CENTREX
HELPING TO DEVELOP POLICING

Digest

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Legal Validation and Research

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Legal Validation and Research Department

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

This edition contains articles on several recently announced Government proposals surrounding the subjects of Anti-social behaviour, Protection of children, Money Laundering and Road Traffic. Articles in relation to anti-social behaviour issues include the Respect Action Plan, Prostitution Strategy as well recent statistical reports. Protection of children articles include the recently proposed reforms to prevent sex offenders working with children, Information databases and guidance for practitioners working with young victims. Changes to Road Safety funding, Evaluation and proposed legislation in relation to speed cameras, and the drink/drug driving figures for December 2005 are featured amongst other articles on the subject of Road Traffic.

A brief article on the recently published Police and Justice Bill is included. This will be expanded on in next month's edition.

Further legislative proposals are also included including the reform of the law on Murder, a consultation on Bribery, and the Legislative and Regulatory Reform Bill.

Guidance on provisions of the Drugs Act 2005, Section 8 PACE warrants, Terrorism Act stop and search powers are included.

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 lawtel From Sweet & Maxwell

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CONTENTS

The Duty to Promote Disability Equality: Statutory Code of Practice - England and Wales

The Disability Rights Commission (DRC) has published a Code of Practice on the Disability Equality Duty (England and Wales). Its aim is to help public authorities to promote equality of opportunity and to eliminate disability discrimination, as well as helping disabled people to understand the duties imposed on public authorities.

The disability equality duty for the public sector was introduced in the Disability Discrimination Act 2005 and will come into force in December 2006. Regulations under the Act, which included the obligation for public authorities to publish their Disability Equality Schemes by a specified date, came into force on 5 December 2005 (covered in November 2005 *Digest*).

The Code is a 'statutory' Code, which means that whilst it is not an authoritative statement of the law and does not impose legal obligations, it is admissible as evidence in legal proceedings under the Act, due to it having been approved by Parliament. Therefore courts and employment tribunals must take into account any part of the Code that appears to them to be relevant to any question arising in those proceedings. If public authorities follow the guidance in the Code, it may help to avoid an adverse decision by a court or tribunal in such proceedings.

It gives practical guidance to public authorities on how to meet the general duty to promote disability equality. It includes guidance on both the general duty and the specific duties imposed by way of regulations.

The DRC has also announced that it is launching a campaign aimed at ensuring Chief Executive Officers and senior public sector managers 'buy in' to implementing the Disability Equality Duty (DED). This follows a recent DRC poll which showed that the levels of understanding among senior managers could make all the difference between the success or failure of the DEDs implementation.

The DRC website has details of two workshops being held on the subject. The first is being held on the 14 February in Manchester, the second on 21 February in central London.

The Code of Practice as well as further details on the workshops can be found via **http://www.drc.org.uk/index.asp**

Home Office Clarification of Police Powers to Deal with Unauthorised Encampments

The Home Office has set out, in a letter which has been forwarded to all police forces, the Government's position on powers to deal with unauthorised encampments. The letter has been prompted by the variation between police forces of the use made of police powers under the Criminal Justice and Public Order Act 1994 to deal with unauthorised encampments. In part this stems from differences of opinion about the usability of these powers, in particular in relation to human rights issues.

The Government's position on this is that the power under Section 62A of the Criminal Justice and Public Order Act 1994 (introduced by Section 60 of the Anti Social Behaviour Act 2003), which came into force on 27 February 2004, was not and is not intended to replace Section 61 of the Criminal Justice and Public Order Act 1994 and was not intended to signal that the powers in Section 61 were unworkable or could not be used.

Section 62A was aimed at offering the police an alternative power without having to satisfy the pre-conditions in Section 61.

Section 62A of the Criminal Justice and Public Order Act 1994 states that if the senior police officer present at a scene reasonably believes that a person and one or more others are trespassing on the land and all the following apply:

- They have between them at least one vehicle on the land.
- They are present on the land with the common purpose of residing there for any period.
- It appears to the officer that the person has one or more caravans in his possession or under his control on the land.
- That there is a suitable pitch on a relevant caravan site for that caravan or each of those caravans.
- The occupier of the land or a person acting on his behalf has asked the police to remove the trespassers from the land.

The officer may direct the person to leave the land and remove any vehicle and other property he has with him on the land.

The officer must consult every local authority within whose area the land is situated as to whether there is a suitable pitch for the caravan or each of the caravans on a relevant caravan site which is situated in the local authority's area.

Section 61 of the Criminal Justice and Public Order Act 1994 states that if the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave, and either of those persons:

- Has caused damage to the land or to property on the land.
- Has used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his.
- Have between them six or more vehicles on the land.

The officer may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.

Where the persons in question are reasonably believed by the senior police officer to be persons who were not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the damage, threatening, abusive or insulting words or behaviour took place after those persons became trespassers, before he can exercise the power to direct those persons to leave the land.

The letter counters arguments that have been made to the effect that Section 61 is not compliant with the European Convention on Human Rights, quoting the case R. v Chief Constable of Dorset Police ex p. Josette Fuller & others 2001. It does, however, advise that the police must be able to demonstrate that all eviction and enforcement decisions are 'proportionate' in weighing individual harm against the wider public interest.

It also states that the use of Section 61 is not prohibited by the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000, providing that the police are able to show that they have properly considered the race and equalities implications of their policies and actions in relation to unauthorised encampments and unauthorised

development by Gypsies and Irish Travellers, and can demonstrate that their policies and actions are proportionate bearing in mind all the circumstances of the case.

Guidance on the use of these powers can be found at
http://www.odpm.gov.uk/index.asp?id=1153499

Survey of Police Officers with Diabetes

Diabetes UK, the National Police Diabetic Association and the National Disabled Police Association are conducting a survey which aims to find out how police forces have accommodated officers with diabetes since the Disability Discrimination Act was extended to cover police officers in October 2004.

It is intended that this survey will be followed by a further survey of HR managers and occupational health advisers, to try and ascertain what policies are in place and how they have been implemented.

Further information can be found via **http://www.diabetes.org.uk/home.htm**

PSNI Human Rights Action Plan

The Police Service of Northern Ireland has published its Human Rights Programme of Action for 2005-2006. It is the force's second programme of action on human rights and is believed to the only one of its kind in Europe.

The report details ongoing work in the areas of training and policy and sets out a timeframe for the implementation of additional projects, which include:

- A major conference on hate crime.
- A series of seminars for police operational planners to highlight human rights considerations for all major events.
- A course for police policy writers on the research and preparation of service instructions.

The 2005/6 plan can be found in full via **http://www.psni.police.uk/index.htm**

Women in Policing Seminar

The National Black Police Association (NBPA) is hosting a seminar, 'Women in Policing' on 25/26 February 2006 at Jurys Inn, in Birmingham. The purpose of the seminar is to revisit the aims for black minority ethnic women in policing, revitalise the NBPA Women in Policing Group and focus on career aspirations.

Further details can be found at **http://www.nationalbpa.com/**

Skills Summit 2006

Skills for Justice, in association with the Home Office, are holding a Skills Summit conference. The event is taking place at the Riverbank Plaza, London, on 10 and 11 March. It is intended to bring together delegates from all parts of the justice sector to discuss the skills agenda, reform, modernisation, and best practice.

Besides speeches from leading figures in the justice system, a range of workshops will be held during the two days on the subjects of:

- Professionalising investigation.
- Beyond race and diversity – total equality.
- An integrated approach to learning.
- Voluntary/statutory partnerships.
- Challenges and tensions in large organisations: skills agenda and regional delivery.

More information can be found at **http://www.skillsforjustice.com/summit06.html**

PDR Best Practice Seminar

Skills for Justice in conjunction with the National Centre for Policing Excellence are holding Performance Development Review (PDR) seminar on 28 February 2006 at Wyboston Lakes. The purpose of the seminar is to discuss and share good practice, discuss the role of PDR in the Professionalising Investigation Programme (PIP) process and hear how others have implemented the PDR.

Further details can be found at **http://www.skillsforjustice.com/pdr_seminar.html**

Skills for Justice Annual Report

Skills for Justice has published its annual report which is available to view at **http://www.skillsforjustice.com/publications/html**

Police and Justice Bill

On 25 January the Police and Justice Bill was introduced in the House of Commons. The Bill contains provisions to:

- Establish the National Policing Improvement Agency.
- Abolish the Central Police Training and Development Authority (CENTREX) and the Police Information Technology Organisation (PITO).
- Establish police authorities as best value authorities.
- Amend police powers e.g. in relation to police bail, stop and search powers at aerodromes).
- Standardising the powers and duties of community support officers (see article on page !!!).
- Extending powers of weights and measures inspectors and others.
- Establish the office of Her Majesty's Chief Inspector for Justice, Community Safety and Custody.
- Amend the Computer Misuse Act 1990.
- Amend the Protection of Children Act 1978 in relation to the forfeiture of indecent images of children.
- Provide for the conferring of functions on the Independent Police Complaints Commission in relation to the exercise of enforcement functions by officials involved with immigration and asylum.
- Amend the Extradition Act 2003.
- Amend and introduce further legislation in relation to combating crime and disorder.

An article on this Bill, looking at in greater depth, will be included in next month's edition of the *Digest*.

The Bill can be found in full at
http://www.publications.parliament.uk/pa/cm200506/cmbills/119/2006119.htm

Proposals on the Reform of the Law on Murder

The next stage of the reform of the law on murder (previously reported in the August 2005 *Digest*) has now commenced, with the publication by the Law Commission of a consultation paper which sets out some provisional proposals on the on the structure of homicide offences, and the introduction of different degrees of culpability.

The proposed structure comprises a three tier system of general homicide offences supplemented by specific offences:

- First tier murder (mandatory life sentence).
- Second tier murder (discretionary life sentence).
- Manslaughter (fixed term of years maximum sentence)
- Specific homicide offences, such as assisting suicide and infanticide (fixed term of years maximum sentence).

First Tier Murder

This would apply to cases where there is an intention to kill. This offence would retain the mandatory life sentence.

Second Tier Murder

This would apply where the killing occurred where:

- There was an intention to do serious harm but not to kill.
- There was an intention to kill, but with provocation.
- There was an intention to kill, but with diminished responsibility.
- There was an intention to kill, but under duress.
- There was reckless indifference as to causing death.

The sentence would depend on the details of the case.

This tier would also include revised versions of provocation, diminished responsibility and duress. The Law Commission is provisionally proposing the following:

In relation to provocation:

- That the partial defence of provocation should remain for those who, without acting out of a considered desire for revenge, kill only in response to gross provocation and/or kill only in response to a fear of serious violence in circumstances where someone of the defendant's age and of an ordinary temperament might have reacted in the same or in a similar way.
- That the effect of a successful plea should reduce 'first tier murder' to 'second tier murder', but not to manslaughter.
- That it should continue to be possible to plead provocation and diminished responsibility together and that each, if successful, should lead to the same verdict, namely conviction of the 'second tier' homicide offence.

In relation to diminished responsibility:

- That the definition of 'diminished responsibility' be modernised/reformulated so it can take account of evolving diagnostic practice.

It proposes that it should read:

A person who would otherwise be guilty of 'first tier murder' is not guilty of 'first tier murder' if, at the time of the act or omission causing death, that person's capacity to:

(a) understand events; or

(b) judge whether his or her actions were right or wrong; or

(c) control him or herself;

was substantially impaired by an abnormality of mental functioning arising from an underlying condition or developmental immaturity, or both; and the abnormality of mental functioning or the developmental immaturity or the combination of both was a significant cause of the defendant's conduct in carrying out the killing.

The Law Commission proposals on this subject also include that:

- A successful plea of diminished responsibility would reduce 'first tier murder' to 'second tier murder', but not to manslaughter.
- An 'underlying condition' would mean a pre-existing mental or physiological condition.
- Killing in pursuance of a suicide pact under Section 4 of the Homicide Act 1957 should be repealed. Deserving cases that otherwise would have fallen within it should be pleaded under Section 2 of the Homicide Act 1957 (diminished responsibility). This will result in a verdict of 'second tier murder'.

In relation to duress:

- That duress should be a partial defence to 'first tier murder' which reduces the offence to 'second tier murder'.
- That for a plea of duress to succeed as a partial defence to 'first tier murder' (and to 'second tier murder' and to attempted murder if were subsequently decided to recommend that the defence applied to those offences) the defendant must have been threatened with death or life threatening harm.
- The defendant's view of the nature of the threat or circumstances must be one which is reasonably held.
- In deciding whether a person of reasonable firmness would have acted as the defendant did, the jury can take into account all the circumstances of the defendant, including his age, other than those which bear upon his capacity to withstand duress.

In previous proposals the Law Commission had intended that duress be a complete defence to murder, but now considers in the context of its revised framework for murder that it is more appropriate for duress to be a partial defence. It gives two reasons for its change of opinion. Firstly, it is seeking to achieve consistency with the partial defences of provocation and diminished responsibility, both of which would reduce 'first tier murder' to 'second tier murder'. Secondly, when a defendant pleads duress as a defence to 'first tier murder' he admits that he intentionally killed someone, and therefore it feels that the law should recognise some degree of culpability.

In relation to reckless indifference:

- That indifference to causing death would apply where a person is indifferent, manifesting a 'couldn't care less' attitude to death, when he or she realises that there is an unjustified risk of death being caused by his or her conduct, but goes ahead with that conduct, causing the death.
- That in deciding whether a person was recklessly indifferent and had a 'couldn't care less' attitude about causing death, that person's (the offender's) own assessment of the justifiability of taking the risk in the circumstances, is to be considered, along with all the other evidence.

Manslaughter

The main proposal in respect of manslaughter is to replace the present offence of manslaughter with a new offence of manslaughter, which focuses, in terms of culpability, on whether or not a person intended to cause, or was reckless as to causing, injury. The proposal outlined in the consultation paper is that conduct causing another's death should be manslaughter if:

- A risk that the conduct would cause death would have been obvious to a reasonable person in the defendant's position, the defendant had the capacity to appreciate the risk and the defendant's conduct fell far below what could reasonably be expected in the circumstances; or

- A person causes another person's death by a criminal act intended to cause physical harm or by a criminal act foreseen as involving a risk of causing physical harm.

The consultation paper also contains a proposed new homicide offence of 'complicity in an unlawful killing'. This proposed offence would cover the circumstances where e.g.

A and B were parties to a joint venture to commit an offence. B committed the offence of a 'first tier murder' or 'second tier murder' in relation to the fulfilment of that venture on account of his intention to kill or cause serious injury. A intended or foresaw that (non-serious) harm or the fear of harm might be caused by a party to that venture; and a reasonable person in A's position, with A's knowledge of the relevant facts, would have foreseen an obvious risk of death or serious injury being caused by a party to that venture.

This proposed offence is intended to ensure that a person, such as A, who joins in a criminal enterprise with the knowledge that knives (or other weapons such as loaded guns) are being carried, should bear a share of criminal responsibility for an ensuing death.

The Law Commission has produced two versions of the consultation paper. A full consultation paper has been written with lawyers and specialists in mind. In addition, a shorter overview paper is available, which outlines the key points and asks crucial questions about the proposals.

The consultation period will close on 13 April 2006. Final recommendations will be published in August 2006, and these will feed into a wider Government consultation on the public policy issues.

The Consultation Paper can be found in full at
http://www.lawcom.gov.uk/murder.htm

Bribery Consultation Paper

The Home Office has published a consultation paper seeking views on proposed changes to the existing law on bribery. In 2003, the Government published the a draft Corruption Bill which was not well received during pre-legislative scrutiny by a Joint Committee of both Houses, although it was agreed that the present law, which is comprised of the common law and the Prevention of Corruption Acts 1889 and 1916, is fragmented and needs to be reformed.

The purpose of this consultation is to seek a consensus on the way forward, and to seek views on a new proposal to enhance Serious Fraud Office powers to tackle bribery of foreign public officials.

The Government's favoured option would appear to be introducing a Bill along the lines of the previously published Corruption Bill. It would contain some modifications from the original Bill suggested by the Joint Committee during their pre-legislative scrutiny.
The new Bill would replace the existing offences with 3 new ones:

- Corruptly conferring an advantage.
- Corruptly obtaining an advantage.
- Performing functions corruptly.

This third offence would cover the situation where a person performs his duties in a way designed to secure a future corrupt reward, rather than as a result of any specific corrupt agreement.

The consultation paper sets out the two fundamentally different approaches between the Government proposals and the Joint Committee recommendations in respect of two main issues in any new Bill, these being:

- The definition 'of acting corruptly'.
- The 'agency' basis' on which the present legislation is constructed.

The paper also suggests a change to the operational powers of the Serious Fraud Office (SFO) to deal with cases of bribery of foreign officials. The proposed change would allow the Director of the SFO, if he/she had reasonable grounds for suspecting that a case involved the corruption (bribery) of a foreign public official, to use powers under Section 2 of the Criminal Justice Act 1987 (to compel the production of documents and explanations of them) for purpose of determining whether an investigation should be undertaken into a case which involves the offence of the bribery of a foreign public official.

The closing date of the consultation is 1 March 2006. The consultation paper 'Reform of the Prevention of Corruption Acts and SFO Powers in Cases of Bribery of Foreign Officials' can be found at
http://www.homeoffice.gov.uk/documents/2005-cons-bribery?version=1

Legislative and Regulatory Reform Bill

On 11 January 2006, Cabinet Minister Jim Murphy proposed a Bill aimed to provide a fast mechanism to bring about the Government's reform programme.

In essence this would give the Government a wider reform power than that under the Regulatory Reform Act 2001 and help the Government to reform outdated and over-complicated legislation with more speed and ease. The Bill would also reduce the numbers of domestic legislative instruments required at present to implement an EU Directive in the UK.

Effects on the police

On a general note, if enacted this would mean that legislation which affects the police could be reformed more quickly, thus there will be even more of a need for the police to make sure that they are aware of the effects of the rapid changes in legislation which could occur. The Bill would affect a wide range of legislation, including public general Acts, local Acts, Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and subordinate instruments made under a public general Act or a local Act. This would also mean that training will have to be planned and implemented earlier in order to comply with changes.

More specifically, the two most important aspects of the Bill for the police are the implications for criminal penalties and forcible entry.

Implications for criminal penalties

- It is explicitly stated in the Bill that a Minister of the Crown may not, by the powers of amending, repealing or replacing legislation given under the Bill, create a new offence that is punishable, or increase the penalty for an existing offence so that it is punishable, on indictment, with imprisonment for a term exceeding two years, see clause 6(1)(a); or on summary conviction, with imprisonment for a term exceeding the normal maximum term, see clause 6(1)(b)(i) or a fine exceeding level five on the standard scale, see clause 6(1)(b)(ii).

Implications for forcible entry

- A Minister of the Crown would not be able to make provision amending, repealing or replacing legislation which will authorise any forcible entry, search or seizure, see clause 7(1)(a) or compel the giving of evidence, see clause 7(1)(b).

However, the Bill then continues with limitations to the above. Clause 6(1) does not apply to a provision which merely restates legislation or to the extent that it implements recommendations of the UK Law Commission, see clause (6)(6)(a) and clause (6)(6)(b) respectively. There are similar provisions referring to clause 7(1), see clause 7(3)(a) and clause 7(3)(b).

Therefore if the Minister is implementing recommendations of the UK Law Commission or is merely restating legislation, he would have the power to create a new offence that is punishable, or increase the penalty for an existing offence so that it is punishable:

- On indictment, with imprisonment for a term exceeding two years, or
- On summary conviction, with imprisonment for a term exceeding the normal maximum term or a fine exceeding level five on the standard scale.

They can also under the Bill, if implementing recommendations of the Law Commission or merely restating legislation:

- Make provision amending, repealing or replacing legislation which will authorise any forcible entry, search or seizure or compel the giving of evidence.

Therefore, depending on whether Ministers are implementing Law Commission recommendations, the Bill would affect criminal penalties and forcible entry to the extent proposed in the Bill.

The Bill can be found at the United Kingdom Parliament website at **http://www.publications.parliament.uk/pa/cm200506/cmbills/111/2006111.pdf**

Road Traffic Signs (Enforcement Cameras) Bill

This is a Private Member's Bill introduced by MP Dr Nick Palmer. The Bill is intended to introduce legislation to require all road traffic signs which indicate the location of speed cameras to include information about the speed limit that drivers are expected to observe. Signs for example would say, 'Speed camera 30', when 30 mph is the limit at that spot or, 'Speed camera 40', when the limit is 40 mph.

It is expected that this Bill could be used to achieve one of the objectives of the Government's recently announced intentions on improving road safety and road safety funding (see article on page 27.

The Bill will be read for a second time on Friday 14 July 2006. The Bill will shortly be published and be available at **http://www.publications.parliament.uk/pa/pabills.htm**

New European Parliament Directive on Retention of Telephone and Internet Records

Proposals for a new EU Directive on the retention of data processed in connection with the provision of public electronic communication services and amending Directive 2002/58/EC (COM(2005)0438 – C6-0293/2005 – 2005/0182(COD)) have been approved by the European Parliament.

The new Directive will make it mandatory for telecommunication firms to hold telephone and internet data for periods of not less than 6 months and for a maximum of two years from the date of the communication. Each EU member state will decide how long data should be kept in its own country.

At present, in Britain, telephone records are kept for 12 months, and emails, texts and internet details are kept for 6 months under a voluntary Code of Practice under Part 11 of the Anti-Terrorism, Crime and Security Act 2001. Under the new Directive, this agreement will become mandatory. The Home Secretary was keen to extend the requirement to hold records up to a period of two years; it is not yet known whether the period of retention that applies in the UK will be extended.

The new Directive will set out details of data that is required to be kept and will include data that is necessary to:

- Trace and identify the source of a communication.
- Identify the destination of a communication.
- Identify the date, time and duration of a communication.
- Identify the type of communication.
- Identify users' communication equipment or what purports to be their equipment.
- Identify the location of mobile communication equipment.

Further details on the agreement of the new directive can be found at **http://www.europarl.eu.int/omk/sipade3?L=EN&OBJID=105467&LEVEL=2&MODE=SIP&NAV=X&LSTDOC=N**

Northern Ireland (Offences) Bill

The Government has announced that the Northern Ireland (Offences) Bill (covered in the November 05 *Digest*) is being withdrawn from the legislative process. The decision to withdraw the Bill was made following a lack of support for the Bill, for differing reasons, from the majority of Northern Ireland's political parties.

Respect Action Plan

The Government has published its Respect Action Plan. It sets out a range of measures which are intended to strengthen its policy of tackling anti-social behaviour. It is divided into six main areas:

Activities for children and young people

The measures in this area are intended to encourage and enable children and young people to contribute to their communities and help divert them from anti-social behaviour. Proposals include:

- Piloting Youth Opportunity Cards in a number of areas. The cards allow young people to receive discounts on activities with accredited providers of sport, constructive activities and clubs and classes. All young people will have a right to such a card; but if they behave anti-socially, the financial credits added to their cards to encourage them to take part in the activities will be withdrawn.
- Expanding the Youth Opportunity Fund.
- Implementing Britain's first national youth voluntary service.
- Expanding mentoring projects.

Improving behaviour and attendance in schools

The measures mentioned in this area cover future legislative provisions to be included in the Education Bill (to be published in early 2006), actions surrounding truancy issues and exclusions from schools. Proposals include:

- Allowing schools to apply for 'parenting orders'.
- Giving school staff a clear and unambiguous legal right to discipline pupils.
- Requiring parents, schools and local authorities to arrange supervision for excluded pupils.
- Making all secondary schools (by September 2007) part of partnerships with public, private and voluntary service providers.

Supporting families

This area covers a series of measures intended to expand and improve services for parents, as a central part of the Government strategy to promote and sustain respect, so that where parents are unwilling or unable to meet their responsibilities they are challenged and supported to do so. Many of the proposals are based on the use of 'parenting classes', particularly for teenage parents and the expansion of the use of parenting orders. One of the other main proposals is the setting up of a National Parenting Academy.

Dealing with challenging families

Proposals included in the action plan to deal with problem families include:

- Establishing a national network of intensive family support schemes.
- Developing a cross-government strategy on the most challenging families.
- Considering the introduction of sanctions for households evicted for anti-social behaviour who refuse help.

Strengthening communities

Many of the proposals outlined under this heading are intended to drive forward other, connected, Government initiatives which already exist and which impact greatly on policing. The proposals include:

- Introducing Local Area Agreements between central and local government to all upper tier local authorities by 2007.
- Developing Neighbourhood Policing across the country.
- Standardising police community support officers' powers, including introducing a new power to enable them to take part in 'truancy sweeps' with police officers.
- Introducing a nationwide single non-emergency number.
- Introducing Neighbourhood Charters, which would set out what people in a neighbourhood should expect from each other and from service providers. (A draft National Neighbourhoods Agreement is expected to be published for consultation in the Spring).
- Introducing a power that will give local communities a formal way to request and ensure that action is taken by the police, local authorities and others in response to persistent anti-social behaviour or community safety problems.
- Ensuring senior representatives of all Crime and Disorder Reduction Partnerships hold regular 'face the people' sessions.
- Introducing neighbourhood management and neighbourhood warden schemes in 100 new areas.

Effective enforcement and community justice

This area covers the proposed changes to both criminal and civil legislation it considers necessary to improve the way in which anti-social behaviour is dealt with.

The document states the Government's intention to consult with the police service and other agencies, to ensure that sufficient pre-court summary powers are available to them to bring about immediate protection for those suffering anti-social behaviour. Proposals include:

- Increasing the penalty fine for a range of serious penalty notices for disorder (PND) offences from £80 to £100.
- A national roll out of the PND scheme for those under 16.
- Allowing trading standards officers to issue PNDs to people who sell age-restricted products, such as alcohol or fireworks, to young people.
- Extending conditional cautioning, presently limited to direct compensation, to include the offender undertaking work.
- Introducing a new power (similar to existing powers in connection with Class A drugs within the Anti-social Behaviour Act 2003) to allow the closure of any residential or licensed premises for a set period, regardless of tenure, which is causing significant, persistent and serious nuisance to local communities.
- Introducing legislation to ensure that it is clear that Anti-Social Behaviour Injunctions (ASBIs) can be used to protect whole communities and also protect witnesses from being named in applications.
- Introducing legislation to allow those suspected of breaching a Local Government Injunction under the Local Government Act 1972 to bring injunctions to be brought before the courts within 24 hours of arrest.

- Improving Anti-Social Behaviour Orders (ASBOs), including introducing new rules to give magistrates and Crown Courts clear power to case manage ASBOs, reviewing ASBOs given to young people after one year and updating guidance on the effective use of ASBOs.
- Conducting a consultation on lowering the minimum financial threshold for the seizure of the proceeds of crime under the Proceeds of Crime Act 2002 from £5,000 to £1,000.
- Creating a new offence of obstructing the progress of ambulance workers when they are responding to emergencies.
- Considering whether NHS trusts need additional powers to remove individuals from areas, such as A&E departments, in circumstances where they are not at medical risk but where their anti-social behaviour is affecting the ability of staff to deliver healthcare or is causing distress to staff and other patients.

The Respect Action Plan can be found in full at
http://www.respect.gov.uk/whats-being-done/action-plan/index.html

Proposed Standard Powers for CSOs

The Home Office has published a summary of responses to the consultation document 'Standard Powers for Community Support Officers and a Framework for the Future Development of Powers' (featured in September 05 *Digest*) as well its own findings from the consultation, which includes a proposed list of standardised powers it intends to introduce via provisions in the Police and Justice Bill (see article on page 9.

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

Home Office Autumn Performance Report 2005

The Home Ofice has published a report setting out its performance against its 2004 Public Service Agreement (PSA) targets (which were published in the Spending Review (SR) White Paper in July 2004).

The report covers performance against targets that the Home Office is solely responsible for delivering and also those targets that it jointly owns with other departments, such as the Department for Constitutional Affairs and the Crown Prosecution Service.

The report claims that the Home Office is on track to meet six out of seven targets, and highlights a number of achievements in evidence of that, including:

- Crime has fallen by 12% since 2002/03.
- Fear of violent crime is down from 21% in 2002/03 to 16% in 2004/05.
- Fear of burglary is down from 15% in 2002/03 to 12% in 2004/05.
- Fear of vehicle crime is down from 17% in 2002/03 to 13% in 2004/05.
- 1.194 million offences have been brought to justice, exceeding the target of 1.15 million.

- The number of offenders entering drug treatment each month has increased substantially, from 384 offenders in March 2004 to 2207 in October 2005.
- Unfounded asylum applications are down from 70,200 in 2003/04 to 52,000 in 2004/05.
- £834 million of efficiency savings have been made for the Home Office and Police Service during 2004/05.
- The target on stopping prison escapes has been exceeded, with no Category A escapes since 1996.

The area where the report shows a lack of sufficient progress is in relation to PSA target 7 – 'Reducing race inequalities and build community cohesion'. In relation to this target, the report shows an overall slippage on the target from 3 of the 4 measured areas:

- The perception of discrimination.
- Discrimination by organisations.
- Discrimination in the labour market.

The fourth area, community cohesion, has not yet been assessed.

The Autumn Performance Report also includes the new adult re-offending results from 2001/02. These statistics show that the re-offending rate has risen to 58.5% in 2002, from a base line of 57.6% in 2000. The Home Office has stated this rise is partly due to changes in the method for counting reconviction, but has accepted that adult reoffending rates are not as good as they would have hoped. It has announced that it will shortly be publishing a five year Reducing Reoffending Strategy to assist in tackling this problem.

The full report can be found at
http://www.homeoffice.gov.uk/documents/ho-targets-autumn-report-041

DNA Expansion Programme 2000-2005: Reporting Achievement Report

The Home Office has published a report on the progress of the Government's DNA Expansion Programme for the period April 2000 to March 2005. The report, 'DNA Expansion Programme 2000–2005: Reporting Achievement', charts the impact of the DNA expansion programme in building up DNA suspect profiles and crime scene profiles on the National DNA Database and the enhanced capability of the expanded database to provide DNA intelligence to detect crime.

The report shows that:

- The UK has the largest DNA database of any country and the largest proportion of its population's DNA held on a database.
- At the end of March 2005, it held 3,000,949 DNA profiles (this includes around 290,000 duplicate profiles partly due to the use of false names and aliases etc).
- 5.2% of the UK population is on the Database. This figure is 4% more than the percentage of any other country.
- The number of crimes for which a crime scene profile was loaded has gone from around 25,000 in 1999/2000 to 49,723 in 2004/05.
- The annual number of direct DNA detections has more than doubled from 8,612 in 1999/2000 to 19,873 in 2004/05.

- On average the Database provides the police with around 3,000 matches each month (there were approximately 40,000 matches in 2004/05).

On 5 April 2004, provisions in Section 10 of the Criminal Justice Act 2003 which amended Section 63 of the Police and Criminal Evidence Act (PACE) 1984 came into force. These provisions extended the powers of the police to take a non-intimate sample without consent, to include the taking of a sample from a person in police detention who has been arrested for a recordable offence. DNA profiles extracted from such samples are added to the National DNA Database, whether or not the person from whom the sample was taken from was proceeded against or not.

The extension of these extended police powers has not been without controversy and has been the subject of legal challenges. In the case of R v Chief Constable of South Yorkshire ex parte S and Marper, where an appeal was brought on the basis of the fact that retention of DNA samples under these circumstances was a breach of Articles 8 and 14 of the European Convention on Human Rights, the Court of Appeal ruled that the breach of Article 8 was proportionate and justifiable and found no breach of Article 14. This decision was subsequently upheld by the House of Lords.

In relation to the sampling of arrestees, the report identifies that 43% of arrested persons are not proceeded against and 'no further action' is taken. The report shows that since the provision was introduced, 250 individuals from whom samples were taken upon arrest and who were not subject to proceedings from that arrest have since been linked with crime scene samples from earlier offences. The earlier offences include: four murder/ manslaughters, three rapes, six robberies, four sexual offences, five of the supply of controlled drugs and 98 burglary offences. The report claims that these links may never have been made if the power to take a DNA sample on arrest had not been implemented.

The report does not include numbers of arrested persons from whom samples were taken, but who were not proceeded against and 'no further action' was taken, which has subsequently linked them to later crimes.

The report can be found in full via
http://police.homeoffice.gov.uk/operational-policing/technology-equipment/

Section 12 Children Act 2004: Information Databases

The Government has announced that it is to take the lead in the implementation of an information-sharing index in respect of persons to whom arrangements under Sections 10 (Co-operation to improve well-being) or 11 (Arrangements to safeguard and promote welfare) of the Children Act 2004 or under Section 175 (Duties of LEAs and governing bodies in relation to welfare of children) of the Education Act 2002 relate.

The legislation which allows the setting up of such a database is contained under Section 12 of the Children Act 2004. This Section was brought into force on 1 January 2006 by virtue of SI 3464/2005, The Children Act 2004 (Commencement No.5) Order 2005. (See SI Section).

It is intended that the system, a single central index with its data partitioned into 150 parts, one relating to each local authority in England, will be available to practitioners by the end of 2008 and will contain:

- Minimal identifying information for each child: name, address, date of birth, gender, and contact details for parents or carers.

- A unique identifying number for each child, which in almost all cases will be a scrambled version of their Child Reference Number (which all children are allocated when a claim for child benefit is made).
- Contact details for their educational setting and GP practice and for other practitioners or services working with them.
- An indicator showing that a practitioner wishes to be contacted by other practitioners because he/she e.g. has relevant information to share, is taking action, or has undertaken an assessment in relation to that child.

No case information will be held on the database. A child, young person or, where appropriate, their parents or carers will be able to ask to see their records and to challenge any inaccuracies, in accordance with data protection legislation.

Section 12(5) of the Children Act 2004 also allows the Secretary of State to make Regulations covering the establishment and operation of any database or databases under this Section, which are then subject to the affirmative resolution procedure.

It has been announced that the Government intends to publish an initial set of Regulations in Spring 2006 to allow trials to take place for the creation of the initial records.

In Summer 2006, it then plans to publish, for public consultation, a main set of Regulations to govern the operation of the index, prior to their introduction in the Autumn.

The Government has estimated the initial cost of setting up the system at £224 million, with subsequent yearly running cost of £41million. It has indicated that both the setting up and running costs will be funded by central Government and will not impact on local authority council tax.

Proposed Reforms to Prevent Sex Offenders Working in Schools

On 19 January 2006 the Education Secretary, Ruth Kelly announced an overhaul of the way schools currently approve staff in an attempt to improve child safety. This follows recently publicised revelations highlighting certain problems in this area in relation to List 99.

List 99 is a sensitive and confidential document, the purpose of which is to enable employers to safeguard against employing a barred person. It contains the names, dates of birth and teacher reference numbers of people whose employment has been barred or restricted, either on grounds of misconduct or on medical grounds.

If a person's employment is restricted, the entry shows the types of employment in which he or she is permitted to work. People barred on misconduct grounds are listed separately from those barred on medical grounds, but no details of misconduct are given. It should be emphasised that not all those on the list are perceived to be a danger to children.

Similar details of people who have been struck off the Register of Teachers in Scotland or barred from teaching in Northern Ireland are included in Annexes to the List.
The suitability of these people has not been considered by The Secretary of State, but action under the regulations could be taken should it come to light that any of them were seeking relevant employment in England and Wales.

Currently the law requires that before someone is placed on List 99, his/her case has to be considered individually by ministers. The recent highly publicised issues involved cases where people who had been convicted of offences which would mean that they would have

been placed on the sex offenders register if it had existed at the time of their offence, or who had received cautions for offences in relation to children (one example being where a person was cautioned for downloading child pornography) had not been placed on List 99 and were approved to teach children.

A review of the law was authorised on the 12 January 2006. Its findings identified the following key principles for reform:

- Safeguarding children must be the top priority.
- The reform system must be rigorous, drawing in expert advice as appropriate.
- The reform system must be clear in operation and there musty be clear responsibilities for Government departments, the police and others.
- The reform system should not penalise an individual more than necessary to prevent a child from harm. There should not be a culture of false accusations and unnecessary suspicion.

From this package of principles, the Government has put forward a two-tier package of reforms. This package includes firstly, immediate reforms and secondly, further reforms.

Immediate Reforms

- Individuals will automatically be entered onto List 99 if they are cautioned or convicted for a sex offence against children. By including cautions as well as convictions the anomaly between offenders who are convicted and those who admit their guilt and accept a caution will end.
- People convicted of serious sex offences against adults will be automatically be added to List 99. To do this it does not matter if they are on the sex offenders register or not. Therefore even if they are not on the sex offenders register, they can still be barred.
- New regulations will also mean that it is mandatory for schools, supply agencies and any other employers in the sector of education perform enhanced Criminal Records Bureau checks on all newly-appointed school workers and teachers.
- Ofsted will carry out an urgent survey of existing vetting practice in a sample of schools and will report to Ruth Kelly in the spring.
- The role of the police will be increased. In the review it was stated that the information provided by the police was critical in respect of List 99 cases in insuring that the correct decisions are made.
- There will be an enhancement of the risk-assessment process in relation to the decision-making unit. The Government has also pledged to build on the 'Memorandum of Understanding' which was developed with the Association of Chief Police Officers (ACPO) and which aims to improve the provision of police information relevant to barring decisions. It has been stated that appropriate training will continue to be provided for all of the staff who work on these decisions.
- Ministers will be removed from the barring process and instead there will be expert advice on the decision whether to bar. This will be done by a 'Centralised Vetting and Barring' system by a statutory body. This statutory body will make all decisions on whether an individual should be barred. However to do this there will be a need for primary legislation. In the immediate future however an expert panel will be set up to do this job. These experts will include a high level panel of child protection workers, police and medical practitioners and will be led by the former head of Barnardos, Sir Roger Singleton. In the meantime (before the legislation comes into place) the Secretary of States discretion will not be fettered but it is envisaged in the review that she will follow the panel's advice in all cases.

Proposed Legislative Reforms

A Safeguarding of Vulnerable Groups Bill is planned to be unveiled in February 2006. These legislative proposals are based on the implementation of the Bichard Inquiry Report.

This Bill will introduce a centralised vetting and barring system which will integrate the current barring schemes in the children's workforce, List 99 and Protection of Children Act. The aim of this is to create a central record of all bars and restrictions placed on people working with children where they pose a risk to children. There will also be an aligned but separate record of all bars and restrictions placed on people who work with vulnerable adults.

If an individual is working or is applying for work in jobs which would bring them into contact with children or vulnerable adults, they will have to apply for a Vetting and Barring Disclosure (this is the equivalent of the current Criminal Records Bureau Enhanced Disclosure).

The Central Barring Unit will consider all of the information which is contained in the Vetting and Barring Disclosure, along with any other information which they have about the individual in question. They will then make a decision as to whether they should bar the individual from working with children and also vulnerable adults. This decision will be communicated to the individual concerned and also employers by the Vetting and Barring Disclosure. Under the Bill barring decisions will have to be updated as soon as any new information becomes available. Employers will be notified quickly if the employee in question is then deemed unsuitable. This new information could be in the form of new convictions or referrals from employers.

There will be secure access by all employers, including domestic employers (including parents who contract private tutors), to make secure, instant online checks of an applicants status. This check will be instant and will have the up-to-date barred status of the individual concerned.

Details of how the Government is implementing the recommendations of the Bichard Inquiry are available at
http://www.everychildmatters.gov.uk/socialcare/safeguarding/vettingandbarring/

The review of the List 99 decision making process and policy implications, 19 January 2006
http://www.dfes.gov.uk/highlights/docs/reviewoflist99.doc

The full statement made by Ruth Kelly to the House of Commons can be found at
http://www.dfes.gov.uk/highlights/docs/ruthkellystatement.doc

Guidance Handbook for Victim Services Working With Teenage Victims

The Home Office has published a practical guidance handbook, produced by the United States National Crime Prevention Council and The National Center for Victims of Crime. The guide is based on an American study which showed that teenagers are twice as likely as adults to become victims of violent crime and that 80% of youths reporting violent victimisation had been victimised two or more times. Despite this fact, the study also found that teenagers are the least likely to report their victimisation.

The guide is intended to help victim service providers to reach and work with teen victims more effectively.

The first two chapters present the rationale for focusing on teenaged victims and explore the common ground between victim services and youth development.

Chapters 3 and 4 cover the principles of adolescent development and the unique impact of victimisation on adolescents, who are already facing numerous challenges as they make the transition from childhood to adulthood

Chapter 5 presents tips on how to assess the nature and extent of teen victimisation in the community. It particularly stresses the importance of collecting local information and talking with teenagers and service providers.

Chapters 6 to 8 discuss specific steps (from outreach to the service environment to specific interventions) that service providers can take to improve their success with teen victims. It comments that many prevention programs fail to include information for teenagers who have already been victimised and thereby miss out on the opportunity of getting information out to them, pointing out that statistics show that when presenting the programs they will probably always have some victims in their audience.

The guidance also includes tips on legal issues and parental involvement, although these are based on American legislation.

The guidance can be found via **http://www.crimereduction.gov.uk/victims37.htm**

Latest ASBO Statistics and Proposed ASBO Guidance Update

The latest statistics on ASBOs have been published by the Government. They show that a total 918 orders were issued between 1 April and 30 June 2005, 43 % of these being to juveniles. Since their introduction in April 1999, up to June 2005, a total of 6497 ASBOs have been issued.

Hazel Blears has also announced that, in order to ensure that ASBOs are being issued appropriately, the Government is planning to update the existing guidance. It also plans to introduce new measures, so that ASBOs issued to young people are reviewed after one year to allow changes in the behaviour of the individual to be taken into account.

Existing guidance can be found at
http://www.crimereduction.gov.uk/asbos9.htm
http://www.together.gov.uk/

The ASBO statistics for the period April to June 2005 can be found at
http://www.crimereduction.gov.uk/asbos2.htm

Anti-Social Behaviour Order (ASBO) Powers for Environment Agency

The Government has announced that the Environment Agency is to be given powers to apply for Anti-Social Behaviour Orders (ASBOs). The Home Office is presently drafting an order under Section 1A of the Crime and Disorder Act 1998 to make the Environment Agency a 'relevant authority'; but the date when it is intended to be brought into force is not yet known.

Proposed Prostitution Strategy

On 17 January the Government published the responses to their consultation on prostitution, 'Paying the Price: a consultation paper on prostitution', which was published in July 2004. A summary of this consultation paper and the impact on the police was included in the August 2004 *Digest*.

Over 850 responses to this public consultation were received. The responses to 'Paying the Price' have been used to produce a coordinated strategy for prostitution.

The key objectives of the strategy are:

- To challenge the view that street prostitution is inevitable and here to stay.
- To achieve an overall reduction in street prostitution.
- To improve the quality of life and safety of communities which are affected by prostitution.
- To reduce all forms of commercial street prostitution.

The main points of the prostitution strategy are:

Prevention

This will include prevention and early intervention measures to stop individuals, especially young people and children from becoming involved in prostitution.

Tackling demand

Deterring those who create the demand and also removing the opportunity for street prostitution to take place. There will be a new focus on the enforcement of the law on kerb crawling and a new staged approach to enforcement against loitering and soliciting.

The Government has introduced a new civil order for adults which can run alongside an Anti Social Behaviour Order (ASBO) (see section 0 Drugs Act 2005). This new Intervention Order will be available from April 2006 and will mean that individuals who carry out anti-social behaviour can receive treatment to address any underlying causes of their behaviour where it is related to drugs. This will mean that it will help those involved in prostitution find another route to support services. It is also stated that in the review, ASBOs and Acceptable Behaviour Contracts (ABCs) can be used against kerb crawlers and pimps who encourage the demand.

Producing routes out

This will involve engaging with those involved with prostitution to provide a range of advocacy and support services to help them leave prostitution.

Ensuring justice

Individuals who exploit people through prostitution will be targeted along with those who commit violent and sexual offences against those involved in prostitution. A new guide to the law will be produced, including advice on effective investigation and witness support.

Tackling off street prostitution

This will mean targeting commercial sexual exploitation, especially where the victims are young or have been trafficked. It is stated in the review that the Government will make proposals to include a definition of a brothel, which will not include premises where two or

three prostitutes are working together. At present as established in the case Stevens v Christy 1987, premises where a number of different prostitutes work as a team, even when only one of them is ever present in the premises is deemed to be a brothel.

The main area where the police will be greatly involved is as an enforcement agency. Also, in the review, it is suggested that the police will be the first line of contact for community concerns to be raised. An 'Online Guide to Community Engagement in Policing' has been published to provide practical advice to the police on how to engage effectively with communities which are affected by prostitution. Further, the police are asked to add practical examples on how they have successfully tackled issues associated with prostitution. There will be an attempt to foster a partnership between the police and local communities by 2008 by way of dedicated and visible neighbourhood policing teams in all areas in England and Wales. This is proposed in 'Neighbourhood Policing: your police; your community; our commitment'.

The responses to the consultation paper and the coordinated strategy can be found at **http://www.homeoffice.gov.uk/documents/ProstitutionStrategy.pdf?view=Binary**

The consultation paper can be found at the Home Office website **http://www.homeoffice.gov.uk/documents/paying_the_price.pdf?view=Binary**

An 'Online Guide to Community Engagement in Policing' **www.communityengagement.police.uk**

'Neighbourhood Policing: your police; your community; our commitment', 2005 available at **http://police.homeoffice.gov.uk/community-policing/neighbourhood-police**

Consultation on Human Trafficking Action Plan

The Government has published a consultation entitled 'Tackling Human Trafficking – Consultation on Proposals for a UK Action Plan'. The Governments ultimate aim is to develop a strategy which will cover the whole process of trafficking and to identify points at which the UK can effectively intervene. At present the Government is inviting views on what this action plan should cover.

The 3 core elements of the proposed anti-trafficking strategy are:

- Prevention and demand reduction. This will include preventing trafficking at the source. It will also support projects that tackle the causes of trafficking in source and transit countries. The Government will attempt to reduce the demand for trafficked victims in the UK.
- Investigating and prosecuting trafficking. This includes raising knowledge levels in relation to the extent of the problem among the police and front line staff at home and abroad.
- Supporting victims. The possibility of providing border control agencies with profiles of trafficking victims will be explored to aid identification and attach appropriate support.

The consultation, Tackling Human Trafficking – Consultation on Proposals for a UK Action Plan can be found at **http://www.homeoffice.gov.uk/documents/TacklingTrafficking.pdf?view=Binary**

Proposed Changes to Road Safety Funding

Proposed changes to the current system of road safety funding have been announced by the Department for Transport. The new measures include:

- Ending to the current system of funding speed cameras from the fines they generate.
- Increasing funding for road safety.
- Improving the signposting of speed cameras.
- Requiring all local authorities to review the speed limits on their A and B roads by 2011.

The proposals in relation to road safety funding and changes to speed camera revenue will mean that, from 2007/08, camera activity and partnerships will be integrated into wider local authority road safety activity, and expenditure on safety cameras will cease to be funded through netting-off. As part of this process, the responsibility for safety cameras in Wales will transfer to the National Assembly for Wales.

The Government has promised local authorities in England an additional £110 million a year over the first four years of these changes, which it claims is £17 million more than the latest projection of annual expenditure by safety camera partnerships in England. The changes will allow this funding to be used for all types of road safety measures and not just, as at present, for speed cameras. Money will be allocated to local authorities based on casualty reduction plans that they will have to submit and on their road casualty need.

The Handbook of Rules and Guidance in relation to speed cameras will be amended during 2006/07 to allow greater flexibility in the siting of cameras, and also make improvements e.g. by co-locating speed limit and camera signs (see article on Road Traffic Signs (Enforcement Cameras) Bill on page 14 and making signs and cameras visible to the driver in the same view. It is expected that the amended guidance will be published in the near future.

The National Safety Camera Programme: Four-year Evaluation Report

An independent four year research report, prepared by PA Consulting and University College London, which examined over 4000 camera sites in 38 safety camera partnership areas throughout Great Britain, has been published. The report finds that, overall, safety cameras continue to be highly effective in reducing speeding, accidents and casualties at camera sites.

Other specific findings in the report conclude that:

- Whilst fixed, mobile and time-over-distance cameras are all effective in reducing speed and maintaining high levels of compliance with speed limits, fixed cameras are the most effective at reducing speed.
- Taking all cameras into account, the reductions in speed have been greatest at urban fixed camera sites.
- Reductions in speed at camera sites are sustained over time; and at mobile sites are not only sustained but actually strengthened further as sites matured.

- The level of public support for the use of cameras has been consistently high; although there is some evidence that this support is declining in a number of areas, particular concerns were that cameras are associated with revenue-raising and not casualty reduction.
- On average, over the four years of the programme, around 85% of all local press coverage was positive or neutral.

The report can be found in full at **http://www.dft.gov.uk/stellent/groups/dft_rdsafety/documents/page/dft_rdsafety_610815.hcsp**

Congestion Charging Expansion

Seven local authorities have been awarded a total of £7 million to develop a model charging system that the Government hopes to be able to roll out nationally in the future as part of its plans to tackle road congestion.

The money has been awarded after a Government road pricing feasibility study, conducted in 2004, recommended that local or regional schemes should be piloted to test approaches as road pricing is further developed. The seven areas are:

- Cambridgeshire.
- Durham.
- Greater Manchester.
- Shrewsbury.
- Tyne and Wear.
- West Midlands.
- A coalition of authorities around Bristol and Bath.

The Department for Transport expects that charging schemes will come into force in one or two of these areas by 2008 and allow the testing of the technology prior to it being adopted by other areas.

Illegal Roadside Adverts

The Government has announced that new measures are to be introduced to help deal with the growing problem of illegal roadside adverts, particularly where advertisers are putting adverts on trailers in fields at the side of motorways and major roads.

Legislation already exists to enable local planning authorities (LPAs) to decide whether a particular advertisement should be permitted or not, under the Town and Country (Control of Advertisements) Regulations 1992. LPAs also have powers, under the Town and Country Planning Act 1990, to prosecute people displaying adverts in contravention of the Regulations and also to remove or obliterate any illegally displayed placard or poster, after giving two days notice of their intention to do so. On conviction, an offender can be fined up to £2,500 and £250 for each day during which the offence continues.

Advertisements which may be displayed without having to apply to the local planning authority for express consent include:

- Temporary advertisements to be displayed publicising a forthcoming event.

- Those to advertise a short-term use of the advertisement site, such as announcing that there is to be a sale of goods or livestock on land or premises, such as a sale of livestock on farm premises.
- Those to advertise any local event being held for charitable purposes.

However, there are conditions and limitations attached, such as the size and the length of time the advertisement can be displayed.

The Office of the Deputy Prime Minister (ODPM) is, as part of the new measures, to publish guidance and advice for LPAs on the control of outdoor advertisements.

In addition, the ODPM is seeking assurances from companies believed to be advertising illegally that this practice will cease. As a follow-on to this action, during 2006, a new national database will be launched, containing information on companies who advertise illegally beside motorways to assist local planning authorities (LPAs) in enforcing the law. The database will be placed on the ODPM planning portal at **http://www.planningportal.gov.uk/england/government/en/**

The Planning Advisory Service (PAS), which is funded by the ODPM to help LPAs provide better quality services, is also to publish practical examples of action taken by LPAs to prevent and remove illegal roadside advertising, as a guide to other authorities.

The PAS is launching a new, redesigned website in the first week of February. This will be available at **http://www.idea-knowledge.gov.uk**

Proposals for a New Licensing System for Heavy Goods and Public Service Vehicles

The Department for Transport has published a consultation paper entitled 'Modernising Operator Licensing - A streamlined regulatory system for operators of goods and public service vehicles'. The consultation document follows up on the Government's White Paper, 'The Future of Transport', in which it made a commitment to streamline the system of licensing of operators of heavy goods and public service vehicles. It also builds upon administrative improvements already made by the Vehicle and Operator Service Agency (VOSA). If stakeholders support the proposals, they will be implemented during 2007.

The main object of these proposals is to reduce the burden on the road freight and passenger transport industries whilst maintaining the standards of safety.

The three main reform proposals are:

- New administrative arrangements for holders of more than one licence.
- Reforming licensing and testing fees.
- Moving from paper discs to online transactions.

If these reform proposals are implemented the effect will be as follows:

New administrative arrangements for holders of more than one licence

- Operators would be allocated to a lead Traffic Commissioner (TC), using certain criteria including the traffic area where the greatest number of vehicles is based, the area with the greatest number of operating centres or the area in which the operator's registered office is based. This would address concerns about the consistency of decisions and the duplication of paperwork of operators who need a separate licence for each traffic area where they operate. There will also be set criteria for TCs considering licensing applications and variations.

Reforming licensing and testing fees

- It is suggested that there should be a merging of all of the operator licensing and vehicle fees with the vehicle test fee, meaning that operators would pay a single fee for each vehicle at the time of the annual test. This would simplify the structure of licensing and testing fees to considerably reduce the number of financial transactions between the VOSA and operators. Further, a new fee structure would be introduced for different categories.

Moving from paper discs to online transactions

- The requirement of vehicle specific windscreen discs, which are issued to goods vehicle operators when they specify vehicles on their licence, would be abolished. Also the margin concession which currently allows vehicles to be used without specifying them on a licence for up to twenty-eight days would be withdrawn. The consultation paper notes that before the requirement of windscreen discs can be abolished there is a need for enforcement officers to have adequate access to technology. There is a possibility of the same approach occurring for public service vehicles.

The consultation paper can be found at the Department for Transport website at **http://www.dft.gov.uk**

Consultation on Cash Seizure Threshold

The Home Office is conducting an informal consultation with the Association of Chief Police Officers, HM Revenue and Customs and HM Courts Service, as well as with Scottish Ministers, on whether the cash seizure threshold under the Proceeds of Crime Act 2002 should be lowered from £5,000 to £1,000.

The powers under the Act allow police and customs officers to seize cash suspected to be the profit of crime or intended for use in crime. At present around £1 million a week in suspect cash is currently being seized by law enforcement officers. The consultation will end in mid-February 2006.

Consultation on Transposing the EU Unfair Commercial Practices Directive into UK Law

The Department for Trade and Industry (DTI) has published a consultation paper seeking views on how best to draft the transposing legislation and accompanying Guidance in relation to the implementation of the EU Unfair Commercial Practices Directive (2005/29/EC) into UK law.

The Directive will introduce, for the first time into UK law, a general duty on all businesses not to trade unfairly with consumers, in particular by not misleading consumers through acts or omissions, or subjecting them to aggressive commercial practices such as high pressure selling techniques. It also provides additional protections for vulnerable consumers. Some of these protections broadly replicate existing legislation, but others are new.

The Directive sets out rules that determine when commercial practices are unfair. These rules fall into three distinct parts:

- The general prohibition.
- Specific rules on how practices may mislead through acts or omissions; or which through the use of harassment, coercion or undue influence are aggressive.

- An Annex of 31 practices which are deemed to be unfair and therefore prohibited under all circumstances.

It will require amendments to be made on up to 28 pieces of existing consumer legislation. The Directive must be transposed into UK law by 12 June 2007 and will then come into force on 12 December 2007.

Following this consultation the DTI intends to hold a second consultation in autumn 2006 on the draft implementing legislation.

The consultation paper and the Directive can be viewed in full at **http://www.dti.gov.uk/ccp/consultations.htm**

HOC 53/2005
Money Laundering: The Confidentiality and Sensitivity of Suspicious Activity Reports (Sars) and the Identity of Those Who Make Them

The Home Office has published this Circular in response to issues raised about the need to protect the identity of members of staff who make Suspicious Activity Reports (SARs), and the firms they represent.

The Circular contains guidance on the use and handling of SARs by the National Criminal Intelligence Service (NCIS), police forces and other law enforcement agencies. The aim of the guidance is to minimise the number of occasions where the identity of a person, or a firm, making a SAR is revealed in prosecution evidence or disclosed to the defence as unused material under the Criminal Procedure and Investigations Act 1996. It stresses that these agencies as well as prosecutors should make every reasonable effort within the law to avoid using SARs or SARs-derived material, but acknowledges that in certain cases such a disclosure may be necessary.

The Circular sets out, for relevant agencies, the procedure to be followed by them in relation to the disclosure under the Criminal Procedure and Investigations Act 1996 (CPIA) of SARs. This staged process should be for each item of unused material:

- Is it 'relevant'?
- Is it potentially 'sensitive' or non-sensitive?
- Does the 'disclosure test' apply?
- Is a 'Public Interest Immunity (PII) application' necessary?

The guidance states that the content of the SAR will frequently be relevant to an investigation. Where it is, under the statutory CPIA Code of Practice, investigators must retain material and reveal it to the prosecutor on a schedule of non-sensitive or sensitive material. The schedule of non-sensitive material will also be revealed to the defence.

In relation to 'sensitivity', an item of unused material must pose a 'real risk of serious prejudice to an important public interest'. The risk must be real, not fanciful, and any consequent prejudice, serious. Examples of 'sensitive' material in the CPIA Code of Practice can include material given in confidence and material relating to identity of persons supplying information to the police who may be in danger if their identities are revealed, therefore SARs could in these circumstances be classed as 'sensitive'.

SARs listed on either a non-sensitive or sensitive material schedule can only be disclosed to the defence if they meet the disclosure test, i.e. *'there is something that might reasonably be considered capable of undermining the prosecution case against the accused or of assisting the case for him'*. This means that items meeting the 'sensitive' test but not meeting the 'disclosure' test remain hidden and undisclosed to the defence. Items meeting the disclosure test will need a PII hearing.

On the subject of PII, the guidance makes reference to the fact that PII applications in respect of SARs will probably only be necessary on rare occasions. The guidance contains a number of extracts from the House of Lords judgement in the case of H&C (February 2004), in relation to PII applications. One of the key points highlighted from this

judgement, which is also relevant in relation to the 'disclosure test' stage, is the fact there is no duty to disclose material that is neutral or that is damaging to the defendant: *'if material does not weaken the prosecution case or strengthen that of the defendant there is no requirement to disclose it'.*

In cases where disclosure is believed necessary, the guidance sets out the procedure to be followed.

Firstly, prior to disclosure being considered to any defendant, the relevance and sensitivity of the content of the SAR, including the identification of the reporter, must be assessed.

If after discussion with the prosecution (as necessary) that the SARs (or other NCIS material) should be disclosed, whether at the initial disclosure stage or under the continuing prosecution duty, the police or other law enforcement agency should contact NCIS in writing, including details of:

- The nature of the case being prosecuted.
- The issues in the case in respect of which the SARs are believed to be relevant.
- What material and/or information believed to be held by NCIS.

NCIS can, if it is not satisfied that the identified SAR or other material should be released, seek legal advice. This could be on the grounds that it is not relevant to the investigation, fails to meet the disclosure tests or, if it does, runs the risk of prejudice to a wider public interest. If that legal advice recommends that material is not to be released or further information is required before a decision on its disclosure can be made, NCIS can make representations to the prosecutor.

If details of a SAR are to be disclosed the guidance advises that:

- Disclosed material does not need to remain in the form in which it was originally or derivatively recorded but could be disclosed in redacted form, or by admissions.
- Police forces or other LEAs should consult with the reporter before a decision is made which would have the effect of identifying him/her.
- Where the source branch or person, or a third-party, is itself relevant or if, despite redaction, the source would nevertheless be evident, then a risk assessment must be made of the real risk of harm to that person from that particular defendant or organisation.
- The police or other LEA are responsible, in consultation with the reporter, for the assessment of the threat, i.e. the capability of the criminal organisation.
- The police or other LEA are responsible, in consultation with the reporter, for the assessment of the vulnerability of the reporter to that threat.
- If the assessment is that there is insufficient reason for concern then the full details will be disclosed. However, the risk assessment should be reviewed by the prosecutor before details are disclosed.

The Circular also reminds practitioners that SARs received by NCIS will be classified as "Restricted" and must be treated in confidence by law enforcement agencies, warning that failure to observe this general duty could lead ultimately to disciplinary sanctions.

SARs may also be used in civil proceedings. With the exception of cash forfeiture proceedings in the magistrates' court, the use of SARs in civil proceedings is covered by Part 31 of the Civil Procedure Rules. The Circular states that in cases of civil recovery proceedings under the Proceeds of Crime Act 2002, the Assets Recovery Agency will take

all possible steps to protect the identity of the person in such circumstances, and will follow the guidance as closely as possible in relation to notifying and discussion with the disclosing agency.

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

HOC 55/2005
Guidance on Sections 1, 3, 5 and 8 of the Drugs Act 2005

This Circular covers the commencement of Sections 1, 3, 5 and 8 of the Drugs Act 2005; and explains the change to the Misuse Of Drugs Act 1971 which has made Ketamine a Class C controlled substance and placed it in Schedule 4 Part 1 of the Misuse Of Drugs Regulations 2001, all of which were brought into force on 1 January 2006, by virtue of Statutory Instruments 3053, 3178, and 3372 of 2005 (see November and December *Digest*s).

The provision contained in Sections 1, 3, 5 and 8 of the Drugs Act 2005 were covered in the *Digest* (January 2005); parts of these provisions will be covered again in this article, as well as further guidance contained within the Circular.

Section 1 of the Drugs Act 2005 stipulates the conditions which, when met, a court must treat as aggravating factors when considering the seriousness of the offence of supplying a controlled drug contrary to Section 4 of the Misuse of Drugs Act 1971, when the offence is committed by a person aged 18 or over.

The aggravating factors to be considered are:

- That the offence was committed on or in the vicinity of school premises at a relevant time (i.e. any time when the school premises are in use by persons under the age of 18 and one hour before the start and one hour after the end of any such time).

and/or

- That in connection with the commission of the offence, the offender used a courier who, at the time the offence was committed, was under the age of 18.

The Act purposely does not define the term 'in the vicinity', as this would run the risk of excluding from the term particular circumstances which a court may want to include in a particular case. Courts will have to determine what constitutes 'in the vicinity' of a school on a case by case basis in the light of local knowledge.

The Circular does put forward a list of factors (which is not intended to be exhaustive) which may be relevant and assist the court in its deliberations on the matter. They are:

- The risk posed by drug dealing to young people when attending school is of primary concern.
- Distance from the school is an important but not necessarily determinative factor.
- The practical accessibility of a location to young people is an important factor, irrespective of whether the location is open to public access or is on private property.
- Any premises, including cafes and private dwellings, that are in the vicinity of a school may be 'in the vicinity'.
- Other points in the vicinity of a school at which young people will regularly gather (including but not restricted to bus stops, car parks, waste ground, fast food outlets or public parks) on the way to or from school are of particular concern.

- When considering whether a place is one at which young people regularly gather, consideration should be given to the informal routes they may take to school or between school premises located on different sites or two facilities used by the school such as swimming pools (e.g. by trespassing on private land) as well as public footpaths and roads.
- Drug dealing to young people on the way to or from school on public and private transport may be considered to be in the vicinity of school premises depending on the circumstances.

It gives a particular example where a dealing site may be some distance from the school using conventional footpaths or roads, but be easily accessible by less conventional means, for example, by trespassing, e.g. where a hole in a fence allowed the unauthorised crossing of the railway line at a place other than a bridge.

In practice, it is likely that the only way information such as shown in the example above will be brought to the attention of the court is by the investigating officers considering the issue when conducting an investigation and including such information in the evidential package.

Section 3 of the Drugs Act 2005 amends Section 55 of the Police and Criminal Evidence Act 1984 (PACE), which makes provision with regard to intimate searches. The key changes are:

- A drug offence intimate search can only be carried out if appropriate consent is given in writing.
- Where such a search is proposed, an appropriate officer shall inform the suspect of the authorisation for the search and the grounds for giving the authorisation.
- The authorisation, the grounds for the search and the fact that appropriate consent has been given must be recorded on the custody record.
- If consent is refused without good cause, a court can draw such inferences as appear proper.

There is no basis to refuse consent for cultural or religious reasons. Examples of 'good cause for refusing consent' could include:

- Health, on the advice of the forensic physician or radiologist.
- Pregnancy, a reasonable belief that the detainee is pregnant.

NB The provision within Section 55 of PACE for carrying out an intimate search to find other harmful items, such as articles which could be used to cause injury or damage, interfere with evidence or assist escape, has not been changed.

Detailed guidance on the procedure for carrying out an intimate search of a detained person to find drugs can be found in Section 55 of PACE and Annex A of PACE Code C. Main points include:

- An officer of the rank of inspector or above can authorise an intimate drug offence search, if they have reasonable grounds to believe that the detainee may have a Class A drug concealed on them and was in possession of it prior to his arrest with the intention to supply it to others or to export it unlawfully.
- Authority may not be given unless the officer has reasonable grounds for believing the drugs cannot be found by any other means.
- The officer may give the authority orally or in writing. If given orally, it must be confirmed in writing as soon as practicable.

- A drug offence intimate search may only be conducted by a suitably qualified person. This would be a registered medical practitioner or registered nurse only.
- An intimate search which is only a drug offence search may only be carried out at a hospital, a registered medical practitioner's surgery or other premises used for medical purposes.

Section 5 of the Drugs Act 2005 has introduced a new Section 55A to PACE, which enables the police to have x-rays and/or ultrasounds taken of persons in police detention suspected of swallowing Class A drugs, provided certain conditions are met. The main provisions contained within the legislation and PACE Code of Practice C are:

- If an officer of at least the rank of inspector has reasonable grounds for believing that a person who has been arrested for an offence and is in police detention may have swallowed a Class A drug, and was in possession of it with the appropriate criminal intent before his arrest, the officer may authorise that an x-ray is taken of the person or an ultrasound scan is carried out on the person (or both).
- The person who is to be subject to it must be informed of the giving and the grounds of the authorisation by an 'appropriate officer', i.e. a constable or a detention officer (in pursuance of Section 38 of the Police Reform Act 2002 if his/her designation applies paragraph 33D of Schedule 4 to that Act), or a person who is designated as a staff custody officer (in pursuance of Section 38 of that Act if his designation applies paragraph 35C of Schedule 4 to that Act).
- Before the detainee is asked to give appropriate consent, an 'appropriate officer' must warn them that if they refuse without good cause, their refusal may harm their case if it comes to trial and a court may draw such inferences from the refusal as appear to it to be proper. A detainee who is not legally represented must also be reminded of their right to free legal advice.
- An x-ray must not be taken of a person and an ultrasound scan must not be carried out on that person unless the person has given appropriate consent in writing.
- An x-ray may be taken or an ultrasound scan carried out only by a suitably qualified person and only at a hospital, a registered medical practitioner's surgery, or some other place used for medical purposes.
- The custody record of the person must also state the authorisation by virtue of which the x-ray was taken or the ultrasound scan was carried out, the grounds for giving the authorisation, the giving of the warning required and the fact that the appropriate consent was given or if refused the reason given for the refusal (if any).
- If an x-ray is taken or an ultrasound scan is carried out the custody record must also show where it was taken or carried out, who took it or carried it out, who was present and the result.

The form of words of the warning that may be used is set out in Annex K of the PACE Code of Practice C and is:

"You do not have to allow an x-ray of you to be taken or an ultrasound scan to be carried out on you, but I must warn you that if you refuse without good cause, your refusal may harm your case if it comes to trial."

The Circular contains further practical guidance relating to this procedure which is of particular importance and which is not covered in the legislation or the PACE Codes. As some form of medical clearance will be required by an appropriate medical facility to conduct a medical procedure, such as an x-ray or ultrasound scan, and because such medical clearance will need to be authorised by a qualified medical practitioner, the guidance states that:

- The officer of the rank of inspector or above who authorises the x-ray or ultrasound scan **must** request a forensic physician (a medical practitioner retained by the police, registered with the General Medical Council) to determine the appropriateness of the request to carry out an ultrasound scan or x-ray or both with a view to obtaining relevant evidence.
- The forensic physician will refer the detainee to the appropriate medical facility and make clear whether the referral is for evidential, medical or for dual purpose.
- Forces that use healthcare professionals other than forensic physicians in their custody areas need to consider circulating internal guidance on procedures that should be followed.

The guidance also reminds practitioners that a forensic physician may have to be called in at an earlier stage in the procedure (possibly before an x-ray or ultrasound has been authorised in this way) if there is any reason to be concerned as to the health of the detainee. Advice on dealing with detainees who may have swallowed drugs is contained in PACE Code C at section 9 and Annex H. The current advice from the Association of Forensic Physicians is that persons suspected to have swallowed dugs should be removed to a hospital in the first instance.

Section 8 of the Drugs Act 2005 extends Section 152 of the Criminal Justice Act 1988 (CJA). This now allows a magistrates' court to commit a person aged 17 or over who is charged with an offence under Section 5(2) of the Misuse of Drugs Act 1971 (possession of a controlled drug) or a drug trafficking offence, into police custody for up to 192 hours to increase the likelihood that swallowed evidence can be recovered. Previously, under the legislation a person could only be remanded for this period into the custody of a customs officer.

The maximum period that can be granted on any one occasion is 192 hours. If the period granted is insufficient to enable police to recover the drugs, or complete an operation to arrest accomplices, a further application may be made when the person is brought back to court.

Drug trafficking offences for this purpose are defined by Section 151(5) CJA 1988 and are:

- Section 4(2) or (3) Misuse of Drugs Act 1971 (unlawful production or supply).
- Section 5(3) Misuse of Drugs Act 1971 (possession with intent to supply).
- Section 8 Misuse of Drugs Act 1971 (permitting certain activities).
- Section 20 Misuse of Drugs Act 1971 (assisting in or inducing the commission outside the UK of an offence punishable under a corresponding law).

Or

- Attempting, conspiring or inciting, or aiding, abetting, counselling or procuring, the commission of any of the above.

Albeit Section 8 Drugs Act 2005 is applicable in England, Wales and Northern Ireland, the guidance contained in the Circular only relates to its application in England and Wales. The Northern Ireland Office is to issue separate guidance regarding its application in Northern Ireland.

Applications under Section 152 will require sufficient evidence to satisfy the court that a remand to the custody of police is 'appropriate' in the circumstances. Appropriate is not defined, but it is suggested that it will usually apply when the main reason for seeking the remand is to enable police to recover swallowed drugs for evidence.

Decisions to charge a suspect with an offence for which a remand may be sought and to authorise detention after charge will continue to be made and recorded in accordance with the Director of Public Prosecution's Guidance issued under Section 37A PACE and Section 38 PACE (Duties of custody officer after charge). Crown prosecutors will apply the threshold test when making their charging decisions as this will be a remand into police custody.

If an application under Section 152 is successful the court will issue a warrant of commitment to police custody. This directs the police to keep the person in custody and specifies the date and time at which the person must re-appear before the court.

A person remanded under Section 152 is not in police detention and not subject to the detention provisions and time limits in Sections 37 to 44 PACE, but the need for the person to remain in police custody should be periodically reviewed.

Upon arrival at the police station where the person is to be held, a new custody record should be opened, on which the reasons for the remand presented in court should be noted. The commitment warrant which is the authority to keep the person in police custody should be kept with the custody record. The commitment warrant must be returned to the court with the person when the hearing resumes.

If the reasons for the remand cease to apply, the police should inform the court and the CPS so that arrangements can be made for the person to be returned to court. The police will also need to notify any solicitor representing the person of these arrangements.

The Circular reminds all police officers and police staff that the risks to health arising from internal concealment of drugs must be managed in accordance with the continuing risk assessment process required by Code C paragraphs 3.6 to 3.10 and Code C section 9 (Care and treatment of detained persons).

The guidance given in the Circular is intended to apply throughout the person's period in police custody before and after charge and whilst he/she is remanded under Section 152.

The guidance suggests that forces need to:

- Ensure the health and safety of police officers and police staff engaged in the recovery of excreted drugs, by undertaking an appropriate assessment of the risks and putting in place control measures to address them, including the provision and use of protective equipment and the introduction and maintenance of an immunisation programme.
- Ensure that single occupancy cell toilet facilities which allow drugs to be safely recovered and which provide evidential continuity are available at police stations.
- Give consideration as to whether police officers should carry out all the escort duties in relation to a charged person being taken to and from court for an internal concealment of drugs remand, rather than the appointed prisoner escort service contractor. Also, if this is thought necessary, to agree the arrangements with the court concerned.

The guidance advises that officers dealing with such cases should:

- Ensure that a single occupancy cell toilet facility which allows drugs to be safely recovered and which provides evidential continuity is available before applying for a remand under Section 152 and inform the court of that police station when making the application. (The station need not be the one where the person was charged and from which they were taken to court).

- If they have any direct contact with the person in the custody suite or when involved in escorting the person to and from court, be suitably trained and must be made aware of, the medical and evidential significance of internal drug concealment and need to report and record full details of any such relevant occurrences.
- Ensure that suitable arrangements have been made to ensure evidential continuity in recovering further drugs, preventing escape and minimising health risks whilst the charged person is being taken to court for any application or further application; at court; and, if the application is granted, being taken to a police station.
- Consider, as the officer in charge of the investigation, together with the CPS, what action to take if an application under Section 152 is refused.

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

HOC 56/2005
PACE 1984: Revised Codes of Practice 2005, Accompanying Guidance and Revised Notice of Rights and Entitlements

This Circular announces that the electronic copies of the revised PACE Codes are now available on the Home Office website and that hard copies have been distributed to and should already be with each police force. The hard copies also contain the revised Notice of Rights and Entitlements, which has also been translated into a number of additional languages.

There are some errors in Codes B and Code C as published, which are highlighted in the Circular and which will be amended in the next revision. The corrections are as follows:

Search Warrants and Production Orders

Code B (Note for Guidance 2A(b), 3.4(a) and 3.6(e)(i)) was amended so that the police can apply to "a judge of the High Court, a Circuit judge, a recorder or a District judge" for a warrant under PACE Schedule 1 or the Terrorism Act 2000, Schedule 5, paragraph 11.

This relates to an amendment to the Police and Criminal Evidence Act 1984 brought about by the Courts Act 2003, Section 65 and Schedule 4, paragraph 6(5). That provision has not yet been commenced. Therefore applications under PACE Schedule 1 or the Terrorism Act 2000, Schedule 5 must continue to be made to a Circuit Judge.

Drug testing for the presence of Class A drugs - Retention of samples

Code C paragraph 17.16(b) currently states that a sample taken under this power must be retained until the person concerned has made their first appearance before the court. However, with the introduction of testing on arrest this is no longer appropriate, as persons who are tested on arrest may not necessarily be charged.

Therefore this paragraph will be corrected in the next revision of the Codes so that it is consistent with drug intervention programme guidance, which makes it clear that the sample can be disposed of as clinical waste unless it is to be sent for further analysis in cases where the test result is disputed at the point when the result is known, or where medication has been taken, or for quality assurance purposes.

The Circular also includes detailed guidance, including templates, relating to the application for and issue of warrants under Section 8 of PACE. The guidance guides the user through the completion of each form, as well as advising on the procedures to be followed before during and after execution. There are five template forms in relation to such applications:

- Form 1. Application for warrant to enter and search premises under section 8 PACE.
- Form 2. Schedule to search warrant/application under section 8 PACE.
- Form 3. Warrant to enter and search premises for evidence of an indictable offence.
- Form 4. Warrant to enter and search premises for evidence of an indictable offence - COPY FOR OCCUPIER OF THE PREMISES ENTERED.
- Form 5. Record of Authority given by inspector or above to execute search warrant issued under section 8 PACE.

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

Review of Policing at Airports

Stephen Boys Smith, a retired Home Office Director-General, has been appointed by the Government to lead an independent review of policing at airports.

The terms of reference for the review are:

- To review the role of the police service at airports, using as a base-line the recommendations of Sir John Wheeler's 2002 review of airport security. It will take account of any other relevant reports and will consider how the airport manager, the police and other stakeholders at the airport can best work together, given their respective roles and responsibilities, including under the National Aviation Security Programme. Account will also be taken of the extent of any overlap in security activities at airports and the scope for efficiencies.
- To compare the present approach to the policing of airports with that applied to other modes of transport to establish any differences or similarities in policing approaches, roles, responsibilities and accountabilities that may apply. This will include the current review into the BTP.
- To develop a model for the policing of airports, with options recognising that different airports may require different approaches.
- To develop criteria upon which an objective assessment can be made as to whether an airport should be designated for policing purposes. Then to consider whether, on the basis of these criteria and taking account of voluntary multi-agency risk assessments (MATRA), the principle of the existing designation process can be made to work; and if not, to propose alternative options.
- To consider options and mechanisms for funding policing at airports in the light of any findings or recommendations that emerge from the review, taking account of the resources committed separately to security by airport operators and others. The Review will take into account the economic impact of any recommendations that it makes.
- To consider any requirement for changes in legislation.

The review is expected to be completed by late spring 2006.

Interim Practice Advice on Stop and Search Powers in relation to the Terrorism Act 2000

The National Centre for Policing Excellence has published in electronic format an interim practice guide in relation to the stop and search provisions in the Terrorism Act 2000. Views on the document are being sought and it is intended that, following this consultation period, a final document will be published in April 2006.

The document advises on the rationale and processes involved in obtaining authorisations, appropriate use of the powers and community impact factors.

The document can be found in full at **http://www.acpo.police.uk/policies.asp**

New Operational Support Helpline Launched

The National Centre for Policing Excellence Directorate of Centrex has launched a new operational support telephone helpline 'Opsline' which will be run from a new Operations Centre. The new Operational Centre will include the advisory services previously offered by the Covert Law Enforcement Advice Line and the Crime Desk.

Opsline will have a central enquiry handling unit supported by two specialist desks, the Covert Desk and the Crime and Uniform Desk. The unit will be responsible for providing initial responses as well as information on NCPEs portfolio of products and services. Specialist operational advice will be dealt with by the two specialist desks. The unit as a whole will also conduct research on behalf of customers in relation to specific operational enquiries.

The Opsline central number is 0870 2415641.
Customers can also email non-urgent enquiries to **opsline@centrex.pnn.police.uk.**

The Operations Centre offers a full service from 9am -5pm Monday to Thursday and 9am - 3pm on Fridays, with a reduced staffed service provided outside these core hours via the Genesis information platform (the police extranet).

HOC 54/2005
The Police Pension Scheme - New Police Pensions Financing Arrangements

This Circular provides guidance for police authority treasurers, force directors of finance, pension administrators and other practitioners to enable them to introduce and administer the new financial arrangements for police officer pensions. Police authorities will need to act on this guidance in order to make the necessary changes to ensure the new financial arrangements can be introduced and administered from 1 April 2006.

The guidance sets out detailed information on the new financial arrangements including:

- A summary of the arrangements.
- Employer and employee contribution rates.
- Ill-health early retirements.

- Seconded and transferring officers.
- Funding arrangements, including conditions of the funding agreement.
- Impact on police authorities, including administrative, audit and accounting requirements.
- Legislative requirements.
- Next steps.

Changes to the financial arrangements for the Police Pensions Regulations 1987 will be made in exercise of the power conferred by Section 1 of the Police Pensions Act 1976. The changes will come into effect on 1 April 2006. Similar provisions will be included in the Police Pensions Regulations 2006, which will govern the new Police Pension Scheme.

From 1 April 2006, police authorities are required to:

- Set up a police officer pension fund (referred to in the Circular as the 'pensions account').
- Make an employers' contribution, as a percentage of pensionable pay, towards the future pension liability for all serving members of the Police Pension Schemes into their pension account.
- Pay the officers' contribution, the percentage of pensionable pay paid by all serving members of the Police Pension Schemes towards their future pension liability, into their pensions account.

Although referred to as a 'pensions account', its legal status will be that of fund for the purposes of Section 30 of the Local Government Finance Act and it will also be referred to as the pensions fund in the Police Pensions Regulations.

The 'pensions account' will appear as a separate income and expenditure statement in an Authority's Statement of Accounts. A separate 'pensions account' balance sheet will be required. The 'pensions account' will be ring-fenced to prevent unauthorised transfers taking place. Each police authority will discharge its responsibility for paying the pensions of retired officers and their survivors through this account.

Under the new financial arrangements, the funds paid into and out of a police authority's 'pensions account' will be:

Income

- Officer contributions (including those of officers seconded elsewhere).
- Employer contributions (including those for officers seconded elsewhere).
- Incoming transfers from other pension schemes.
- Inter-authority adjustments for 1966 and 1974 reorganisations.
- Re-instatement of pensions – mis-selling charges.
- Capital-equivalent charge payments for ill-health early retirements.
- 30+ reimbursements.
- Other authorised income – to be specified by the PA.
- Top-up from central government to meet any deficit.

Expenditure

- Pension payments to retired police officers and other beneficiaries.
- Inter-authority adjustments for 1966 and 1974 reorganisations.
- Refund of pension contributions.
- Outgoing transfers to other pension schemes.
- Other authorised expenditure – to be specified by the PA.
- Payments to central government, if an authority's account was in surplus at the end of the accounting year.

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

Police Service Strength

The Home Office has published Statistical Bulletin 01/06, showing the numbers employed within the police service in England and Wales as at 30 September 2005.

The Bulletin shows that:

- There were 142,972 police officers (full-time equivalents) in England and Wales on 30 September 2005. 141,250 of these were serving in the 43 police forces in England and Wales, the remainder were on secondment to the National Crime Squad (NCS), the National Criminal Intelligence Service (NCIS) or Central Services.
- Police officer numbers have increased by 1,195 compared with September 2004 and by 50 compared with March 2005.
- The largest regional percentage increase was in the Yorkshire and the Humber region, where police officer numbers have increased by 2.3% since September 2004.
- Police staff numbers (including NCS and NCIS) were 73,357, an increase of 4.5% compared with September 2004, and an increase of 1.9% compared with March 2005.
- There were 6,324 Police Community Support Officers (PCSOs) on 30 September 2005, a rise of 53% since September 2004 and a rise of 1% since March 2005.
- There were 1,151 Traffic Wardens, a decrease of 24.8% compared with September 2004.
- There were 1,291 Designated Officers (under Section 38 Police Reform Act 2002, excluding PCSOs).

The number of police officers does not include the 2,319 officers in the British Transport Police in England and Wales.

The Bulletin can be found in full at **http://www.homeoffice.gov.uk/hosbpubs1.html**

Arrests for Recorded Crime (Notifiable Offences) and the Operation of Certain Police Powers under PACE

The Home Office has published Statistical Bulletin 21/05, which sets out the number of arrests made in England and Wales during 2004/2005 for recorded crime (i.e. notifiable offences) and the operation of certain police powers (i.e. stops and searches of persons or vehicles, road checks, detention of persons, and intimate searches of persons) under the Police and Criminal Evidence Act 1984.

Some of the main statistics from the report show that:

- Around 1,353,800 persons were arrested for recorded crime (notifiable offences) in 2004/05, a 2% increase on 2003/04.
- There was 16% increase in arrests for violent crime. The number of recorded violent crimes increased by 7% during 2004/05.
- 49% of arrests were for property offences (i.e. burglary, theft, fraud and forgery and criminal damage), a decrease of 3% from 2003/04.
- 83% of people arrested for recorded crime offences were males, the same as in 2003/04.
- There was an increase of 1% in male arrests and a 6% increase in female arrests. Male arrests increased by 10,600 to 1,120,200 and female arrests by 12,700 to 233,600.
- Of all persons arrested, a quarter were aged 17 or under and two fifths were under 21.
- The most common offence group for arrestees aged 10-17 was theft, whilst for males aged 18 and over there were more arrests within the violence against the person category.
- A comparison between 2003/04 and 2004/05 showed that 30 forces recorded increases in the number of arrests for recorded crime offences, the largest percentage increase being 42%. Thirteen forces showed a decrease in the number of arrests: the largest percentage fall was 25%.
- The police stopped and searched 851,200 persons and/or vehicles, 14% more than in 2003/04.
- 11% of searches led to an arrest, 2% less than 2003/04 and the lowest since 1999/00.
- 63 road checks were carried out, down from 68 in 2003/04.
- 1,132 persons were detained for more than 24 hours and subsequently released without charge, 511 higher than the 2003/04 figure of 621.
- 93 intimate searches, mostly for drugs, were carried out, 12 more than in 2003/04.

The Bulletin can be found in full at **http://www.homeoffice.gov.uk/rds/hosbpubs1.html**

Drink and Drug Driving Arrest Figures for Christmas Period 2005 Published

The Association of Chief Police Officers (ACPO) has published figures showing the results of the national campaign against drink/drug driving in December.

The figures show that during this period:

- 133,136 drivers were breath tested, with 9,275 tests proving positive.
- Of the total breath tested, 15,635 were tested following road accidents, with 1,344 proving positive.
- Fit to drive tests were conducted on 540 drivers suspected of being impaired whilst under the influence of drugs. 178 of these were subsequently arrested for drink or drug impairment offences.

The Segway Human Transporter

The Association of Chief Police Officers (ACPO) has published guidance in relation to the legality of use of the Segway Human Transporter on public highways and in public places.

The Transporter is produced by an American company and is designed to carry a single person. It is a battery driven vehicle, consisting of two transverse mounted wheels connected with a mounting plate, where the rider stands and holds onto a set of handlebars. The machine is operated by way of body movement. By leaning forward, the rider moves the machine forward; and to stop or reverse, the rider leans backwards. It has a maximum speed of 12.5mph and has a range of approximately 12 miles, although some newer models have twice this range.

The Transporter is advertised by the manufacturers as suitable for use anywhere people walk such as sidewalks and crosswalks, in parks and on gravel trails, or in most other public spaces, and many States in the USA allow such use. In respect of use on public highways, many States within the USA have enacted permissive legislation allowing such use.

ACPO guidance is that the Transporter falls within the legal definition of a moped in so much as it is mechanically powered, has less than four wheels, weighs less than 250kg and has a maximum design speed not exceeding 30mph. Therefore, any rider using this vehicle on a road would need:

- A relevant and appropriate licence.
- Relevant vehicle insurance.
- To wear a suitable helmet.

The machine would need to be registered with DVLA and would be subject of vehicle excise duty.

The ACPO advice is that at this moment in time the Segway Transporter should be treated as a moped.

There are apparently ongoing discussions within the House of Lords regarding the legality of the Transporter with some suggestions being made that a change in the law could be made to allow it to be ridden on a footpath in a similar vein to the invalid carriage.

Further details on the Segway Transporter can be found at **http://www.segway.com**

Freedom of Information Act Requests

The Association of Chief Police Officers (ACPO) Central Referral Process Unit (CRPU) has published its latest position paper on requests under the Freedom of Information Act to UK police forces, covering the period 01/07/05 to 30/09/05.

Analysis of the figures shows that:

- 4,758 requests were received by police forces during the period 01/07/05 to 30/09/05.
- Of the 4,758 requests, 12.9% were Subject Access Requests under the Data Protection Act.
- Requests are becoming more focused on sensitive issues and are taking longer to research and answer.
- Requests from internal staff have dropped dramatically.
- The Police Federation and Unison have started to make requests under the Act.
- Nationally requests from media bodies accounted for a quarter of requests.
- The number of requests purely to Scottish forces from the media accounted for nearly two thirds of the requests.
- The number of requests to police forces that cross over into central government has increased.

The trend of requestors placing a request with one force and awaiting the answer before then making the same request to other forces and using the first response as a precedent is continuing, particularly from media organisations.

Following the London bombings in July, a considerable number of requests were generated, in particular in respect of anti-terrorist operations and action plans. These requests were made to several police forces nationally and due to the central referral process were able to be dealt with in a unified way agreed by ACPO.

Section 5 of the Domestic Violence, Crime and Victims Act 2004

Police in Bedfordshire have charged the mother of a child in Luton with the offence of causing or allowing the death of a child or vulnerable adult, under Section 5 the Domestic Violence, Crime and Victims Act 2004 (covered in the March 2005 *Digest*). It is believed to be the first case brought under this piece of legislation since it came into force on 21 March 2005. The next hearing of the case is scheduled for 27 March 2006.

Asylum and Immigration Conference

On 28 February 2006, a conference on Asylum and Immigration, aimed at updating delegates on the work currently being undertaken within this field by the police service and other agencies, is being held at Centrex, Bramshill.

The conference will feature speakers from the Immigration Service Enforcement and Removals Directorate, the National Asylum Support Service and the Gangmasters Licensing Authority.

Discussions will also include ways as to how asylum seekers can be integrated further into communities with assistance from the Neighbourhood Policing Programme and the National Community Tension Team.

Delegate Registration Forms can be obtained from Susan McAteer, Events Officer, Centrex Communications, Bramshill, Hook, Hampshire RG27 0JW.

Bank and Building Society Anti-fraud Measures

From 1 October 2006, banks and building societies are to change the way they handle cheques that are payable just to a bank or building society, as a further measure to reduce cheque fraud, which totalled £46.2m last year. These revised procedures are highlighted within the Banking Code.

From this date, banks and building societies will no longer accept cheques which are made payable to a financial institution rather than a customer. Instead people will either have to make the cheque payable to an individual, or include the individual's name on the payee line after the name of the institution. However, the industry is advising that people start adding the extra details now, so that they benefit from greater protection immediately.

One of the main reasons for the change is due to a high profile case where an independent financial adviser told his clients to make cheques out to the financial institutions where the money was going to be invested and then paid them into his own account, rather than the customers' accounts.

The new arrangements will not affect payments being paid into the drawer's own account, or cheques used to pay a utility bill or credit card bill in the drawer's own name. Cheques payable to an individual or other business will not be affected.

Case Law

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

Evidence Obtained By Torture

A & ORS v SECRETARY OF STATE FOR THE HOME DEPARTMENT (2005)

[2005] UKHL 71

HL (Lord Bingham of Cornhill, Lord Nicholls of Birkenhead, Lord Hoffmann, Lord Hope of Craighead, Lord Rodger of Earlsferry, Lord Carswell, Lord Brown of Eaton-under-Heywood) 8/12/2005

CRIMINAL EVIDENCE - HUMAN RIGHTS - IMMIGRATION

Admissibility: Burden Of Proof: Inhuman Or Degrading Treatment Or Punishment: Right To Liberty And Security: Special Immigration Appeals Commission: Terrorism: Torture: Admissibility Before The Special Immigration Appeals Commission Of Evidence Procured By Torture: Detention Without Trial: Standard Of Proof: Witness Statements: Lawfulness Of Detention: S.23 Anti-Terrorism, Crime And Security Act 2001: Art.5 European Convention On Human Rights: Human Rights Act 1998 (Designated Derogation) Order 2001: S.25 Anti-Terrorism, Crime And Security Act 2001: Art.3 European Convention On Human Rights: Part 4 Anti-Terrorism, Crime And Security Act 2001: S.16(4) Prevention Of Terrorism Act 2005: S.21 Anti-Terrorism, Crime And Security Act 2001: R.44(3) Special Immigration Appeals Commission (Procedure) Rules 2003

The Special Immigration Appeals Commission could not, when hearing an appeal under the Anti-terrorism, Crime and Security Act 2001 s.25 by a person certified and detained under s.21 and s.23 of that Act, receive evidence that had or might have been procured by torture inflicted by officials of a foreign state without the complicity of the British authorities. The commission should refuse to admit evidence relied on by the secretary of state to issue a certificate under s.21 if it concluded on a balance of probabilities that that evidence had been obtained by torture. If the commission was left in doubt as to whether the evidence had been obtained by torture, then it should admit it, but it had to bear its doubt in mind when evaluating the evidence.

The appellant detainees (X) appealed against the decision ((2004) EWCA Civ 1123) that the fact that evidence in their appeals before the Special Immigration Appeals Commission had, or might have, been procured by torture inflicted by foreign nationals without the complicity of the British authorities was relevant to the weight of the evidence but did not render it legally inadmissible. X had been certified by the respondent secretary of state as suspected international terrorists under the Anti-terrorism, Crime and Security Act 2001 s.21 and detained under s.23 of that Act without charge in accordance with the derogation from the European Convention on Human Rights 1950 Art.5 permitted by the Human Rights Act 1998 (Designated Derogation) Order 2001. X unsuccessfully appealed to the commission under s.25 of the 2001 Act. The commission, during the proceedings, affirmed that the fact that evidence might have been procured by torture inflicted by foreign officials without the complicity of the British authorities was relevant to the weight of the evidence but not to its admissibility. It further held that they could consider all of the evidence and that there was no finding that any of the evidence from third parties abroad

had been obtained in breach of the European Convention on Human Rights 1950 Art.3. The Court of Appeal upheld that decision. Despite the repeal of the Anti-terrorism, Crime and Security Act 2001 Part 4, X's right of appeal to the House of Lords was preserved by the Prevention of Terrorism Act 2005 s.16(4). X submitted that

(1) common law precluded the admission of evidence obtained by the infliction of torture and, if it appeared that a confession or evidence might have been procured by torture, the court had to exercise its discretion to reject such evidence as an abuse of process. The obtaining of evidence by the infliction of torture was so grave a breach of international law, human rights and the rule of law that any court degraded itself and the administration of justice by admitting it;

(2) if the common law was not enough to require rejection of evidence that had or might have been procured by torture, whether or not with the complicity of the British authorities, then the 1950 Convention compelled that conclusion.

HELD

(Lords Bingham, Nicholls and Hoffmann dissenting on the issue of burden of proof)

(1) English common law had from its earliest days been set firmly against the use of torture to obtain confessions and had refused to accept that oppression or inducement should go to the weight rather than the admissibility of the confession. Rather, it insisted on an exclusionary rule, Wong Kam-Ming v The Queen (1980) AC 247 considered. That a confession not proved to be voluntary was inadmissible was perhaps the most fundamental rule of English criminal law, Lam Chi-Ming v The Queen 3 All ER 172 and R v Mushtaq (Ashraq Ahmed) (2005) UKHL 25 , (2005) 1 WLR 1513 considered. The principles of common law, standing alone, compelled the exclusion of third party torture evidence as unreliable, unfair, offensive to ordinary standards of humanity and decency, and incompatible with the principles that should animate a tribunal seeking to administer justice, R v Horseferry Magistrates' Court, Ex Parte Bennett (1994) AC 42, R v Latif (2001) 2 Cr App R 92, Mullen (2000) QB 520 and Attorney-General's Reference (No 3 of 2000), Re (2001) 2 Cr App R 472 considered.

(2) The principles of common law did not stand alone and effect had to be given to the 1950 Convention, which took account of the all but universal consensus embodied in the International Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment 1984. The international prohibition of the use of torture enjoyed the enhanced status of a "jus cogens" or peremptory norm of general international law, R v Bow Street Metropolitan Stipendary Magistrate, ex p Pinochet (1999) 2 WLR 827 applied. Article 3 of the 1950 Convention was an absolute prohibition, not derogable in any circumstances, and the 1984 Convention enjoyed the same quality. The Special Immigration Appeals Commission (Procedure) Rules 2003 r.44(3), which provided that the commission could receive evidence that would not be admissible in a court of law, was incompatible with the fundamental nature of the objection to the admission of statements procured by torture, and did not extend to such statements. The question of whether that objection could be overridden and, if so, in what circumstances, had to be left to the legislature, and was not a matter that could be left to implication. Nothing short of an express provision would do, yet the 2001 Act and the 2003 Rules made no mention of torture. The commission could not, when hearing an appeal under s.25 of the 2001 Act by a person certified and detained under s.21 and s.23 of that Act, receive evidence that had or might have been procured by torture inflicted by officials of a foreign state, in order to obtain evidence, without the complicity of the British authorities. In relation to X's appeals the Court of Appeal had been unable to conclude that there was no plausible suspicion of torture. Accordingly the appeals should be allowed, and the orders of the commission and the Court of Appeal set aside. X's cases were remitted to the commission for reconsideration.

(3) The commission should refuse to admit evidence if it concluded that it was obtained by torture, but not merely if it was unable to conclude that there was not a real risk that the evidence had been obtained by torture. Therefore the liberty of the subject dictated that the commission should not admit the evidence if it concluded on a balance of probabilities that it was obtained by torture. If the commission was left in doubt as to whether the evidence was obtained by torture, then it should admit it, but it had to bear its doubt in mind when evaluating the evidence. This position was supported by Art.15 of the 1984 Convention, which stated that a statement could not be used as evidence if it was "established" to have been made as a result of torture; it did not say that the statement had to be excluded if there was an unrebutted suspicion of torture.

(4) (Per Lords Bingham, Nicholls and Hoffmann) The commission should refuse to admit the evidence if it was unable to conclude that there was not a real risk that the evidence had been obtained by torture. If it was in doubt whether the evidence had been procured by torture, then the commission should exclude the evidence.

APPEALS ALLOWED

Competency of Young Persons Giving Evidence

R v P (2006)

[2006] EWCA Crim 3

CA (Crim Div) (Scott Baker LJ, Ramsey J, Recorder of Cardiff) 13/1/2006

CRIMINAL EVIDENCE - CRIMINAL LAW

Competence: Indecent Assault: Sexual Activity With Children: Video Evidence: Young Age Of Person Giving Evidence Not Necessarily An Obstacle To Proving Competency: S.27(2) Youth Justice And Criminal Evidence Act 1999: S.78 Police And Criminal Evidence Act 1984: S.53 Youth Justice And Criminal Evidence Act 1999

Although the young age of a complainant in a sexual assault case was not in itself a necessarily insurmountable obstacle for the prosecution in proving competency to give evidence under the Youth Justice and Criminal Evidence Act 1999 s.53, in the circumstances the complainant had not been interviewed timeously or appropriately and had not on cross examination given intelligible answers that indicated that she was a competent witness.

The appellant (P) appealed against his conviction for indecent assault of a child (C) and extended sentence of 5 years' imprisonment comprising a custodial term of 3 years and an extension period of 2 years. P had attended a party at the home of C's parents. C, who was three and a half years' old at the time, alleged on the night of the party that P had twice sexually assaulted her by licking her genitalia. DNA matching that of P was found on the inside and outside of C's knickers. P claimed that C had touched his beard after he had been sick and then put her hand down her knickers and that was how his DNA came to be on her knickers. Nine weeks later C was interviewed and a video recording of her evidence was made. C's account in the video recording lacked the detail of the complaint to her mother on the night of the incident but did include the same allegation of indecent

assault by P. The trial judge agreed that the video should be admitted in evidence. P submitted that

(1) the Crown had failed to prove competence;

(2) there were deficiencies in the video interview, in that it was poorly planned and conducted, undertaken in an environment ill-suited for the purpose and there was a substantial delay between the alleged incident and the interview, because of which the judge should have excluded it either under the Youth Justice and Criminal Evidence Act 1999 s.27(2) or the Police and Criminal Evidence Act 1984 s.78;

(3) the judge should not have left the case to the jury.

HELD

(1) The judge was justified in ruling, on the material that she had heard and seen prior to the evidence being given, that C was a competent witness. She was right to say that the question might need to be revisited when C's evidence was complete.

(2) The criticisms of the video were neither such as to undermine the judge's competence finding nor were they such as to make the whole interview process fundamentally unfair. They were all matters that could be brought out at the trial and given such weight as each of them justified. The discretion under s.27(2) was a wide one requiring the judge to look at the whole of the circumstances of the case and apply an interests of justice test. The interests of justice did not include the interests of P alone. The judge's exercise of discretion under s.27(2) could not be faulted.

(3) It was unfortunate that the judge was not requested to revisit her decision on competence at the end of C's evidence. Had she done so she would, or should, have concluded that C was not a competent witness and withdrawn the case from the jury.

(4) The conviction was unsafe. C was very young but that was not in itself a necessarily insurmountable obstacle for the prosecution. Had C been interviewed appropriately and promptly and had the trial taken place very soon after the event it was possible that when C was cross-examined by the defence she would have given intelligible answers which indicated that she was a competent witness. Unfortunately the answers that C gave on cross-examination indicated that she was not. Competency to give evidence related to the whole of the witness's evidence and not just to part of it. The judge should have stopped the case at the conclusion of C's evidence.

APPEAL ALLOWED

Criteria to be Considered Concerning the Deletion of Conviction Data Held on Police Computer Systems

(1) CHIEF CONSTABLE OF WEST YORKSHIRE (2) CHIEF CONSTABLE OF SOUTH YORKSHIRE (3) CHIEF CONSTABLE OF NORTH WALES v INFORMATION COMMISSIONER (2005)

Information Tr (David Marks, John Black, Jean Nelson) 12/10/2005

INFORMATION TECHNOLOGY - POLICE

Data Protection: Data Protection Principles: Discretion: Police Records: Retention Of Conviction Data By The Police: Disclosure Of Conviction Data: Past Convictions: Conviction Data: Police National Computer: Third Data Protection Principle: Adequate And Relevant Personal Data: Fifth Data Protection Principle: Data Kept For Longer Than Necessary: Distress Caused By Continued Retention Of Data: Rules For Criminal Record Weeding On Police Systems: Acpo Code Of Practice For Data Protection: S.40 Data Protection Act 1998: S.42 Data Protection Act 1998: Art.8 European Convention On Human Rights: Sch.1 Data Protection Act 1998

The criminal conviction data relating to three individuals and held on the police national computer should be retained for inspection only by the data controller or a data controller representing a chief officer of police, subject to the retention rules of the Association of Chief Police Officers' Code of Practice for Data Protection; the data should not be disclosed to other parties. The Information Tribunal set out the criteria to be considered when formulating future guidance or codes concerning the deletion of conviction data held on police computer systems.

The appellant data controllers (P) appealed against three enforcement notices, served by the respondent information commissioner (C) under the Data Protection Act 1998 s.40, that required P to erase from the police national computer conviction data relating to three individuals (S, W and N) that had been held for considerable periods. P had placed reliance on the General Rules for Criminal Records Weeding on Police Computer Systems, appended to the Association of Chief Police Officers' Code of Practice for Data Protection, for continued retention of N's and W's conviction data because the records contained aggregated sentences of six months or more and were subject to the rule that they could be retained for the life of the subject or until he was 100 years old. P had also been entitled under the weeding rules to retain S's data for life as S had been convicted of an offence of assault occasioning actual bodily harm, which was classified as an offence of violence. S, W and N had requested an assessment of the processing of the data under s.42 of the 1998 Act following P's disclosure of the data to third parties. The disclosure had occurred in S's case in connection with a formal complaint against a police officer, in W's case in connection with an application for US citizenship and in N's case in connection with a job application. S and W maintained that their applications had been prejudiced by the disclosure. N's job application had been rejected. C subsequently served enforcement notices on P on the basis that the processing of the data had contravened the European Convention on Human Rights 1950 Art.8 and the third and fifth data protection principles under Sch.1 to the 1998 Act.

HELD

(1) Although the weeding rules did not and could not represent an unqualified and rigid code, they demonstrated that there was some incontestable value in retaining conviction data dependent largely upon the nature of offence. The perception of any particular offence, from the point of view of the police and the public, would change

over time. There was a generalised understanding between the parties that data relating to certain offences, particularly those involving violence and, more obviously, homicide and sexual offences, merited retention, at least for longer periods than less serious offences. The police should initially be the sole judge of the value of retaining conviction data, but that was clearly subject to C's role. Offenders might escape conviction for substantial periods of time, which suggested that conviction data should be retained in certain cases for what could otherwise appear to be undue periods of time. In any event, conviction data assisted the police with their profiling and general investigative work, and could maximise the benefit of the retention of soft information that was not subject to the weeding rules. Such information could be coupled with DNA and finger print evidence, which would be regarded as pure identification evidence, R (on the application of Marper) v Chief Constable of South Yorkshire (2002) EWCA Civ 1275 , (2002) 1 WLR 3223 considered. Past conviction evidence was also valuable in criminal prosecutions. Balanced against all those points was the prejudicial risk, not of the retention of data, but its disclosure, which appeared to be the cause of distress to data subjects. If there had been in place some form of police access only regime, the disclosures in the case of S and W would not have occurred and no distress would have been experienced. As retained conviction data was intrinsically private in nature, Art.8(1) of the Convention was engaged. However, the interference in the sense of the retention of conviction data was justified and therefore qualified by Art.8(2) since it contributed to the achievement of the purpose of Art.8(2), Marper considered. As to the application of the third and fifth data protection principles, overall C had been entitled to take enforcement action on the material that he had on the facts of each of the cases.

(2) There was a need periodically to review and revise the Code of Practice and rules relating to the weeding or deletion of past conviction data. The term "weeding" was likely to be unclear at least to those outside the police, and it would be better to use an expression such as "deletion" in the sense of permanent removal. The weeding rules had constituted a blunt instrument and any revised code regarding weeding or deletion should be much more sophisticated in its designation of the applicable criteria. Matters such as types of offence, age of offender, modus operandi, length of retention period, nature and extent of any soft information as well as other appropriate items should be specifically incorporated into any revised code. Furthermore, any design for a national database in the form of the police national computer or otherwise should be flexible enough to allow for the following transactions: (a) proper deletion of data subject records; (b) limiting of access to those users meeting criteria set by the Association of Chief Police Officers or any other authorised body with access being on an opt-in basis, rather than an opt-out basis; (c) amendments to users' details that pertained to their ability to match the access criteria; (d) amendments to criteria to meet changes in circumstances; (e) automation of record-culling process on the basis of a variety of appropriate prompts such as age, conviction, time elapsed. The criteria for access and for deletion should be arrived at independently if possible, and documented so that there would be transparency to all parties concerned.

(3) The instant three appeals would not necessarily form any useful basis for similar future cases in view of the generalised and sparse nature of the evidence. A case-by-case approach would be necessary. In all three cases, it was appropriate to retain the conviction data but subject to a police access only regime. Accordingly, the enforcement notices would be amended to the effect that, within six months of the judgment, P would procure that the conviction data relating to S, W and N would be retained on the police national computer subject to the retention rules of any current Code of Practice and not be open to inspection other than by the data controller or any other data controller who represented a chief officer of police.

APPEALS ALLOWED

Offers Made Prior to Introduction of Civil Procedure Rules 1998 to be Taken into Account

FARAG v COMMISSIONER OF POLICE OF THE METROPOLIS (2005)

CA (Civ Div) (Longmore LJ, Hallett LJ) 15/12/2005

CIVIL PROCEDURE

Costs: Discretion: Offers: Part 36 Offers: Offers Made Prior To Introduction Of Civil Procedure Rules 1998: Offers To Settle: County Court Rules 1981 (Amendment) Rules 1982: Civil Procedure Rules 1998: Part 36 Civil Procedure Rules 1998

An offer to settle made prior to the coming into force of the CPR and withdrawn some time before the trial should still have been taken into account by the judge when considering an order for costs.

The appellant commissioner (C) appealed against an order for costs made in favour of the respondent (F). F had issued proceedings for damages for wrongful arrest, false imprisonment, misfeasance in public office and for five assaults. C had made an offer to settle the matter in 1997 at a stage when minimal costs had been incurred. The offer was withdrawn two years before the trial. Damages were awarded for one of the assaults and the rest of the claims failed. C was ordered to pay F's costs on a standard basis. C contended that the judge had failed to exercise his discretion correctly as he had failed to give any reasons for not taking the offer into consideration when awarding costs. F contended that the offer, which was made under the County Court Rules 1981r.10.1, failed to be operative after the coming into force of the CPR. Further, F argued that as the offer was withdrawn two years prior to the trial it should not be given the same weight as an offer left open until trial.

HELD

The court was entitled to, and ought to, have had regard to the offer at the time of trial and after the coming into force of the CPR. An offer made by letter could, in appropriate circumstances, be taken into account and treated as a CPR Part 36 offer and the fact that it was withdrawn did not deprive the offer of effect, Trustees of Stokes Pension Fund v Western Power Distribution (South West) Plc (2005) EWCA Civ 854 , (2005) 1 WLR 3595 applied. In the instant case, the judge had failed to exercise his discretion correctly as he had failed to give any reasons for his decision and had failed to consider the offer. The costs order was struck out and no order for costs substituted.

APPEAL ALLOWED

Extradition Proceedings

OWALABI v COURT NUMBER FOUR AT THE HIGH COURT OF JUSTICE IN SPAIN (2005)

[2005] EWHC 2849 (Admin)

DC (Gage LJ, Openshaw J) 15/11/2005

EXTRADITION

Delay: Extradition Orders: Oppression: Unjustness Of Extradition: Oppressiveness Of Extradition: S.11 Extradition Act 2003: Extradition Act 2003

A judge in an extradition hearing was entitled to conclude that a delay of over five years between an individual's arrest and his extradition hearing did not render his extradition to Spain unjust or oppressive under the Extradition Act 2003.

The appellant (O) appealed against a decision to extradite him to Spain pursuant to a European arrest warrant. O had been arrested by the Spanish police in 2000 for attempting to withdraw cash using a forged credit card. O was released on a type of bail whilst the Spanish authorities carried out further investigations. The investigations revealed that O had possessed forged passports and credit cards. A European arrest warrant was issued in respect of O in 2004. O was subsequently arrested in the United Kingdom and his extradition to Spain was approved at an extradition hearing. O contended that pursuant to the Extradition Act 2003 s.11 it was unjust and oppressive to return him to Spain due to the passage of time, and further, that insufficient weight had been given to the fact that he had remarried and changed his lifestyle.

HELD

In the circumstances of the case the delay that occurred was not oppressive. The decision of the judge at the extradition hearing was plainly correct and whilst O had remarried he had not changed his lifestyle by ceasing to commit crime, Kasis v Government of Cyprus (1978) 1 WLR 77 considered.

APPEAL DISMISSED

Cutting a Persons Hair Without Their Consent is an Assault

DIRECTOR OF PUBLIC PROSECUTIONS v SMITH (2006)

DC (Sir Igor Judge (President QB), Cresswell J) 17/1/2006

CRIMINAL LAW

Actual Bodily Harm: Actus Reus: Assault: Hair: Element Of The Offence: Cutting Of Hair Without Consent: Offences Against The Person Act 1861

The cutting of hair without an individual's consent constituted an offence under the Offences against the Person Act 1861 of assault causing actual bodily harm.

The appellant DPP appealed by way of case stated against a decision of a magistrates' court that the respondent (R) had no case to answer to a charge of assault causing actual bodily harm contrary to the Offences against the Person Act 1861. Information had been laid against R that he had caused actual bodily harm to his former partner (X), by cutting her hair. The magistrates' court acceded to an application by R of no case to answer on the basis that, whilst the evidence before the court indicated that X had been assaulted by R, as X had suffered no bruising, bleeding, scratching of her skin or psychological harm, an important element of the alleged offence was missing. The question stated for the consideration of the court was whether the magistrates' court had been wrong in law to hold that the cutting of X's hair did not amount to assault causing actual bodily harm. R contended that, although hair was subcutaneous, on the scalp it was dead tissue incapable of being part of the body.

HELD

Actual bodily harm meant what it said; therefore it was necessary to look at the definitions of those words as used in ordinary language. Harm was not limited to injury and included hurt or damage. "Actual" meant not being so trivial as to be without significance. "Bodily" meant concerned with the body. The authorities indicated that actual bodily harm applied to all parts of the body and that pain was not a necessary element of the offence. Whether it was alive beneath the surface of the skin, or dead tissue, hair was part of the human body and was intrinsic to every human. Even if hair on the scalp was medically no more than dead tissue, whilst attached to the scalp it fell within the meaning of bodily in the term "actual bodily harm". Cutting hair, like putting paint on, or other injury to, hair, was capable of being assault causing actual bodily harm, R v Donovan (1934) 2 KB 498, R v Chan-Fook (1994) 1 WLR 689, R v Stephen Cook (unreported, 28 July 1994) and T v DPP (2003) EWHC 266 considered.

APPEAL ALLOWED

Home Office v Carol Anne Saunders (2005)

EAT (Judge Birtles, D Norman, J Hougham) 7/11/2005

EMPLOYMENT

Comparators: Detriment: Direct Discrimination: Prisoners: Prison Officers: Sex Discrimination: Cross-Gender Body Searches: Rub-Down Searches: Cross-Gender Searches: Feelings Of Distaste And Indecency: Less Favourable Treatment: S.1(1)(A) Sex Discrimination Act 1975: S.5(3) Sex Discrimination Act 1975: R.39 Prison Rules 1999

The employment tribunal was entitled to find that the correct hypothetical comparator for a female prison officer required to conduct rub-down searches on male prisoners was a male prison officer who was required to conduct rub-down searches on female prisoners. In the circumstances, a female prison officer was subjected to direct sex discrimination in being required to carry out a cross-gender search when a male prison officer was specifically prohibited from carrying out such a search.

The appellant secretary of state appealed against a decision of the employment tribunal that it had breached the terms of the Sex Discrimination Act 1975 s.1(1)(a) by discriminating against the respondent female prison officer (S). S had refused to carry out a rub-down search on a male prisoner on the basis that she found the procedure degrading and distasteful. Consequently, she was transferred to a women's prison. Such searches by male prison officers on female prisoners were prohibited by Home Office Circular Instruction No.49/92. S complained of sex discrimination. The tribunal held that the correct comparator was that of a male prison officer conducting a rub-down search on a female prisoner, and that it was less favourable treatment to ask a woman to overcome her feelings of distaste and indecency, as well as to deal with inappropriate comments, when a man was not asked to do the same. The secretary of state submitted that

(1) the tribunal had erred in law by failing to identify the correct comparator as a "male prison officer being ordered to carry out a rub-down search on a male inmate";

(2) the tribunal had improperly concerned itself, not with the act complained of, but with the secretary of state's general policy and practice on cross-gender rub-down searches;

(3) the tribunal had wrongly found that S had suffered less favourable treatment and detriment in being asked to overcome her feelings of distaste and indecency.

HELD

(1) It was quite clear that S had relied upon a hypothetical and not an actual comparator, which she was entitled to do Balamoody v United Kingdom Central Council for Nursing Midwifery and Health Visiting (2001) EWCA Civ 2097 , (2002) ICR 646 applied. Such a comparator satisfied s.5(3) of the Act. The tribunal had been entitled to find that the hypothetical comparator was a male prison officer who was required to conduct a rub-down search on a female prisoner. Therefore, S was subjected to direct sex discrimination in being required to carry out a cross-gender search when a male officer was specifically prohibited from conducting such a search. To hold otherwise would "defeat the purpose of the legislation, which [was] to eliminate discrimination against women on the ground of their sex in all the areas with which it deals", Shamoon v Chief Constable of Royal Ulster Constabulary (Northern Ireland) (2003) UKHL 11 , (2003) 2 All ER 26 applied.

(2) The secretary of state was unable to cite any part of the tribunal's decision founded on policy as set out in Prison Rules 1999 r.39 and Instruction No.49/92. The tribunal was fully entitled to take the approach that it did, which was to the specific facts of the case.

(3) The tribunal was entitled to accept the evidence of the feelings of distaste and indecency that S felt when asked to conduct a cross-gender search. The secretary of state had not challenged that evidence in any meaningful way. The tribunal's conclusion on both the issues of less favourable treatment and detriment could not be challenged R v Birmingham City Council, ex parte Equal Opportunities Commission (1989) 1 AC 1155 and Chief Constable of West Yorkshire Police v Khan (2001) UKHL 48 , (2001) 1 WLR 1947 applied.

APPEAL DISMISSED

Spiritual Reason for Failing to Provide a Blood Specimen is not a Reasonable Excuse

DIRECTOR OF PUBLIC PROSECUTIONS v NYARARAI MUKANDIWA (2005)

[2005] EWHC 2977 (Admin)
DC (Scott Baker LJ, Newman J) 21/10/2005
CRIMINAL LAW - ROAD TRAFFIC

Blood Tests: Failing To Provide Specimen: Findings Of Fact: Reasonable Excuse: Reasonable Excuse For Failure To Provide A Specimen: Blood Specimen: Traditional Healers: Sight Of Blood: Trance: Medical Reasons: Spiritual Reasons: Religious Excuse: S.7 (6) Road Traffic Act 1988

A judge had erred in law in concluding that a faith healer charged with an offence under the Road Traffic Act 1988 s.7(6) had a reasonable excuse for refusing to provide a specimen of blood as he was likely to go into a trance at the sight of blood; there was a material difference between the sight of blood and the taking of blood, which the judge had failed to take into account.

The DPP appealed by way of case stated against a decision of a district judge to discharge charges brought against the respondent (M) under the Road Traffic Act 1988 s.7(6). M had been arrested on suspicion of driving over the limit and taken to a police station. The police, being satisfied that M was unable to provide a breath specimen for medical reasons, elected that M should provide a blood specimen instead. M refused to provide a specimen on the grounds that to do so would contravene his spiritual beliefs. M was charged with an offence under s.7(6), namely failing to provide a specimen of breath without a reasonable excuse. At his trial, M gave evidence that he was a registered member of the Zimbabwe National Traditional Healers Association and was licensed to practice healing. M contended that as a traditional healer he had to avoid situations that would send him into a trance and that one such situation was the sight of blood. M further contended that when he was in a trance he could be violent to himself and others. Expert evidence was adduced that supported M's contentions. The district judge held that when M refused to provide a blood specimen for "spiritual reasons" those reasons were primarily a health concern by M for both himself and the others at the police station, namely the police, and as such M had a reasonable excuse and not a religious excuse for not providing a blood specimen. The issue for determination was whether, without a finding that M had gone into a trance, the court was entitled to draw the conclusion that to give a specimen of blood would cause a substantial risk to M's health.

HELD

The district judge had reached a conclusion that was not open to him on the facts. The judge appeared to have assumed that the mere taking of blood was sufficient to trigger a trance rather than, as the evidence made clear, the actual sight of blood. There was a material difference between the sight of blood and the taking of blood, which the judge had failed to take into account. It was obvious that any possible sight of blood by M could have been avoided by either M shutting his eyes or looking away when his blood was taken. In addition, the judge had failed to make any findings as to whether a trance would actually follow M sighting blood. The judge had also made no findings as to what was likely to happen if M entered into a trance other than that there might be violence and as such failed to take into account the fact that police officers were used to dealing with violent persons. Accordingly, the matter was remitted to the magistrates' court with a direction to convict, Law v Stephens (1971) RTR 385 and R v John (1974) RTR 332 considered.

APPEAL ALLOWED

SI 3311/2005 The Revenue and Customs (Complaints and Misconduct) Regulations 2005

In force **28 December 2005**. These Regulations confer functions on the Independent Police Complaints Commission (IPCC) in relation to Her Majesty's Revenue and Customs (HMRC). They provide for the provisions of Part 2 of the Police Reform Act 2002 and secondary legislation made under Part 2 to apply with modifications to HMRC.

SI 3439/2005 The Clean Neighbourhoods and Environment Act 2005 (Commencement No 3) Order 2005

In force **1 January 2006**. This Order brings into force the body corporate to be known as the Commission for Architecture and the Built Environment and certain provisions about the Commission.

SI 3447/2005 The Serious Organised Crime and Police Act 2005 (Designated Sites) Order 2005

In force **1 April 2006**. The Order contains a schedule of sites that will be designated for the purposes of Sections 128 and 129 of the Serious Organised Crime and Police Act 2005 (Offences of trespassing on designated land). Section 128 relates to designated sites in England, Wales and Northern Ireland. Section 129 relates to Scotland.

The Order also, under the provisions of Section 128(2) and 129(2), describes the area of the designated site for the purpose of these offences. In relation to the designated areas listed below, this means the area within the outer perimeter of the protection provided for the site, being the line (determined on the assumption that every gate, door or other barrier across a way through a fence, wall or other obstacle is closed) of the outermost fences, walls, or other obstacles provided or relied on for protecting the site from intruders.

In respect of any site directly adjoining the coast, the line referred to above is the line that runs along the edge of the man-made quay so that any wharf, jetty or structure that projects into the sea is included within the designated site.

The designated sites covered by this Order are:

- Her Majesty's Naval Base Clyde.
- Northwood Headquarters.
- RAF Brize Norton.
- RAF Croughton.
- RAF Fairford.
- RAF Feltwell.
- RAF Fylingdales.
- RAF Lakenheath.
- RAF Menwith Hill.
- RAF Mildenhall.
- RAF Welford.

- Royal Naval Armaments Depot Coulport.
- Sea Mounting Centre Marchwood.

SI 3464/2005 The Children Act 2004 (Commencement No 5) Order 2005

In force **1 January 2006**. The Order brings Section 12 of the Children Act 2004 into force. Section 12 concerns the establishment and operation of databases containing information in respect of persons to whom arrangements under Section 10 or 11 of the Act, or under Section 175 of the Education Act 2002 (see article on page 20).

SI 3469/2005 The Communications Act 2003 (Maximum Penalty and Disclosure of Information) Order 2005

In force **30 December 2005**. This Order amends the Communications Act 2003 in relation to Premium Rate Services. It raises the maximum penalty for contraventions of the Code of Practice of the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS) from £100,000 to £250,000. The Order also allows for disclosure of information to ICSTIS under Section 393 of the Act for the purposes of its function of administering and enforcing the code which is approved by Ofcom under Section 121 of the Act.

SI 3483/2005 The Courts-Martial (Army) (Amendment) Rules 2005

SI 3484/2005 The Courts-Martial (Royal Navy) (Amendment) Rules 2005

SI 3485/2005 The Courts-Martial (Royal Air Force) (Amendment) Rules 2005

In force **2 February 2006**. These Rules amend the Courts-Martial (Army) (Amendment) Rules 1997 (S.I. 1997/169), the Courts-Martial (Royal Navy) (Amendment) Rules 1997 (S.I. 1997/170) and the Courts-Martial (Royal Air Force) (Amendment) Rules 1997 (S.I 1997/171) to enable the powers conferred on a court-martial by the Armed Forces Proceedings (Costs) Regulations 2005 (S.I. 2005/3478) to be exercised by a judge advocate sitting alone. These powers enable a court-martial to order one party's costs to be paid by the other if the court is satisfied that those costs have been incurred as a result of that other party's unnecessary or improper act or omission. In addition, a court- martial is given power to disallow costs incurred as a result of a legal or other representative's improper, unreasonable or negligent act or omission, and may order a legal or other representative to meet a party's costs wasted as a result of any such act or omission.

SI 3486/2005 The Summary Appeal Court (Army) (Amendment) Rules 2005

SI 3487/2005 The Summary Appeal Court (Navy) (Amendment) Rules 2005

SI 3488/2005 The Summary Appeal Court (Air Force) (Amendment) Rules 2005

In force **2 February 2006**. These Rules amend the Summary Appeal Court (Army) Rules 2000 (S.I. 2000/2371), the Summary Appeal Court (Navy) Rules 2000 (S.I. 2000/2370) and the Summary Appeal Court (Air Force) Rules 2000 (S.I 200/2372) to enable the powers conferred on a summary appeal court by the Armed Forces Proceedings (Costs) Regulations 2005 (S.I. 2005/3478) to be exercised by a judge advocate sitting alone. The powers concerned enable a summary appeal court to order one party's costs to be paid by the other if the court is satisfied that those costs have been incurred as a result of that other party's unnecessary or improper act or omission. In addition a summary appeal court is given power to disallow costs incurred as a result of a legal or other representative's improper, unreasonable or negligent act or omission, and may order a legal or other representative to meet a party's costs wasted as a result of any such act or omission.

SI 3495/2005 The Serious Organised Crime and Police Act 2005 (Commencement No 4 and Transitory Provision) Order 2005

In force **1 January 2006**. This Order brings into force numerous provisions of the Serious Organised Crime and Police Act 2005. These provisions include:

- Section 1(3) (power in relation to NCS and NCIS).
- Sections 8 to 10 (general duty; priorities; codes of practice).
- Sections 17 and 18 (grants).
- Section 27 (regulations).
- Section 39 (directions about prosecutions).
- Section 42 (interpretation of Chapter 1).
- Section 44(2) (designations).
- Section 52 (modification of enactments).
- Section 54 (interpretation of Chapter 2).
- Section 58 and Schedule 3 (transfers to SOCA).
- Sections 110 and 111 (powers of arrest) and Schedule 7 (powers of arrest: supplementary).
- Sections 113 and 114(1) to (8) (search warrants).
- Section 116 (photographing of suspects etc.) to the extent not already in force.
- Section 118 (impressions of footwear).

- Schedule 8 (powers of designated and accredited persons) to the extent not already in force.

It also includes a number of repeals and revocations under Part 2 of Schedule 17 to the Act.

SI 3503/2005 The Police and Criminal Evidence Act 1984 (Codes of Practice) Order 2005

In force **1 January 2006**. This Order brings into force the revised Codes of Practice under Sections 60(1)(a), 60A(1) and 66(1)(a)(i) and (ii) and (b) to (d) of the Police and Criminal Evidence Act 1984.

SI 3593/2005 The Freedom of Information (Additional Public Authorities) Order 2005

This Order adds further bodies and offices in Part 6 to Schedule 1 of the Freedom of Information Act 2000 as 'public authorities' for the purpose of the Act. Some of those included are:

From **7 February 2006**:

- The Advisory Panel on Public Sector Information.
- The British Transport Police Authority.
- A courts board established under section 4 of the Courts Act 2003.
- The Commission for Integrated Transport.
- The Criminal Procedure Rule Committee.
- The Family Justice Council.
- The Family Procedure Rule Committee.
- The Independent Regulator of NHS Foundation Trusts.
- The Sentencing Guidelines Council.
- The Registrar General for England and Wales.

From **1 June 2006**:

- The Children's Commissioner.
- A conservation board established under section 86 of the Countryside and Rights of Way Act 2000.
- The Royal College of Veterinary Surgeons, in respect of information held by it otherwise than as a tribunal.
- The Royal Pharmaceutical Society of Great Britain, in respect of information held by it otherwise than as a tribunal.

SI 3595/2005 The Register of Judgments, Orders and Fines Regulations 2005

Regulations 1 and 4 came into force on **17 January 2006**. For all other purposes they shall come into force on **6 April 2006**. The Regulations replace both the Register of County Court Judgments Regulations 1985 and the Register of Fines Regulations 2004. They provide a regulatory framework for the keeper of the public register of:

- County court judgments.
- High court judgments.
- Magistrates' court fines.
- County court administration orders.
- Child Support Agency liability orders.

The Regulations also provide registered debtors with the right to amend their own entry in the register if it is incomplete or inaccurate. The Regulations also provide the Registrar with new powers to refuse a person access to the Register.

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