible adult in this situation.

Clauses 7 to 15 deal with the effects and consequences of non-compliance with compulsory registration, associated penalties, appeal rights and provision for the use and destruction of an individual's biometric records. The regulations must:

- Include provision about the failure to comply with a requirement of the regulations. Sanctions may include refusing BID applications; cancellation or variation of leave to enter or remain in the UK; penalty notices (Clause 7).
- Make provision about the use and retention of biometric information, including provision permitting the use of information for specified purposes which do not relate to immigration (Clause 8).
- Include provision about the destruction of information obtained or recorded by virtue of the regulations (Clause 8).

Clauses 9 to 14 make provision for a civil penalty scheme (governed by a Code of Practice) for failure to comply with a requirement under the regulations. Under Clause 9, the Secretary of State may, by notice, require a person to pay a penalty for failing to comply with a requirement of the regulations. The notice must specify:

- The amount of the penalty (maximum £1,000).
- The date before which the penalty must be paid (which must not be fewer than 14 days after the date on which the notice is given).
- Methods by which the penalty must be paid.
- The grounds on which the Secretary of State thinks the person has failed to comply with the regulations.
- How the person can object to the penalty and appeal the penalty, and how the penalty may be enforced.

A person who has been given a penalty notice may, by notice, object to the Secretary of State on the grounds that either:

- He has not failed to comply with a requirement of the regulations.
- It is unreasonable to expect him to pay the penalty.
- The amount of the penalty is excessive.

He may also appeal that notice to a county court on the same grounds as above. The court may then cancel the penalty notice, reduce the penalty by varying the penalty notice, increase the penalty notice, or confirm the penalty notice (Clause 11).

Clause 12 makes provision for enforcement of a penalty. Where a penalty has not been paid before the specified date, it may be recovered as a debt due to the Secretary of State. However, where an objection notice is given in respect of a penalty notice, the Secretary of State may not take steps to enforce the penalty notice before he has decided what to do in respect of the objection, and has informed the objector. Additionally, the Secretary of State may not take steps to enforce the penalty notice while an appeal under Clause 11 could be brought (disregarding the possibility of an appeal out of time) or has been brought and has not been determined or abandoned. In proceedings for the recovery of a penalty, no question may be raised in respect of matters which are grounds for objection or for appeal. Any money received by the Secretary of State in respect of a penalty under Clause 9 is to be paid into the Consolidated Fund.

Treatment of claimants

Clause 16 amends Section 3(1) (c) of the Immigration Act 1971, providing that a person who is given limited leave to enter or remain in the UK may be subject to a condition requiring him to report to an immigration officer or the Secretary of State or to a condition about residence.

Clause 17 provides that a person whose claim for asylum has been refused and who is pursing an appeal against an immigration decision will remain an asylum seeker for the purposes of Section 4 and Part VI of the Immigration and Asylum Act 1999 and of Part 2 of and Schedule 3 to the Nationality, Immigration and Asylum Act 2002. The effect of this provision is that, until his appeal is determined, such a person will be eligible for support on the same basis as asylum seekers who have not yet received a decision on their claim.

Clause 18 provides for a power of arrest without warrant, entry, search and seizure for an immigration officer, in connection with offences under Sections 106 and 106 of the Immigration and Asylum Act 1999 (offences relating to asylum support fraud).

Clause 19 defines the conditions under which late evidence may not be included in an appeal against the refusal of a points – based application.

Enforcement

Clauses 20 to 22 deals with the conditions under which cash may be seized and detained, and property forfeited and disposed of.

Clause 20 gives immigration officers (with prior approval of a judicial officer, or if not practicable, the authority of a civil servant at least the rank of assistant director) the power to search a person or premises for cash, where there are reasonable grounds for suspecting that the cash in question is derived from or intended for use in connection with an offence under the Immigration Acts. The officer may also seize and detain such cash, where there are reasonable grounds for suspecting that the cash is derived from or intended for use in connection with an offence under the Immigration Acts or an offence listed in Section 14 of the Asylum and Immigration (Treatment of Claimants, etc.)Act 2004.

Clause 21 provides that where a court makes a forfeiture order, the court may order the property to be taken into the possession of the Secretary of State (rather than the police) if it thinks that the offence in connection with which the order was made related to immigration or asylum, or was committed for a purpose connected with immigration or asylum.

Clause 22 provides powers of disposal in respect of property which is in the possession of an immigration officer, or which has come into the possession of the Secretary of State in the course of the exercise of his immigration functions under the Immigration Acts.

Clause 23 introduces an express power of arrest of individuals who knowingly employ an illegal worker.

Clause 24 provides a power to search for personnel records in connection with this offence.

Clause 25 is an amendment that ensures that acts committed after an asylum seeker has arrived in the United Kingdom but before they have entered will be covered by the offence of facilitating an asylum-seeker's entry to the United Kingdom.

Clause 26 is an amendment that allows for non-UK citizens who commit acts outside the UK, suspected of facilitating the illegal entry of individuals to the UK, to be charged with various facilitation offences.

Clause 27 amends existing offences of trafficking for exploitation to ensure that acts committed after a person has arrived in the United Kingdom, but before they have entered, will be covered by the offences. This clause will also extend the extraterritorial application of the trafficking offences to cover acts of facilitation carried out overseas, irrespective of the nationality of the person carrying out the acts.

Deportation of criminals

Clause 28 relates to the automatic deportation of "foreign criminals". A "foreign criminal" in this respect is a person who is not a British citizen, who has been convicted in the United Kingdom of an offence and to whom Condition 1 or Condition 2 applies:

- Condition 1 is that he is sentenced to a period of imprisonment of at least 12 months.
- Condition 2 is that he is sentenced to a period of imprisonment for an offence specified in an order made under Section 72(4) (a) of the Nationality, Immigration and Asylum Act 2002.

The Secretary of State must make a deportation order in respect of a foreign criminal, except where one of the exemptions in Clause 29 applies. These are:

- Where removal of the foreign criminal in pursuance of the deportation order would breach a person's Convention rights, or the United Kingdom's obligations under the Refugee Convention.
- Where the Secretary of State thinks that the foreign criminal was under the age of 18 on the date of conviction.
- Where the removal of the foreign criminal would breach his rights under the European Community treaties.
- Where the Secretary of State has received a valid extradition request in respect of the foreign criminal.
- Where certain provisions of the Mental Health Act 1983 or corresponding legislation in Scotland or Northern Ireland apply (the foreign criminal is a "mentally disordered offender").

The Secretary of State cannot revoke a deportation order unless one of the exceptions applies or the application for revocation is made while the foreign criminal is outside the UK. The requirement on the Secretary of State to make an 'automatic' deportation order does not create a private right of action in respect of the consequences of non-compliance.

The Secretary of State can chose when the deportation order should be made (Clause 30). However, no order may be made while an appeal against a relevant conviction or sentence is pending, or could be brought.

Clause 32 gives the Secretary of State power to detain a person while he considers whether Clause 28 applies, and pending the making of a deportation order under Clause 28.

Clause 33 provides that a deportation order may not be made against a family member of a foreign criminal if more than eight weeks have elapsed since either the expiry of the time limit for appeal (if no appeal against an automatic deportation order is brought) or such an appeal ceased to be pending.

Information

This part of the Bill deals with information-sharing arrangements between the Immigration and Nationality Directorate, HM Revenue and Customs (HMRC) and Revenue and Customs Prosecution Office (RCPO).

Clause 36 states that HMRC and the RCPO may supply the Secretary of State with information, documents or articles for use for purposes which relate to the exercise of the Secretary of State's immigration and nationality functions.

The Secretary of State, ministers and officials have a statutory duty of confidentiality under Clause 37 in respect of such information, documents and articles. However, the clause does state that they are permitted to disclose such information if any of the following applies:

- They are permitted to do so by any other enactment.
- It is made in relation to the exercise of the Secretary of State's immigration and nationality functions.
- It is made for the purposes of civil proceedings relating to an immigration or nationality matter.

- It is made for the purposes of a criminal investigation or criminal proceedings relating to an immigration or nationality matter.
- It is made in pursuance of an order of a court.
- It is made with the consent of HMRC or the RCPO.
- It is made with the consent of each person to whom the information relates.

A person will commit an offence if they contravene Clause 37 by disclosing information relating to a person whose identity is specified in the disclosure or can be deduced from it. However, the offence does not apply to the disclosure of information about internal administrative arrangements of HMRC or RCPO.

On indictment, the offence is punishable by imprisonment for a term not exceeding two years, a fine or both; and on summary conviction, imprisonment for a term not exceeding 12 months, a fine or both. However, prosecutions for this offence require the consent of the Director of Public Prosecutions.

Clause 31 amends Section 131 of the Nationality, Immigration and Asylum Act 2002 to allow chief officers of police and the Serious Organised Crime Agency to supply information (including evidence of previous convictions) to assist the Secretary of State in determining whether applicants aged 10 or over for registration under a provision listed in Section 58(2) of the Immigration, Asylum and Nationality Act 2006 are of good character.

Also under this part of the Bill, Clauses 40 and 41 give immigration officers and police constables the powers of entry and search in relation to nationality documents. This power may only be exercised with the written authority of a senior officer (i.e. chief immigration officer or police inspector) and they may also seize and retain any such documents found.

This power exists where a person has been arrested for a criminal offence and the immigration officer or police constable suspects that the individual might not be a British citizen and documents relating to his nationality might be found on certain premises. The premises which may be searched are premises occupied or controlled by the arrested person, or the premises in which he was when arrested.

A nationality document is defined in Clause 40(5) as a document showing the individual's:

- Identity, or
- Nationality or citizenship, or
- The place from which he travelled to the United Kingdom, or
- The place to which he is proposing to go.

Any such document may be seized, provided it is not a document subject to legal privilege. An immigration officer or a constable may retain the seized document while he suspects that the individual to whom the document relates may be liable to removal, and that retention of the document may facilitate that removal.

General

Clause 44 lists the various commencement dates for parts of the Bill. It states that Clause 17 (support for failed asylum seekers) shall come into force on the day the Bill is passed. Other provisions will be brought into force by statutory instrument.

A full version of the Bill can be found at
http://www.publications.parliament.uk/pa/pabills/200607/uk_borders.htm

Alcohol Labelling Bill

The Alcohol Labelling Bill is a Private Members' Bill which was introduced to the Lords by Labour peer Lord Mitchell on 29 January 2007.

Clauses 1 to 3 make provision for a warning to be carried on the brand label of an alcoholic beverage container. The wording of this warning is:

"GOVERNMENT WARNING: drinking alcoholic beverages during pregnancy even in small quantities can have serious consequences for the health of the baby".

Clause 4 introduces a provision that a producer of an alcoholic beverage shall ensure that each container carries a code marking, whether by batch number or otherwise, whereby the place, date and time of its manufacture may be determined.

Clauses 5 and 6 set out the offences for failing to comply with the provisions set out in Clauses 1 to 4.

Clause 7 provides statutory defences to the offences in the Bill.

Clause 8 sets out who will be the 'enforcement authority' for the purposes of the Bill. In England and Wales this will be a weights and measures authority.

Clause 9 sets out the powers that a duly authorised officer of such an enforcement authority will have in respect of the Bill. These include a limited power of entry, production and seizure. Under this Clause a duly authorised officer can also apply to a magistrates' court for a warrant to enter, if need be by force, premises, other than premises used only as a private dwelling house, for the purpose of the functions under the Bill. Having obtained such a warrant, the duly authorised officer is allowed to take with him when he enters those premises such other persons and such equipment as he considers necessary. It is in these circumstances that it is likely that police assistance would probably be sought.

Clause 10 provides further offences of:

- Intentionally obstructing a duly authorised officer acting in the proper exercise of his functions.
- Without reasonable cause failing to comply with any requirement made of him an officer acting in this capacity.
- Making a false statement in a material particular.

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

Mental Capacity Act 2005 Code of Practice

The Code of Practice for the Mental Capacity Act 2005 was laid before Parliament in February 2007. The Act requires a range of people to have regarded to the Code, for example anyone acting in a professional or paid role in relation to someone who lacks capacity and could include the police.

Everyone who cares for, or makes decisions on behalf of, someone who lacks capacity will need to follow the new law when it comes into force. The Code is intended to provide valuable information and guidance to all those covered by the Act and has been written to meet the needs of this wide and varied audience.

Subject to the views of Parliament the Code of Practice will be formally issued in April 2007. It can be found in full at
ttp://www.dca.gov.uk/menincap/legis.htm#codeofpractice

Independent Review of the Prevention of Terrorism Act 2005

The Home Office has published an independent review by the Liberal Democrat peer, Lord Carlile of Berriew, pursuant to Section 14(3) of the Prevention of Terrorism Act 2005.

Lord Carlile's report concludes that the use of control orders for monitoring terrorism suspects is justified in a small number of cases. There are currently 18 individuals subject to such measures. However, it recommends that the Government works to come up with an alternative to the controversial measures. Lord Carlile comments that some of the controlees have already been the subject of their orders for a considerable time and that their orders cannot be continued indefinitely, as that was never intended and would not be permitted by the courts.

In a recent case, Secretary of State for the Home Department v E (covered in detail on page 51) the High Court quashed a control order, ruling that the control order breached E's human rights.

Lord Carlile's report can be found in full at
http://security.homeoffice.gov.uk/news-publications/publication-search/independent-reviews/lord-carlile-ann-report.pdf

The Prevention of Terrorism Act 2005 (Continuance in force of Sections 1 to 9) Order 2007

On 22 February 2007, The Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2007 was voted on in the House of Commons, the vote was in the affirmative. The Order continues in force for a period of one year, beginning on 11 March 2007, Sections 1 to 9 of the Prevention of Terrorism Act 2005, which would otherwise expire at the end of 10 March 2007 pursuant to Article 2 of the Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006.

Sections 1 to 9 of that Act enable the Secretary of State to make a control order against an individual where he has reasonable grounds for suspecting that individual is or has been involved in terrorism-related activity and it is necessary to impose obligations on that individual for purposes connected with protecting members of the public from a risk of terrorism.

This Order will now be voted on in the House of Lords on 5 March 2007. The draft Statutory Instrument that introduces the Order can be found at
http://www.opsi.gov.uk/si/dsis2007.htm

Preventing Violent Extremism Pathfinder Fund

The Government has launched a new £5 million fund as a key part of the PREVENT element of its counter-terrorism strategy. The 'Preventing Violent Extremism Pathfinder Fund' is aimed at supporting local authorities in building strengthened partnerships with the peaceful majority in communities, in order to isolate and defeat violent extremism.

In support of the fund, a guidance document has been published which explains the objectives of the fund and how it will be rolled out. It also offers practical guidance on working with communities to develop community-based and community-led initiatives to tackle radicalisation.

Funds will be initially focused on areas of highest priority, that is, in the main, on local authorities with sizeable Muslim communities. As a starting point, this will generally be authorities with Muslim populations of 5% or more.

The guidance document can be found at
http://www.communities.gov.uk/index.asp?id=1506075

EU (Cross-Border Powers) Pr /4m Convention

The Pr /4m Convention was signed on 27 May 2005 by France, Germany, Austria, Spain, Luxembourg, the Netherlands and Belgium. It is designed to intensify cross-border police co-operation between the signatories, particularly in respect of terrorism, cross-border crime and illegal migration. It offers the potential to improve the exchange of information on DNA, fingerprints and vehicle registrations.

As part of its plans during its presidency of the EU, the German government has initiated a discussion on the topic and announced that it plans to transpose the convention into EU law, but has not yet tabled formal proposals.

The exact process as to how the convention or some of its provisions could be brought into the EU framework has yet to be agreed. Any EU instrument covering the transposition of the Pr /4m Convention into EU law would be subject to parliamentary scrutiny.

Commenting on the plans, the Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, Lord Triesman, stated that the Government will carefully consider any formal proposals that the German presidency puts forward to transpose the convention into EU law.

Metropolitan Police Authority Report on Improving UK's Response to Terrorism

The Metropolitan Police Authority (MPA) has published its report on improving the UK's response to terrorism. The Authority's year long programme of community engagement sought the views of over 1,000 people who live and work in London on how best to tackle the terrorist threat.

The report makes a large number of recommendations including that the Metropolitan police justifies its use of Section 44 Terrorism Act 2000 or stops using it. Many of the people surveyed in the MPA programme stated that they so strongly object to the use of Section 44 powers, which they consider inappropriate and unfair and was causing untold damage to certain communities' confidence in the police.

The report can be found in full at
http://www.mpa.gov.uk/committees/mpa/2007/070222/06.htm

Government Response to Select Committee on Transport Recommendations

The Government has issued its response to the recommendations made by the Select Committee on Transport in its report, 'Roads policing and technology: getting the right balance'.

One particular response, in relation to the recommendations in the report in respect of number of roads police officers and the use of 'non-sworn' staff, clearly sets out the Government's position on the subject and has prompted numerous comments from police source areas. This response states:

The Government agrees that police have a very important role in roads policing. However the number of dedicated traffic police should not be the sole measure of roads policing activity. Any police officer can enforce the law on the roads and the Government has increased the number of police over-all by over 14,000.

Integration of roads policing with other core activities might be the best way locally to make more effective use of police resources. Where a force has adopted such an approach, the number of dedicated officers might have reduced without any lower level of enforcement. The effective use of technology and removal from the police of work not requiring their specialist expertise and powers are also significant, as is decriminalisation where appropriate.

Such changes remove unnecessary burdens from the police and free up their time. The policy on how such freed up resources are used is a matter for local decision in the light of changing situations, circumstances and public concerns at different times and in different places. It is right that day-to-day decisions should be taken at the local level, to respond to local needs and concerns. Nationally the Government has made clear its view of the importance of roads policing, as has the Association of Chief Police Officers (ACPO).That importance is reflected in the issue of the joint Roads Policing Strategy, agreed by ACPO, HO and DfT.

On the strategic road network the different roles of police and Highways Agency Traffic Officers (HATOs) are clear. The latter do not have enforcement powers and the police retain operational primacy when in attendance at an incident. The transfer of roles enables existing road policing officers to pursue core roads policing activities rather than being diverted into network management tasks.

We welcome the focus on roads policing in ACPO's Uniformed Operations Business Area and the championing of effective roads policing by the Chief Constable Head of Business Area, Meredydd Hughes. The importance of roads policing is demonstrated and supported through the extensive senior level involvement in events such as ACPO's annual national roads policing conference and the activities of specialist groups such as the Roads Policing Operational Forum.

The document can be found in full at
http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/290/29004.htm

Evasion of Vehicle Excise Duty in Great Britain in 2006

The Department for Transport has published a statistical bulletin showing the evasion of Vehicle Excise Duty for Great Britain in 2006.

Key points from the report show:

- Evasion in traffic increased to 2.2%, from 2.0% in 2005.
- Motorcycles and the other vehicles category continue to be the vehicles on which evasion rates are highest.
- Regionally, the largest increase in evasion in traffic between 2005 and 2006 was in the North West.
- Evasion rates are higher for older vehicles. Evasion among vehicles in the private light goods class that are more than 10 years old is about five times the evasion level of vehicles less than 10 years old. Evasion is over 10 times higher for vehicles whose owner details are not known.
- It is estimated that Vehicle Excise Duty evasion will cost around £220 million in the year 2006/07.

The report can be found at
http://www.dft.gov.uk/pgr/statistics/recentforthcomingpublications/recentpublications

Consultation on Gaming in Clubs and Pubs

The Department for Culture, Media and Sport has published a consultation document containing new proposals to control the provision of gaming in clubs and premises licensed to sell alcohol.

Under Part 12 of the Gambling Act 2005, the current position under the Gaming Act 1968, whereby clubs, pubs and certain other premises licensed for the sale of alcohol may provide limited, generally low stakes gaming facilities for their members and customers, is to be maintained. The 2005 Act removes the requirement under the Gaming Act 1968 for licensees to seek approval from the local licensing authority for the playing of equal chance gaming. However, the provisions in the Gambling Act 2005 require that the Secretary of State needs to make regulations covering a range of matters, including types of games, limits on stakes and prizes and maximum participation fees for gaming that are allowed. The consultation paper's proposals include:

Clubs and institutes

- To prescribe bridge and whist for the purposes of Sections 266(2), 267(2) and Schedule 12 of the Gambling Act 2005. This would mean that whist or bridge clubs would be classed as either members' clubs or commercial clubs for the purposes of the Act, providing they are established or conducted wholly or mainly for the purpose of the provision of facilities for gaming of bridge or whist and that facilities are not provided for any other kind of gaming in the course of the club's activities.
- To implement the Secretary of State's power to place limits on stakes and prizes for exempt equal chance gaming but only, at this stage, in respect of poker.
- That the appropriate limits for equal chance poker played in members' clubs, commercial clubs or institutes that do not hold a club gaming permit should be £1000 in any seven day period and £200 on any day (in total stakes or prizes); with a maximum stake of £10 per person, per game.
- That there should be a code of practice for gaming in clubs and institutes.
- That the maximum participation fee for exempt gaming in clubs or institutes that do not hold a club gaming permit should be: bridge/whist, £18; all other equal chance gaming, £1.
- That the maximum participation fee for equal chance gaming where a club gaming permit is held should be: for bridge and/or whist, £20; all other equal chance gaming, £3.
- That pontoon and chemin de fer should be prescribed under Section 271 of the Act as the additional games of chance that may be provided by the holder of a club gaming permit.
- To implement the provision that enables members' clubs and institutes to charge participation fees for pontoon and chemin de fer, with the maximum charge set at £3 per day.
- Not, at this stage, to implement Section 271(4)(b) of the Act, which would allow deductions or levies to be imposed by holders of club gaming permits on sums staked or won by participants in pontoon or chemin de fer.

Alcohol-licensed premises

- That the appropriate limit for all exempt equal chance gaming on alcohol-licensed premises should be £5 per person, per game and, in addition, for poker, there should be limits for each premises of £500 in any period of seven days, and £100 on any day (in total stakes or prizes).
- That there should be a code of practice for gaming in alcohol-licensed premises.

The consultation paper can be found in full at
http://www.culture.gov.uk/Reference_library/Consultations/2007_current_consultations/cons_gaming_clubs.htm

Regulation of Enforcement Agents

The Department for Constitutional Affairs (DCA) has published a consultation document which sets out options for the future regulation of enforcement agents. The DCA estimates that there are currently 5,200 enforcement agents operating within England and Wales, many of whom are doing so without any formal or statutory regulation. This figure is made up of approximately 600 County Court bailiffs, 1,600 other state-employed enforcement agents (such as tax collectors, customs officers, etc), 200 local authority-employed enforcement agents, 1,600 certificated private bailiffs and 1,200 non-certificated private bailiffs. It is also estimated that there are approximately 150 firms operating within the industry.

The consultation sets out three options for the future regulation of enforcement agents, these being:

- Option 1 – No change
- Option 2 – The creation of a new regulator, the Enforcement Services Commission.
- Option 3 – Regulation by the Security Industry Authority (SIA).

The paper gives a clear indication of the Government preferred option which is regulation by the SIA (Option 3). It argues that the SIA could provide a cost-effective means of regulating the enforcement industry as opposed to setting up a wholly separate commission dedicated to the enforcement industry.

The consultation ends on 25 April 2007. The consultation paper can be found in full at **http://www.dca.gov.uk/consult/enforce_agt/cp0207.htm**

Report on Community Engagement

The Home Office has published a report which is intended as a resource for practitioners setting up mechanisms to engage local communities in community safety activities. The practical messages and points contained in the report are drawn from a pilot project which ran in nine separate Community Safety Groups in an East Midlands city.

Some of the key points that practitioners are advised to consider when setting up community engagement mechanisms include:

- Clearly defining what is meant by 'community engagement' and ensuring that this is understood by all stakeholders at the outset.
- Using a combination of inward-facing and outward-facing methods to obtain a broader picture of the issues that need addressing.
- Defining clear accountability structures for community engagement.
- Creating capacity for communities to get involved so that they are able to hold service providers to account.

The report can be found in full at **http://www.homeoffice.gov.uk/rds/dprpubs1.html**

Consultation on Guidance on the Use of the Power of Members of Staff to Search School Pupils for Weapons

The Department for Education and Skills (DfES) has published a draft guidance document which is aimed at all maintained schools, including pupil referral units, when they consider whether or not to screen pupils or use the search power which is provided by Section 45 of the Violent Crime Reduction Act 2006 (yet to be introduced).

It contains advice on the law and good practice advice on how to search pupils on suspicion and without consent and also carries information and advice on the power to undertake no-contact or low-contact screening of pupils with electronic arch or wand. It should also assist other schools, including independent schools.

The guidance contains several references to the police, advising:

- Before conducting a without-consent search if the school decides it is not safe, they should call the police. In particular, if members of staff believe that a pupil is carrying a weapon and is likely to resist a search physically, they should call the police rather than tackle him physically.
- School staff can search a pupil outside the school premises where the pupil is under their lawful control or charge, e.g. during an offsite educational visit. But as mentioned in earlier guidance (School Security: Dealing with Troublemakers), it recommends that on school visits, staff should normally rely on calling the police rather than seek to have a member of staff authorised to search on every visit where suspicion might arise.
- When staff decide to call the police, they should implement the procedures in the school's policy on how to deal with a suspected pupil while the police are not present.
- Whether or not schools use the new power to search without consent, school and local police should mutually establish and develop strong partnerships, formally through Safer School Partnerships or otherwise. This could result in better and more cost-effective search arrangements and security procedures. A Safer School Partnership is an effective mechanism for ensuring structured joint working between schools, police and other local agencies. It provides a safer and more secure school environment by engaging with young people, challenging unacceptable behaviour, and helping young people develop a respect for themselves and their community.
- If reasonable force is not enough to remove the outer clothing and staff still suspect a weapon, they should call the police. Resisting a police search can constitute an assault on a constable in the execution of his duty under Section 89 of the Police Act 1996.
- School staff should take account of DfES guidance on use of restrictive physical interventions for pupils with severe behavioural difficulties (2003) and for pupils who display extreme behaviour in association with learning disability and/ or autistic spectrum disorders (2002). Schools should not conduct a search themselves, but should call the police, when they expect a pupil may violently resist being searched.
- If a weapon is seized it must be delivered to the police as soon as is reasonably practicable. It is lawful for staff to keep a seized weapon (we recommend securing it in a locked cupboard) until delivering it to the police. The head teacher should also arrange for a written note to the police recording delivery of a seized item.

- Anything which the searcher suspects is evidence in relation to an offence and seizes must, as with weapons, be delivered to the police.
- The Safer School Partnerships (SSPs) Mainstreaming Guidance illustrates the different ways schools and police forces should consider SSPs as part of their response to a range of challenges in their schools and local areas, which can be adapted to suit local need.

The guidance has been put out for consultation, prior to the DfES publishing the final draft. The consultation paper does comment that Section 45 of the Violent Crime Reduction Act 2006 is to be brought into force on 31 May 2007.

Section 46 of the Violent Crime Reduction Act 2006 provides similar provisions for a member of staff to search further education students for weapons.

Closing Date for the consultation is Tuesday 15 May 2007. It can be found in full at **http://www.dfes.gov.uk/consultations/conDetails.cfm?consultationId=1443**

Consultation on Safeguarding Children from Abuse Linked to a Belief in Spirit Possession

The Government is committed to publishing non-statutory guidance on child abuse linked to a belief in spirit possession. As a result The Department for Education and Skills (DfES) has published a draft guidance document on this issue for all agencies for consultation. This draft guidance is supplementary to the statutory guidance set out in 'Working Together to Safeguard Children' (2006).

It sets out:

- Key points.
- Definitions and Incidence.
- Why Children are abused or neglected in this way.
- How to identify child abuse or neglect linked to spirit possession.
- What to do if you suspect such abuse or neglect.
- Emerging best practice of agencies and institutions.

The closing date for the consultation is Friday 9 March 2007. The paper can be found at **http://www.dfes.gov.uk/consultations/conDetails.cfm?consultationId=1453**

Home Office - Three point plan to tackle gun crime

The Home Office has set out a three point plan to help tackle gun crime following a gun crime summit involving the police and community leaders at Downing Street.

New measures will see tough punishments for those who use other people to look after weapons, improved technology for connecting incidences with the weapons used in them, and increased funding for community groups that work to improve local conditions for young people.

The Government will now focus on three main areas for action:

- Policing - ensuring the police are equipped to tackle gun crime.
- Powers - giving the police and courts the powers to deal with offenders.
- Prevention - empowering communities to take action themselves to prevent gun crime and gang culture and offering support to parents to challenge their children's behaviour

Consultation Paper on Causing Death by Driving Offences

The Sentencing Advisory Panel has issued a consultation paper on sentencing for a range of offences of death by driving. These offences are:

- Causing death by dangerous driving, contrary to Section 1 of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988. Carries maximum 14 years' imprisonment.
- Causing death by careless driving when under the influence of drink or drugs, contrary to Section 3A(1)(a)of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988. Carries maximum 14 years' imprisonment.
- Causing death by careless, or inconsiderate, driving, contrary to Section 2B of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988. Carries maximum 5 years' imprisonment.
- Causing death by driving: unlicensed, disqualified or uninsured drivers, contrary to Section 3ZB of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988. Carries maximum 2 years' imprisonment.

These two latter offences are provided by Sections 20 and 21 of the Road Safety Act 2006; they have not yet been brought into force, but are expected to be so in 2007.

In particular, the consultation is seeking views on distinguishing between the offences in terms of the culpability of the offender and the difficult balancing exercise that needs to be carried out when sentencing an offender who had no intention to cause harm but whose actions have resulted in death.

Following the consultation, the Panel hopes to be able to produce advice that will enable the Sentencing Guidelines Council to publish guidelines to assist the courts when sentencing for these offences. It is intended that this will be completed before these offences are brought into force and start coming before courts for sentencing.

Responses are requested by 19 April 2007. The consultation paper can be found at **http://www.sentencing-guidelines.gov.uk/**

Research Report on Restorative Justice

The Smith Institute, an independent think tank, has published a report which examines the evidence on restorative justice (RJ) from Britain and around the world. The report is based on a series of seminars looking at case studies of the use of RJ techniques among criminals and their victims, in schools, and within communities and neighbourhoods. It employed a broad definition of RJ, including victim-offender mediation, indirect communication through third parties, and restitution or reparation payments ordered by courts or referral panels.

The most important conclusion in the report is that RJ works differently on different kinds of people. It also found that RJ:

- Can work very well as a general policy, if a growing body of evidence on 'what works for whom' can become the basis for specifying when and when not to use it.
- In general, seems to reduce crime more effectively with more, rather than less, serious crimes.

- Works better with crimes involving personal victims than for crimes without them.
- Works with violent crimes more consistently than with property crimes.

The report comments that its findings do tend to run counter to conventional wisdom, and could become the basis for substantial inroads in demarcating when it is 'in the public interest' to seek RJ rather than criminal justice.

It suggests that RJ could be a rolled-out nationally, especially if it is done on a continue-to-learn-as-you-go basis. It also suggests the setting up of a 'Restorative Justice Board' (RJB), modelled on the Youth Justice Board but on a smaller scale, which could be involved in things like working on new legislation, monitoring RJ practices, introducing new RJ strategies.

The report can be found in full at **http://www.smith-institute.org.uk/publications.htm**

Prolific and other Priority Offender Programme

The Research Development and Statistics Directorate of the Home Office have published two reports on the Prolific and other Priority Offender Programme (PPO).

The first, Home Office Online Report 08/07 'An impact assessment of the Prolific and other Priority Offender programme' addresses the adult strands Catch and Convict and Rehabilitate and Resettle of the PPO programme.

The analysis method used was judged to have been less successful than originally hoped. This ultimately limited the conclusions that could be drawn about the specific impact of the PPO initiative on levels of offending, as distinct from other interventions and factors that may also have influenced offending levels amongst PPOs. However, based on the results from the qualitative interviews with PPO staff and offenders the report findings do support a positive assessment of the PPO programme.

The second report, Home Office Online Report 09/07 'The National PPO evaluation – research to inform and guide practice' primarily focuses on the implementation of the PPO programme, and also provides a number of practical recommendations aimed at improving practice.

Recommendations for practitioners include:

- All appropriate agencies should be involved and be encouraged to review the procedures for selection and deselection of PPOs to ensure that they are targeting the most problematic offenders in a transparent, defensible and robust manner.
- Co-location of key staff was seen by practitioners to add considerably to working relations and managing PPOs. Schemes should be encouraged to explore fully the possibility of co-locating key PPO staff and where possible to implement this.
- Schemes should identify all costs associated in delivering the scheme and seek out opportunities for additional funding, so as to enable the cost effective delivery of the programme.

Both reports can be found in full at **http://www.homeoffice.gov.uk/rds/whatsnew1.html**

HOC 4/2007
The Police and Justice Act 2006

This Home Office Circular provides details of changes that will take place on commencement of Section 4 of the Police and Justice Act 2006 on 31 March 2007. This Section will remove from police authorities certain best value requirements, i.e. to conduct best value reviews and the requirement for auditors to audit Best Value Performance Plans.

Section 4 provides that police authorities in England and Wales shall not be best value authorities for the purposes of Sections 5, 6, 7 to 9, 13(5) and 15(2)(a) and (b) of the Local Government Act 1999.

However, Sections 3 and 4 of the Local Government Act 1999 (LGA) will continue to apply to police authorities. Consequently, under Section 3 of the LGA, a police authority must continue to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

Under Section 4 of the LGA, the Secretary of State may through an Order set out Statutory Performance Indicators against which a best value authority's performance can be measured. Those indicators are set out in the Police Authorities (Best Value) Performance Indicators Order 2005 (S.I. 2005/470), as that instrument is amended by S.I. 2006/620, and remain unchanged for 2007/08.

Best Value Performance Plans

For the financial years ending 31 March 2008 and 31 March 2009, the Secretary of State will, by Order, require police authorities to publish an abridged Best Value Performance Plan. The abridged plan should set out both:

- The performance indicators set in relation to the police authority's functions by the Home Secretary ("SPIs") under Section 4(1)(a) of the Local Government Act 1999; and
- A summary of its assessment of its performance in the previous financial year against those indicators.

The abridged Best Value Performance Plan for 2007/08 will assess the authority's performance in 2006/07 and should be published by 30 June 2007.

The abridged Best Value Performance Plan for 2008/09 will assess the authority's performance in 2007/08 and should be published by 30 June 2008.

From 31 March 2007, police authorities will only be required to include in their Best Value Performance Plans the applicable performance indicators and an assessment of their performance against those indicators for the previous financial year. In particular, they will no longer be required to include the following in their Best Value Performance Plans:

- Comparisons of performance against the authority's performance in previous years and with other best value authorities.
- Details of the authority's best value review timetable and summary of reviews undertaken.
- A summary of any reviews completed in the previous year and how local policing services will be improved by implementation of the outcomes.

- An explanation of the authority's plans for improvement and their expected impact; how performance will be measured and key milestones.
- Any action taken, or planned to be taken, to address the findings from audit and inspection reports, or following directions by the Home Secretary, and the outcome of reviews.
- A summary of any key or important recommendations made by Her Majesty's Inspectorate of Constabulary and how the authority has responded.

Current guidance requires police authorities to publish their Best Value Performance Plan as part of their local policing plan, under Section 8 of the Police Act 1996. That local policing plan also needs to be published by 30 June of the financial year to which it relates. The same will apply to the abridged Best Value Performance Plan, which should be published as part of the local policing plan for the same financial year.

A local policing plan must also be issued before the beginning of each financial year. Current guidance requires projected out-turn data or 9/10 month data under the Best Value Performance Plan to be issued at the same time and as part of the local policing plan. The same will apply to the data relating to the police authority's assessment of its performance which is to be included in the abridged Best Value Performance Plan. That data should be issued as part of the local policing plan.

In effect, the local policing plan (not the Best Value Performance Plan element) must include the following:

- Any strategic policing priorities set by the Home Secretary under Section 37 of the Police Act 1996 (introduced by the Police and Justice Act 2006).
- Any local objectives set by the police authority under Section 7 of the Police Act 1996.
- Any performance targets set by the police authority in respect of strategic priorities, or local objectives.
- Any action proposed for the purposes of complying with the applicable best value provisions in the Local Government Act 1999.
- The financial resources expected to be available and the proposed allocation of those resources.
- A brief statement on procurement to confirm that they are abiding by guidance relating to staffing matters.

Other planning requirements

Under the current requirements, police authorities submitted three year strategic plans for 2005/08 (under Section 6A of the Police Act 1996). Any significant modifications made to the 2005/08 plan should be submitted to the Home Secretary by 28 February 2007.

The Police and Justice Act 2006, Schedule 2, paragraph 9 inserts a new Section 6ZB and 6ZC into the Police Act 1996, relating to plans and reports by police authorities, and provides for the Home Secretary to make secondary legislation setting out the requirements for each. It is intended that from April 2008 different arrangements will apply, once these provisions are commenced. Under the new arrangements, police authorities will be required to publish a three year rolling plan, instead of a three year strategic plan and a local policing plan.

Police authorities are still required to produce local policing summaries under Section 8A of the Police Act 1996 (introduced by Section 157 of the Serious Organised Crime and Police Act 2005).

Continuing role of Audit Commission

The Audit Commission's existing powers under the Audit Commission Act 1998, to audit police authority accounts and satisfy itself that an authority has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources, remain unaffected.

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

Police Pay Review

Sir Clive Booth has completed the first part of his review of police officer pay arrangements and published a report, entitled 'Fair Pay for Police Officers'.

The terms of reference for Part 1, were - To consider the options for replacing the current arrangements for determining changes to police officer pay for 2007 and make recommendations on this.

The report contains the following recommendations:

1. Government policy needs to be formally communicated to, and understood by the Police Negotiating Board (PNB) from the start.
2. Indexation should be retained for 2007 but using the public sector facing index set out in Recommendations 3 to 8. The flexible application of the new index and the link to resumed work on modernisation should be part of the package: see recommendations 11 and 12. Subject to Part 2 of this review, and the progress made in the 2007 negotiations, the index could be rolled forward one more year, into 2008.
3. The new index should cover the following ten pay groups: armed forces, doctors and dentists, nurses and other health professionals, prison service (England and Wales), school teachers (England and Wales), all three principal groups covered by the Senior Salaries Review Body (i.e. judges, senior military and senior civil servants), civil servants employed in the DWP, MoD, Home Office and HM Revenue and Customs.
4. The new index should use, for each pay group, the percentage increase over one year in the basic pay settlement figure as defined in Appendix 2.
5. For groups covered by Review Bodies, the basic pay settlement figure should be calculated from the Review Body award, before any staging or other modification. If staging or modification is applied by government to the police officer settlement it should happen at the end of the process.
6. The index should be calculated from the unweighted median of the percentage annual increase in the basic pay settlement figure for each of the ten pay groups.
7. The relevant settlement figure for each group included in the index should be the most recent announced annual settlement as at 31 May 2007.
8. The task of calculating the index, though simple, should be undertaken by an independent expert organisation.
9. The negotiations in 2007 should not be limited to discussion of indexation in the sense of producing a uniform percentage increase for all ranks. There should be a more flexible approach. The index should be regarded as producing a "pot" of money that can be applied differentially according to the needs of the service, including modernisation.
10. The three year agreement on ACPO ranks which expired in 2006 should be rolled forward for the period covered by recommendation 2, pending part two of this review, and any uplift will come from the "pot" specified in recommendation 9.

11. It should be a matter of routine for both Sides regularly to examine information on recruitment and retention and motivation and morale and other relevant factors and to set benchmarks against which these can be monitored. Armed with this information, both Sides can discuss what corrective action may be needed to maintain the benchmark positions. A start should be made with gathering this information, assessing it and setting broad benchmarks in the 2007 negotiations, but developing a refined system will take more time.

12. It is important that the two Sides should discuss between now and the end of 2007 new approaches to wider reward and recognition in the context of wider police work force developments. The Staff Side have expressed a willingness to enter into such discussions on a number of occasions. The parties should agree a timetable for undertaking and concluding the discussion, with a commitment on both Sides to meeting key timetable milestones.

13. The National Policing Improvement Agency, which is led by the police service, offers a new source of expertise which must be tapped as soon as possible.

14. Those who speak for the Official Side must have a fast response time and a clear negotiating brief.

Sir Clive Booth is to shortly undertake the second part of the review which will review the effectiveness of the negotiating machinery for the police and make recommendations for how police pay and other conditions of service should be determined. It will include consideration of the option of a pay review body and the impact of any proposal for determining police officer pay on the negotiation machinery. This is expected to be completed by the autumn.

The full report is available via
http://www.policeoracle.com/news/Police_Pay_Report.doc

HMIC and HMCPSI Report on the Review of the Investigation and Prosecution of Rape Offences

Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) have published a detailed report, 'Without consent', on their review of the progress made by the police and the Crown Prosecution Service (CPS) against the 18 recommendations and three suggestions made in its 2002 joint thematic inspection report.

The new report finds that the police and the CPS have made considerable efforts, since the inspection in 2002, to develop and improve their responses to the investigation and prosecution of rape offences, and inspectors were impressed by the achievements of many dedicated and committed individuals. The review identified a considerable amount of good practice, but also found that some significant challenges still remain. To address these challenges, the report sets out a further 12 recommendations:

Recommendation 1 - That police forces specifically include auditing of rape 'no crimes' within routine auditing processes, to ensure that all 'no crimes' are sustainable and compliant with the Home Office Counting Rules (HOCR).

Recommendation 2 - That police forces:

- Review the Specially Trained Officer (STO) call-out lists and rotas to ensure that they are up to date, are meeting need and are regularly maintained.

- Formally monitor the deployment of STOs to ensure that workloads are equitable and that all STOs have the opportunity to engage in the work and maintain their skills.
- Review STO supervisory structures to ensure that line-management responsibility for STOs following deployment and during investigations is clearly defined.

Recommendation 3 - That police forces issue guidance to first response officers on the action to be taken when attending a report of a rape, including taking an initial account from a victim, in line with the ACPO Guidance on Investigating Serious Sexual Offences.

Recommendation 4 - That ACPO, in consultation with the CPS, revisits the procedures for taking a victim's statement in rape cases, taking into account the evaluation of pilot schemes for the relevant special measures and duties of disclosure of unused material.

Recommendation 5 - That police forces ensure that review processes are established for the investigation of rape and that the quality of reviews is monitored.

Recommendation 6 - That where expert opinion is to be sought from a forensic physician (FP):

- Police forces ensure that all prosecution evidence is sent to the FP as soon as is reasonably practicable.
- The CPS ensures that the FP is always included in the conference with the prosecutor, counsel and the officer in the case, unless there are particular reasons for not doing so; and that the FP is always called as a live witness in a trial, unless there are considered reasons for not doing so.

Recommendation 7 - That the CPS should:

- Set a standard for the role of rape specialist lawyer and deliver appropriate training to achieve this.
- Ensure that specialist accreditation is the subject of continuous review.
- Enhance the role of Area rape co-ordinator by defining the level of experience and competences required, and by allocating specific time to the role.
- Empower rape co-ordinators to sample rape files systematically to: check for the quality of decision making and the implementation of the specific recommendations of the 2002 report; identify any learning points; and disseminate results throughout the Area, in particular to unit heads and Chief Crown Prosecutors, and share relevant issues with the police.

Recommendation 8 - That police forces and the CPS ensure that rape cases receive full and early consultation between the Investigating Officer (IO) and the rape specialist prosecutor.

Recommendation 9 - That Chief Crown Prosecutors ensure that one specialist prosecutor is involved in, and accountable for, a rape prosecution from beginning to end. Consultation with a second specialist should be undertaken if no further action is to be advised or a prosecution is to be dropped, and the consultation should be recorded and the second specialist identified.

Recommendation 10 - That Chief Crown Prosecutors ensure that a conference with trial counsel and the officer in the case takes place in every case involving an allegation of rape. This is essential where consideration is being given at a late stage to stop the case, or to accept pleas to alternative charges, in order to analyse the evidence and explore ways of overcoming any difficulties.

Recommendation 11 - That the CPS produces and circulates a rape checklist to address all relevant issues at the advice stage.

Recommendation 12 - That Chief Crown Prosecutors ensure that there is continuity of counsel, as well as of specialist prosecutor, throughout the case, and that the caseworker in the case should attend court throughout the trial.

Areas identified by the review that require improvement include:

POLICE CRIME RECORDING

- Variations in interpretation of the HOCR still exist, skewing recorded crime figures and undermining the ability to gain an accurate understanding of attrition.
- Inaccuracies in 'no criming' levels under the 'verifiable information that no crime was committed' criterion remain unacceptably high.
- There is an over-estimation of the scale of false allegations among practitioners and subjective judgements are still being made about victim credibility.
- Inaccurate 'no criming' is resulting in loss of intelligence about offenders.
- There remains a need to revisit the criteria for the classification of 'detected' and 'undetected' offences, given the high proportion of cases where the suspect is known but there is insufficient evidence to proceed with a charge or prosecution.

POLICE STRUCTURES

- There remain gaps in relation to training for non-specialist officers and supervisors and refresher training for STOs, and nationally accredited training has not yet been delivered.
- STO rotas and deployment are not well managed and supervision of STOs during investigations is often ad hoc.
- Understanding of the STO role is not widely shared at supervisory level and conflicting demands can place STOs under unreasonable pressure.
- There is a need to ensure that line-management responsibility for STOs during investigations is clearly defined.

FIRST RESPONSE

- First response officers are often unaware of how to approach taking an initial account from a victim and this is constraining effectiveness.
- Awareness of ACPO guidance was found to be limited.
- There is inconsistent management, availability and use of Early Evidence Kits (EEKs).

AN EFFECTIVE INVESTIGATION

- Strategies for interviews with victims are not always well developed, resulting in the failure to deal with potential evidential weaknesses at an early stage.
- Greater consideration needs to be given to the timing of interviews with victims to ensure that victims' needs and the needs of the investigation are properly balanced.
- Video recording of interviews with victims has developed in an unstructured way and the procedures for taking a victim's statement in rape cases requires to be revisited as a matter of urgency.

- The arrest and interview of suspects are not always effectively planned, particularly in relation to exploring and challenging 'consent' defences.
- Awareness of risk identification is not always being translated into effective practice on the ground.
- The forensic medical examination of suspects needs to be considered at an earlier stage in the investigation.
- The availability of crime scene investigators (CSIs) needs to be examined locally to ensure that it matches need.
- Although levels of submissions to the Serious Crime Analysis Section (SCAS) have improved, this varies from force to force and timeliness remains an issue.
- The CPS should be included in forensic strategies.
- There is a need for improved understanding of the extent to which alcohol consumption is influencing decision making and the outcome of investigations.
- Structured supervision and review of investigations is inconsistent and processes are not always being followed.

FORENSIC MEDICAL EXAMINATIONS

- There is little consistency in the way in which FPs are employed, resulting in significant variations in standard and level of service.
- There is concern about the level of expertise of some FPs; training is inconsistent and performance monitoring is a gap.
- Lack of availability of FPs is resulting in delays in medical examinations and, potentially, disengagement and loss of confidence on the part of victims.
- Outsourcing of FP services is not being effectively monitored, resulting in new difficulties not being identified and addressed.
- The quality of medical examination facilities remains variable, despite review.
- Medical evidence is an important factor in the prosecution of rape offences but its evidential worth is not always properly understood by prosecutors.
- There is a lack of engagement by health services – it is critical that this is remedied if improvements are to be made.

PRE-CHARGE DECISION MAKING

- Awareness of the DPP's Guidance on Charging among police officers needs to be improved.
- There is a need to ensure that both police and prosecutors undertake early liaison and a team approach to case building.
- Unnecessary delays on the part of the police in submitting files to the CPS and on the part of the CPS in providing advice are still occurring.

REVIEW AND DECISION MAKING

- CPS policy in relation to the provision of advice by a rape specialist is not being followed consistently.
- There is a need to ensure that one specialist prosecutor is involved in, and accountable for, a rape prosecution from beginning to end.

- More effort needs to be made to ensure that counsel provides a written report in all rape cases resulting in an acquittal; there may be a need for the CPS to consider an additional payment to counsel and its inclusion in the graduated fee scheme.
- The quality of recording of review endorsements of relevant evidential factors at each review on Compass CMS is poor.
- Proactivity in case building by prosecutors is variable, resulting in decisions to stop work in some cases being taken prematurely.
- There is a need for prosecutors to be more proactive in identifying and considering hearsay evidence at each stage, including pre-charge advice.
- There is a need for police and prosecutors to look beyond previous convictions when considering 'bad character' evidence.
- The use of debriefs following the conclusion of a trial is limited, resulting in the loss of opportunities for police and prosecutors to learn from experience in both successful and unsuccessful cases.

CASE PREPARATION

- Compliance with the prosecution's duties under the Criminal Procedure and Investigations Act 1996 needs to be improved in relation to disclosure, and the timeliness of third party disclosure.
- Compliance by all parties to the 2006 Protocol for the management of unused material in the Crown Court, issued by the Court of Appeal, needs to be sought.
- Prosecutors need to watch victims' interviews, even where they have been superseded by a written statement, to ensure that they are properly equipped to apply the evidential test.
- The large majority of applications made in relation to a victim's previous sexual history under Section 41 of the Youth Justice and Criminal Evidence Act 1999 take place at trial and are not made in writing.
- Where disclosure is undertaken by IOs, as opposed to dedicated Disclosure Officers, there is a need to ensure that they are adequately trained.
- There is a need to ensure that prosecuting counsel is regarded as part of the prosecution team and is fully instructed.

VICTIMS AND WITNESSES

- There remains some lack of clarity as to who is responsible for contacting victims at each stage of the criminal justice process and what the victim should be told, resulting in either duplication of or gaps in information provision.
- Compliance with notifications under the direct communication with victims scheme requires significant improvement.
- The timing and method of taking the victim personal statement are variable.
- Early special measures meetings between the police and the CPS are rarely taking place in practice, resulting in applications being made on the basis of the initial assessment of victims' needs carried out by the police.
- Pre-court familiarisation visits for victims need to be undertaken systematically and, where feasible, to inform decisions on any special measures to be sought.
- There are currently no arrangements in place for monitoring diversity and vulnerability issues locally to ensure that relevant services are available and that gaps in services are identified.

SAFEGUARDING CHILDREN

- Video interviews of children are not always watched by prosecutors.
- There can be delays in obtaining transcripts of video interviews and this has an adverse impact on case management.
- There is a need for guidance to assist prosecutors in selecting the most appropriate offence in cases involving children under Sections 1 and 9 of the Sexual Offences Act 2003.

PARTNERSHIP WORKING

- Within the context of rape, partnership working at a strategic level was often found to be disjointed and needs to be taken forward on a more structured and formalised footing.
- There were generally no forums where all agencies could come together, and partnership working was found to be underdeveloped when compared with issues such as domestic violence and safeguarding children.
- Lack of co-ordination across agencies was found to be resulting in some victims not receiving full access to all available services and lost opportunities for feedback.

The document can be found in full at **http://inspectorates.homeoffice.gov.uk/hmic/inspect_reports1/thematic-inspections/wc-thematic/**

Police Authority Capital Grant 2006-07

On 19 February, the Minister for Policing, Security and Community Safety, Tony McNulty, made a ministerial statement that a further £25 million of capital, originally earmarked for the restructuring of police forces, has been made available for distribution to police authorities. The total amount of capital grant allocated to police authorities in 2006-07 will be £220 million. This compares to £210 million in 2005-06, an increase of 4.8%.

The full ministerial statement, including details of the additional amounts to be allocated to each police force, can be found at **http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070219/wmstext/70219m0001.htm#0702198000009**

Recall to Duty

The recent case of Lavelle v Chief Constable of Northumbria, which was heard at Newcastle County Court, has raised a number of issues that are likely to impact on police forces in respect of overtime claims. Details of the case have been circulated by the Police Federation on JBB Circular 06/2007.

The claimant Lavelle, a police officer who was on an on call rota for POLSA calls, was supported in his action by the Police Federation. The claim was that receiving such a call at home amounted to a recall to duty and would entitle the officer to the minimum payment of four hours and which should not be subject to the half hour disregard.

The claim was successful and the JBB Circular sets out the relevant parts of the decision. These are:

- The phrase 'recalled to duty' can include occasions when an officer receives telephone calls at home in his capacity as a Police Search Adviser, but I do consider that the approach should be fact specific.

- In the first place it is necessary to see whether on a particular occasion the Claimant was doing something he was required to perform. If he was, it matters not that he does not receive a specific instruction, "you are recalled to duty". He is being recalled by the fact of the call upon him at a time when it is his duty to respond. For that reason, I would distinguish those occasions when the Claimant was not actually rostered as on-call. On those occasions, he could, if approached for help, do as he did on one occasion and refer the enquiry to someone who was. If on those occasions he took the call, he was strictly, it seems to me, a volunteer doing what he did as a matter of goodwill and no doubt because it would reflect well upon him that he did it.
- Second, I do not think that there would be a recall to duty if the Claimant did not engage in some way with the call in a way that amounted to a performance of his duty as a Police Search Adviser. Even on occasions when he was rostered, if the result of answering the call was simply to deflect it in some way, because there had been a mistake in calling upon him or the call was about something which was outwith his particular expertise, or for some other similar reason, it would not seem to me he was recalled to his duty. But if he engaged with the enquiry and dealt with it within the scope of his duty a Police Search Adviser, it seems to me that it falls within the Regulations as a recall.

Draft Guidance for Police Use of Body Worn Video

The Home Office has published a draft guidance document on police use of body worn video (BWV), which is intended to provide police forces and Basic Command Units (BCUs) with the necessary information to consider the impact of BWV on the policing efforts within their local area and, if necessary, to move forward with policing activity with this equipment.

It has been complied in conjunction with an extended use pilot programme organised by Plymouth BCU of Devon and Cornwall Constabulary, which commenced in September 2006 and is due to run until the end of March 2007. On completion of the pilot programme, an independent evaluation of the benefits and drawbacks derived throughout the 6 months of the trial will be compiled and published, together with a final guidance document including examples of effective use and feedback regarding the potential benefits of using this equipment. An interim report covering the trial from commencement to the end of December 2006 has been published (see following article).

The draft guidance document also contains extracts from the Association of Chief Police Officers (ACPO) and Home Office (2002) Digital Imaging Procedure1 (DIP) and the forthcoming ACPO Practice Advice on Police Use of Digital Images (target completion date for this piece of work is August 2007). The guidance document advises that it must be read in conjunction with these two ACPO documents.

Comments or information with regards to the draft guidance document or the pilot project, and in addition any examples of effective use or difficulties encountered by other police force areas, should be forwarded to Chief Inspector Martin Goodall at the Police Standards Unit by email **martin.goodall5@homeoffice.gsi.gov.uk 1**

The document can be found in full at **http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/Guidance_for_Police_Body_Cam.pdf?view=Standard&pubID=441602**

Plymouth Head Camera Project Interim Report

Process Evolution Limited, the company commissioned to make an independent review of the Plymouth Head Camera Project, has published an interim report on the project. This report suggests that the primary objective of the project of proving the concept of this technology has been achieved. The other main interim finding is that the use of head cameras shows a reduction in reported crime levels and an increase in the number of offenders brought to justice, specifically:

- Violent crime has reduced by 8% in the pilot sectors, compared with a 1% reduction across other sectors. Within this reduction, wounding has reduced considerably, by 18% in pilot sectors compared to no change across other sectors.
- Increase of 20% in converting a violent incident into a crime.
- Increase of 85% in the number of violent crimes resulting in an arrest.
- Increase of 40% in the number of violent crimes detected.

Other interim findings include:

- The head camera is a useful tool in reducing complaints against police.
- The process for handling the evidence appears robust, with a secure audit trail of evidence; this process could be streamlined and is under review by the Project Team.

A comprehensive evaluation of the benefits and drawbacks derived throughout the 6 months of the trial will be compiled by Process Evolution Limited and published by the Home Office on completion of the project.

The interim report can be found in full at **http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/Plymouth_Head_Camera_Project.pdf?view=Standard&pubID=441605**

Report on Assessing the Threat of Terrorist use of CBRN Weapons in the UK

Chatham House (The Royal Institute of International Affairs), the independent body which conducts research on political, business, security and other key issues in the international arena, has published a report on the possible use of weapons of mass destruction in a terrorist attack on Britain.

It provides a detailed overview of what CBRN weapons are; what terrorists could do with CBRN, and why; and how serious the overall danger is.

It suggests that, to counter the CBRN danger, each category will require a tailored approach, and warns that anything other than a comprehensive approach to the CBRN problem could be dangerously self-delusory. It suggests that a surge of activity in one area, whilst generating a sense of security on the part of the public and the political elite, may well have precisely the opposite of what was intended, as adversaries could be prompted to exploit other means and select other targets. It advocates that there is a strong case for retaining the initiative in that part of the CBRN system which is largely beyond the reach of terrorists, by ensuring a proportionate, non-panicked public response to an attack. It concludes that the CBRN threat should be understood as well and as widely as possible.

The report can be found in full at
http://www.chathamhouse.org.uk/pdf/research/niis/CBRN0207.pdf

Case Law

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

Electronically Stored Data is Capable of being an 'Article' under Section 57 of the Terrorism Act 2000

R V M & 4 ORS (2007)

CA (Crim Div) (Hooper LJ, David Clarke J, Dame Heather Steel) 7/2/2007

Criminal Law - Criminal Evidence - Legislation

Cds: Data Storage: Documents: Legislative Intention: Records: Statutory Interpretation: Terrorism: Meaning Of "Article" In S.57 Terrorism Act 2000: Electronically Stored Data: S.57 Terrorism Act 2000: S.58 Terrorism Act 2000

Compact discs or computer hard drives holding electronic data were capable of being articles within the meaning of the Terrorism Act 2000 s.57 but that section could not be used to sidestep s.58 of the Act as Parliament had clearly laid down different regimes for documents and records under s.58 and articles under s.57.

The appellants (X) appealed against a ruling that electronically stored data, such as that found on computer hard drives and compact discs, was capable of being an article under the Terrorism Act 2000 s.57.

HELD

(1) The notion that a compact disc was not an article because it could only be read with a computer was farfetched. Therefore, compact discs or computer hard drives holding electronic data were capable of being articles within the meaning of s.57 of the Act.

(2) It was clear that Parliament had laid down a different regime for documents and records under s.58 and articles under s.57. Parliament often created overlapping offences but it could not have intended that the regime for documents and records in s.58 could be sidestepped by using s.57 and describing them as articles. Section 58 would otherwise have been redundant and it was not. Accordingly the appeal succeeded.

APPEAL ALLOWED

Confessions of Co-accused Not Admissible as Evidence under PACE Where Co-accused Had Pleaded Guilty

R v DAVID BARRY FINCH (2007)

CA (Crim Div) (Hughes LJ, Rafferty J, Sir Charles Mantell) 15/1/2007

Criminal Evidence

Accomplices: Admissibility: Confessions: Hearsay Evidence: Police Interviews: Admissibility Of Co-Accused's Police Interview: S.76a Police And Criminal Evidence Act 1984: S.114(1)(D) Criminal Justice Act 2003

Police interviews of a co-accused were not admissible in evidence under the Police and Criminal Evidence Act 1984 s.76A where the co-accused had pleaded guilty and was no longer a person charged or accused in the trial of the appellant. The judge had been correct not to adduce them as hearsay under the Criminal Justice Act 2003 s.114(1)(d) as the witness was available to give evidence if compelled to do so.

The appellant (F) appealed against his conviction for possession of a prohibited firearm and ammunition on the grounds that police interviews of a co-accused were admissible in evidence under the Police and Criminal Evidence Act 1984 s.76A and the Criminal Justice Act 2003 s.114(1)(d). F had been the passenger in a car driven by a friend that had been stopped by the police. Under the front passenger seat was a sliding drawer that contained a 9mm self-loading pistol with a loaded magazine in place wrapped in a plastic bag. The driver's fingerprints and one of F's were found on the bag. F had claimed that his fingerprint may have got on the bag as they had had food and drinks in the footwell and he had eaten some and passed some to the driver. However, the policeman who found the gun claimed that the drawer was fully closed and no part of the bag was visible. When the driver was interviewed he told the police that F had not known that the gun was in the car. The driver had pleaded guilty. F's case at trial was that he had no idea there was a gun in the car and was simply accompanying his friend on a drive. F sought to adduce evidence of the driver's police interview. However, the judge ruled that the interviews were not admissible under s.76A of the 1984 Act as the driver was not being tried together with F. The driver had been produced at court but had been reluctant to give evidence for fear of affecting his sentence and F's counsel had declined to call him. The judge concluded that it was not in the interests of justice for the interviews to be admitted as hearsay under s.114(1)(d) of the 2003 Act as the driver was available to give evidence if compelled to do so.

HELD

(1) In enacting s.76A of the 1984 Act, Parliament must plainly have known of the well established proposition that a person who had pleaded guilty and who was not on trial before the jury was not a person charged with an offence in the proceedings for the purpose of his status as a witness. Having pleaded guilty the driver was no longer a person charged or accused in the trial of F. Accordingly, s.76A of the 1984 Act did not apply and what the driver said to the police was not admissible under that section.

(2) The decision not to adduce the driver's out of court assertions as hearsay was a conclusion that was within the band of legitimate decisions available to the judge and was not exercised on wrong principles. The driver's refusal to give evidence voluntarily plainly carried the suggestion that he was anxious he would not be believed and his credibility was put severely in question by his reluctance to enter the witness

box. It was not the law that every reluctant witness's evidence could automatically be put before the jury under s.114 of the 2003 Act and accordingly the judge was right on both issues.

APPEAL DISMISSED

Understanding of Language Crucial for a Fair Trial

R v B (2007)

CA (Crim Div) (Hughes LJ, Irwin J, Common Serjeant) 9/2/2007

Criminal Procedure - Criminal Law

Causing Death By Dangerous Driving: Foreign Language: Fresh Evidence: Interpreters: Public Interest: Right To Fair Trial: Unsafe Convictions: Lack Of Understanding

A defendant had not received a fair trial where proceedings were conducted in a language in which he was not fluent and consequently he had not understood critical parts of the proceedings and his answers in police interviews and cross-examination at trial could not be said to be reliable.

The appellant (B) appealed against his conviction for causing death by dangerous driving. B had been driving to work but lost control of his vehicle on a bend on a single carriageway. The vehicle collided with a tree and the front seat passenger died at the scene. B only had a provisional licence, was not insured, the vehicle was not taxed and its MOT test certificate had expired. The Crown put the case against B on the basis that his driving fell below that which was expected of the careful and competent driver and that the vehicle was in such a condition as to be dangerous. The Crown alleged that the vehicle was defective and that B was positively aware of it being so. However, there were difficulties in B's police interviews and subsequently at trial, as B was from East Timor and spoke the local language, Tetum. He was provided with an interpreter (D) but he was only able to provide translation in the official language of the country, Bahasa Indonesian, which B was not particularly fluent in. In the immediate aftermath of B's conviction, D wrote a letter to the trial judge expressing concerns about his role as interpreter but also about B generally. D considered that B's answers during cross-examination might have been based on information learned after the accident. He was also concerned that B lacked understanding of the questions being put to him with the result that he did not do himself justice. D also believed that B's guilt and reactions were affected by cultural issues. B submitted that he had not had a fair trial for the reasons set out by D in his letter to the trial judge and that he had since found a Tetum interpreter who was willing to translate on his behalf. B submitted that there was further evidence in the form of a psychological report, which identified that he functioned at an abnormally low level and that it was likely he suffered from learning difficulties. B argued that his limited intelligence and understanding combined with his answers to questions in a language he was not fluent in made those answers unreliable.

HELD

B's case was a unique and exceptional one during which the trial judge was undoubtedly patient and careful, but the information provided by D demonstrated that despite the best efforts of all concerned, it had not been sufficient to provide B with a fair trial. D's letter to the judge was originally intended to provide mitigation on B's behalf at sentencing, but the judge rightly concluded that the letter gave rise to clear concerns that B's conviction was not safe. The psychological report suggested that B was in the bottom 5 per cent of the population in terms of his intellect. Further, having had the opportunity to consider the relevant material, the Crown was satisfied that B's conviction was not safe as he might not have understood critical parts of the proceedings, in particular questions relating to the condition of the vehicle. Having concluded that B's conviction was unsafe, the court had to consider whether it was in the public interest for there to be a retrial, especially since two years had passed since the date of the accident. Bearing in mind the fact that it was a serious accident in which a person died and the poor condition of the vehicle, it was appropriate for a retrial to be undertaken in the public interest. Although B had lost the opportunity to give a first account of the accident, the Crown had agreed not to rely on his police interviews. Accordingly the conviction was quashed and a retrial ordered.

APPEAL ALLOWED

Breach of an ASBO is a Question of Fact

R v CHRISTOPHER JOHN DOUGHAN (2007)

CA (Crim Div) (May LJ, Forbes J, Judge Findlay Baker QC) 20/2/2007

Criminal Procedure

Antisocial Behaviour Orders: Harassment: Intimidation: Jury Deliberations: Prosecution Case: Prosecution Evidence: Jury Questions: Questions Of Fact

The issue for a jury when considering the breach of an anti-social behaviour order was one of fact. Where an order prohibited an individual from harassing, intimidating, abusing or causing a nuisance to any person, the fact that the case against a defendant had been put on the basis that his behaviour had been directed at a specific complainant was immaterial.

The appellant (D) appealed against a conviction for breach of an anti-social behaviour order. D had been made subject to an ASBO prohibiting him from harassing, intimidating, abusing or causing a nuisance to any person on the London Underground Network. D was observed in an underground station by a police officer (P) who recognised him. P alleged that he heard D scream and swear and went over to investigate the cause. P and D were then approached by the complainant (C), who stated she knew D. C alleged that D had sworn at her, at which point P called for assistance and arrested D for a public order offence. At the police station, D's ASBO was discovered and he was charged with breach. The Crown alleged that D had sworn intentionally and deliberately at C causing her to be frightened and worried. At trial, D asserted that P and C were both lying and lost his protection against the admission of previous offences, following which a previous breach of D's ASBO was admitted. During the trial, the jury passed a note requesting the judge to clarify the position in the situation where there was no doubt that D swore but the majority of the jury was unconvinced that it was directed at C. The judge ruled that the Crown had to prove that the words were said in the way that it claimed and, as a result, that C was caused harassment and intimidation or abused and caused nuisance. D submitted that the

judge erred in directing the jury that it should convict if it was sure that the relevant words had been said by D and that C had felt the relevant emotion, since that introduced a new basis of conviction which had not been addressed by either counsel in the case.

HELD

In order to assess whether a breach of an ASBO had occurred, the courts and jurors alike must consider the specific terms of the order. Consequently, whether an individual had breached an order was a question of fact. It had been accepted by D that the direction that the judge gave was correct in law as the ASBO was set out in terms that prohibited D from harassing or intimidating "anyone" on the London Underground Network. However, it was also accepted that the case against D had proceeded on the basis that not only did the jury have to be sure that D said the words alleged, but that they had to be sure they had been directed at C. It might be possible that an answer to a jury question could leave to a jury a factual version of a case that a defendant had not had the opportunity to meet and consequently render a conviction unsafe but that scenario did not apply to the instant case. The jury simply had to be sure that the material parts of C's evidence were true in that D had sworn and that he had caused C to be harassed, intimidated, abused or caused nuisance. The fact that D's words might not have been directed at C did not impugn her credibility and accordingly D's conviction was safe.

APPEAL DISMISSED

Voluntary Intoxication Not a Defence to Sexual Assault

R v LEE HEARD (2007)

CA (Crim Div) (Hughes LJ, Henriques J, Field J) 12/2/2007

Criminal Law

Basic Intent: Defences: Sexual Assault: Specific Intent: Voluntary Intoxication: Criminal Intent: S.3 Sexual Offences Act 2003

The offence of sexual assault contrary to the Sexual Offences Act 2003 s.3 required the sexual touching to be intentional or deliberate, and voluntary intoxication could not be relied upon to negate the necessary intention.

The appellant (H) appealed against his conviction for sexual assault contrary to the Sexual Offences Act 2003 s.3. Police officers had been called to H's home where he was found drunk, in an emotional state and had cut himself. He requested to be taken to hospital for treatment where he became abusive and began to sing noisily in the waiting area. The police officers took H outside to wait where he would be less of a disturbance to others. Whilst outside, he began to dance suggestively to one of the officers (P) and put his hand on his own groin. H attempted to re-enter the hospital and when discouraged became angry, punching P in the stomach. H then undid his trousers, took his penis in his hand and rubbed it up and down on P's thigh. H was arrested. During interviews H stated that although he could not remember anything that had occurred, he accepted that when he was ill or intoxicated he was prone to being "silly and start stripping". At trial, prior to his summing up, the judge was asked to rule whether or not the offence was one to which voluntary drunkenness could afford a defence in the sense that it might prevent H from having the necessary state of mind. The judge ruled that the offence was one of basic intent as it had to be committed deliberately rather than accidentally in light of the use of "intentionally" in s.3(1)(a) of the Act, and that drunkenness could not be relied on as a defence. He directed the jury that the Crown had to prove that H had touched P deliberately. H submitted that the judge erred in his ruling since the offence was one of specific intent as reckless touching would not suffice, and that the jury ought to have been directed to consider if his voluntary intoxication meant that he did not have the intention to touch P.

HELD

(1) It should not be supposed that every offence could be categorised simply as one of either specific or basic intent as that might conceal the truth that different elements of it might require proof of different states of mind. The instant offence was an example and the different elements of the offence as identified in s.3(a) to (d) did not call for proof of the same state of mind. It was of very limited help to try and label the offence as one particular type of intent because the state of mind that must be proved varied with the issue. However, on the evidence available, H plainly intended to touch P with his penis. That he was drunk could have meant that he was either disinhibited and did something that he would not ordinarily have done when sober, or that he did not remember it afterwards. Neither of those matters would destroy the intentional character of his touching P. A drunken intent was still an intent and H's behaviour, both in committing the offence and his interviews afterwards, made it clear that the touching had been deliberate. The judge had been correct in his direction to the jury on intent.

(2) It was not open to a defendant charged with sexual assault to contend that his voluntary intoxication prevented him from intending to touch, DPP v Majewski (1977) AC 443 considered. Historically the law of England regarded voluntary intoxication as an aggravation rather than a potential excuse and it was unlikely that Parliament had intended to change the law by permitting reliance on voluntary intoxication where it previously had not been permitted. There was no basis for construing the Act as having altered the law.

APPEAL DISMISSED

No Requirement for Prosecution to Adduce in Evidence the Result of the Roadside Breath Test in Figures

STEPHEN JOHN HENRY SMITH v DIRECTOR OF PUBLIC PROSECUTIONS (2007) QBD (Admin) (Pill LJ, Tugendhat J) 30/1/2007

Criminal Evidence - Road Traffic

Breath Tests: Disclosure: Drink Driving Offences: Requirement To Take Into Account Specimens Of Breath: Specimens Of Breath Obtained At Roadside: Roadside Breath Test: S.5(1)(A) Road Traffic Act 1988: S.15(2) Road Traffic Offenders Act 1988: S.7 Road Traffic Act 1988: S.6a Road Traffic Act 1988

The specimens of breath that established whether a defendant had committed an offence under the Road Traffic Act 1988 s.5(1) were those that might be required of a defendant at a police station and did not include specimens obtained at a roadside.

The appellant (S) appealed by way of case stated against a decision to convict him for driving with alcohol concentration above the prescribed limit, contrary to the Road Traffic Act 1988 s.5(1)(a). Following a collision between S's car and another car, S had been required by the police to provide a roadside breath test, which had proved positive. The police did not obtain from the device a breath and alcohol reading in figures. S was subsequently arrested and taken to a police station where he provided two further specimens of breath on another device, both of which were above the prescribed limit. S was convicted on the basis of the test carried out at the station. The question posed for the High Court was whether the judge had been right to hold that the prosecution was not under an obligation to adduce in evidence the result in figures of the roadside breath test. S submitted that the prosecution was obliged to adduce in evidence or disclose to him the reading obtained at the roadside breath test in figures, as it may have supported his case that the device used at the station had not been working satisfactorily and so the figure on which the conviction had been based was unreliable. He argued that the requirement under the Road Traffic Offenders Act 1988 s.15(2) to take a specimen of breath into account included a requirement to take into account a specimen obtained at the roadside. The DPP argued that the specimens that could be taken into account were those specified in s.7 of the Road Traffic Act, which did not include the roadside specimen.

HELD

The requirement to take into account evidence of the proportion of alcohol in a specimen of breath did not impose a requirement on the prosecution to adduce in evidence the result of the roadside breath test in figures. The specimens of breath that established whether a defendant had committed an offence under s.5(1) of the Road Traffic Act were those that might be required of a defendant at the police station under s.7 of the Road Traffic Act. The requirement under s.15(2) of the Road Traffic Offenders Act to take into account a specimen of breath was, in relation to the roadside test, no more than a requirement to ensure that the procedure had been correctly followed. The roadside breath test, as s.6A of the Road Traffic Act provided, was a procedure by which an indication of whether the prescribed limit was likely to be exceeded was obtained, and the specimen had no greater status. Further, the assumption under s.15(2) about the proportion of alcohol in a specimen of breath plainly applied to s.7 specimens and did not relate to roadside breath tests.

APPEAL DISMISSED

Control Order for Terrorism Breached Right to Liberty under ECHR

SECRETARY OF STATE FOR THE HOME DEPARTMENT v E (2007)

[2007] EWHC 233 (Admin)

QBD (Admin) (Beatson J)

Human Rights – Criminal Law

Consultation: Inhuman or Degrading Treatment or Punishment: Legal Certainty: Mental Illness: Non-Derogating Control Orders: Proportionality: Restrictions: Right to Liberty and Security: Right to Respect for Private and Family Life: Terrorism: Extent and Effect of Restrictions Imposed Under Control Order: Requirement Under European Convention on Human Rights 1950 For "Legal Certainty": s.3 Prevention of Terrorism Act 2005: Anti-Terrorism, Crime and Security Act 2001: s.1(3) Prevention of Terrorism Act 2005: s.2(9) Prevention of Terrorism Act 2005: European Convention on Human Rights: Art.5 European Convention on Human Rights: s.8(2) Prevention of Terrorism Act 2005: Art.3 European Convention on Human Rights

The court quashed a non-derogating control order that had been imposed on an individual suspected of being involved in terrorist-related activity, since the restrictions contained in it breached his right to liberty under the European Convention on Human Rights 1950 Art.5.

In a supervisory hearing under the Prevention of Terrorism Act 2005 s.3, the court was required to determine the legality of the applicant secretary of state's decision to make a non-derogating control order in respect of the respondent (E). E, a Tunisian national, had been certified under the Anti-terrorism, Crime and Security Act 2001 and was detained in HMP Belmarsh in 2001. The control order had been made in March 2005. Under the terms of the order, E was required to remain at home between 07.00 and 19.00, to wear an electronic monitoring tag and to report to the monitoring company by telephone every day. Further, there were restrictions on who could visit his home and who he could have pre-arranged meetings with outside his home, as well as restrictions on the type of communications equipment he could use. E was married with four young children. The issues for determination were whether (i) the power conferred by s.1(3) of the 2005 Act, when read together with s.2(9), breached the requirement in the European Convention on Human Rights 1950 for "legal certainty"; (ii) E's right to liberty under Art.5 of the Convention had been breached by the obligations imposed by the order; (iii) the decisions of the secretary of state to make, renew and maintain E's control order were flawed.

HELD

(1) Notwithstanding the extraordinary scope of the powers conferred on the Government by the 2005 Act, its provisions did not create an arbitrary regime and thus did not violate the Convention requirement for legal certainty. Statute law and common law principles were often framed in broad terms: that was not itself a cause of uncertainty, Kuijper v Netherlands (Admissibility) (64848/01) (2005) 41 EHRR SE16 and R (on the application of Gillan) v Commissioner of Police for the Metropolis (2006) UKHL 12 , (2006) 2 AC 307 applied. The provisions of the 2005 Act regarding the circumstances in which a control order could be imposed were accessible and as detailed, specific and unambiguous as the provisions considered in Gillan. The obligations that could be imposed under a control order were not unlimited: the secretary of state had no power to impose conditions that deprived a person of his right to liberty under Art.5, and the power under s.1(3) only conferred power to impose obligations that the secretary of state or court "consider[ed] necessary for purposes connected with preventing or

restricting involvement by that individual in terrorism-related activity". It was not arguable that the legal safeguards against abuse had been removed by the Act. Section 3(11) of the Act provided that the court had to apply the principles applicable on an application for judicial review. The court was required to give intense scrutiny to the necessity for each of the obligations imposed on an individual under a control order.

(2) While the curfew requiring E to remain at home for 12 hours of every day was a major restriction on liberty of movement, the Strasbourg authorities showed that it did not in itself constitute a deprivation of liberty. The obligation for the court, in considering whether Art.5 had been breached, to start by considering the individual's "concrete or actual situation" meant that some, albeit limited, account should be taken of the individual's mental condition, R (on the application of Secretary of State for the Home Department) v Mental Health Review Tribunal (2002) EWCA Civ 1868 applied. The fact that E suffered from depression had contributed to the impact that the restrictions had had on his social network. However, E did not have problems functioning and did not altogether lack a social network: he went to the mosque, took his children to school, went shopping and saw family members who lived nearby. Thus, only very limited weight could be given to his mental condition in the context of Art.5. There was a strong probability that E's control order would be renewed in 2007 and, unless there was a material change of circumstances, for further periods of 12 months at a time. E was subject to the same control over visitors to his home and meetings outside his home as the controlled persons in the case of Secretary of State for the Home Department v JJ. The fact that E's home was subject to police and other searches, and the fact that all visitors and pre-arranged meetings had to be approved in advance, made the requirements under the order particularly intense. The cumulative effect of the restrictions deprived E of his liberty, in breach of Art.5, JJ applied, Guzzardi v Italy (A/39) (1981) 3 EHRR 333, Trijonis v Lithuania (Unreported, March 17, 2005) and Ciancimino v Italy (1991) 70 D&R 103 considered. The control order was quashed.

(3) (Obiter) The secretary of state had not breached his duty, under s.8(2) of the Act, to consult about the possibility of prosecuting E for terrorist offences. However, the secretary of state had failed to consider the impact of judgments of the Belgian court in cases in which associates of E were successfully prosecuted on the prospects of prosecuting E. That meant that his continuing decision to maintain the control order was flawed. The restrictions in the control order did not breach the rights of E's children under Art.3 of the Convention.

JUDGMENT ACCORDINGLY

Indirect Discrimination against Gypsy Caravans not incompatible with Human Rights

R (on the application of CLAIRE WILSON) v (1) WYCHAVON DISTRICT COUNCIL (2) SECRETARY OF STATE FOR COMMUNITIES & LOCAL GOVERNMENT (2007)

CA (Civ Div) (Sir Anthony Clarke MR, Moses LJ, Richards LJ) 6/2/2007

Planning - Human Rights

Caravans: Exemptions: Gypsies: Indirect Discrimination: Stop Notices: Travellers: Justification For Inclusion Of Residential Caravans In Stop Notice Regime: Residential Caravans: Dwelling Houses: S.183(4) Town And Country Planning Act 1990: Art.14 European Convention On Human Rights: European Convention On Human Rights: Human Rights Act 1998

Although the Town and Country Planning Act 1990 s.183(4) did indirectly discriminate against Gypsies, such discrimination could be objectively justified by the legitimate aim of protecting the environment and was not therefore incompatible with the European Convention on Human Rights 1950 Art.14.

The appellant Gypsy (W) appealed against the refusal ((2005) EWHC 2970, (2006) 2 P & CR 24) of her application for judicial review of a decision of the first respondent local authority to serve stop notices on her pursuant to the Town and Country Planning Act 1990 s.183(4). W and members of her family had acquired land that they had then moved caravans onto and had created hard standing, access roads and a service area without planning permission. The local authority had refused W's application for retrospective planning permission and had issued enforcement notices along with two stop notices, one requiring construction to cease and the other requiring W to cease using the land for the stationing of residential caravans. The issue for determination was whether s.183(4) of the 1990 Act was incompatible with the European Convention on Human Rights 1950 Art.14 in that, in providing for an exception for dwelling houses but not for residential caravans, it discriminated against Romany Gypsies and Irish travellers. The secretary of state conceded that Art.14 was engaged and that s.183(4) of the 1990 Act was indirectly discriminatory in its effect. The point to be decided was, therefore, whether the secretary of state had discharged the onus of justifying the provision. W submitted that there was no justification for the degree of discrimination involved in conferring a total exemption in relation to dwelling houses but no exemption at all for residential caravans, arguing that:

(1) Hansard showed that Parliament had given no consideration to the reasons for removing caravans from the exemption, and the court could take that into account in its assessment of proportionality.

(2) There could be no assumption that the stationing of residential caravans would be more likely to cause serious harm than development to which the dwelling house exemption applied.

(3) Even if the stationing of caravans would cause more immediate damage than the change of use of a building to a dwelling house, a more limited exemption would meet the legitimate aim, and the feasibility of a more limited exemption was demonstrated by the provisions relating to temporary stop notices.

(4) The legislature's discretion in a case such as W's was very small and the court had to scrutinise the justification with particular intensity.

(5) The existence of discriminatory legislation could not be justified by the duty on local planning authorities to act compatibly with Art.8 of the Convention.

HELD

(1) It was not open to the court to examine Hansard for the purposes sought by W, Wilson v Secretary of State for Trade and Industry (2003) UKHL 40 , (2003) 3 WLR 568 followed.

(2) The discriminatory impact of s.183(4) could be justified only if it pursued a legitimate aim and there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The aim in the instant case was the protection of the environment, more particularly the protection of the public against serious harm to amenity, and was an aim on which reliance could properly be placed even in the context of the special consideration to be given to Gypsies and travellers, Chapman v United Kingdom (2001) 33 EHRR 18 considered. There were clear differences between the positions of dwelling houses and residential caravans, both in respect of the harm that they were in general likely to cause and as regards the effect of a stop notice on the ability of the occupiers to remain in their home, and there was a cogent case for a simple bright-line rule exempting the use of a building as a dwelling house from the stop notice regime.

(3) The provision was not automatically open to challenge on the basis that a less restrictive solution would have been possible: the "less restrictive alternative" test was not an integral part of the analysis of proportionality under Art.14. However, that did not mean that the existence of a less restrictive alternative was altogether irrelevant in the context of Art.14: the narrower the discretionary area of judgement or the more intense the degree of scrutiny required, the more significant it might be that a less restrictive alternative could have been adopted. In the instant case, however, there were material differences between the temporary and ordinary stop notice regimes and the solution adopted in relation to temporary stop notices did not compel the adoption of a similar approach in relation to ordinary stop notices.

(4) When reviewing legislative provisions pursuant to its obligations under the Human Rights Act 1998, the court accorded to Parliament a discretionary area of judgment that was narrower in relation to discrimination on grounds such as sex or race than it was for matters of social or economic policy. Nevertheless, while cogent reasons had to be given for discrimination on the grounds of sex or race, the legislature was still accorded a very real discretionary area of judgement, Godin-Mendoza v Ghaidan (2004) UKHL 30 , (2004) 2 AC 557 applied. Whilst a stricter approach was called for in cases of direct discrimination, the inclusion of residential caravans within the scope of the general stop notice regime was aimed at protection of the public against environmental harm and could not be said to involve the targeting of Gypsies or travellers, and the case did not fall within the very strict reasoning applied in Timishev v Russia (Unreported, December 13, 2005), Timishev distinguished.

(5) Whilst the duty on local planning authorities to act compatibly with Art.8 of the Convention was not sufficient to justify the difference in treatment, it meant that the difference requiring justification was not as great as might have at first sight appeared.

APPEAL DISMISSED

SI 153/2007 The Emergency Workers (Obstruction) Act 2006 (Commencement) Order 2007

In force **20 February**. This Order brings into force Sections 1 to 6 of the Emergency Workers (Obstruction) Act 2006. Section 7 came into force on Royal Assent. (See February and July 2006 editions of *Digest* for explanation of provisions).

SI 173/2007 The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007

In force **30 April**. These Regulations make provision for the proceedings of licensing committees and subcommittees, where they are required to hold a hearing in respect of applications relating to premises licences under Part 8 of the Gambling Act 2005.

Under Part 8 of the Act, applications may be made for a premises licence, to vary, transfer or reinstate a premises licence, for a provisional statement, and for a review of a premises licence. Sections 162(1) and 201(4) of the Act require licensing authorities to hold a hearing in specified circumstances to consider such applications.

Section 154(1) of the Act delegates the functions of a licensing authority in England and Wales under Part 8 of the Act to the authority's licensing committee. Section 154(3) of the Act applies Sections 7(9) (referral back to licensing authority) and Section 10 (sub-delegation) of the Licensing Act 2003 in relation to a function delegated to a licensing committee. Section 10(1) of the Licensing Act allows a licensing committee to delegate its functions to a sub-committee or to an officer of the licensing committee.

Regulation 4 requires committees to hold hearings as soon as reasonably practicable after the deadline for making representations.

Regulation 5 requires committees to give notice of any hearing to relevant persons listed in the Schedule, and for the notice to contain specified information.

Regulation 6 sets out further information and documents that must accompany the notice.

Regulation 7 allows a committee to postpone hearings either where it needs to consider information or documents, or if a party, witness or person representing a party, is unable to attend.

Regulation 8 requires hearings to be held in public, but allows committees to hold them in private if they consider it necessary.

Regulation 9 sets out how a committee is required to conduct the hearing, and the circumstances in which it may allow parties to attend, question and cross-examine persons at the hearing.

Regulation 10 makes provision in cases where a party does not attend the hearing, and allows committees to adjourn the hearing or proceed in a party's absence.

Regulation 11 allows relevant committees to exclude persons who are disrupting the hearing or set conditions on their attendance; if a person is excluded, the committee must allow him to make written submissions which it is obliged to take into account.

Regulation 12 requires a committee to notify the parties if, with their consent, it has dispensed with a hearing. In these circumstances, the committee is to make a decision on the application or review.

Under Regulations 13 and 14, committees are required to determine the application or review within five working days after the last day of the hearing, but may extend this time limit if it is in the public interest.

Regulation 15 requires committees to ensure that a record of the hearing is taken and kept for six years after the hearing.

Regulations 16 and 17 allow committees to disregard or remedy the consequences of any irregularities that result from a failure to comply with a procedural requirement, and to correct accidental slips or omissions in any record of their decision.

SI 175/2007 The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007

In force **6 April**. These Regulations revoke and remake the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 to add categories "4 stars", "3 stars" and "2 stars" to the existing categories "excellent" and "good".

Regulation 2 prescribes the ranges within which the amounts of certain fixed penalties that are capable of being specified (in place of the amount prescribed in the relevant Statute) by a local authority are required to fall. Accordingly:

- In respect of a notice of a fixed penalty that is capable of being issued for certain offences for which the amount prescribed in the relevant Statute is £75, the Regulations prescribe that the range within which a local authority may choose to specify its own locally applicable amount is not less than £50 and not more than £80 (regulation 2(1)).
- In respect of certain other offences, for which the amount of fixed penalty prescribed in the relevant Statute is £100, the Regulations prescribe that the range within which a local authority may choose to specify its own locally applicable amount is not less than £75 and not more than £110 (regulation 2(2)).
- In respect of other offences, for which the amounts of fixed penalty prescribed in the relevant Statutes are, respectively, £100, £200 and £300 (but in each case with no facility for an authority to specify a different locally applicable amount), an authority may still decide to treat a lesser sum paid within a specified period as full payment of the fixed penalty.

Regulation 3 prescribes the minimum amount of fixed penalty that a local authority may (if it chooses to do so) treat as full payment of the fixed penalty, where a lesser amount than the full prescribed amount (whether this is the amount specified locally by the authority, or that prescribed in the relevant Statute) is paid within such period of less than 14 days as may be specified by the local authority in the notice:

- If a local authority decides to treat a lesser sum paid within a specified period as full payment of the fixed penalty, the Regulations provide that that lesser sum shall not be less than £50 (regulation 3(1)).
- In respect of certain other offences, for which the amount of fixed penalty prescribed in the relevant Statute is £100, if a local authority decides to treat a lesser sum paid within a specified period as full payment of the fixed penalty, the Regulations provide that that lesser sum shall not be less than £60 (regulation 3(2)(a), (b) and (c)).
- In respect of other offences, for which the amounts of fixed penalty prescribed in the relevant Statutes are, respectively, £100, £200 and £300 (but in each case with no facility for an authority to specify a different locally applicable amount), the Regulations provide that those lesser sums shall not be less than £60 (regulation 3(2)(d)); £120 (regulation 3(3)); or £180 (regulation 3(4)), respectively.

Regulation 4 provides that certain fixed penalty receipts paid to a local authority may, where such a local authority is categorised as excellent, good, 4 stars, 3 stars or 2 stars in a categorisation Order made by the Secretary of State under section 99(4) of the Local Government Act 2003, be used for any functions of that local authority. Such functions are accordingly specified as "qualifying functions" of that authority, in addition to the qualifying functions already specified in respect of such fixed penalty receipts in the relevant Statutes.

In the event that an authority described in regulation 4 ceases to be categorised as excellent, good, 4 stars, 3 stars or 2 stars, the Regulations provide that it may continue to use any fixed penalty receipts in relation to which regulation 4 would otherwise have applied for any of its functions for one year after it ceases to be categorised as 4 stars, 3 stars or 2 stars (regulation 5).

Regulation 6 prescribes the condition that must be satisfied before a person may be an authorised officer of a parish council for the purposes of giving a notice of a fixed penalty under the provisions mentioned in regulation 6(1). The condition is that the person should successfully complete a course of training approved by the Secretary of State, that is provided by a training provider recognised by the Secretary of State.

SI 182/2007 The Immigration, Asylum and Nationality Act 2006 (Commencement No 4) Order 2007

In force **31 January**. This Order brings into force the following sections in relation to claimants and applicants of the Immigration, Asylum and Nationality Act 2006:

- Section 50(1) and (2) (procedure).
- Section 51 (fees).
- Section 52(1) to (6) (fees supplemental).

SI 207/2007 The Terrorism Act 2000 (Business in the Regulated Sector) Order 2007

In force **1 November**. This Order amends the Terrorism Act 2000 to add to the list of regulated activities the activity of operating a multilateral trading facility. The effect of this is that a business will be in the regulated sector to the extent that it conducts such an activity. This is relevant to the offence of failure to disclose information concerning money laundering in Sections 21A and 21B of the Terrorism Act 2000, one component of which requires information to come to a person in the course of a business in the regulated sector.

SI 208/2007 The Proceeds of Crime Act 2002 (Business in the Regulated Sector) Order 2007

In force **1 November**. This Order amends the Proceeds of Crime Act 2002 to add to the list of regulated activities the activity of operating a multilateral trading facility. The effect of this is that a business will be in the regulated sector to the extent that it conducts such an activity. This is relevant to the offence of failure to disclose information concerning money laundering in Section 330 of the Act, one component of which requires information to come to a person in the course of a business in the regulated sector.

SI 237/2007 The Road Safety Act 2006 (Commencement No 1) Order 2007

In force **27 February**. This Order brings into force the following provisions of the Road Safety Act 2006:

- Section 26, which relates to increases in penalties for the breach of requirements as to a driver's control of a motor vehicle and the use of a hand-held mobile telephone or similar device whilst driving a motor vehicle.
- Section 36 which amends Sections 89 (driving tests) and 91 (repayment of test fees) of the Road Traffic Act 1988.
- Section 40, which enables the Secretary of State to charge such fees as may be prescribed for renewal of a photocard licence and issue of certain alternative licences.
- Section 50, which relates to safety arrangements at level crossings.
- Section 59, in so far as it relates to paragraphs 9, 12 and 16 of Schedule 7, (and accordingly paragraphs 9, 12 and 16 of Schedule 7) which contain repeals relating to driving tests, fee for renewal of photocard licence and issue of certain alternative licences and safety arrangements at level crossings.

SI 296/2007 The Sexual Offences Act 2003 (Amendment of Schedules 3 and 5) Order 2007

In force **19 February**. This order was previously mentioned in the January 2007 edition of the *Digest*; see also article on HOC 5/2007 on page 8!. It amends Schedules 3 and 5 to the Sexual Offences Act 2003.

Section 80 of the Act provides that if a person is:

- Convicted, or
- Found not guilty by reason of insanity, or
- Cautioned for an offence listed in Schedule 3 to the Act, or
- Found to be under a disability and to have done the act charged against him in respect of such an offence,

then that person is subject to the notification requirements of Part 2 of the Act. An offence under Schedule 3 may also make a person a qualifying offender for the purposes of a foreign travel order under Section 114 of the Act.

Article 2 of this Order adds three offences to Schedule 3 to the Act in respect of both England and Wales and Northern Ireland.

Schedule 5 to the Act lists the offences which, in addition to those listed in Schedule 3, may lead to a person being made subject to a sexual offences prevention order under Section 104 of the Act.

Article 3 of this Order adds eight offences for England and Wales and nine offences for Northern Ireland to Schedule 5 to the Act. Article 3 also removes from Schedule 5 the three offences being added to Schedule 3.

SI 319/2007 The Gambling Act 2005 (Inspection) (Provision of Information) Regulations 2007

In force **21 May**. These Regulations require persons who exercise their powers of entry and inspection under Part 15 of the Gambling Act 2005, to provide information about those powers and their exercise.

Part 15 of the Act empowers constables, enforcement officers and authorised persons ("inspectors") to enter different kinds of premises under specified circumstances. An inspector exercising a power under Part 15 to enter premises, also has powers under Section 317(1) of the Act to inspect the premises, question persons on the premises, require access to and copies of written or electronic records on the premises, and remove and retain material from the premises.

Regulation 3 places an obligation on inspectors exercising their powers under Part 15 of the Act, to ensure that anyone accompanying them produces evidence of his identity. Section 324 of the Act allows an inspector exercising a power to enter premises under Part 15 of the Act to take one or more persons with him.

Regulation 4 requires inspectors to inform specified persons on the premises ("appropriate recipients", defined in Regulation 2(1)) of their right to request a written record of the visit. If there is no appropriate recipient on the premises, the inspector is required to leave that information in a written notice, with his name and the date of the inspection.

Regulation 5 requires inspectors to inform persons they are questioning, of the inspector's power to question any person on the premises under Section 317(1)(b) of the Act, and of the offence of obstruction under Section 326 of the Act. An inspector's obligation under Regulation 5 will arise where a person refuses to answer any of his questions.

Regulation 6(1) requires an inspector to provide a written record of his inspection to the persons listed in Regulation 2(1), referred to as "interested persons". The record is only required to be provided on request, and Regulation 6(2) sets out the required contents of that record.

SI 361/2007 The Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) (Amendment) Regulations 2007

In force **14 March**. These Regulations amend the Motor Vehicles (Type Approval for Goods Vehicles) (Great Britain) Regulations 1982 to change the method used to determine whether a vehicle of category N1 is an "end of series" vehicle in relation to a particular type approval requirement, and the Road Vehicles (Construction and Use) Regulations 1986 to make transitional provisions, made necessary by the fact that these Regulations will enter into force at a time when a "stage" of emissions requirement will already be in progress.

The general provisions regarding end of series vehicles, including the limit on the number of vehicles that can benefit from the end of series derogation, are set out in Article 8(2)(b) of and Part B of Annex XII of the Framework Directive on vehicle type approval. Under these provisions, Member States have a choice between two ways of setting the limit:

- Allow the entry into service of a percentage of the number of vehicles that entered into service during the year preceding the beginning of the "stage".

or

- Allow the entry into service of all vehicles in respect of which a certificate of conformity had been issued at least three months before the beginning of the "stage", even if the certificate would otherwise have lost its validity because of the beginning of the "stage".

These Regulations adopt the second option. They insert a new Part IIA into Schedule 1C to the 1982 Regulations, which deals with end of series vehicles.

SI 390/2007 The Clean Neighbourhoods and Environment Act 2005 (Commencement No 4) (England) Order 2007

In force **6 March**. This Order brings into force the following provisions of the Clean Neighbourhoods and Environment Act 2005:

- Paragraphs 5 to 9 of Schedule 4 (making minor amendments to the Environmental Protection Act 1990).
- Paragraphs 14 to 19 of Schedule 4 (making minor amendments to the Anti-social Behaviour Act 2003).
- Part 2 of Schedule 5 to the extent it is not already in force (repealing certain provisions of the Environmental Protection Act 1990).
- Part 9 of Schedule 5 to the extent it is not already in force.

SI 391/2007 The Criminal Justice Act 2003 (Commencement No 8 and Transitional and Saving Provisions) (Amendment) Order 2007

In force **3 April**. This Order amends the Criminal Justice Act 2003 (Commencement No.8 and Transitional and Saving Provisions) Order 2005 by changing the coming into force date of certain provisions from 4 April 2007 to 4 April 2009.

The effect is that, in so far as they apply where a person aged 16 or 17 is convicted of an offence, commencement of Sections 177 and 179 to 180 of and Schedule 8 and 9 to the 2003 Act (community orders) is deferred until 4 April 2009.

Commencement of related amendments in Schedule 32 to the 2003 Act, referred to in article 4(2) of the 2005 Order, is also deferred until 4 April 2009.

Until that time the transitional provisions in paragraphs 7 to 13 of Schedule 2 to the 2005 Order will continue to have effect.

