Digest

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LEGISLATION POLICE NEWS
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DIVERSITY Criminal Justice

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

This edition contains a number of articles relating to police reform and modernisation, including a Home Affairs Committee Inquiry into policing in the 21st century, two independent think tank reports and the Government's proposal of 3 year public sector pay awards.

A number of issues relating to the criminal justice system also feature this month. These include the issue of prosecuting and sentencing for offences of bad driving, and in particular offences of bad driving which result in death. The piloting of the 'Streamlined Process' for the Preparation and Prosecution of Cases in the Magistrates' Court and related Director of Public Prosecutions Guidance.

The issue of missing and runaway children is also covered in articles on the Runaway and Missing Children Bill, A Children's Society report on its review of the services and responses provided by local authorities and police forces in respect of children under 16 who run away from home or care and the new Cross-Government Working Group to Support Young Runaways. In addition there is also an article on the recently published ACPO strategy document for children and young people.

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

Case law in association with

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

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Black and Asian People's Perceptions of Racial Discrimination by Public Services

The Communities and Local Government Department has published a qualitative study report entitled, 'The Drivers of Black and Asian People's Perceptions of Racial Discrimination by Public Services', which covers eight key public services, including the police. The public services covered in the report are:

- Housing services.
- Local doctors' surgeries.
- Local schools.
- The Police Service.
- The Crown Prosecution Service.
- The courts.
- The Prison Service.
- The Probation Service.

The report sets out the factors that contribute to perceptions of discrimination or fairness. It concludes with a range of recommendations, based on the respondents' suggestions, on how to ensure that public services are perceived to be fair.

The police was the most widely discussed of all public services covered in the study. 98 respondents chose to discuss the police, of whom 57 expected that the police would discriminate against them, and 41 expected that they would treat them fairly. The police were generally expected to be fair when respondents positioned themselves as victims of crime.

The police were usually expected to be discriminatory when respondents positioned themselves as ordinary citizens who were approached by the police and treated as suspected criminals.

The report found there were differences in the Black and Asian communities in their perceptions of the police. More Black respondents (35) than Asian (22) respondents expected to be discriminated against by the police, and more Asian respondents (24) than Black respondents (17) expected to be treated fairly by the police.

The perceptions of fairness or discrimination in the police were based on: a wide range of sources of knowledge; personal and vicarious experiences; community-based knowledge; formal knowledge; and the media (to an unparalleled degree).

High-profile cases, such as the Stephen Lawrence Inquiry, the shooting of Jean-Charles de Menezes, *The Secret Policeman* programme, the case of Christopher Alder and the case of Sikh Sergeant Gurpal Virdi were found to have had a significant contribution to shaping perceptions of the police as institutionally racist.

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Black respondents, especially of Caribbean backgrounds, were very likely to hold well-informed, negative and highly politicised views about the police, developed over the years.

Asian respondents seemed to have enjoyed a better relationship with the police, but now felt targeted and discriminated against. This was most strongly felt by Pakistanis, but Bangladeshi and Indian respondents also shared this view.

The recommendations in the report in respect of the police include:

- The current efforts to improve the quality of customer service in the police service should continue.
- The drive to recruit more police officers and community support officers from minority ethnic backgrounds should continue.
- The effectiveness of stops and searches as crime prevention and detection mechanisms needs to be balanced against the negative consequences they have on minority ethnic perceptions of racial discrimination in the criminal justice system as a whole.
- Clarifying the rationale for stops and searches, as many respondents felt discriminated against when stop and searches were carried out based on loose "profiling", but believed that they were a legitimate tool to fight crime when carried out based on evidence that the person targeted may have committed an offence.
- Engagement in community consultation should be further developed.
- All mechanisms to increase the accountability of the police should be explored.

The report can be found in full at http://www.communities.gov.uk/documents/communities/pdf/652045

Checklist for Gender-Sensitive Approach to Health and Safety Policies and Practices

The TUC's Gender and Occupational Safety and Health (G&OSH) Working Party has produced this checklist to help safety reps and others to check whether their workplace health and safety policies and practices are gender sensitive.

The checklist has been produced following recent research which has shown that differences in both sex (biological differences between women and men) and gender (socially determined differences) that affect workers' health and safety in many ways are too often ignored or misunderstood, leading to failures in prevention. The research also showed that gender stereotyping (e.g. 'women's work is light work' or 'stress is for wimps') or stereotyping in relation to different categories or work (e.g. manual and white-collar jobs) can also lead to false assumptions about who is or is not at risk in the workplace; and opportunities for prevention can be missed as a result.

A copy of the checklist can be found at http://www.tuc.org.uk/h_and_s/tuc-14179-f0.pdf

Empowering Muslim Women: Case Studies

The Department for Communities and Local Government has published a good practice and guidance document, 'Empowering Muslim Women: Case Studies' for local authorities across England. The guidance is intended to assist local authorities in working with established local groups in the setting up of programmes and training for Muslim women, to assist them to take on a wider role in the community and play a part in tackling violent extremism.

The document can be found in full at http://www.communities.gov.uk/documents/communities/pdf/669801

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National Occupational Standards Under Review

Skills for Justice is reviewing a number of National Occupational Standards (NOS) suites as part of a large over-arching project and is looking for experienced practitioners in these areas to input into the future development of NOS. The standards under review are those relating to:

- Road Traffic and Safety.
- Firearms.
- Financial Investigations.
- Issues within the Community.

The deadline for this feedback is Friday 22nd March 2008. Further details can be found at http://www.skillsforjustice.com/WLE or by emailing Clare.Naseby@skillsforjustice.com

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The Counter-Terrorism Bill

On 24 January the Government published its Counter-Terrorism Bill. The purpose of the Bill is to:

- Confer further powers to gather and share information for counter-terrorism and other purposes.
- Make further provision about the detention and questioning of terrorist suspects and the prosecution and punishment of terrorist offences.
- Impose notification requirements on persons convicted of such offences.
- Amend the law relating to asset freezing proceedings under United Nations terrorism orders.
- Amend the law relating to inquests and inquiries.
- Amend the definition of 'terrorism'.
- Amend the enactments relating to terrorist offences, control orders and the forfeiture of terrorist cash.
- Provide for recovering the costs of policing at certain gas facilities.
- Amend provisions about the appointment of special advocates in Northern Ireland.

A detailed summary of the provisions contained in the Bill will be published in the March edition of the *Digest*.

The Bill can be found in full at http://services.parliament.uk/bills/2007-08/counterterrorism.html

Update on PACE Review

Following the Home Office's publication of a summary of responses to the PACE Review public consultation exercise on 31 July 2007, it had been announced that a number of regional seminars were to be held in Coventry, Leeds, Bristol and London. These were, however, postponed, the reason given by the Home Office being that they would not have represented value for money due to the level of responses received.

A PACE Review Board has been established under the chair of Patricia McFarlane, Home Office head of policing powers and safeguards. The board contains representatives from the judiciary, academia, the Bar Council, Criminal Justice Council, Crown Prosecution Service, Equality and Human Rights Commission, ILEX, IPCC, Law Society, Liberty, National Policing Improvement Agency, and two of the three police staff associations (ACPO and the Police Superintendents' Association).

The PACE Review Board held its first meeting on 3 December 2007, and a further meeting was due on 7 January 2008. Minutes of the December meeting can be found at http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/PACE-Review

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We have been informed that the minutes of the January meeting will also be posted on the above site shortly.

The current timeline aims for the final PACE Review consultation paper are to be published by the end of March 2008.

Climate Change Bill

The Climate Change Bill is currently undergoing the Committee Stage. A recent amendment has been put forward that, if enacted, will have implications for police forces and local authorities in the whole of the UK.

Part 4 of the Bill deals with the impact of and adaptation to climate change. It places a duty on the Secretary of State for Environment, Food and Rural Affairs to carry out an assessment of the risks to the UK from the impact of climate change; the first report must be made within three years, with subsequent reports at least every five years. Each risk assessment must be followed by the publication of a Government programme of adaptation measures.

The recently tabled amendment places a duty on persons or bodies who are listed in Parts 1 to 4 of Schedule 1 to the Civil Contingencies Act 2004 (this includes chief officers of police in the UK including the British Transport police) and any other persons or bodies as shall be specified in regulations made by a Minister of the Crown to:

- Assess the risks of the impact of climate change on the ability of the person or body to continue to perform any of his or its functions.
- Produce an action plan to reduce, control or mitigate the risks of those impacts.
- Comply with any relevant guidance issued by the Secretary of State.
- Disclose relevant information on request to another person or body to which this section applies.
- Co-operate, to such extent and in such manner as may be specified in relevant guidance, with any other person or body to which this section applies.

In carrying out the duty mentioned above, the person or body will be required to take account of the reports and programmes published by the Secretary of State under Clauses 48 and 49 of the Bill.

The Department for Environment, Food and Rural Affairs is expected to be publishing a report in the spring which sets out the current view of risks faced by the UK.

The Home Office is also looking at potential issues it might face as a result of climate change and is intending to run the project as a ‘futures exercise’.

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Issues that have been so far identified for policing by the Home Office Strategic Policy Team include:

- Flooding and other extreme weather conditions, which raise resource issues.
- Evidence that there is a seasonal element to some crimes.
- That the increase in global temperatures may lead to the creation of new drug routes.
- In extreme cases, parts of the country may become uninhabitable and this may raise issues in relation to the policing of such areas.

Full details of the Bill can be found at http://services.parliament.uk/bills/2007-08/climatechangehl.html

Runaway and Missing Children Bill

On 9 January, Labour MP Helen Southworth presented the Runaway and Missing Children Bill to Parliament. The Bills purpose is to make requirements regarding the safeguarding of runaway and missing children; and for connected purposes. Helen Southworth previously presented a similar Bill, the Safeguarding Runaway and Missing Children Bill, in January 2007; this did not progress due to lack of parliamentary time.

The Second Reading of the Bill will be on Friday 20 June.

(See connected articles on pages 14 and 18).

Criminal Justice and Immigration Bill

During the Second Reading of the Bill in the House of Lords, the Parliamentary Under-Secretary of State for the Ministry of Justice, Lord Hunt of Kings Heath stated that on behalf of the Government he intended to table amendments in the Committee stage to withdraw Part 4 and Part 5 of the Bill.

Parts 4 and 5 deal with the establishment of HM Commissioner for Offender Management and Prisons and The Northern Ireland Commissioner for Prison Complaints.

The current Prisons and Probation Ombudsman for England and Wales, the Prisoner Ombudsman for Northern Ireland and the Parliamentary Ombudsman had all expressed significant concern about the provisions. All three ombudsmen have argued for a different model that provides for direct accountability to Parliament.

Lord Hunt explained that the Government will continue to try and find a way to place the two offices on a firm statutory basis and that a period of further consultation with interested parties would be commenced to try and find an alternative statutory model which will provide value for money and enhanced service.

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R v Simon Kennedy (2007) - House of Lords Overrules Court of Appeal Decision

The House of Lords has overruled a Court of Appeal decision in the case R v Simon Kennedy (originally covered in the May 2005 *Digest*).

Kennedy was originally convicted of manslaughter when, whilst living in a hostel, he visited a room in which the deceased (B) lived. B told Kennedy (K) that that he wanted "a bit to make him sleep". K prepared a dose of heroin and gave B a syringe ready for injection. B injected himself and returned the empty syringe to K, who left the room. B later died, the cause of death being the inhalation of gastric contents while acutely intoxicated by opiates and alcohol.

On appeal against conviction, the Court of Appeal upheld the conviction but certified the following question for the opinion of the House of Lords: "When is it appropriate to find someone guilty of manslaughter where that person has been involved in the supply of a Class A controlled drug, which is then freely and voluntarily self-administered by the person to whom it was supplied, and the administration of the drug then causes his death?".

On 17 October 2007, the ruling from the House of Lords (Lord Bingham of Cornhill, Lord Rodger of Earlsferry, Baroness Hale of Richmond, Lord Carswell, Lord Mance) was that a supplier of a drug is not guilty of manslaughter where the deceased freely and voluntarily self-administered the drug. The defendant's appeal against conviction was allowed.

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Children's Society Report on the Future of Runaways Services

The Children's Society, with support from the Department for Children, Schools and Families (DCSF), has published a report, 'Stepping Up: The Future of Runaways Services', following its review of the services and responses provided by local authorities and police forces in respect of children under 16 who run away from home or care.

In respect of police forces, findings from the review showed that:

- 40% of police forces are not able to access sufficient data to be able to provide information on levels of need.
- The 2005 Association of Chief Police Officers (ACPO) Guidance on missing persons has had a positive impact on local police force responses to missing children.
- 10 out of 27 police forces who responded to the Children's Society stated that they had young people staying in police stations overnight due to a lack of alternative emergency accommodation.

To deal with the problems identified in the report, at national, regional and local level, it argues that a comprehensive framework is needed. It puts forward 39 proposals that form the basis of a national 'safety net', the concept of which is safe people, safe places and safe procedures.

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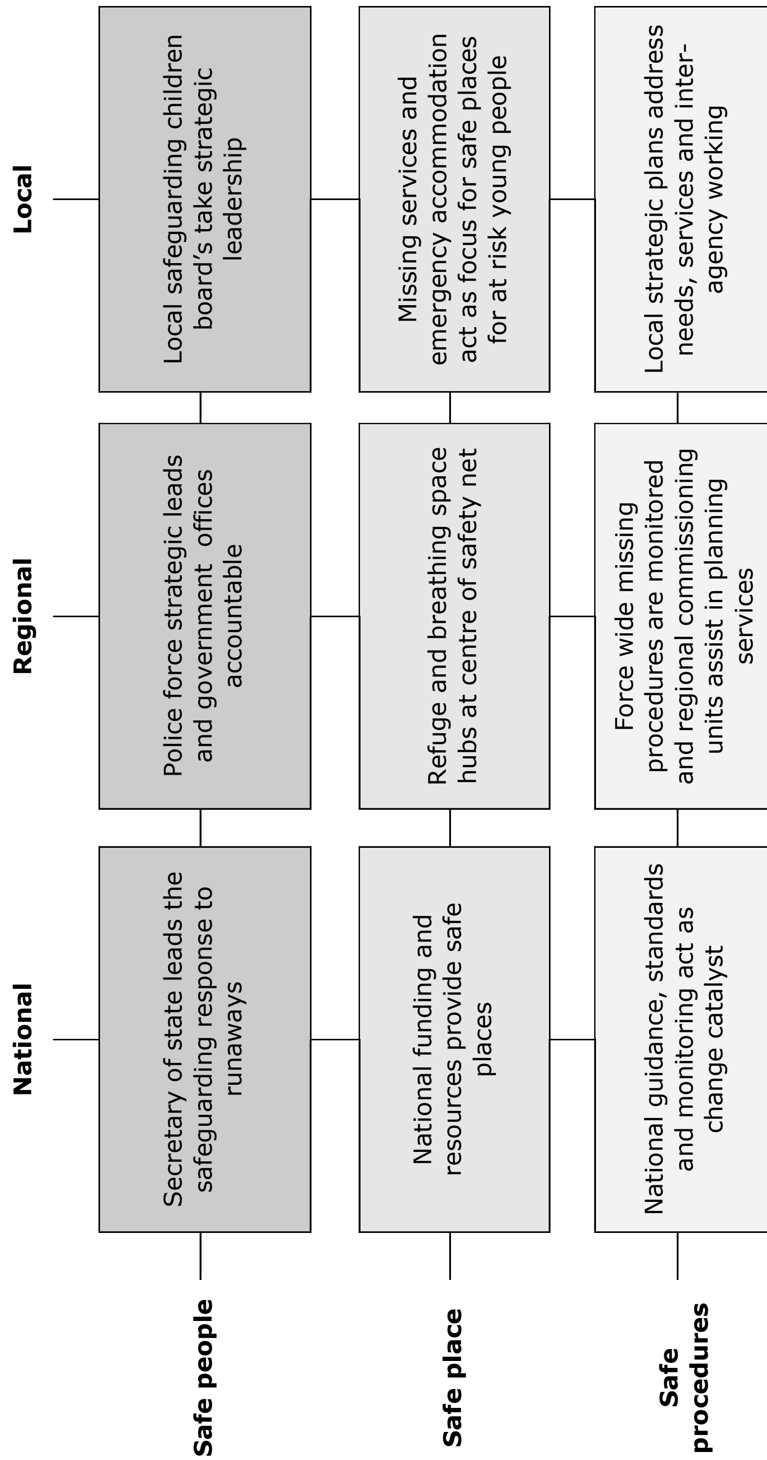

National
Regional
Local
Safe people
Secretary of state leads the safeguarding response to runaways
Police force strategic leads and government offices accountable
Local safeguarding children board's take strategic leadership
Safe place
National funding and resources provide safe places
Refuge and breathing space hubs at centre of safety net
Missing services and emergency accommodation act as focus for safe places for at risk young people
Safe procedures
National guidance, standards and monitoring act as change catalyst
Force wide missing procedures are monitored and regional commissioning units assist in planning services
Local strategic plans address needs, services and inter-agency working

The recommendations that impact on the police, either directly or in their role as part of a local safeguarding children board (LSCB), are:

Safe people – National

- DCSF uses appropriate channels to specify that runaway and missing children are a safeguarding issue and as such must be managed at a local level by LSCBs.
- DCSF to create a statutory duty for local authorities to ensure that every child who is returned from a missing incident receives a 'return interview', to a standard that ensures a proper assessment of need is made in accordance with a pre-common assessment framework process.
- DCSF, the English Coalition for Runaway Children (ECRC) and ACPO work together to implement a joint communications strategy that will engage the local authorities and the wider public.

Safe people - Regional

- ACPO strengthens, clarifies and embeds the strategic 'misper' lead into force-level structures.

Safe people – Local

- Directors of Children's Services are held accountable for the implementation of the new statutory duty to ensure that all police requests to undertake a 'return interview' are fully complied with.
- Every LSCB ensures that safeguarding runaways fits within their wider and stated policy and strategy for safeguarding teenagers.
- Every LSCB holds accountability for the planning and implementation of all new national guidance issued from DCSF.
- Every LSCB appoints a strategic leader for runaway and missing children, which is closely defined by role description.
- Every LSCB undertakes a needs and capacity gap analysis in order to develop a plan that will address capacity shortfalls.

Safe places - National

- DCSF, with the Department of Health and the Department for Communities and Local Government, undertake a review of emergency accommodation which addresses a range of issues including: the need for different models for different groups of young people, the status of children who access emergency and breathing space accommodation, the need for parental permission and the thresholds for entry.

Safe places – Regional

- Police forces to work with Government Offices for the Regions on developing regional protocols on managing safeguarding responses for children who run away 'out of area' and across borders.

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Safe places – Local

- Directors of Children's Services to ensure that schools and education, including Connexions and missing from education services make links with LSCB strategy for missing and runaway children; and that capacity is developed appropriately to implement guidance.
- Local authorities, police forces, primary care trusts and service providers to develop local crisis response protocols to address out-of-hours services for at-risk young people, including runaways.

Safe procedures - National

- ACPO to issue a national police code on data collection and reporting standards required of police forces relating to missing people.
- Annual 'Missing People' conference acts as a reporting window for police to share intelligence and monitoring data from previous year, to include monitoring of local authority responses.
- DCSF to ensure that revised guidance supports the role of LSCBs to develop and implement a strategic plan to meet the needs of runaways.
- DCSF, ACPO and the Home Office to develop a national inter-agency risk model specifying thresholds, definitions and application for runaway and missing children, which is to be included in the revised guidance from DCSF and ACPO.
- National Policing Improvement Agency 2007 update to the 2005 ACPO guidance on missing persons be revised to address key issues, including the monitoring of social services responses and data consistency.

Safe procedures – Regional

- Police forces to review implementation of procedures and data standards to ensure that monitoring and recording practices, including recording of social services responses, in order to inform planning processes.

Safe procedures – Local

- Every LSCB implements processes for intelligence-led needs analysis and scenario planning, in order to address the differing tiers of need for young runaways.
- Every LSCB utilises local Common Assessment Framework and trusted adult arrangements to form basis for 'return interviews'.
- Police forces to ensure that BCU-level lead officers are in place and that they embed standards of reporting and monitoring of social services responses to police requests for support.

The report can be found in full at
http://www.childrenssociety.org.uk/resources/documents/Policy/Stepping_Up_The_Future_For_Young_Runaways_5305_full.pdf

New Cross-Government Working Group to Support Young Runaways

In response to the Children's Society report (covered in the previous article), the Government has announced that it is setting up a new Cross-Government Working Group whose remit will be to:

- Develop an action plan to drive forward the work on young runaways - by June 2008.
- Conduct a review of emergency accommodation provision - for completion by summer 2008.
- Review the "Missing from Home and Care" guidance - for completion by the end of 2009.
- Consider data collection methods - full technical consultation autumn 2008.

Membership of the Cross-Government Working Group includes representatives from:

- Department for Children, Schools and Families.
- Home Office.
- Department of Health.
- National Policing Improvement Agency.
- Association of Chief Police Officers.
- Association of Directors of Children's Services (ADCS).
- The voluntary sector.

Consultation on Visitor Visa Regulations

The Home Office has published a consultation paper seeking views on a package of measures to ensure visitors to the UK comply with their visa regulations.

The proposals cover four main visitor categories:

- Tourist.
- Business and special visitors.
- Short-term student.
- Sponsored family.

Proposals include:

- Reducing the length of time a tourist can stay in the UK from six to three months.

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- Creating a specific business and specialist visa.
- The creation of specific visas for one-off events such as the Olympics.
- Requiring people to put up a financial deposit to ensure any foreign national family members return home following their visit.

The deadline for responses is 10 March 2008. The consultation paper can be found in full at http://www.bia.homeoffice.gov.uk/sitecontent/documents/consultations/visitorsconsultationpaper/

Consultations on Marriage Visas and Marriage to Partners from Overseas

The Government has put forward a number of proposals in two separate but related consultation papers, which cover marriage visas and marriage to partners from overseas.

The measures proposed in the first paper are intended to help to protect the vulnerable from being pressurised into forced marriage and to ensure that such visas are not abused. Proposals include:

- Raising the minimum age at which people can come to this country for marriage from 18 to 21.
- Requiring someone intending to sponsor a partner from overseas to declare this intention before they leave the UK on the visit/trip.
- Revoking the immigration status obtained, or to make it liable to revocation for a set period after it has been granted, if individuals abuse the marriage route to gain settlement.
- Introducing a code of practice, which would say how an application for a marriage visa should progress if one of the parties is identified as being vulnerable to a forced marriage.
- Giving potential sponsors the opportunity to have a confidential interview if they request one.

The second consultation seeks views on the introduction of an English language test before entry for people applying for a spouse visa, to help to encourage successful integration.

Both consultations run until 27 February 2008. They can be found in full at http://www.bia.homeoffice.gov.uk/aboutus/consultations/current/

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Council of Europe Convention on Action against Trafficking in Human Beings

The Home Secretary, Jacqui Smith, has announced that the Government intends to make the necessary legislative and procedural changes in order to ratify the Council of Europe Convention on Action against Trafficking in Human Beings by the end of 2008.

Government estimates have shown that legislative changes required in the ratification of the Convention centre around four or five issues in each of Articles 10, 14 and 23. Most of the changes are expected to be achieved by secondary legislation, although in some instances new primary legislation could be necessary.

At present, 37 out of the 47 Council of Europe Members have signed the Convention but only 12 states have ratified thus far. Most Member States are in the same position as the UK, in that they have signed the Convention and are in the process of implementing it.

The convention and numerous related papers relating to it can be found at http://www.coe.int/t/DG2/TRAFFICKING/campaign/default_en.asp

New Inquiry into Human Trafficking

The Home Affairs Committee has announced a new inquiry into human trafficking, which will examine what progress has been made to tackle all forms of trafficking, including people brought illegally into the UK by smuggling gangs to work for little or no money, children used as domestic labour, and women who have been tricked into working in the sex trade.

The primary focus of the inquiry will be on the response by public authorities in the UK and the effectiveness of international co-operation in addressing the problem. In particular, the Committee will consider:

- Estimating the scale and type of activity.
- The difficulty of finding those who have been trafficked when they are normally too frightened to complain to the authorities; and the role of non-governmental organisations (NGOs) in helping to identify and assist victims.
- The treatment of those who have been trafficked but have no legal right to remain in the UK, including the requirements imposed by the Council of Europe Convention on Action against Human Trafficking.
- Co-operation within the EU (including Europol); and control of the EU’s external frontiers.
- Relations with transit and source countries, and the role of Interpol and the UN Office on Drugs and Crime.

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- Effectiveness of the co-ordination between public authorities in the UK (Home Office, FCO, police forces, Serious Organised Crime Agency, Border and Immigration Agency, social services).

Written submissions are invited by Friday 8 February 2008 and should be forwarded by e-mail to homeaffcom@parliament.uk.

New Guidance for Universities and Higher Education Colleges to Tackle Violent Extremism on Campus

The Department for Innovation, Universities and Skills has published upgraded guidance on the shared values that can help universities and higher education colleges to tackle violent extremism on campus. The guidance document, 'Promoting Good Campus Relations, Fostering Shared Values and Preventing Violent Extremism in Universities and Higher Education Colleges', replaces that issued in 2006 (covered in the November 2006 *Digest*).

The guidance highlights the crucial importance of higher education (HE) institutions, working with students of all backgrounds, to build community cohesion and good race relations on campus and to prevent the segregation of students. It aims to share information and experiences in order to enable university or college authorities to develop a more consistent and effective approach across the sector. It considers recommendations that may be necessary to ensure good relations and a safe environment in HE institutions, thus ensuring that all staff and students can work, study and live without fear of intimidation, harassment, bullying, threatening or violent behaviour.

The guidance also contains specific information on the recruitment and grooming processes used by violent extremists, engagement with the police, and the legislative framework.

In relation to engagement with the police, the guidance acknowledges that many HE institutions have highly effective multi-level liaison with their local uniform police. It stresses the importance of such partnerships with the police and highlights that the police are keen to build on existing relationships to support them in recognising and responding to instances of violent extremism that may lead to terrorism, should they occur.

It states that if a university or college suspects that an offence has been or is likely to be committed then:

- A report should be made to the police.
- Educational providers should have a policy on the release of student information which should be followed.
- If the police require information from a university or college then they will make a request for it. A court order is not necessarily required before a disclosure can be made to the police, although if a university or college receives such an order it must be complied with.

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- Most police forces will have their own request form, which should always include a brief outline of the nature of the investigation, the student's role in that investigation, the signature of the investigating officer and will, if necessary, provide how the request is compatible with the Data Protection Act 1998.
- Disclosures should be made in writing rather than over the telephone.

The guidance can be found in full at http://www.dius.gov.uk/publications/extremismhe.pdf

A similar document for further education colleges is to be launched for consultation shortly.

Government Plans to Tackle Use of Internet to Promote Extremism

Whilst speaking at the launch of the International Centre for the Study of Radicalisation and Political Violence on 17 January, the Home Secretary Jacqui Smith, announced her intention in the next few weeks to hold talks with the communications industry and people in communities, with a view to seeking ways of how best to identify material on the internet that is drawing vulnerable young people into violent extremism and taking action to remove it.

She cited the results that had already been achieved by working with the industry in tackling paedophiles' use of the internet and the improvements in ways of reporting instances of possible abuse that had been made.

Local Government Finance Settlement (England) 2008-09 and Provisional 2009/10 and 2010/11 Settlements

The Government has published the Local Government Finance Report (England) 2008-09, which confirms the amounts of revenue support grant (RSG) and non-domestic rates (NDR) to be paid to local authorities in 2008-09, and the basis of their distribution.

The report also contains proposals for formula grant allocations in 2009-10 and 2010-11.

This is the first full three-year settlement for local government in England. In line with the Government's policy on three-year settlements, it is not intended that the 2009-10 and 2010-11 settlement proposals will be changed, other than in exceptional circumstances.

Details can be found in full at http://www.local.communities.gov.uk/finance//0809/grant.htm#set

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Consultation on Comprehensive Area Assessments

The Audit Commission has published a consultation document on the new Comprehensive Area Assessment (CAA) performance assessment framework, which is a key part of the proposals set out in the White Paper 'Strong and Prosperous Communities', published by the Government in October 2006. CAA is due to take effect from 1 April 2009.

The CAA assessments are intended to inform how the local strategic partnership and its constituent bodies plan for future improvement by helping them to focus on the most significant barriers to progress. They will also be used by the Government in its negotiations with local areas on future priorities and, where appropriate, to target support for improvement.

Other performance frameworks for specific services such as schools, colleges, police, probation, housing, and health and social care will continue, but will be developed alongside CAA to avoid any duplication.

Police authorities and forces, working alone or in partnership, will be subject to the new Assessment of Policing and Community Safety being developed by the Home Office and HM Inspectorate of Constabulary (HMIC). The intention is for HMIC and the Audit Commission jointly to inspect police authorities, and the Audit Commission to continue to make annual use-of-resources judgements.

The CAA is due to run until 15 February 2008. The consultation document can be found in full at http://www.audit-commission.gov.uk/reports/NATIONAL-REPORT.asp?CategoryID=&ProdID=127A6321-4FA8-40ba-BCE2-CF1023A3DDB9&SectionID=toc#

Consultation on Local Petitions and Calls for Action

The Department for Communities and Local Government has published a consultation document which is seeking views on:

- How the arrangements for local petitions (set out in the Governance of Britain Green Paper (July 2007)) can be strengthened and the details of how the new system might operate.
- The power for local councillors to call for action, introduced under the Local Government and Public Involvement in Health Act 2007, in particular what, if any, matters should be excluded from the call for action and what guidance Government should provide on the operation of it.

Local petitions

The Government's proposal is that local authorities should be required to respond to any petition that asks them to consider any issue which falls within their broad functions as outlined above. Petitions which would more properly be dealt with by another public body, and raise issues which relate neither to local improvement targets agreed by that body, nor to the area's sustainable community strategy, would fall outside the proposed new duty.

Calls for action

Under the call for action provisions introduced under the Local Government and Public Involvement in Health Act 2007, which are not yet in force, all local authority councillors are empowered to refer local government matters and local crime and disorder matters for consideration by the relevant overview and scrutiny committees of their local authorities.

The consultation closes on 20 March 2008. Further details can be found at http://www.communities.gov.uk/publications/localgovernment/petitionscalls

Guide for Local Authorities on Developing Local Charters

The Department for Communities and Local Government has produced a guidance document for local authorities to assist them in designing and developing local charters.

Local charters are voluntary partnership agreements between a community, the local authority and other service providers. They form part of the initiatives set out in the Government's Action Plan for Community Empowerment (covered in the November 2007 *Digest*) and are intended to be an effective way to help communities, local authorities and other providers of public services, to work together.

The guidance advises that to avoid duplication and 'engagement fatigue', charters should draw on existing information. This would include previous consultation exercises, detailed service plans for services provided by the council and other agencies (including the police), local regeneration strategies, parish, community or neighbourhood plans and tenant participation structures.

The guidance, which is described as essential reading for anyone embarking on a charter, whether as a local authority member, a representative of the community, or a local service provider, can be found at http://www.communities.gov.uk/documents/communities/pdf/669759

Crime in England and Wales: Quarterly Update to September 2007

The Home Office has published a statistical bulletin which presents the crime statistics from two different sources: the British Crime Survey (BCS) and police recorded crime. Both data sets represent the most up-to-date information, but they cover different time periods. The BCS results are from interviews conducted in the period October 2006 to September 2007; police recorded crime refers to the July to September 2007 quarter.

Main points include:

- BCS interviews in the year to September 2007 show a statistically significant decrease in the risk of being a victim of crime compared with the year to September 2006 (23% as against 24%).

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- The number of crimes recorded by the police fell by 9% for the period July to September 2007 compared with the same quarter a year earlier.
- With the exception of all personal acquisitive crime, which decreased by 11%, BCS measures of violent crime, burglary, vehicle-related theft and vandalism crime remained stable for interviews in the year ending September 2007 compared with the previous year.
- Recorded violence against the person for July to September 2007 fell by 8% compared with the same period in 2006.
- Recorded domestic burglary fell by 8% for July to September 2007.
- Recorded crime showed a 12% fall in offences against vehicles for July to September 2007 and an 11% fall in criminal damage.
- In the 12 months to September 2007 there were a provisional 10,182 firearm offences. This was an increase of 4%, or 427 offences, compared with the 12 months ending September 2006.
- BCS interviews showed no change in the overall levels of perceived anti-social behaviour.
- The BCS shows confidence in the local police significantly increased in the 12 months to September 2007, compared to the previous year.

The bulletin can be fund in full at http://www.homeoffice.gov.uk/rds/pdfs08/hosb0108.pdf

Human Genetics Commission's Citizens' Inquiry into the Forensic use of DNA

The Government advisory body on new developments in human genetics, the Human Genetics Commission (HGC), is to conduct a citizens' Inquiry into the forensic use of DNA and genetic information to fight crime, centred on the police national DNA database.

The inquiry will involve up to two hundred people at group sessions in Birmingham and Glasgow with the participants linked by live video. The key discussions will centre around thirty people in two linked panels meeting over a six-week period. They will be able to take evidence and direct their own research into the forensic use of DNA.

The panels will be reinforced by up to two hundred observers from all over the country who will be able to take part in the discussions. Their conclusions are expected to be published in the spring.

The HGC's website is http://www.hgc.gov.uk/Client/index.asp?ContentId=1

National Alcohol Strategy - Local Implementation Toolkit

The Home Office has launched a toolkit to help alcohol leads and others within local authorities, primary care trusts, children's services and delivery partnerships (such as Crime and Disorder Reduction Partnerships, and Drug and Alcohol Action Teams) to develop strategies to address alcohol-related crime, ill-health and other harm, in line with the Government's National Alcohol Strategy.

The toolkit is available at http://www.crimereduction.homeoffice.gov.uk/drugsalcohol/drugsalcohol097.pdf

Consultation on Developing a Comprehensive Blue Badge (Disabled Parking) Reform Strategy

As has been previously covered in the May and October editions of the *Digest* the Department for Transport (DfT) is committed to publishing a Comprehensive Blue Badge (Disabled Parking) Reform Strategy by Spring 2008.

As part of a consultation exercise the DfT has published a draft response to the independent strategic review of the Blue Badge Scheme which it intends will provide the foundations of the strategy. It is now seeking views from stakeholders and the public on its intended strategy and in particular in a number of questions it poses in the consultation document. The consultation will run until Thursday 17 April and can be found at http://www.dft.gov.uk/consultations/open/bluebadgereformstrategy/consulbludebadgereform

Consultation on Extending the Penalty Regime for Incorrect Returns of Taxes

HM Revenue and Customs has published a consultation paper which is seeking views on whether the penalty regime for the main taxes, i.e. income tax, corporation tax, Pay As You Earn (PAYE), national insurance contributions (NICs) and value added tax (VAT), should be extended to incorrect returns for other taxes. The other taxes are:

- Environmental taxes (aggregates levy, climate change levy, landfill tax).
- Excise duties (alcohols, tobacco, oils, gambling and air passenger duty).
- Inheritance tax.
- Insurance premium tax.
- Pension schemes (the "accounting for tax" form).
- Petroleum revenue tax.
- Stamp duties (stamp duty land tax, stamp duty reserve tax).
- Accounting to HMRC for repayments of student loans.

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- Recovery of statutory payments from HMRC (sick, maternity, paternity and adoption).

The closing date for the consultation is 6 March 2008. The consultation paper can be found in full at

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ConsultationDocuments&propertyType=document&columns=1&id=HMCE_PROD1_028281

Review of Transfer of when Historical Records are transferred to National Archive

As covered in the December 2007 *Digest*, the review team commissioned by the Prime Minister to conduct a review of when historical records are transferred to the National Archives and largely opened to public access, has commenced its work and has now launched a website in relation to its review. The website sets out the background, terms of reference and timetable of the review and also an electronic consultation on which views are being sought. The consultation will run until Friday 29 February 2008.

It is now expected that the review team will consider its findings and submit their recommendations to the Prime Minister and the Lord Chancellor by summer 2008.

The website address is http://www.30yearrulereview.org.uk/default.htm

PCS Union Members in Home Office Begin Work to Rule

Up to 10,500 members of Public and Commercial Services Union (PCS) working for the Home Office, including the Border and Immigration Agency (BIA), have begun a continuous work-to-rule in a dispute over the imposition of below-inflation three-year pay offer.

The union has warned that the work-to-rule could result in passenger delays at ports and airports, as well as delays in dealing with asylum and immigration cases.

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CPS Policy for Prosecuting Cases of Bad Driving

The Crown Prosecution Service (CPS) has published a policy document which sets out the way in which it will deal with cases involving bad driving. The policy document has been revised following feedback from a wide public consultation (details covered in December 2006 and October 2007 *Digests*).

The document, which supplements and is subordinate to the Code for Crown Prosecutors, is intended to help the public to understand the work of the CPS; how it makes its decisions; and how it deals with the often difficult issues that arise in cases.

The document sets out the elements of a number of general offences that directly concern or relate to the way in which a vehicle is driven, plus additional information and examples of what are likely to be regarded as circumstances that fit each offence.

Unlawful act manslaughter

Unlawful act manslaughter will be considered the most appropriate charge when there is evidence to prove that a vehicle was used as an instrument of attack (but where the necessary intent for murder was absent), or to cause fright, and death resulted.

Gross negligence manslaughter

A charge of gross negligence manslaughter will only be preferred over one of the statutory offences (e.g. Section 1 of the Road Traffic Act 1988 (causing death by dangerous driving) or Section 3A of the Road Traffic Act 1988 (causing death by careless driving whilst unfit through drink or drugs)), in cases where there is evidence to show a very high risk of death, making the case one of the utmost gravity.

Under the provisions of Section 33 of the Road Safety Act 2006, which came into force on 24 September 2007, juries are now able to return alternative verdicts for offences of causing death by dangerous driving, dangerous driving, causing death by careless driving when under the influence of drink or drugs, and furious driving, where they are not satisfied that the prosecution has made out its case for manslaughter. This has not previously been the case.

In most cases where a death occurs as a result of dangerous driving, the statutory offence of causing death by dangerous driving will remain the correct charge.

Causing death by dangerous or careless driving

There are three separate offences that specifically cover causing death by careless or inconsiderate driving:

- Section 1 of the Road Traffic Act 1988 - Causing death by dangerous driving.
- Section 3A of the Road Traffic Act 1988 - Causing death by careless driving while under the influence of drink or drugs.

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- Section 2B of the Road Traffic Act 1988 - Causing death by careless or inconsiderate driving. **N.B.** This section is not presently in force.

In relation to these offences, the prosecution is not required to prove that the death was foreseeable, only that the vehicle was driven dangerously or carelessly and that the driving was the cause of the death of another person.

The essential qualitative difference between the offences therefore depends on the standard of driving.

These offences are objective in the sense that the defendant's state of mind is not normally a relevant consideration in determining whether the defendant drove dangerously or carelessly. The fact that a defendant genuinely believed that in the circumstances his or her driving was not dangerous is irrelevant.

The offences require the driver to depart from the standard of a competent and careful driver, but the key difference between the offences is the extent to which the driving falls below the required standard:

- To be dangerous, the driving must fall 'far below' the required standard.
- To be careless, the driving need only fall 'below' the required standard.

Section 3ZA of the Road Traffic Act 1988 defines the meaning of careless, or inconsiderate, driving for the purposes of Sections 2B, 3 and 3A of the RTA 1988. This states that:

- A person is to be regarded as driving without due care and attention if (and only if) the way he drives falls below what would be expected of a competent and careful driver.
- In determining what would be expected of a careful and competent driver in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.
- A person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving.

In addition to existing decided cases that provide some guidance as to the driving that courts will regard as dangerous, careless or inconsiderate, the CPS policy document sets out a number of examples which are typical of what it is likely to regard as dangerous, careless or inconsiderate driving:

Dangerous driving

- Racing or competitive driving.
- Speed which is highly inappropriate for the prevailing road or traffic conditions.
- Aggressive driving, such as sudden lane changes, cutting into a line of vehicles, or driving much too close to the vehicle in front.
- Disregard of traffic lights and other road signs, which, on an objective analysis, would appear to be deliberate.

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- Disregard of warnings from fellow passengers.
- Overtaking which could not have been carried out safely.
- Driving a vehicle with a load which presents a danger to other road users.
- Where the driver is suffering from impaired ability, such as having an arm or leg in plaster, or impaired eyesight.
- Driving when too tired to stay awake.
- Driving a vehicle knowing it has a dangerous defect.
- Using a hand-held mobile phone or other hand-held electronic equipment when the driver was avoidably and dangerously distracted by that use.
- Reading a newspaper/map.
- Talking to and looking at a passenger where the driver was avoidably and dangerously distracted by that.
- Selecting and lighting a cigarette, or similar, in circumstances where the driver was avoidably and dangerously distracted by that.

Careless driving

- Overtaking on the inside.
- Driving inappropriately close to another vehicle.
- Inadvertently driving through a red light.
- Emerging from a side road into the path of another vehicle.
- Tuning a car radio.
- Using a hand-held mobile phone or other hand-held electronic equipment where the driver was avoidably distracted by that use.
- Selecting and lighting a cigarette or similar where the driver was avoidably distracted by that use.

Inconsiderate driving

- Flashing of lights to force other drivers in front to give way.
- Misuse of any lane to avoid queuing or gain some other advantage over other drivers.
- Unnecessarily remaining in an overtaking lane.
- Unnecessarily slow driving or braking without good cause.
- Driving with un-dipped headlights which dazzle oncoming drivers.
- Driving through a puddle causing pedestrians to be splashed.
- Driving a bus in such a way as to alarm passengers.

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Causing death by driving while unlicensed, uninsured or disqualified

This offence is created by Section 21 of the Road Safety Act 2006. N.B. It is not currently in force; however, when in force it will not require any proof that the driving fell below any standard required by law.

The CPS policy states that this charge will be preferred where a death has resulted from a person driving whilst unlicensed, uninsured or disqualified, as set out in Section 21, but only where there is no evidence that the driving fell below the required standard. Where the driving falls below the required standard, a charge incorporating dangerous or careless driving will be preferred.

Aggravated vehicle taking

The policy states that the CPS will prosecute under Section 12A of the Theft Act 1968 (aggravated vehicle-taking) where there is no evidence that the manner of driving fell below the standard required, but there is evidence that the vehicle was taken without consent, and where there has been a collision, as a result of which either personal injury or damage to property other than the vehicle has been caused. In addition, this charge will be used in cases where there is no evidence of a collision, but there is evidence of damage to the vehicle itself.

Where there is evidence of dangerous driving leading to a fatal collision, the driver will normally be charged with the offence of causing death by dangerous driving, so that the sentencing court has power to order the driver to take an extended re-test before driving again. This power is not available for aggravated vehicle-taking.

Also, in circumstances where the vehicle being driven badly has been taken without the consent of the owner or other person authorised to give consent, and the manner of driving falls far below the standard required, the driver will probably be charged with dangerous driving, because on conviction for that offence the court has power to order the driver to take a re-test before driving again, a power which is not available on conviction for aggravated vehicle-taking.

Wanton and furious driving

The offence of causing bodily harm by wanton/furious driving, contrary to Section 35 of the Offences against the Person Act 1861, will only be used when it is not possible to prosecute for an offence under the road traffic legislation, e.g. when the driving was not on a road or other public place or when the vehicle used was not a mechanically-propelled vehicle (such as a bicycle or horse-drawn vehicle).

The policy document can be found in full at http://www.cps.gov.uk/publications/prosecution/pbd_policy.html#38

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Sentencing Advisory Panel Advice on Sentencing for Offences of Causing Death by Driving

The Sentencing Advisory Panel (SAP) has produced advice on sentencing in relation to four offences of causing death by driving. The advice was produced following a request from the Sentencing Guidelines Council (SGC) in order to assist the SGC in producing sentencing guidelines in respect of the offences. The SGC's guideline on causing death by driving has been published for consultation alongside SAP advice and is covered in the following article.

The four offences to which the advice relates are:

- Section 1 of the Road Traffic Act 1988 - Causing death by dangerous driving.
- Section 3A of the Road Traffic Act 1988 - Causing death by careless driving when under the influence of drink or drugs or having failed to provide a specimen for analysis without reasonable excuse.
- Section 2B of the Road Traffic Act 1988 - Causing death by careless or inconsiderate driving.
- Section 3ZB of the Road Traffic Act 1988 - Causing death by driving: unlicensed, disqualified or uninsured drivers.

N.B. These latter two offences are introduced by Sections 20 and 21 of the Road Safety Act 2006 but are not yet in force. As previously mentioned in the September *Digest*, the Ministry of Justice Minister, Maria Eagle, has stated that it is her intention to bring Sections 20 and 21 into force, subject to the Sentencing Guidelines Council publishing final sentencing guidelines in respect of the offences.

In formulating its proposals in the report, the SAP has conducted a public consultation process (covered in the February 2007 *Digest*) and taken into account the CPS Policy for Prosecuting Cases of Bad Driving (covered in the previous article).

The advice to the SGC in the report relates to the sentencing of offenders aged 18 and over only. These recommendations are:

- Where there is sufficient evidence of driving impairment, the consumption of alcohol or drugs prior to driving will make an offence more serious. Where the drugs were legally purchased or prescribed, the offence will only be regarded as more serious if the offender knew or should have known that the drugs were likely to impair driving ability.
- Unless inherent in the offence or charged separately, failure to provide a specimen for analysis (or to allow a blood specimen taken without consent to be analysed) should be regarded as a determinant of offence seriousness.
- The fact that an offender was avoidably distracted by using a hand-held mobile phone when a causing death by driving offence was committed will always make an offence more serious. Similarly, adjusting the controls of

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a hands-free mobile phone or any other electronic equipment will be an avoidable distraction. Reading or composing text messages over a period of time will be a gross avoidable distraction.

- The fact that the victim of a causing death by driving offence was a particularly vulnerable road user is a factor that should be taken into account when determining the seriousness of an offence.
- Where more than one person is killed, that will aggravate the seriousness of the offence because of the increase in harm. Where the number of people killed is high and that was reasonably foreseeable, the number of deaths is likely to provide sufficient justification for moving an offence into the next highest sentencing band.
- The fact that an offender may have consumed alcohol or drugs unwittingly before driving may be regarded as a mitigating factor; but consideration should be given to the circumstances in which the offender decided to drive or continue to drive when driving ability was impaired.
- The degree to which serious injuries sustained by an offender will justify a reduction in sentence will depend upon the degree of fault in the offender's driving in relation to the commission of the offence.
- Normally, the fact that the victim of an offence was in a close personal or family relationship with the offender should be treated as a mitigating factor. The degree to which this factor should influence sentence will vary according to the culpability of the offender and, where culpability is high, a reduction in sentence may not be justified.
- Any actions on the part of the victim(s) or a third party that contributed to the commission of an offence may be taken into account as a mitigating factor.
- Where an offender gave direct, positive, assistance to victim(s) at the scene of a collision, this should be regarded as a mitigating factor.
- The fact that an offender's lack of driving experience contributed to the commission of an offence should be treated as a mitigating factor; in this regard, the age of the offender is not relevant.
- Genuine remorse on the part of an offender or evidence that an offender is normally a careful and conscientious driver may both be taken into account as personal mitigation and may justify a reduction in sentence.
- When ordering disqualification from driving, the purpose of which is primarily public protection, the duration of the order should allow for the length of any custodial period in order to ensure that the disqualification has the desired impact.
- The sentencing starting points and ranges for the offence of causing death by dangerous driving require significant revision only towards the top of the scale of seriousness.
- A fine is most unlikely to be an appropriate sentence for an offence of causing death by careless or inconsiderate driving; where a custodial sentence is not justified, a community order should be imposed.

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- A fine will rarely be an appropriate sentence for an offence of causing death by driving whilst unlicensed, disqualified or uninsured; where a custodial sentence is not justified, a community order normally should be imposed.
- The sentencing starting point for the offence of causing death by driving whilst unlicensed, disqualified or uninsured should be higher where the offender was disqualified than where the offender was unlicensed or uninsured.
- Where an offender is convicted of causing death by driving whilst unlicensed, disqualified or uninsured, the fact that the decision to drive was prompted by a genuine emergency affecting the offender or a passenger in the offender's vehicle may be treated as mitigation.

The full report can be found at http://www.sentencing-guidelines.gov.uk/docs/death-by-driving-advice.pdf

SGC Consultation Sentencing Guideline on Causing Death by Driving

The Sentencing Guidelines Council (SGC) has published a consultation sentencing guideline on four offences of causing death by driving, as referred to in the previous article. The SGC has almost entirely adopted the advice of the SAP as summarised above.

In the guidelines, the levels of seriousness for those offences based on dangerous or careless driving alone have been determined by reference only to determinants of seriousness. Aggravating factors will have the effect of either increasing the starting point within the sentencing range provided or, in certain circumstances, of moving the offence up to the next sentencing range

Causing death by dangerous driving: Section 1 of the Road Traffic Act 1988

Three levels of seriousness are set out in the guideline.

Level 1 - The most serious offences, encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others. Such offences are likely to be characterised by:

- A prolonged, persistent and deliberate course of very bad driving

AND/OR

- Consumption of substantial amounts of alcohol or drugs leading to gross impairment

AND/OR

- A group of determinants of seriousness which in isolation or smaller number would place the offence in level 2.

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Level 2 - is driving that created a substantial risk of danger and is likely to be characterised by any of the following:

- Greatly excessive speed, racing or competitive driving against another driver.
- Gross avoidable distraction, such as reading or composing text messages over a period of time.
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs, failing to take prescribed medication or as a result of a known medical condition.
- A group of determinants of seriousness which in isolation or smaller number would place the offence in Level 3.

Level 3 - is driving that created a significant risk of danger and is likely to be characterised by any of the following:

- Driving above the speed limit/at a speed that is inappropriate for the prevailing conditions.
- Driving when knowingly deprived of adequate sleep or rest or knowing that the vehicle has a dangerous defect or is poorly maintained or is dangerously loaded.
- Driving whilst avoidably distracted.
- Failing to have proper regard to vulnerable road users.

Causing death by careless driving when under the influence of drink or drugs or having failed to provide a specimen for analysis without reasonable excuse: Section 3A of the Road Traffic Act 1988

In comparison with causing death by dangerous driving, the level of culpability in the actual manner of driving is lower; but that culpability is increased in all cases by the fact that the offender has driven after consuming drugs or an excessive amount of alcohol.

Causing death by careless or inconsiderate driving: Section 2B Road Traffic Act 1988

Disqualification of the offender from driving and endorsement of the offender's driving licence are mandatory, and the offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification.

Some cases will be on the borderline between dangerous and careless driving, or may involve a number of factors that significantly increase the seriousness of an offence. As a result, the guideline for this offence identifies three levels of seriousness, the range for the highest of which overlaps with ranges for the lower levels of seriousness for causing death by dangerous driving.

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Causing death by driving: unlicensed, disqualified or uninsured drivers: Section 3ZB of the Road Traffic Act 1988

Disqualification of the offender from driving and endorsement of the offender's driving licence are mandatory, and the offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification.

The consultation period ends on 10 March 2008, after which the SGC will consider any responses received and then issue a definitive guideline, to which every court is required to have regard in accordance with Section 172 of the Criminal Justice Act 2003. The consultation guidelines can be found in full at http://www.sentencing-guidelines.gov.uk/docs/death-by-driving-cons-guideline.pdf

Revised Magistrates' Court Sentencing Guidelines

The Sentencing Guidelines Council (SGC) has published for consultation revised Magistrates' Court Sentencing Guidelines (MCSG), which are intended to replace the current edition of the guidelines, published in October 2003 by the Magistrates' Association.

By statute, every court must have regard to any relevant guidelines issued by the Council. These guidelines will apply both to sentences imposed in a magistrates' court when dealing with adult offenders and to decisions about mode of trial. They will also be relevant to the Crown Court when deciding an appeal against a sentence imposed in a magistrates' court.

The revised guidelines take into account the significant changes that have been made to the sentencing framework since that time, including the implementation of the Criminal Justice Act 2003 and the development of guidelines by the SGC.

They include a new format of offence guidelines; address a greater number of offences; incorporate relevant guidelines issued by the SGC and Court of Appeal; and provide greater guidance on matters such as compensation, ancillary orders, racial and religious aggravation, road traffic offences, and the relevance of conditional cautions and penalty notices to sentence.

The Council has also incorporated two additional offence guidelines (making off without payment and abstracting electricity), based on advice from the Sentencing Advisory Panel on sentencing for offences of dishonesty.

The revised guidelines continue the existing method of using a proportion of weekly income as the basis for calculation of the assessment of fines. But they do also now provide guidance on some issues not previously covered. These include the relevance of factors such as an offender's outgoings, savings, additional household income and potential earning capacity, and the approach to be adopted where there is insufficient reliable information about an offender's financial circumstances.

The consultation closes on Wednesday 6 February 2008. Papers and the revised guidelines can be found at http://www.sentencing-guidelines.gov.uk/docs/SGC%20Final.pdf

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Piloting of the 'Streamlined Process' for the Preparation and Prosecution of Cases in the Magistrates' Court

The Government has decided that the magistrates' court must seek to ensure that it deals with its workload of one and a half million cases a year more expeditiously and in a manner that is simple and consistent with fair summary justice.

The Government has, therefore, as part of its Public Service Agreements (PSA) 2008 -2011, set for the criminal justice system (CJS) "To deliver a more effective, transparent and responsive criminal justice system for victims and the public".

Two of the supporting indicators are integral to this project, namely:

- 1 - Improve the effectiveness and efficiency of the CJS in bringing offences to justice.
- 2 - Improve public confidence in the fairness and effectiveness of the CJS.

Data from the Simple Speedy Summary Justice (CJSSS) initiative is showing that improvements in early guilty plea rates are being achieved at first hearings and that the numbers of adjournments are being reduced and cases are moving more swiftly to trial.

However, it has also been recognised that, unless the level of the bureaucracy necessary for the production of a prosecution file for likely guilty plea cases is proportionately reduced and a more focussed preparation for trial is enforced, the full potential benefits will not be realised and maintained at a time when there is real pressure on resources.

A quick, less bureaucratic but effective approach is also supported by the Sir Ronnie Flanagan Interim Report on Policing (recommendation 10), the senior judiciary and criminal justice Ministers.

As a result, a bespoke project – the Streamlined Process has been established as a sub-set of CJSSS and managed by the Prosecution Team's Charging Operational Board.

Streamlined Process Objectives

The Streamlined Process aims to deliver more proportionate prosecution preparation for:

- Anticipated guilty plea cases suitable for sentencing in the magistrates' court.
- Anticipated not guilty plea cases suitable for disposal in the magistrates' court.

The scheme seeks to enhance the CJSSS arrangements with a much simplified, but proportionate, file build procedure (summary of evidence and key evidence where required) for the first hearing and includes:

- The development of a process to be used by the police and CPS to build a Guilty Plea Report in anticipated guilty plea cases.

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- The development of a process to be used by the police and CPS to build a First Hearing File in anticipated not guilty plea cases.
- Guidance on evidence which will be served upon the defence, court and probation as advance information.

The Streamlined Process is to be trialled in seven forces (LCJB areas) or parts of (BCU/borough) during spring 2008. Following a post-implementation review, further rollout will be undertaken in the Beacon sites (ten LCJB areas who are testing a combination of different CJ initiatives) and subsequently the remaining CJS areas from summer 2008.

The areas identified as test sites are:

- Cheshire.
- Gloucestershire.
- Humberside.
- London.
- Merseyside.
- Staffordshire.
- Suffolk.

The following have been identified as being the key drivers of success:

- A significant reduction of police bureaucracy in the production of a prosecution file fit for first hearing, irrespective of anticipated plea.
- Quality of police investigations is not compromised, leading to increased not guilty pleas being entered in respect of cases within scope.
- Embedding of a national consistent standard of police file preparation for cases within scope.
- Court and defence accept a nationally consistent advance information package sufficient to identify appropriate plea and disposal venue.

The Director of Public Prosecutions has prepared guidance for police officers and Crown Prosecutors on the new streamlined procedures. These are summarised in the following article.

DPP's Guidance on the 'Streamlined Process' Prosecution File Procedures

The Director of Public Prosecutions has prepared guidance for police officers and Crown Prosecutors which sets out the file content and criteria for how the Streamlined Process (outlined in the previous article) will operate in the test sites.

Casework not covered by this Guidance should continue to be dealt with under the Director's Guidance on Charging, issued February 2007, or later edition.

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Under the Streamlined Process, police officers will still be required to provide a summary of the evidence to the Prosecutor in all cases.

In police-charged cases which are expected to result in guilty pleas suitable for sentencing in the magistrates' court, the summary, referred to as the 'Police Report', will be contained within an adapted MG5 form. Subject to certain exceptions which require MG11 witness statements and copies of visual recordings to be attached to the file, the 'Police Report' will form the single source of advance information for service on the defendant and the court.

The criteria for expected guilty plea cases are where:

- The suspect has made a clear and unambiguous admission to the offence to be proved and has said nothing that could be used as a possible defence (e.g. "I hit him first because I thought he was going to hit me" or "I did walk out of the shop without paying but I just forgot. I did not mean to", etc.).

Or

- Although the suspect has made no admission in interview, the commission of the offence and the identification of the offender can be established by good quality evidence (e.g. of a police officer or another reliable independent witness) or the suspect can be seen clearly committing the offence on good quality visual recording.

Cases will be considered suitable for sentence in the magistrates' court if any of the following apply:

- The loss or damage of the offence to be charged is less than £5000 or would not exceed £5000 if there is more than one offence charged (including TICs).
- The overall circumstances of the offence are not so serious that the magistrates are likely to decide that the defendant deserves more than six months imprisonment and send the case to the Crown Court.
- The offence has not been committed at a time when the suspect was subject to a Crown Court order then in force (e.g. a suspended sentence of imprisonment).

In cases in which it is anticipated that there will be a guilty plea suitable for sentencing in the magistrates' court, the 'Guilty Plea Report' prosecution file will contain the following information, material or evidence for the first hearing:

- Charge Sheet (MG4) together with the Bail Record (MG4A) or Custody Remand form MG7.
- The Police Report (MG5).
- Dates to avoid for ALL witnesses (MG10) (unless alternative dates-to-avoid procedure agreed under local CJSSS arrangements).

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And where appropriate, copies of the following:

- Witness statements (MG11).
- Any visually recorded evidence (CCTV and/or photographs) as prescribed in the guidance.
- The defendant's previous convictions and cautions (with usual copies for the defence and court).
- A schedule of offences to be taken into consideration (MG18).
- A MG6 for confidential information, including the name and address of a victim for the payment of compensation. A note of any material which undermines the prosecution's case which may assist the defence in the early preparation of their case or in making an application for bail should be included.

The guidance advises that the contents of the 'Police Report' should be set out in a narrative style and set out the full circumstances of all offences charged in a chronological order and should also:

- Clearly indicate which witness is providing the evidence summarised.
- Mention any aggravating or mitigating circumstances or expression of remorse.
- Include the exact wording of admissions made at the scene or at the point of arrest, or later when charged.
- Set out in the defendant's interview section any admissions made during a PACE-compliant interview.
- Provide details of estimates in support of any compensation claims to be made.

The guidance also advises that, at the conclusion of any interview in which admissions have been made, the interviewing officer should summarise the admissions aloud and confirm the suspect's agreement to that summary. This agreed summary should be recorded on the Police Report. Recording that a full and frank admission was made will not suffice.

Where a 'Guilty Plea Report' prosecution file is not appropriate, a magistrates' court 'First Hearing File' will be sufficient to progress the case to mode of trial and/or plea and will enable the court, with the assistance of the parties, to identify the real issues for trial. It will contain:

- The MG4 charge sheet together with the bail record (MG4A) or Custody Remand form (MG7).
- The Police Report (MG5).
- MG11 key witness statements and a copy of any other key evidence only.
- Dates to avoid of ALL witnesses (MG10) (unless alternative dates-to-avoid procedure agreed under local CJSSS arrangements).

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- A copy of any visually recorded evidence as prescribed in the guidance.
- A schedule of the defendant's previous convictions and/or cautions.
- A MG6 for confidential information, including the name and address of a victim for the payment of compensation. A note of any material which undermines the prosecution's case which may assist the defence in the early preparation of their case or in making an application for bail should be included.

It is expected that the guidance will be made available on the CPS website at http://www.cps.gov.uk/

Possible Industrial Action that will Affect the CPS

Following the imposition of a recent pay offer on Crown Prosecution Service (CPS) staff, the Public and Commercial Services Union (PCS) is to ballot its members in the CPS on whether they wish to take industrial action short of a strike.

If PCS members vote for industrial action, then there could be disruption and delays in the preparation and presentation of criminal cases by the CPS.

New Criminal Injuries Compensation Model

Carole Oatway of the Criminal Injuries Compensation Authority (CICA) has announced that CICA intends to roll-out a new criminal injuries compensation model on 1 July 2008. The model is currently being run as a pilot scheme and allocates inquiries on a geographical basis, allowing for relationships to be built up. It also offers more scope for technology to be better used. Plans are also being made to introduce an in-house helpline for claimants which, it is hoped, will enable more support to be offered to claimants.

New Partnership Arrangement for the Operation of Her Majesty's Courts Service

A new partnership arrangement for the operation of Her Majesty's Courts Service (HMCS) is expected to begin early in the new financial year.

Under the arrangement, the Lord Chancellor and Lord Chief Justice will jointly agree the aims and objectives for HMCS, as well as priorities for, and division of, funding within the Courts Service in England and Wales. A detailed structure of the partnership and its governance is to be set out in a new Framework Document for HMCS, which will be laid in due course before both Houses of Parliament.

CPS Hate Crime Scrutiny Panel

The Crown Prosecution Service's CPS Direct department has set up a Hate Crime Scrutiny Panel to improve the way in which it deals with hate crime. The Panel's membership includes independent representatives from Voice UK, Liverpool City Council, University of Northumbria, Action on Elder Abuse, Stop It Now! and the sexual assault referral centres.

The Panel, together with a CPS Direct facilitator, will review examples of hate crimes where the initial charging advice was given by CPS Direct lawyers, in order to identify strengths, weaknesses or trends in the decision making.

Examples of good practice and any learning points will then be passed on to CPS Direct lawyers.

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Home Affairs Committee Inquiry into Policing in the 21st Century

The Home Affairs Committee has announced that it is to conduct a new major inquiry into policing in the 21st century, which will examine progress made with the programme of police reform initiated by the Government in 2001.

The primary focus of the inquiry will be on how expectations of the police service have changed and the resources the police have to meet these expectations. In particular, the Committee will consider:

- What the public expects of the police; how chief constables determine priorities; the role of the Home Office in setting priorities.
- The effect of heightened concerns about terrorism, immigration, gun and knife crime, identity fraud; the growth in cyber-crime; the Olympics.
- Public involvement in local policing.
- Roles of and relationship between PCs and PCSOs; different ways in which police forces deploy staff.
- Use of technology to enable police officers to return to the beat.
- Definition of 'front-line policing' (i.e. should it include work on case files and report preparation?).
- Police funding and the efficiency with which the various police forces deploy the financial resources available; difficulties in recruitment and retention, covering not just numbers but quality of applicants/staff retained.
- Perceived problems with the bail system.

The bail system was not one of the issues listed as being part of the inquiry when it was originally announced, but was announced later by the Rt Hon Keith Vaz MP, Chairman of the Committee, following in the wake of two high-profile murder cases, those by Adam Swellings and Garry Weddell, a police inspector.

Swellings was convicted for the murder of Garry Newlove in Warrington, Cheshire. He committed the crime only hours after being bailed.

Weddell appears to have killed his mother-in-law before committing suicide, having been bailed after being charged with murdering his wife.

Organisations and individuals interested in making written submissions are invited to do so by Friday 15 February 2008. These should be sent by e-mail to homeaffcom@parliament.uk.

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Independent Think Tank Report on Police Reform

The independent think tank, the Policy Exchange, has published its report called 'Footing the Bill: Reforming the police service', in which it investigates the challenges that police face in containing costs and balancing protective services, counter-terrorism and neighbourhood policing.

The report contains a number of recommendations which are divided into four sections:

- Funding.
- Collaboration.
- Workforce modernisation.
- Private provision.

The recommendations in respect of funding are:

- That the cap on council tax increases be removed.
- That the police funding formula be reviewed now, as opposed to 2010-11.
- That local pay bargaining be instituted.

The recommendation in respect of collaboration is:

- That collaboration be achieved through locally-driven strategic alliances.

The recommendations in respect of workforce modernisation are:

- The introduction of transferable police powers of arrest, search and seizure, which would be conferred on non-sworn members of staff by a chief constable on a temporary basis.
- The creation of unified employment arrangements for sworn and non-sworn staff.
- To retain, but review, the office of constable.
- To encourage the Police Federation to admit all staff, both sworn and non-sworn.
- The overhaul of the current system of performance management by better use of performance data.
- The expansion of non-sworn staff role for tasks presently carried out by fully-warranted officers.
- The identification and reduction of "resilience" risks associated with workforce modernisation.
- Cutting the number of police ranks to three or four ranks, including constable, sergeant and superintendent, with bands of pay within each rank.

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- That chief constables be given powers of chief executives of their forces, with police officers and staff being employees.

The recommendations in respect of partnership are:

- That the use of private partnership be widened.
- To strengthen procurement expertise at Home Office and at force leadership level.

In respect of this last recommendation, the report suggests that the National Policing Improvement Agency (NPIA) is best placed to develop a standard framework for contract negotiation with private providers. It states that contracts need to be short term, flexible, accountable through key performance indicators and possibly multi-sourced.

It also suggests that the NPIA should establish a training programme that would ensure police forces have well-trained procurement staff, able to get the best terms from private partnership contracts.

The report can be found in full at http://www.policyexchange.org.uk/images/libimages/340.pdf

Independent Think Tank Report on Police Force Modernisation

The independent think tank, the Institute for Public Policy Research, has announced that it is to publish a report entitled, 'Modernising the Police Workforce' in February. This will call for police pay to be radically overhauled to reflect performance and skills, rather than length of service. It will argue that the current system does not reward expertise and discourages officers from developing much-needed specialist skills, such as tackling violent and gang-related crime, and that it fails to reward officers who do the most difficult or dangerous roles, such as emergency response work.

Recommendations in the report will include:

- Reforming the police pay system to introduce pay bands for each rank, with higher pay for those with specialist skills, and an end to tenure-related pay increments, except in the first few years of service.
- Moving to a model of policing that allows police officers and staff to develop and use their skills to maximum effect by pursuing a wide range of specialisms, e.g. becoming a specialist in managing alcohol-related disorder or in victim support.
- Increasing the use of mixed teams of police officers and specialist civilians, e.g. burglary teams might include civilian victim support or home security specialists.
- Putting more focus on the active development and training of every police worker, e.g. tailoring training to individual officer interests and needs and by training officers in current areas of weakness, such as forensic awareness and crime scene management.

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- Moving away from remote, central targets to one where performance is primarily driven by senior officers supporting constables to deliver results.

The report, when published, will be available to download from http://www.ippr.org.uk/publicationsandreports/

Police Pay

The Police Federation has announced that it has filed an application with the High Court to challenge the government's decision to refuse to implement the recommendation of the pay review body.

Three-Year Public Sector Pay Deals

The Chancellor, Alistair Darling, has put forward the suggestion that public sector workers could get pay deals confirmed for three years at a time, rather than on an annual basis, arguing that it would give a degree of certainty so that both employers and employees would know where they stood.

Commenting on the suggestion, the Prime Minister, Gordon Brown, stated that such an option would not be appropriate in all cases and that the Government will be working where relevant with the professions to consider this option for the future.

Commenting on the suggestion, Jan Berry, Chairman of the Police Federation of England and Wales, stated that she found it more than ironic that the Government are now proposing multi-year pay arrangements for public sector workers, when the Police Negotiating Board (staff and employers) proposed such a settlement 10 weeks ago to prevent the current police pay dispute going to arbitration. The proposal at that time was flatly rejected by the Home Office.

Children, Schools and Families Secretary, Ed Balls, has recently announced a three year pay award for teachers, in line with the recommendations of the School Teachers' Review Body. The deal means a 2.45% pay rise for teachers from September 2008, with additional increases for some London teachers, and increases of 2.3% per year from 2009 and 2010.

Ed Balls's announcement met with an angry reaction from the Police Federation, with Jan Berry commenting that it blew out of the water the Government's own spin that public sector pay awards above 2% will fuel inflation. She said she had no doubt the teacher's ability to take strike action influenced the Government's decision to pay in full the recommendation of their pay review body.

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Police Staff in England and Wales Pay Increase

Police support staff in England and Wales have accepted a pay increase deal of 2.5% backdated to 1 September 2007, after UNISON had recommended acceptance of the offer as the best that could be achieved through negotiation. The increase will apply to around 70,000 support staff, including 11,500 police community support officers.

ACPO Strategy for Children and Young People

The Association of Chief Police Officers has published a strategy document for children and young people, covering children under the age of criminal responsibility and extending through the teenage years to people up to the age of 20 years. There are six strategy strands each of which has a Chief Officer portfolio leader whose task is to ensure that the necessary research and development is progressed through a detailed work plan to achieve the strategies objectives. The strategy strands are:

Young People and the Police: Engaging with Children and Young People

- Its aim is to build and maintain positive relationships between all young people and the police.

The portfolio lead is Mike Tonge, Deputy Chief Constable, Merseyside Police.

Children and Young People and the Police: Children and Young People as Victims and Witnesses

Aims:

- To provide young people, their parents and carers, with the best available information to enable young people to avoid crime and disorder.
- Working with our partners we aim to develop systems that provide reassurance and respond to the individual needs of young victims and witnesses of crime and disorder.

The portfolio lead is Brian Paddick, Commander, Metropolitan Police Service.

Pre-Crime Prevention: Helping Those in Need

- Its aim is to take a lead in helping those children and young people at greatest risk of becoming involved in anti-social behaviour or criminality before they enter the criminal justice system.

The portfolio lead is Charles Clark, Deputy Chief Constable, Essex Police.

Post Crime Reduction: Effective Youth Justice

Aims:

- To deal quickly and effectively with children and young people within the youth justice system.

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- To have consistent and effective processes and systems across all police forces.
- To ensure policing responses are appropriately graduated towards those young offenders who are at the highest risk of further anti-social behaviour or criminality.

The portfolio lead is David Warcup, Assistant Chief Constable, Northumbria Police.

Post-Crime Detection: Targetting Persistent Young Offenders (PYOs)

- Its aim is to target nominated young offender groups, presently "spree offenders" and PYOs by intelligence led policing and multi agency partnerships.

The portfolio lead is William Horne, Assistant Chief Constable, Gwent Police.

Young People and the Police: Human Resource Development 'Towards a qualified workforce'

- Its aim is to develop national occupational standards to ensure the delivery of quality services to and for young people.

The portfolio lead is Peter Ditchett, Assistant Chief Constable, Nottinghamshire Police.

The strategy document can be found in full at http://www.acpo.police.uk/asp/policies/Data/strategy_children_young_people.doc

IMPACT Programme: Equality, Diversity and Privacy Consultation Paper

The National Policing Improvement Agency has published a consultation paper on behalf of the IMPACT Programme. IMPACT was established following Sir Michael Bichard's Inquiry, and is responsible for taking forward seven of his recommendations, which relate to the management and sharing of information by the police.

Work has already been commenced with the police service, the Home Office, the Information Commissioner and the Ministry of Justice to look at how the objectives of preventing and detecting crime can be met whilst having due regard to individuals' rights. In addition, various equality and diversity organisations have been contacted to help in identifying the main equality and diversity issues.

A consultation document has now been published to seek views on the work being conducted, identify issues which are likely to cause people the most concern and identify ways in which these might be addressed.

Responses are requested by Friday 4 April 2008. The consultation document can be found in full at http://www.npia.police.uk/en/docs/Equality_Diversity_and_Privacy_Consultationv1_0.pdf

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IPCC Report of Review of Deaths in Custody in South Wales

The Independent Police Complaints Commission has published its report following a review of deaths in custody and 'near misses' in custody in South Wales Police between 1 April 2004 and 1 April 2006.

The report highlights several issues and makes a number of recommendations which, it states, are relevant not just for South Wales Police but for the police service in general.

One of the main issues highlighted in the report was the poor quality of the CCTV provision in custody centres, including a lack of audio in the recordings and inaccurate times.

Recommendations in the report include:

- The introduction of a system of checks for CCTV systems in operation in custody centres, with custody officers signing a daily register to ensure accuracy of the time shown on recordings and that tapes are regularly changed and recording heads regularly cleaned.
- In addition to the existing training courses, mechanisms should be put in place to ensure that all custody staff receive regular updates in respect of changes in law, policy and procedures.
- Establishing a force-wide multi-agency forum with key stakeholders working with vulnerable people including health, homeless agencies and drug and alcohol dependency agencies, with the intention of establishing a co-ordinated approach in helping individuals from vulnerable groups who should not be detained in police cells.

The IPCC report can be found in full at http://www.ipcc.gov.uk/webreport.pdf

Practice Advice on Retail Civil Recovery

The Association of Chief Police Officers (ACPO), after seeking advice from the Office of the Information Commissioner, has issued advice to police forces confirming that Section 35(2) of the Data Protection Act 1998 provides the power to allow them to provide personal information about a defendant to retailers and third-party civil recovery operators acting on behalf of a retailer, who are seeking to take civil action against such a person.

Section 35(2) states:

Personal data are exempt from the non-disclosure provisions where the disclosure is necessary

(a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or

(b) for the purpose of obtaining legal advice,

or is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

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ACPO produced a set of Operating Principles and a Code of Practice in relation to civil recovery in 1999, which was agreed with retailers and civil recovery operators. In 2002, it issued advice to forces clarifying the legal acceptability of providing such information under both the Data Protection Act 1998 and Victim's Charter procedures.

The latest advice has been circulated following reports from the retail industry that they were receiving variable responses from the police to such requests, even within the same force area.

Use of LCN DNA Testing

In December 2007, following the judgment in the Omagh bombing case, the Association of Chief Police Officers (ACPO), after consultation with the Crown Prosecution Service (CPS), recommended that police forces should operate an interim suspension on the use of low copy number (LCN) DNA analysis in criminal investigations in England and Wales. It recommended that this suspension should remain in place whilst the CPS conducted a review of the pending cases in which LCN DNA profiling is to form part of the prosecution case, to see whether any may be affected.

During the Omagh bomb trial, the judge rejected the use of the technique because it was not yet seen to be at a sufficiently scientific level to be considered evidence. In England and Wales, DNA evidence has to be corroborated by other evidence.

LCN allows genetic profiles of offenders to be created from very small tissue samples that have only been detectable with new techniques available since 1999. These can be as tiny as a millionth the size of a grain of salt, which can amount to as little as a few cells of skin or sweat left in a fingerprint.

The CPS has now carried out this review of current cases involving the Forensic Science Service (FSS) use of LCN DNA analysis and has concluded that LCN DNA analysis provided by the FSS should remain available as potentially admissible evidence. It does stress, however, that the strength and weight that such evidence is given in any individual case remains a matter to be considered, presented, and tested in the light of all the other evidence.

The CPS, in conjunction with ACPO, the Forensic Science Regulator at the Home Office and the FSS, have now developed and published a guidance document which explains how the FSS LCN technique works, its validation points and strengths and limitations. This is available to view at http://www.cps.gov.uk/publications/prosecution/lcn_testing.html#05

In addition, a checklist of questions has also been published, which is designed to be read in conjunction with the aforementioned guidance document. The questions contained in the checklist are designed to assist the police service and the Crown Prosecution Service to assess whether further, more detailed, information is required to support a prosecution. The questions should be addressed to the prosecutor's normal point of contact in the case.

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It is advised that both the documents should be regarded as discloseable material in the context of any trial in which they might be relevant.

It is expected that the Home Office Forensic Science Regulator will shortly prescribe standards against which the FSS and other forensic suppliers will be required to validate their LCN and similar techniques.

Police Certificate Service Pilot

The Association of Chief Police Officers (ACPO) Criminal Records Office (ACRO) has implemented a pilot 'Police Certificate Service', which is running from 9 January to 8 June 2008 inclusive.

The pilot scheme is being run with a view to it, subject to positive evaluation at the conclusion of the trial period and after consultation and feedback from the embassies involved, being introduced as means whereby people who require a police certificate for a visa to travel abroad can do so without having to go through the current subject access request process under the Data Protection Act 1998, which is seen as a burden on individual police forces' resources.

During the pilot, the ACRO will act as a single point of contact for both the four participating embassies (USA, Canada, Australia and New Zealand) and the public. Embassies will continue to use subject access alongside the police certificate service during the pilot and will advise people as to whether they require them to obtain a police certificate via the ACRO pilot scheme or in the normal manner.

ACRO will utilise the step down model (approved by ACPO in 2006) when processing its certificates, thereby ensuring that information restricted from non-police view is not disclosed.

ACRO will produce its certificates in 10 working days, from the date the request is accepted to the date of despatch. A person requiring a police certificate urgently will be able to obtain one via a premium service which will provide this in 2 working days from the day the application is accepted to the day of dispatch (£70 fee applies).

Police certificates are valid for 6 months. Documents referring to a police certificate, including application forms and identity documents, will be destroyed after 12 months.

Further questions on the pilot should be directed to Nicholas Apps or Lucy Cahill at the ACPO Criminal Records Office 023 8045 0989 or 01962 871609 respectively.

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Results of the Annual Christmas Drink Driving Campaign

The Association of Chief Police Officers (ACPO) has published figures from the Christmas 2007 drink driving campaign, run by ACPO in partnership with the Department of Transport. The figures show that across England and Wales (but excluding the Surrey area):

- 155,216 breath tests were conducted. (Compared to 145,867 in 2006).
- 7,774 of tests were positive, refused or failed. (Compared to 9,658 in 2006).
- 9,982 of the breath tests were requested following injury collisions. 668 of these were positive, refused or failed.
- 13,434 breath tests were requested following damage only collisions. 972 of these resulted in positive, refused or failed tests.
- The total number of fit to drive (field impairment) tests conducted was 550, of which 153 resulted in arrests.

Regional drink and drug driving figures are available from each local force.

Analysis of the figures also revealed that there was no significant difference in the failure rate between those under 25 years old, who are statistically more likely to be involved in road traffic collisions, and those over 25 years old.

The Electoral Commission and ACPO Guidance on Electoral Fraud

The Electoral Commission and the Association of Chief Police Officers (ACPO) have produced a revised guidance document which is designed to alert police forces to issues that may arise in the run-up to election polling days, on polling days and at related events. It also offers guidance on factors to take into consideration when carrying out a force risk assessment; and includes a comprehensive threat assessment and control strategy checklist.

This guidance relates to elections in England and Wales. It covers:

- Elections to the United Kingdom Parliament.
- Elections to the National Assembly for Wales.
- Elections for elected mayors.
- The cyclical local government elections usually held in May for district, borough, city, unitary, metropolitan and county councils, as well as by-elections.
- Elections to town and parish councils in England and community councils in Wales.

It does not cover elections to the Greater London Authority, where separate guidance will be issued.

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The guidance document can be found in full at
http://www.electoralcommission.gov.uk/files/dms/1Guidance2008EWFinal170108_27924-20526__E__W__.pdf

Use of the Term 'Child Pornography'

Jim Gamble, the Chief Executive of the Child Exploitation and Online Protection Centre, has called on people, in particular the media, to stop using the term 'child pornography' as it 'plays down severity of abuse'. The preferred term for such material is 'images of child abuse'.

International Criminal Database

The *Guardian* newspaper has reported on a United States-initiated programme for an international database of criminals to be set up that can be shared between countries. It is understood that the proposed database, nicknamed 'Server in the Sky', is planned to hold personal information on criminal suspects, including iris, palm prints and other personal biological information.

A working group, the International Information Consortium, has been formed by representatives from the US, UK, Australia, Canada and New Zealand to plan the strategy in respect of the programme.

HOC 35/2007
Increases to Police Pay, Dog Handler's Allowance, Competence Related Threshold Payment and London Weighting

This Home Office Circular publicises the Secretary of State's decision on the increase of pay and certain allowances of police officers in England and Wales.

Pay

The pay of all officers, that is, the federated ranks, superintendents, chief officers and police cadets, is increased by 2.5% with effect from 1 December 2007.

London Weighting

London Weighting is increased from £2,055 to £2,106 with effect from 1 October 2007 (amended to 1 July see HOC 1/2008).

Dog Handler's Allowance

Dog Allowance is increased from £1,926 to £1,974 with effect from 1 December 2007 (amended to 1 September see HOC 1/2008).

Competence Related Threshold Payment

The Competence Related Threshold Payment is increased from £1,095 to £1,122 with effect from 1 December 2007 (amended to 1 September see HOC 1/2008)

Police Negotiating Board Circulars setting out the details of the increases are attached to the Circular, which can be found in full at http://www.circulars.homeoffice.gov.uk

HOC 1/2008
Amendments to Effective Dates for Increases to London Weighting, the Dog Handler's Allowance and Competence Related Threshold Payment

This Circular publicises the Secretary of State's decision to amend the implementation dates of the increases to London Weighting, the Dog Handler's Allowance and Competence Related Threshold Payment, which were publicised in HOC 35/2007.

The following amendments are as follows:

- London Weighting is increased from £2055 to £2106 with effect from 1 July 2007.
- Dog Allowance is increased from £1926 to £1974 with effect from 1 September 2007.
- The Competence Related Threshold Payment is increased from £1095 to £1122 with effect from 1 September 2007.

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Growth Trend in use of Gamma-Butyrolactone (GBL) as Recreational Drug

The Advisory Council on the Misuse of Drugs (ACMD), the independent expert body that advises government on drug-related issues in the UK, is currently investigating the use of the legal compound gamma-butyrolactone (GBL) as a recreational drug and considering whether to advise that it should be classified as an illegal substance under the Misuse of Drugs Act 1971. The ACMD's advice is due to be published shortly.

Recent findings released by the Virtual Health Network Ltd (VHN), the UK-based specialist provider of medicines information whose TICTAC visual drug identification tool is commonly used by healthcare and law enforcement professionals, have shown that 60% of suspected gammahydroxybutyrate (GHB) (a banned Class C drug) samples are in fact legal GBL.

GBL turns into GHB once it passes into the bloodstream. GBL is usually found as a clear liquid. It is an industrial solvent used in the plastics industry and also in products such as nail varnish removing pads, motorcycle chain cleaner and paint stripper.

Updated Study Report on Knife Crime

The Centre for Crime and Justice Studies (CCJS) has published an updated edition of its briefing paper, 'Knife Crime: a review of evidence and policy', which was originally published in August 2006. The updated report takes account of developments over the last year and includes the most recently published crime data. It also contains further detailed statistical analysis of trends in the use of knives in crime in recent years.

It concludes that increased legislation has failed to tackle the growing problem of knife crime and suggests, instead, that a 'coherent evidence-based strategy' be introduced to deal with the root causes.

The report comments that the Government seems to be acting in response to a problem without knowing the full nature and extent of that problem and is overlooking the fundamental causes. It calls for new research to be commissioned to look at the motivations for carrying knives and for the nature and extent of the problems in specific local areas to be clarified by pooling data from different sources such as domestic violence projects, care homes, schools, accident and emergency departments, public surveys and the police.

From the limited research it says is currently available on the motivations for knife carrying, it found that:

- Children who have been a victim of crime are more likely to carry knives.
- There appears to be a link between knife carrying and whether or not young people feel safe from crime and victimisation.
- Children, young people, those living in poor areas and members of black and minority ethnic communities are more likely to be the victims of knife offences.

On the subject of knife amnesties, the report, whilst welcoming the removal of offensive weapons and the fact that they do raise awareness of the issue, finds that they:

- Have a very limited impact on crime levels.
- Only address one tool of expression of interpersonal violence.
- Do nothing to address the underlying causes of interpersonal violence.
- Do not affect either those who retain their knives believing it might be necessary to use them or those who pick up a knife on the spur of the moment in anger or fear.

The report can be found in full at http://www.crimeandjustice.org.uk/opus439/ccjs_knife_report.pdf

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Alleged Victims of Crime – Duty of Care

M v COMMISSIONER OF POLICE FOR THE METROPOLIS (2007)

CA (Civ Div) (Arden LJ, Jacob LJ, Mann J) 21/12/2007

Negligence – Police

Assumption Of Responsibility: Decisions To Prosecute: Duty Of Care: Police Powers And Duties: Victims: Police Decision Not To Prosecute: No Duty Of Care In Tort To Victims Of Crime To Investigate Allegations: Policy Reasons: Summary Procedure In Determining Existence Of Duty Of Care

There were policy reasons for the general rule that the police owed no general duty of care in tort to victims of crime to investigate their allegations, in particular the diversion of resources and that police investigations might be carried out defensively, and there was no basis to extend a duty of care to circumstances where the police had taken into account the interests of child victims of crime in deciding not to prosecute.

The appellant police commissioner appealed against a decision permitting some of the claims of the respondent (V) to go to trial. V had alleged negligence by the commissioner, as liable for the torts of police officers acting under his direction and control, arising out of the decision not to prosecute her step-father following a police investigation into allegations of indecent assault and cruelty made by V and her sisters. V alleged that the police officers conducting the investigations had assumed responsibility to her in such a manner as to impose a duty of care on them in their conduct of the investigation and in taking decisions as to whether her step-father should be prosecuted. V also claimed that the manner in which the officers had approached the decision not to prosecute was negligent as they had failed to consult her adequately or at all about whether to pursue the case or to give sufficient weight to her views; failed to refer the papers to the Crown Prosecution Service; and wrongly decided that it was not in V or her sisters' best interests to pursue the case. The judge allowed parts of the claim to go forward on the basis that further examination of facts and the reasoning behind the decision not to prosecute might lead to a conclusion that the decision gave rise to a limited duty of care. The commissioner contended that the whole claim should have been struck out as having no realistic prospect of

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success. V accepted that there could be no claim simply for a negligent failure to investigate allegations properly and that the courts below had been right to strike out those aspects of her claim, as Hill v Chief Constable of West Yorkshire (1989) AC 53, Elguzouli-Daf v Commissioner of Police of the Metropolis (1995) QB 335 and Brooks v Commissioner of Police of the Metropolis (2005) UKHL 24, (2005) 1 WLR 1495 established that the police owed no general duty of care in tort to victims of crime to investigate their allegations, but that the instant case was taken outside that general rule because in deciding not to prosecute, the police had taken into account V's interests and thereby assumed responsibility, and that the decision of L (A Child) v Reading BC (2001) EWCA Civ 346, (2001) 1 WLR 1575 supported the proposition that the police could owe a duty of care towards a child victim. V further contended that at least until there had been disclosure and possibly until there had been cross-examination at trial it would be wrong to decide that there was no duty of care.

HELD

(1) There were policy reasons for the general rule that the police owed no duty of care to investigate allegations of crime victims, in particular the diversion of resources and that police investigations might be carried out defensively, Hill, Elqzouli and Brooks applied. The same essential public policy underlying those decisions applied in the instant case. The reasoning in L was not to be extended beyond the narrow confines of its facts, L distinguished. Not even a "limited duty of care", as suggested by the judge, would or could affect how decisions to investigate or prosecute crime were made and there would be a real risk of a defensive attitude detrimentally influencing the main job of the police, that of preventing and detecting crime.

(2) There were many important authorities on the tort of negligence, and about whether or not a duty of care existed, which had been decided in strike out or preliminary point circumstances. Such procedure was desirable if a point of law proved decisive, especially in a case which might give rise to a lengthy trial concerning disputed questions of fact, and was appropriate in the instant case. In the circumstances there was no prospect of V's claim succeeding and it would be struck out altogether.

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Payment for Special Policing at Football Matches

CHIEF CONSTABLE OF GREATER MANCHESTER v WIGAN ATHLETIC AFC LTD (2007)

Ch D (Mann J) 21/12/2007

Police - Sport

Football Matches: Implied Contracts: Payment: Police Powers And Duties: Quantum Meruit: Special Police Services: Implied Request For Provision Of Special Police Services: Entitlement To Payment: S.25 Police Act 1996

A police force was entitled to be paid sums by a football club in respect of special police services carried out by them at the stadium used by the club for its football matches where a request for special policing would be implied, thereby giving rise to the obligation to pay for those services under the Police Act 1996 s.25.

The claimant police force claimed sums from the defendant premier league football club (W) in respect of policing activities carried out by them at the stadium used by W for its football matches. W had for some years had an agreement with the police to provide special policing under the Police Act 1996 s.25 at its football matches and appropriate charges were made on an agreed scale. For the 2003/2004 football season, the police proposed an increase to the charging structure because it proposed an increase in the level of policing at fixtures. W did not accept that those increased charges could and should be made, but offered to pay at the current charging rates assuming the previous level of usage of police officers. The parties did not reach agreement and arrears accrued on the basis of the calculations and claims of the police, although special policing was provided throughout the season. That situation was repeated in the 2004/2005 season. Although the amount of the moneys in dispute was paid by W under protest, W sought their return. W contended that what the police had provided was not "special policing" because it had not been agreed or requested and it would be wrong to imply a request in the face of its express refusal to accept paid-for officers, and that the policing provided could not be "special policing" insofar as it contained services provided outside the stadium.

HELD

(1) Where an event was staged at which disorder was a possibility, the police could not be expected to police it as part of their normal duty, and their attendance was capable of amounting to special policing, Reading Festival Ltd v West Yorkshire Police Authority (2006) EWCA Civ 524, (2006) 1 WLR 2005 applied. Where special policing was required, the organiser of the relevant event had to pay for it whether he made a contract to pay or not: a promise to pay would be implied in those circumstances, Glasbrook Bros Ltd v Glamorgan CC (1925) AC 270 applied. In the instant case, the services of the police around the stadium had been in the nature of special policing rather than part of the police's normal duty to a citizen. The ability of the police to claim payment under s.25 of the Act was not,

however, based on providing certain policing but on a relationship that was consequential upon a "request" by a citizen for policing. In the circumstances, although there had been no express agreement, a request for special policing would be implied, as W had needed the police to be able to stage its matches correctly and safely, and there had been no real complaint about police deployment in the disputed seasons, only as to how much W should pay.

(2) The nature of the entitlement of the police to recover sums from W had in previous seasons been contractual, but in the disputed seasons arose under a right to a quantum meruit claim in restitution, as the police had provided services that both parties had expected them to be paid for, W had received the benefit of those services, and there was now a dispute about price. The police were, therefore, entitled to be paid a reasonable sum for the special policing that it had actually provided. In the circumstances, there was no dispute about the appropriate rates, but the amount of special policing provided had to be ascertained on a case by case basis. Taking into account the provision of travel and briefing, spotters and intelligence officers, radio operators and the policing provided over five individual sample matches, the sums payable by W were assessed accordingly.

JUDGMENT FOR CLAIMANT

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Shared Driveway between Private Properties Not a Public Place for the Purposes of the Dangerous Dogs Act 1991

R v MICHAEL EDWARD BOGDAL (AKA MARJAN TADEUSZ) (2008)

CA (Crim Div) (Smith LJ, Underhill J, Sir Christopher Holland) 16/1/2008

Criminal Law

Dangerous Dogs: Public Places: Driveway Shared By Neighbouring Private Properties: Care Home: Common Parts: S.10(2) Dangerous Dogs Act 1991: Dangerous Dogs Act 1991

A driveway shared by neighbouring private properties was not a public place for the purposes of the Dangerous Dogs Act 1991.

The appellant (B) appealed against his conviction for three offences under the Dangerous Dogs Act 1991 s.3(1). B was the owner of a property where his mother lived. A private care home for the elderly had been built in the back garden of the property. B's house and the care home shared a driveway, which was not a public right of way. Visitors walking on the shared driveway adjacent to the front garden of B's house had been attacked and bitten by an Alsatian dog which was tethered there. B had been charged with aggravated offences of failing to keep the dog under control on the basis that he was the

owner of it. B had pleaded guilty after the recorder had ruled that the driveway was a public place for the purposes of the 1991 Act. B had appealed on the ground that the driveway was not a public place. "Public place" was defined in s.10(2) of the 1991 Act as meaning any street, road or other place, whether or not enclosed, to which the public had or were permitted to have access whether for payment or otherwise and including the common parts of a building containing two or more separate dwellings.

HELD

A place that was of its nature private, such as a front garden, would only be a public place for the purposes of the 1991 Act if members of the public had access to it otherwise than at the invitation, express or implied, of the occupier, DPP v Fellowes (1993) 157 JP 936 applied. External areas were not included by the common parts provision at the end of s.10(2) because they were not part of a building, R v C (2007) EWCA Crim 1757 applied. The recorder had erred in distinguishing Fellowes on the basis that the driveway served B's house and the care home. The driveway was plainly on the face of it private, and members of the public were only entitled to use it as visitors to the house or to the care home. It did not make any difference that there were two properties served by the driveway; members of the public using it were using it as visitors rather than as members of the public, Williams (Richard) v DPP (1992) 95 Cr App R 415 applied. The common parts provision had no application because even if the driveway could have been described as common parts it was not part of a building. Fellowes was rightly decided and applied to the facts of the instant case. Therefore the driveway was not a public place. The fact that the driveway led to a care home did not alter its essentially private nature.

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Section 4 of the Offences against the Person Act 1861 – Includes Soliciting a Person to Act as a Secondary Party to Murder

R v MALCOLM JOHN WINTER (2007)

CA (Crim Div) (Gage LJ, Underhill J, Sir Christopher Holland) 28/11/2007

Criminal Evidence

Admissibility: Covert Surveillance: Entrapment: Perverting The Course Of Justice: Police Powers And Duties: Soliciting Murder: Acceptable Police Conduct: S.78 Police And Criminal Evidence Act 1984: Regulation Of Investigatory Powers Act 2000: S.4 Offences Against The Person Act 1861: S.27 Regulation Of Investigatory Powers Act 2000: S.28 Regulation Of Investigatory Powers Act 2000

A judge had been correct to refuse to stay proceedings against a defendant where he alleged that police conduct had gone beyond that authorised by the Regulation of Investigatory Powers Act 2000 and had amounted to entrapment.

The appellant (W) appealed against two convictions for soliciting murder and one conviction of attempting to pervert the course of justice. W had planned to kill his estranged wife (V) to gain control of a public house they had run together. V had various injunctions taken out against W to stop him harassing her. To carry out his plan, W solicited the help of a mutual friend (M), but he alerted V, who contacted the police. M was authorised by police officers covertly to record conversations with W to gather more evidence against him. M also introduced W to a friend (T) with the intention that T drive W's car around areas with CCTV coverage to provide an alibi. T was in fact an undercover police officer. W was arrested in the living quarters of the public house where he had been hiding, and officers found a knife in his pocket. W initially denied he was there for any other purpose than to meet V, but when confronted with the covert recordings, stated that he had never intended to kill V. At the close of the prosecution case, W applied for proceedings to be stayed on the basis that M's and T's involvement went beyond that which they had been authorised to do, and amounted to entrapment. Alternatively, W argued that the covert recordings should not have been admitted under the Police and Criminal Evidence Act 1984 s.78. The judge rejected the applications. W submitted that (1) the facts did not make him guilty of soliciting murder as he had not asked W or T to kill V. He argued that there was a difference between soliciting murder and asking another to assist with the peripheral issues of a murder; (2) the judge should have stayed the second count of soliciting murder and the attempt to pervert the course of justice since they constituted "state-created crime". He argued that once the police became aware of his plan they should have arrested him immediately rather than embark upon further evidence-gathering by means of entrapment, as M and T had caused him to plan details that he would not otherwise have arranged.

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HELD

(1) The Offences against the Person Act 1861 s.4 sufficiently set out provisions to include secondary persons as part of an offence of soliciting murder. Although there was no authority for the basis upon which the prosecution put its case against W, that did not mean that W's submissions were correct. There was a difference between soliciting murder and assisting murder, but it did not prevent an offence of soliciting murder being made out on the facts of the instant case. The jury was adequately directed that it had to be satisfied that W had formed the plan in advance of his encouraging M and T to join him. It was clear by their verdict that the jury had formed the conclusions that he had done so.

(2) W was asserting that M and T, by virtue of their instructions from police officers, had acted in breach of the Regulation of Investigatory Powers Act 2000 s.27 and s.28. To fully understand W's submission the evidence in the case had to be considered on the voire dire. In considering the issue of the covert recordings, the judge heard evidence from three police officers and was satisfied that their actions were motivated by a need to protect V and the need to obtain evidence strong enough to enable a prosecution. The essence of W's submission was that, had M and T not provided further opportunities to enhance his plan, W would not have thought of or gone on to carry them out himself. However, the judge had been correct to rule that the police acted within the statutory provisions, as they did not go beyond what was acceptable. Police conduct that brought about state-created crime was not acceptable except where the individual concerned took the opportunity to break the law of his own free will, unless that conduct brought the administration of justice into disrepute, Attorney General's Reference (No3 of 2000), Re (2001) UKHL 53, (2001) 1 WLR 2060 applied. In the instant case, W had clearly thought of certain aspects of the plan before M and T's involvement, but their presence had made them possible and did not amount to entrapment.

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Fear of Imminent Attack must be shown for Defence of Lawful Self Defence

R v GUNER SALIH (2007)

CA (Crim Div) (Hooper LJ, Pitchford J, Dobbs J) 21/11/2007

Criminal Law

Firearms Offences: Possession Of Firearms With Intent: Self-Defence: Intention To Use Firearm For Lawful Self-Defence: Fear Of Imminent Attack

A defendant charged with possession of a firearm with intent could not argue that he would only have used the firearm in lawful self-defence unless he could show that he was in fear of an imminent attack at the time of the possession.

The appellant (S) appealed against his conviction for possession of a firearm contrary to the Firearms Act 1968 s.16. S owned a shop and was found by police with a loaded pistol in his pocket. He was charged under s.16 with possession of a firearm with intent to endanger life. The prosecution's case was that S had the pistol because he was dealing in guns and therefore was a person who had armed himself in order for protection. S's defence at trial was that the gun had been in the shop for many years as it had belonged his father-in-law. He maintained that he had intended to hand it in to police during a gun amnesty, but had put it in his pocket when a young man came into the shop, and that he had no intent in respect of the weapon at all. S argued that the trial judge ought to have made it clear to the jury that if he had the gun for use in lawful self-defence he would not have been guilty of the charge otherwise persons lawfully in possession of a shotgun who accepted that they might use it should armed robbers attack their home would be guilty of the same offence. The respondent argued that in order to succeed on his defence, S would need to show fear of an imminent attack in circumstances where he would be acting in lawful self-defence if he used the firearm.

HELD

The effectiveness of legislation designed to prevent the carrying of firearms or offensive weapons would be seriously impaired if anyone who reasonably feared that he might at some time be unlawfully attacked was allowed to carry such a weapon, R v Stubbs (Marlon Aaron) (2007) EWCA Crim 1714 applied. If, at the moment at which the defendant was alleged to be in possession of a firearm, he was anticipating an imminent attack and was carrying the weapon for his own defence against a specific danger then that may be different, R v Georgiades (Michael) (1989) 1 WLR 759 applied and R v Bentham (John Preston) (1973) QB 357 considered. There was a distinction to be drawn between an individual who armed himself with an offensive weapon and those concerned with security and law enforcement. The public policy reasons which prohibited a person from possessing a firearm with intent to endanger life, even though he might only use the firearm in lawful self-defence, would not apply to a person in lawful possession of a firearm whose intent was to use it for purposes other than to endanger life, even though he might have the conditional intention to use it should he be attacked, Malnik v DPP (1989) Crim LR 451 applied.

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Adapted Leather Gloves Classed as an Offensive Weapon

PROSECUTION RIGHT OF APPEAL (NO.23 OF 2007) sub nom R v R (2007)

CA (Crim Div) (Laws LJ, Mackay J, Lloyd Jones J) 15/11/2007

Criminal Law - Criminal Evidence

Jury Directions: No Case To Answer: Possession Of Offensive Weapons: Decision For Reasonable Jury

The decision as to whether it could be inferred that an item had been adapted to become an offensive weapon was a decision that a reasonable jury was entitled to make and a judge had erred in halting proceedings at the close of the Crown case.

The Crown applied for leave to appeal against a ruling that had the effect of terminating proceedings against the defendant (R). R was arrested in connection with an incident involving an assault by another man on a third party. R was exonerated but at the police station police officers recovered a pair of "sand gloves" from his pockets and R was subsequently charged. R asserted that he used the gloves to keep his hands warm. The Crown proceeded on the basis that the gloves were an offensive weapon per se and not on an alternative basis that they were carried with the intention of causing injury. The Crown adduced evidence of an advert on a website advertising the gloves as being suitable for self-defence, that they contained powdered lead and that purchasers should check the legality of such gloves in their particular jurisdiction. The Crown asserted that it was sufficient to demonstrate that the gloves had been adapted for use as a weapon and that it was a reasonable inference for the jury to make. At the close of the Crown's evidence, the judge withdrew the case from the jury stating that the gloves were not weapons per se and that, despite the evidence adduced by the Crown, they were nevertheless gloves. The Crown submitted that the judge erred in concluding that there was no basis upon which the gloves could be considered an offensive weapon since that was a decision for the jury.

HELD

The issue in the case was whether the Crown could establish that the gloves were made or adapted for use as a weapon. The court had had the benefit of examining the gloves and it was noticeable that they were considerably heavy. They were consistent in nature with gloves that were made for protecting hands and knuckles, such as those used by motorcycle riders. There was material in the evidence before the jury as to the nature of the gloves and the website advertising the gloves clearly acknowledged their potential purpose. It was an inference that a reasonable jury was entitled to make and it was up to the jury to decide if the gloves were an offensive weapon. A judge should

only halt proceedings where a jury was in danger of making an unreasonable inference. Accordingly, the judge had erred in withdrawing the case from the jury and it was in the interests of justice to order a fresh trial.

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Possessing Indecent Photographs of Children – Internet Pop-Ups

R v NEIL JOHN HARRISON (2007)

CA (Civ Div) (Latham LJ, Jack J, Cranston J) 5/12/2007

Criminal Law - Criminal Procedure

Computers: Inconsistent Verdicts: Indecent Photographs Of Children: Intention: Jury Deliberations: Pornography: Possession: Sexual Offences: Websites: Possession Of Images: Pop-Up Windows

In relation to a charge of possessing indecent photographs of a child, a jury had been well aware of the issues it had to assess in considering whether a defendant knew that there was a likelihood that automatic "pop-up" mechanisms or redirections to other websites on legal, albeit pornographic, websites would occur and whether if, upon accessing the legal website, the "pop-ups" would contain separate illegal images.

The appellant (H) appealed against a conviction for possessing indecent photographs of a child. Police officers had seized H's computer. The hard drive was examined and a number of sexually explicit images were found. The Crown alleged that six images were photographs of girls under 16. H was a regular user of pornographic websites and was aware that illegal photographs appeared on those websites by way of automatic "pop-up" mechanisms. Those pop-ups would be stored to the hard drive of his computer. The Crown asserted that H was aware that the images were stored to his hard drive and he was therefore in possession of them. H denied the offences, asserting that the perpetrator was in fact his teenage son (S). S's school records were adduced and showed that S was present for both morning and afternoon registration on the day that the material had been accessed. The indictment contained seven further counts of making indecent photographs on which H was acquitted. The Crown conceded that in order to obtain a conviction on the possession count it needed to prove not only that H was in possession of the images but that he made them by copying them to his hard drive via the pop-ups. H submitted that (1) the judge erred by misdirecting the jury on both the factual and mental elements of the offence and argued that a person could not be said to make an illegal image if, when using a computer to access websites comprised of lawful pornographic material, without further action on his part the programming associated with the site caused illegal material to pop-up. H further submitted that the factual element of making was absent as it was the

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website creators that caused the images to appear and not the end user; (2) the conviction on the possession count was inconsistent with the acquittals on the making counts since S had to be eliminated as the perpetrator on all counts and that his acquittal on the other counts implied that the jury accepted that S's school records were faulty.

HELD

(1) The main difficulty for the courts arose from applying the law to the rapidly changing nature of the internet. The policy behind the law was to choke off the demand for the type of material that went towards the exploitation and degradation of children. The seriousness with which Parliament treated the matter was evidenced by the consequences that faced an individual on conviction. The notion that it was the website designer, not the user, that made an image was contrary to authority and to the ordinary meaning of the language, R v Bowden (Jonathan) (2001) QB 88, R v Smith (Graham Westgarth) (2002) EWCA Crim 683, (2003) 1 Cr App R 13 and Atkins v DPP (2000) 1 WLR 1427. The jury must have decided against H in relation to the existence and function of the computer in storing information automatically. It must have concluded that H knew that any images he accessed would be copied and stored automatically. It was common ground that H knew that pop-ups or redirections to other sites would occur when accessing legal pornographic websites and the issue for the jury had been whether he knew the likelihood that in accessing certain sites, illegal material would be accessed in that way. H complained that the judge did not make the distinction between the likelihood of pop-up activity occurring on one hand, and the likelihood, if it did occur, of it containing illegal material images on the other. Although there were passages in the judge's summing up where he did not draw the distinction as clearly as he might have, there was no doubt that in the context of the summing up as a whole, the jury knew that it had to be satisfied as to both aspects. There was an evidential basis for the jury to be sure, based on H's previous use of particular sites, that they were likely to contain illegal images.

(2) In relation to the possession count, the way that the Crown presented its case meant that the jury had to be satisfied as to the making element as well. Logical inconsistency was never easy to establish in relation to a jury verdict and there was no basis for it in the instant case. For each of the counts the Crown had to make the jury sure of the various elements of the offences and eliminating the involvement of S was only part of their task. The jury also had to be sure that the images were illegal. The jury clearly regarded age and indecency as live issues as they asked for a magnifying glass to examine the images more closely. The acquittals did not logically imply that the jury did not accept the evidence of the school records and were equally consistent with the jury not being sure that illegal images were involved.

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Handcuffing of Prisoners Whilst Receiving Medial Treatment

R (on the application of GRAHAM) v SECRETARY OF STATE FOR JUSTICE: R (on the application of ALLEN) v SECRETARY OF STATE FOR JUSTICE (2007)

QBD (Admin) (Mitting J) 23/11/2007

Penology And Criminology - Human Rights

Category B Prisoners: Category C Prisoners: Handcuffing: Hospital In-Patients: Inhuman Or Degrading Treatment Or Punishment: Medical Treatment: Prisoners' Rights: Restraint: Handcuffing Of Prisoners During Medical Treatment In Hospital: Consideration Of Art.3 European Convention On Human Rights 1950: Art.3 European Convention On Human Rights

The handcuffing of a prisoner whilst he received chemotherapy treatment had breached his rights under the European Convention on Human Rights 1950 Art.3 not to suffer inhuman or degrading treatment as he did not represent a risk to the public and there was no risk of his escape.

The claimants (B and G) claimed that the defendant secretary of state had infringed their rights under the European Convention on Human Rights 1950 Art.3 by handcuffing them whilst they were receiving medical treatment in hospital. B was 73 years old and a category B prisoner, serving a life sentence for the murder of his wife and two children. He was admitted to hospital suffering from myocardial infarction. He was assessed by prison authorities as a significant risk and was handcuffed during his two-week hospital stay. There were no health reasons why he could not be handcuffed. G had been diagnosed with Hodgkin's Lymphoma whilst serving a three-year sentence for possession of drugs with intent to supply. He was 28 years old, had a history of drug offences and was a category C prisoner. Police records incorrectly indicated that he had used a handgun in a kidnap and had previously concealed weapons in his clothing. He was admitted to hospital after his condition started to deteriorate and remained handcuffed to officers during medical assessment and treatment. Ten days later doctors believed that G's death was imminent. The prison service ordered the removal of G's restraints and G was transferred to a specialist hospital unit. Approximately one month later G's health had improved and he was transferred back to the local hospital where he was again handcuffed during treatment. G attended regular sessions of chemotherapy after his return to prison and officers handcuffed him during treatment for five out of eleven hospital visits.

HELD

(1) The unnecessary use of handcuffs on a prisoner receiving treatment in a civilian hospital was capable of infringing Art.3 in two respects: either because it was inhuman or because it was degrading or both. The use of handcuffs to guard against an adequately founded risk of escape or harm to the public in the event of escape did not infringe Art.3. However, there would come a point where the judgment that a prisoner posed a risk of

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escape or danger to the public had to be made in light of his medical condition, Mouisel v France (67263/01) (2004) 38 EHRR 34 and Gorodnichev v Russia (52058/99) considered. Assessment was a matter for the prison officials and included consideration of the crime for which the prisoner had been sentenced, their history of offending, their category and prison record, their fitness, and the willingness of others to assist escape. Errors in a prison record would not make unlawful a decision based upon them.

(2) In B's case there was every justification for assessing him as posing a risk of escape and of harm to the public during his hospital treatment. The prison service's assessments were lawful and did not cross the threshold of inhuman or degrading treatment prohibited by Art.3.

(3) At the time of G's admission to hospital it was highly unlikely that he would have been able to escape or cause harm to the public and he had every incentive to remain in the hospital, which was the only place where he could realistically expect to receive treatment which might save his life. Taking G to the hospital in handcuffs or the retention of the handcuffs for the first few days whilst in hospital did not infringe his Art.3 rights, although it came extremely close to doing so. The police records indicated that if he escaped he would pose a very serious risk to members of the public. More importantly, at that time, the medical staff had not expressed the view that it was inappropriate to restrain him. When the prison authorities had become aware of the full facts they had immediately ordered the lifting of restraints and taken the humane step of requiring G's escorting officers to be dressed in civilian clothes. However, upon G's return to the local hospital there had been no reason to re-impose the restraints. It had become plain that G did not pose a risk to members of the public and the re-imposition of handcuffs in those circumstances crossed the threshold and breached G's Art.3 rights. In relation to G's five subsequent out-patient visits, there was no basis upon which handcuffing could be justified. The restraint by handcuffs of a man receiving chemotherapy was, at a minimum, degrading. It was also inhumane, unless justified by other considerations which were not present in the instant case. G was entitled to compensation for the infringement of his Art.3 rights for very short periods: three days at the end of February and early March 2007, and 20 to 25 minutes on five occasions in the summer. An appropriate award of damages to that extent on those occasions was £500.

COMPLAINTS UPHELD IN PART

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SI 3484/2007 The Removal and Disposal of Vehicles (Amendment) (England) Regulations 2007

In force **31 March**. These Regulations further amend the Removal and Disposal of Vehicles Regulations 1986 by:

- Amending Regulation 5A of the 1986 Regulations so as not to apply to a vehicle found in a civil enforcement area for parking contraventions on or after 31 March 2008.
- Inserting a new Regulation 5C into the 1986 Regulations, which empowers a civil enforcement officer (as defined in Part 6 of the Traffic Management Act 2004) to remove a vehicle found in a civil enforcement area for parking contraventions, in respect of which he has given a penalty charge notice for a parking contravention in accordance with Regulation 9 of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007.

This power to remove vehicles does not apply where a vehicle is in a parking place and a penalty charge notice has been served in respect of a contravention consisting of, or arising out of, a failure to: pay a parking charge with respect to the vehicle; properly display a ticket or parking device; or remove the vehicle from the parking place by the end of the period for which the appropriate charge was paid, until the appropriate period has elapsed since the giving of that penalty charge notice in respect of the contravention. The appropriate period is:

- In the case of a vehicle in respect of which there are 3 or more penalty charges outstanding, 15 minutes.
- In any other case, 30 minutes.

SI 3492/2007 The Road Safety Act 2006 (Commencement No. 2)(England and Wales) Order 2007

This Order brings into force the following provisions of the Road Safety Act 2006 which extend only to England and Wales.

In force **28 January** - Section 53 (abolition of "contract exemption"), which repeals Section 75(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 which exempts from licensing as a private hire vehicle vehicles which are used only for carrying passengers for hire and reward under a contract for the hire of the vehicle for a period of not less than seven days.

In force **28 January** - Section 55 (trunk road picnic areas), which amends Section 112 of the Highways Act 1980 to enable the Secretary of State to provide picnic sites on land adjoining, or in the vicinity of, motorways and to enter into arrangements for the provision of facilities at such sites and of public sanitary conveniences on land adjoining the motorway.

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In force **31 March** - Section 54 (private hire vehicles in London) amends the definition of "private hire vehicle" in Section 1(1)(a) of the Private Hire Vehicles (London) Act 1998 by removing the words "to the public", so bringing within the London private hire vehicle licensing regime operators and drivers who are currently providing a service to an identified group or organisation (but not the public at large).

SI 3539/2007 The Gambling Act 2005 (Premises Licences) (Review) (Amendment) Regulations 2007

In force **7 January**. These Regulations amend The Gambling Act 2005 (Premises Licences) (Review) Regulations 2007.

These Regulations remove the requirement for licensing authorities to notify responsible authorities of their intention to hold a premises licence review, and the related provisions relating to failure to give proper notice. The Regulations also make a consequential change to the heading to Schedule 4 to the principal Regulations (in which the prescribed form of the notice is set out).

SI 3545/2007 The Safeguarding Vulnerable Groups Act 2006 (Commencement No. 1) Order 2007

This is the first Commencement Order made under the Safeguarding Vulnerable Groups Act 2006. It brings into force a number of provisions from the Act on the following dates:

31 December 2007

- Section 2(2) to (3) (barred lists) in so far as they relate to the provisions in paragraphs 1(1), 2(1), 7(1) and 8(1) of Schedule 3 (barred lists) for the purposes of making regulations.
- Section 2(4) (barred lists) in so far as it relates to the provisions set out in paragraphs 15(1) and (2), 18(3)(b) and (6) and 24(1), (2) and (9) of Schedule 3 (barred lists).
- Section 2(5) (barred lists) for the purposes of making regulations.
- Section 4(8) (appeals).
- Section 56 (devolution: Wales).
- Section 60(1) (interpretation) for the purposes of making orders and regulations.
- Section 61 (orders and regulations).
- Section 62 (transitional provisions) and paragraphs 2, 3 and 4 of Schedule 8 for the purposes of making orders.
- Section 64 (supplementary, incidental, consequential &c. provison).
- Section 66 (extent).
- Section 67 (short title).

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2 January 2008

- Section 1 (Independent Barring Board).
- Schedules 1 and 2 (transfers to IBB).

11 February 2008

The following provisions so far as necessary for the exercise of functions to be conferred on IBB under Schedule 8 (transitional provisions) to the Act:

- Section 2 (barred lists) and Schedule 3.
- Section 5(1) and (2) (regulated activity) and Schedule 4.
- Section 6 (regulated activity providers).
- Section 37 (regulated activity providers: duty to provide information on request &c.).
- Section 38 (duty to provide information: offences).
- Section 40 (local authorities: duty to provide information on request).
- Section 42 (registers: duty to provide information on request).
- Section 43(3) to (5) (registers: notice of barring and cessation of monitoring).
- Section 46 (supervisory authorities: duty to provide information on request).
- Section 50 (provision of information to supervisory authorities).
- Section 51 (Crown application).
- Section 53 (fostering).
- Section 57 (damages).
- Section 58 (family and personal relationships).
- Section 59 (vulnerable adults).
- Section 60(1) and (4) (interpretation).
- Section 62 (transitional provisions) and Schedule 8.

The Independent Barring Board (IBB) has been established to consider relevant information about individuals wishing to work with children or vulnerable adults, and to take all discretionary decisions on who should be barred. The IBB is an independent executive non-departmental public body, sponsored by the Home Office. The IBB will maintain barred lists of those barred from working with either children or vulnerable adults.

Applications will be made by individuals who need to be registered with the IBB in order to work with children or vulnerable adults. The IBB will also receive information and referrals from employers, police and other sources concerning the suitability of individuals for work in these areas.

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SI 3555/2007 The Equality Act 2006 (Dissolution of Commissions and Consequential and Transitional Provisions) (Amendment) Order 2007

In force **31 December 2007**. This Order amends the deadline applicable to the Commission for Equality and Human Rights for compliance with the statutory duties imposed on it as a public authority by equality legislation.

SI 3570/2007 The Employment Rights (Increase of Limits) Order 2007

In force **1 February**. This Order increases the limits on payments and awards made to workers in certain employment rights cases under the annual index-linked formula. The increased limits affect:

- Statutory redundancy payments.
- The basic and compensatory awards for unfair dismissal.
- The limit on guarantee payment made when employees are not provided with work.
- The minimum basic award for unfair dismissal in health and safety and certain other cases.

SI 3580/2007 The Immigration, Asylum and Nationality Act 2006 (Commencement No. 7) (Amendment) Order 2007

This Order amends the Immigration, Asylum and Nationality Act 2006 (Commencement No. 7) Order 2007 (see SI 3138/2007 in December *Digest*) by bringing into force the following Sections of the Immigration, Asylum and Nationality Act 2006 on **1 March**, rather than 31 December 2007:

- Section 34 (offence).
- Section 35 (power of Revenue and Customs to obtain information).
- Section 39 (disclosure to law enforcement agencies).
- Sections 31, 32, 36, 37 and 38 (to the extent to which they are not already in force).

See page 29 of the December *Digest* for an explanation of these Sections.

SI 3627/2007 The Immigration and Asylum (Provision of Services or Facilities) Regulations 2007

In force **31 January**. These Regulations set out the circumstances under which the Secretary of State may provide or arrange for the provision of specified services or facilities to those who are provided with accommodation under Section 4 of the Immigration and Asylum Act 1999.

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SI 3662/2007 The Criminal Procedure (Amendment No. 3) Rules 2007

These Rules amend the Criminal Procedure Rules 2005. They introduce some new rules about criminal case management and about applications in criminal cases for orders such as anti-social behaviour orders. They replace, with revised and simplified rules, existing procedure rules about applications to the Court of Appeal for permission to appeal, or to refer a case, to the House of Lords. They make other changes to accommodate those new rules and to accommodate some new primary legislation.

In force **1 April** - Rules 1-4 and 15-23. These make changes to Parts 57 to 62 (Proceeds of Crime Act 2002—rules for various proceedings) of the Criminal Procedure Rules 2005, to take account of the provisions of the Serious Crime Act 2007 that abolish the Assets Recovery Agency and that amend the provisions of the Proceeds of Crime Act 2002 to which the rules in those Parts apply.

In force **7 April** - Rules 5–14 and 24–33. These make changes to other Parts of the Criminal Procedure Rules 2005. Some of the main new provisions include:

In Part 3 (Case management)

- A new rule 3.5(6) that sets out the sanctions a court may impose for failure to comply with a procedure rule or a procedural direction.
- A new rule 3.8(2) that requires the Crown Court to conduct a plea and case management hearing unless that is unnecessary.
- A new rule 3.10, in substitution for the existing rule, that requires the court to establish the issues the parties intend to explore at the trial or at the appeal; and new explanatory notes.

A new Part 50 (Civil behaviour orders after verdict or finding), in substitution for the existing Part 50 (Supplementary orders made on conviction), that prescribes the procedure for applying in criminal cases for an anti-social behaviour order or other civil behaviour order.

A new Part 74 (Appeal or reference to the House of Lords), in substitution for the existing Part 74, that prescribes the procedure for applying to the Court of Appeal for permission to appeal, or to refer a case, to the House of Lords.

SI 05/2008 The Immigration and Police (Passenger, Crew and Service Information) Order 2008

In force **1 March**. This Order is made under paragraphs 27 and 27B of Schedule 2 to the Immigration Act 1971 and Section 32 of the Immigration, Asylum and Nationality Act 2006 and includes provision made under those provisions as applied with modifications under Section 11 of the Channel Tunnel Act 1987.

The Order makes provision for the acquisition of data in respect of passengers, crew and air, sea and rail services entering and leaving the United Kingdom.

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- Part 2 provides immigration officers with a power to require a passenger list and the particulars of crew members set out in paragraph 1 of Schedule 1, in respect of a ship, aircraft or train entering or leaving the United Kingdom.
- Part 3 provides that the passenger and service information set out in paragraphs 2 and 3 of Schedule 1 and in Schedule 2 can be requested by an immigration officer under paragraph 27B of Schedule 2 to the 1971 Act.
- Part 4 provides that the passenger and service information set out in Schedules 3 and 4 can be requested by a constable under Section 32 of the Immigration, Asylum and Nationality Act 2006.

SI 08/2008 The Immigration, Asylum and Nationality Act 2006 (Data Sharing Code of Practice) Order 2008

In force **1 March**. This Order brings into force the Code of Practice on the Management of Information Shared by the Border and Immigration Agency, Her Majesty's Revenue and Customs and the Police.

The Code is subject to the affirmative resolution procedure in both Houses of Parliament and, once approved, will be published on the Home Office website.

SI 16/2008 The Safeguarding Vulnerable Groups Act 2006 (Barred List Prescribed Information) Regulations 2008

In force **4 February**. These Regulations set out the information which must be retained by the Independent Barring Board in respect of those persons who are barred from working with children or vulnerable adults (placed on the barred lists).

The information related to the identity of the individual and provided to the IBB is:

- Any alternative names and aliases of the individual.
- The individual's date and place of birth.
- The address of the individual.
- All information on any monitoring application submitted by the individual.
- The unique identification number accorded to the monitoring application or referral to the IBB in respect of the individual.
- The Police National Computer identification number relating to the individual.
- The Criminal Records Bureau disclosure number relating to the monitoring application or the referral to the IBB in respect of the individual.
- The national insurance number of the individual.
- All additional information relating to the identity of the individual.

The information related to the IBB's functions is:

- The date of the individual's inclusion on the barred list.
- All information provided to the IBB which it considers relevant to the decision of whether or not the individual should be barred.
- Any information provided to the IBB by keepers of relevant registers or supervisory authorities in accordance with Sections 41 (Registers: duty to refer) and 45 (Supervisory authorities: duty to refer) of the Safeguarding Vulnerable Groups Act 2006.
- Relevant police information provided to the IBB but which the IBB must not take account of for the purpose of deciding whether or not the individual should be barred, in accordance with paragraph 19(5) and (6) to Schedule 3 of the Safeguarding Vulnerable Groups Act 2006 (information which the chief officer of a relevant police force thinks that it would not be in the interests of the prevention or detection of crime to disclose to the individual).
- The reasons for the IBB's decision to bar the individual, including any findings of fact made by the IBB giving rise to that decision.
- Any information provided to the IBB, including representations made to it by the individual, which the IBB considers might be relevant to any subsequent appeal or review.
- The outcome of any such appeal or review and any information provided to or held by the IBB following such proceedings, including any findings of fact.

SI 19/2008 The Gambling Act 2005 (Advertising of Foreign Gambling) (Amendment) Regulations 2008

In force **31 January**. These Regulations amend the Gambling Act 2005 (Advertising of Foreign Gambling) Regulations 2007.

Section 331 of the Gambling Act 2005 makes it unlawful to advertise foreign gambling other than a lottery. Non-remote gambling constitutes foreign gambling if it takes place in a non-EEA State, and remote gambling constitutes foreign gambling if none of the arrangements for it are subject to the laws of an EEA State. The Secretary of State may specify that a country or place is to be treated as an EEA State for the purposes of the definition of foreign gambling.

Regulation 2 of these Regulations substitutes regulation 2 of the principal Regulations. The purpose is to add Tasmania to the list of places which are to be treated as an EEA State for the purposes of Section 331(2), but only in so far as that subsection applies to remote gambling. The effect is that any place which is regulated by the gambling laws of Tasmania will be able to advertise their remote gambling services in the United Kingdom without committing an offence under the Act. The Section 331 offence will still apply in respect of advertising of non-remote gambling services.

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SI 55/2008 The Safety of Sports Grounds (Designation) Order 2008

In force **5 February**. This Order designates the following grounds as sports grounds requiring a safety certificate under Section 1 of the Safety of Sports Grounds Act 1975:

- The Leigh Stadium in Leigh, occupied by Leigh RMI Football Club and Leigh Centurions Rugby League Club.
- Twickenham Stoop Stadium in Twickenham, occupied by Harlequins Football Club.
- Craven Park Stadium in Hull, occupied by Hull Kingston Rovers Rugby League Football Club.

The Order also de-designates the Boulevard in Hull, with the effect that it will no longer require a safety certificate under Section 1 of the Safety of Sports Grounds Act 1975.

SI 78/2008 The Crime and Disorder Act 1998 (Additional Authorities) Order 2008

In force **15 February**. This Order amends the list of authorities in Section 17(2) of the Crime and Disorder Act 1998 to which the duty in Section 17(1) applies. The duty in Section 17(1) is a duty to exercise functions with regard to the likely effect of those functions on, and the need to do all that a body or person reasonably can to prevent, crime and disorder (including anti-social behaviour and behaviour adversely affecting the local environment) in the area and the misuse of drugs, alcohol and other substances in the area.

The bodies added are:

- The Greater London Authority.
- The London Development Agency.
- Transport for London.

SI 82/2008 The Police Authorities (Particular Functions and Transitional Provisions) Order 2008

In force **14 March**. This Order allows the Secretary of State to confer particular functions on police authorities under Section 6ZA of the Police Act 1996.

Section 6 of the 1996 Act provides that police authorities shall have a number of general functions. The Police and Justice Act 2006 inserts a new section 6ZA into the 1996 Act. Under this section, the Secretary of State can confer additional particular functions on police authorities. This Order confers a number of such functions, these being that police authorities shall:

- Monitor the performance of the police force maintained for its area in complying with the duties imposed on that force by the Human Rights Act 1998 and in carrying out any plan issued by virtue of Section 6ZB of the Police Act 1996.

- Secure that arrangements are made for the police force maintained for its area to co-operate with other police forces, where such co-operation would be: in the interests of the efficiency or effectiveness of the police force maintained for its area or in the interests of the efficiency or effectiveness of one or more police forces maintained for the areas of other police authorities.
- Promote equality and diversity within the police force maintained for its area and within the authority.

SI 99/2008 The UK Borders Act 2007 (Commencement No. 1 and Transitional Provisions) Order 2008

In force **1 January**. This Order brings into force the following provisions of the UK Borders Act 2007:

- Sections 1 to 4 (detention at ports).
- Sections 5 to 8 (biometric registration: regulations).
- Section 10 (biometric registration: objection to penalty) for the purposes of making an Order under subsections (2) and (4).
- Section 11 (biometric registration: appeal in respect of penalty) for the purposes of making rules under subsection (6).
- Section 13 for the purposes of issuing a code of practice under subsection (1) and making an order under subsection (6) (biometric registration: code of practice regarding penalty).
- Sections 14 and 15 (biometric registration: prescribed matters and interpretation).
- Section 16 (conditional leave to enter or remain), with the extra provision that a condition under Section 3(1)(c)(iv) and (v) of the Immigration Act 1971 (general provisions for regulation and control) may be added to leave given before the passing of the 2007 Act.
- Section 18 (support for asylum-seekers: enforcement).
- Section 20 (fees).
- Sections 22 and 23 (assaulting an immigration officer: offence and power of arrest).
- Section 26 (disposal of property) for the purposes of making regulations under subsection (5), subject to the fact that Regulations made under subsection 26(5) may have effect in relation to property which came into the possession of an immigration officer or the Secretary of State before the passing of the 2007 Act.
- Sections 29 to 31 (facilitation and trafficking).
- Sections 40 to 43 (supply and wrongful disclosure of information).

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- In the Schedule (repeals) the entries relating to: the Immigration Act 1971; the Immigration and Asylum Act 1999; Section 130 of the Nationality, Immigration and Asylum Act 2002; the Commissioners for Revenue and Customs Act 2005; and the Immigration, Asylum and Nationality Act 2006.

NOTES

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