

Digest

January 2007

Legal Validation and Research



NOT PROTECTIVELY MARKED

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Digest

Legal Validation and Research Department www.centrex.police.uk/digest

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 an article on the recently published Serious Crime Bill which will impact on several areas of the law enforcement community. Other articles cover legislation, regulations and policies that have recently come into force or are due to do so, including, the introduction of the Police Amendment (No. 2) Regulations 2006, the adoption leave policy for police officers, provisions of the Police and Justice Act 2006 (particularly Section 11 (power to detain pending DPP's decision about charging) and provisions in the Violent Crime Reduction Act 2006 and Road Safety Act 2006.

Also covered are guidance documents on the subjects of Drivers' Hours and Tachograph Rules for Road Passenger Vehicles and for Goods Vehicles, Tackling Homophobic Hate Crime, Setting up Sanctuary Schemes for Domestic Violence Victims, Charging in Relation to the Fraud Act 2006, Updated ACPO Cannabis Guidance, and the Process of Information Sharing on Sex Offenders Travelling Between the UK and Ireland.

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

Case law in association with



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

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ACPO Faith Language and Culture Project

The Association of Chief Police Officers has set up a Faith, Language and Culture (FLAC) database. This has been developed by the ACPO National Community Tension Team (NCTT) with police forces, and is a national voluntary database of police officers and staff who have specific faith, language or cultural skills which they can offer to colleagues dealing with policing matters.

Every police force will have a nominated contact for project FLAC, from whom details of the project and further advice can be obtained.

Further details of the database and application forms to be included on the database can be found at http://www.acpo.police.uk/nctt/ncttwork.htm

European Union Reports on 'Islamophobia'

The European Monitoring Centre on Racism and Xenophobia (EUMC), an agency of the European Union which provides support to Member States when taking measures or formulating courses of action against racism, xenophobia and anti-Semitism, has recently published two reports on 'Islamaphobia'.

The first, 'Muslims in the European Union: discrimination and Islamophobia' examines data and information on the extent and nature of discrimination and 'Islamophobic' incidents against Muslims living in the EU. The report presents available research and statistical data. It includes initiatives and proposals for policy action by EU Member State governments and the European institutions to combat 'Islamophobia' and to foster integration.

The report stresses that the extent and nature of discrimination and 'Islamophobic' incidents against European Muslims remain under-documented and under-reported. It recommends that Member States improve the reporting of incidents and implement measures to counter discrimination and racism more effectively. The report highlights that only one Member State, the United Kingdom, publishes criminal justice data which specifically identify Muslims as victims of hate crime incidents.

The report lists many examples of good practice by national or local governments, NGOs and others, drawn from several Member States. It also proposes a number of further practical steps to be taken.

The second report, 'Perceptions of discrimination and Islamophobia' is a qualitative study based on in-depth interviews with members of Muslim organisations and Muslim youth groups in ten EU Member States. The interviews present a snapshot of the opinions, feelings, fears, frustrations, and also the hopes for the future shared by many Muslims in the EU.

The two documents can be downloaded at http://eumc.europa.eu/

Home Office Guidance on Tackling Homophobic Hate Crime

The Home Office has published a guide which focuses on homophobic hate crime, detailing the problems associated with it and solutions to tackling it. It is intended for anyone who might deal with or come across homophobic hate crime incidents in the course of their work, particularly in Community Safety Partnerships or Crime and Disorder Reduction Partnerships (CSP/CDRPs), but also including local authorities, the police, fire, health, social services, schools, healthy/safer schools partnerships, transport providers, the neighbourhood policing team, safer neighbourhoods team, neighbourhood watch, the neighbourhood wardens, councillors, voluntary organisations including LGBT organisations, and other council services.

The guide gives examples across the spectrum of tackling homophobic hate crime from prevention and early intervention through enforcement, investigation and prosecution and resolution.

The guide can be found in full at http://www.crimereduction.gov.uk/sexual028.htm

Training and Development

Amendment to OSPRE® Rules and Syllabus

Officers who have successfully passed the Part I examination and are returning to duty after maternity leave will have the option to defer their first attempt at Part II should all of the Part II assessment dates fall within 120 days of their return to work date.

Sergeants' Part II dates are dependent on the number of candidates applying, however it is recent experience that the Part II Assessment runs over a period of approximately three or four weeks, whilst Inspectors' Part II can be expected to span across five or six days. Therefore, candidates wishing to move their Part II assessment date due to maternity leave can notify Centrex who will work to placing an assessment date towards the final days of the process as required.

Further information about the new measures and submission protocol can be found at http://www.centrex.police.uk.

OSPRE® 2007 Examinations

The Examinations and Assessment Department of Centrex has announced that, as a result of the Fraud Act 2006 being brought into force on 15 January 2007 and the fact that the current Blackstone's manuals for candidates have not yet been brought up to date, neither the repealed or the new offences created by the Fraud Act 2006 will be examined in the OSPRE® syllabus for the duration of 2007 examinations.

The Fraud Act will be included in the 2008 edition of the Blackstone's manuals and will form part of the Part 1 examinations from March 2008 onwards.

Fraud Act 2006 Training Package

The City of London Police, in agreement with the Home Office and with funding from the Finance and Leasing Association (FLA), has produced a training package on the Fraud Act 2006, which will be circulated to all police forces. It consists of CDs, posters and leaflets which carry the key changes to the law.

For further information on the police training package contact DI Andy Fyfe, telephone 020 7601 2898.

Horizon Scan Reports

Two research papers, entitled Sigma and Delta, commissioned by the Government's Horizon Scanning Centre, have been published. Both documents look forward at emerging trends, potential new issues, opportunities and threats, and the possible implications for society.

The Delta Scan contains 100 short papers exploring expert views on the future in science and technology.

The Sigma Scan contains 146 short papers drawing comprehensively on current futures work, which is research aimed at identifying future issues and trends across the entire public policy spectrum. This scan contains numerous issues that impact on policing and is fully searchable on any subject.

The scans can be found at http://www.sigmascan.org and http://www.deltascan.org

Police National CBRN Centre

The Police National CBRN Centre, based in Wiltshire, has been in existence since 2001 and was established through ACPO TAM and Home Office support to meet the emerging threat from CBRN terrorism following the sarin attacks in Tokyo.

As a direct result of a capability gap in the police service's ability to meet the agreed response level to a CBRN incident, an Operational Response Programme (ORP) has been developed as an element of the Home Office CBRN Resilience Programme, which forms part of the wider Government counter terrorist strategy (CONTEST).

The ORP, which has been approved by ACPO TAM and has full ministerial support, is jointly managed through ACPO TAM CBRN and the Home Office's Counter Terrorist Intelligence Directorate (CTID). The programme's vision is to deliver an effective police response in priority and high-risk areas in order to deal with the emerging CBRN threat, through four key objectives: increased capacity, increased capability, increased coordination and increased availability.

The CBRN Operations Centre at Ryton, with the support of a procurement team based in the Home Office and further support based in Edinburgh, will be delivering these objectives across a number of areas:

- The development of foctrine and tactics.
- Equipment procurement and development.
- National co-ordination, planning and operational support.

Doctrine and tactics will be developed and delivered in 2007 against a backdrop of the nine key tasks. These tasks were agreed by the 'blue light services' and represent the fundamental activities associated with a response to a CBRN incident. These key tasks are:

- Arrival at scene.
- Scene assessment.
- Scene management.
- Mobilisation.

- Deliberate reconnaissance.
- Rescue and triage.
- Decontamination.
- Survivor management.
- Command and control.

The CBRN Operations Centre also provides a central point of contact for police forces and stakeholder groups seeking advice or guidance in relation to CBRN policing issues, specifically:

- Doctrine and tactics.
- Equipment and procurement.
- Operational Issues (including plans).
- Incidents (including white powder).
- Logistics.

The Centre will provide a support and co-ordination function on a 24/7 basis. Advice and support will be available both pre-event and post-event, remotely or on-site. Support can be provided in:

- Planning.
- Pre event profiling and support.
- Technical and tactical expertise.
- Liaison officers at Gold, Silver, Bronze (including police liaison officers to the Military Technical Response Force).

The Centre will not at any time provide any executive command or control function. This will remain with the chief constable of the force concerned.

The Centre can be contacted 24 hours a day by the following methods:

Telephone 024 7682 6382 Mobile 07771 975602

Email cbrnopscentre@centrex.pnn.police.uk

Fax 024 7682 6147

Hepatitis B Vaccinations for Police Officers and Staff

The British Medical Association (BMA) has written to the Association of Chief Police Officers (ACPO) and the Association of Police Authorities (APA) to clarify the situation in respect of the provision of free hepatitis B immunisation vaccinations.

The BMA has pointed out that there is no obligation for GPs to provide free immunisation vaccinations to police officers or staff.

Under the health and safety regulations, the responsibility for the provision of occupational health services is that of the employer, i.e. the police force, and the costs incurred would have to be borne by the police service. The BMA also advises that GP practices are allowed to enter into private contracts with employers to provide such vaccinations to their employees, and recommends this approach.

ACPO advice is that police forces should engage in a process of risk assessment to determine which of their officers and staff are in need of the additional protection given by these vaccinations, then make arrangements (such as those set out in the BMA letter) to provide them.

In cases where the risk of infection has significantly increased to an officer or member of staff, e.g. if they have been exposed to blood or other body fluids from a person suspected of having hepatitis B, they should be advised to seek immediate medical attention from their local accident and emergency department. There is a national protocol for treatment of blood-borne viruses in such cases.

Serious Crime Bill

The Serious Crime Bill was introduced into the House of Lords on 16 January 2007 by Lord Bassam of Brighton. It follows the publication, on 17 July 2006, of the Green Paper 'New Powers Against Organised and Financial Crime'. The Bill aims to introduce a package of new powers to enable law enforcement agencies to tackle fraud and serious organised crime. It proposes to:

- Make provision about serious crime prevention orders.
- Create offences in respect of the encouragement or assistance of crime.
- Enable information to be shared or processed to prevent fraud.
- Enable data-matching to be conducted in relation to fraud and other purposes.
- ◆ Transfer the functions of the Director of the Assets Recovery Agency to the Serious Organised Crime Agency and other persons.
- Make further provision in relation to the abolition of the Assets Recovery Agency and the office of the Director.
- ♦ Amend the Proceeds of Crime Act 2002 in relation to certain investigations and in relation to accredited financial investigators and search warrants.
- Make amendments relating to Her Majesty's Revenue and Customs in connection with the regulation of investigatory powers.

The Bill is divided into four Parts.

Part 1 - Serious Crime Prevention Orders

Part 1 of the Bill creates serious crime prevention orders. These are civil orders aimed at preventing serious crime. They can be made on application to the High Court, or the Crown Court upon conviction, against those involved in serious crime. Their purpose will be to protect the public by preventing, restricting or disrupting involvement in serious crime.

The High Court

Clause 1 of the Bill provides that the High Court may make an order if, on the balance of probabilities:

- ♦ It is satisfied that a person has been involved in serious crime (whether in England and Wales or elsewhere); and
- It has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in England and Wales.

Therefore, the court may only make an order where there is proof that a person has been involved in serious crime and there is suspicion about their future involvement in serious crime.

The Bill makes provision for orders being made not only against individuals but also bodies corporate, partnerships and unincorporated associations. The operation of such orders is covered by Clauses 29 to 31 of the Bill.

Clause 2(1) states that a person 'has been involved in serious crime' in England and Wales if he has committed a serious offence in England and Wales; has facilitated the commission by another person of a serious offence in England and Wales; or has conducted himself in a way that was likely to facilitate the commission by himself or another person of a serious offence in England and Wales (whether or not such an offence was committed).

Clause 2(3) defines 'involvement in serious crime in England and Wales'. This means one or more of the following:

- The commission of a serious offence in England and Wales.
- Conduct which facilitates the commission by another person of a serious offence in England or Wales.
- Conduct which is likely to facilitate the commission, by the person whose conduct it is
 or another person, of a serious offence in England and Wales (whether or not such an
 offence is committed).

Clause 2(2) sets out that a 'serious offence in England and Wales' is one which, at the time the court considers the application for an order or the matter in question, is contained in the list set out in Part 1 of Schedule 1 to the Bill, or is an offence which is sufficiently serious that the court considers it should be treated as if it were set out in that list.

The offences listed in Part 1 of Schedule 1 include several offences in connection with:

- Drug trafficking.
- People trafficking.
- Arms trafficking.
- Prostitution and child sex.
- Money laundering.
- Fraud.
- Counterfeiting.
- Blackmail.
- Intellectual property.
- Environment.

The court, when it is considering whether a person has committed a serious offence, must only decide that he has done so if he has been convicted of the offence and that conviction has not been quashed on appeal nor has he been pardoned of the offence.

If this test is satisfied then the court may make an order and may impose such terms in the order, whether prohibitions, restrictions, requirements or other terms, as it considers appropriate to protect the public by preventing, restricting or disrupting the involvement of the person subject to the order in serious crime.

Clause 5 makes it clear that the type of provisions that an order might include are not fixed. They relate to:

- For an order against an individual a person's travel, financial dealings or the people with whom he is allowed to associate, private dwellings.
- For bodies corporate, partnerships and unincorporated associations the provision of goods and services, the way in which that body conducts its financial dealings or its employment of staff.

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An order on any person may require the subject to answer questions, provide information or produce documents to a law enforcement officer.

However, because of the restrictive nature of the orders, the Bill provides a number of general safeguards:

- Clause 6 states that the subject of an order must be over the age of 18.
- Clause 7 allows the Secretary of State, by order, expressly to exclude specified categories of persons from the order.
- Clause 8 will allow an order to be applied for only by the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office.
- Clause 9 provides a safeguard where the making, variation or discharge of an order or not making a variation to an order or discharging it would be likely to have a significant adverse effect on someone who is not the subject of the order. It gives the court the power to allow such persons to make representations at the hearing in relation to the making, variation or discharge of an order.
- Clause 10 ensures that the subject of the order has notice of its existence. Where the order is not made in the presence of the subject or his representative, he will not be bound by it until a notice setting out the terms of the order has been served on him, by either delivering it to him in person or sending it by recorded delivery to him at his last known address (whether residential or otherwise). If delivering it in person, Clause 10(3) provides a power for a constable, or person authorised by the relevant applicant authority, to enter and search for the person concerned, by force if necessary, any premises where they have reasonable grounds for believing the subject to be.

In addition to these general safeguards, the Bill also restricts the acts which the order can command. The orders will not:

- Be used as a means of forcing the subject to answer questions or provide information orally.
- Override legal professional privilege and therefore cannot require its subject to answer a privileged question, provide privileged information or produce a privileged document. However, an order may require a lawyer to provide the name and address of a client.
- Require a person to produce any excluded material (defined with reference to s.11 PACE) or certain information relating to banking business.
- Require a person either to answer any question, provide information or produce documents if they are prohibited from doing so under any other enactment.

Clause 16 states that an order must specify when it will come into force and when it will cease to be in force. It provides that an order can last for a maximum of 5 years from the date of its first provision coming into force, but that it can specify that provisions come into force, or cease to have effect, at different times, and these must be specified in the order. A court is able to make a new order replicating an order, or any part of it, which has ended, provided that the statutory test contained in Clause 1 is still met. This can be done in anticipation of an order ceasing to have effect.

Clauses 17 and 18 deal with the variation and discharge of orders, respectively. The High Court may vary an order if it has reasonable grounds to believe that the terms of the order, as varied, would protect the public by preventing, restricting or disrupting involvement, by the subject of the order, in serious crime. Application may be made by the applicant authority, the subject of the order or a third party. The court must not entertain an application by the subject of the order unless it considers that there has been a change of circumstances affecting the order. The High Court can only consider an application for variation by a third party if a three-stage test is met.

- Firstly, a third party must show that they are significantly adversely affected by the order.
- Secondly, one of two conditions must be met. The first condition relates to when a third party has been given the opportunity to make representations or has made an application otherwise than under that clause, and there has been a change in circumstances affecting the order. The second condition relates to when the third party has not made an application of any kind in earlier proceedings in relation to the order, but where he can show that it was reasonable in all the circumstances for him not to have been so involved.
- ◆ The third part of the test is that third parties cannot apply for variance of the terms to make them more onerous on the subject of the order. A variation may include an extension to the duration of the order, but this is subject to the limits on duration under Clause 16.

The same provisions apply in Clause 18 for the discharge of orders, with the exception of reference to a third party applying to make an order more onerous, which is not relevant in relation to discharge of an order.

The decision of the High Court to make an order, to vary or not vary an order, or not discharge an order, may be appealed to the Court of Appeal by any person who has made representations. The right of appeal of the subject of the order and the applicant authority already exists under the Senior Courts Act 1981.

Failure, without reasonable excuse, to comply with an order is an offence under Clause 25. The punishment for such an offence is:

- On summary conviction, imprisonment for a term not exceeding 12 months (6 months in Northern Ireland) or to a fine not exceeding the statutory maximum or both;
- On conviction on indictment, imprisonment for a term not exceeding 5 years or to a fine or both.

Upon conviction, the court may order the forfeiture of any item which was in the possession of the subject of the order at the time of the offence and which the court considers was involved in the commission of that offence. However, the court must allow representations to be made by those who have an interest in the item before the forfeiture is made. Also, the forfeiture must not come into force while it is still possible for there to be an appeal to set aside or vary the order.

Also, where a company, partnership or relevant body has been convicted for breaching an order, the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office may petition the court for the winding up of the company, partnership or relevant body if it believes this to be in the public interest.

The Crown Court

Although it is anticipated that most orders will be made by application to the High Court, Clause 19 of the Bill also confers a civil jurisdiction on the Crown Court in England and Wales to impose such orders where a person has been convicted of a serious criminal offence (either in the magistrates' court or the Crown Court). The Crown Court may impose such an order where it has reasonable grounds to believe that the terms of the order would protect the public by preventing, restricting, or disrupting involvement by the subject of the order in serious crime in England and Wales. The order may include such terms as is appropriate for this purpose. The general safeguards which apply to the High Court are replicated here, and such an order can only be made by the Crown Court in addition to a sentence imposed in relation to the offence concerned or in addition to giving

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a conditional discharge. This makes it clear that an order is not an alternative to sentencing a person for the trigger offence. Once an order has been made by the Crown Court, any applications for variation or discharge of the order will be dealt with by the High Court unless Clause 20 or Clause 21 applies. Under these clauses, the Crown Court can vary the terms of an order:

- On the conviction for a serious offence of a person already subject to an order (Clause 20); or
- On the conviction of a person for breach of an order (Clause 21).

The Crown Court cannot discharge an order. This can only be done by the High Court. However, the fact that an order has been made by the High Court does not preclude the Crown Court from varying its terms, and vice versa; and a refusal by the Crown Court to make or vary an order does not preclude an application to the High Court to make or vary an order in relation to the same offence (Clause 22).

Clause 24 allows the applicant authority or the subject of the order to appeal to the Court of Appeal against the making of the order. In addition, an appeal may be made to the Court of Appeal in relation to the making or variation of such an order by any person who has made representations.

Part 2 - Encouraging or Assisting Crime

This Part of the Bill abolishes the common law offence of incitement and in its place creates three new offences.

- Clause 39 creates the new offence of intentionally encouraging or assisting crime. To commit this offence, a person must do an act capable of encouraging or assisting the commission of an offence and they must intend to encourage or assist its commission. However, foresight of the consequences is not enough to establish intention. The mode of trial for this offence will be determined as if the person had been charged with committing the anticipated offence as a principal.
- Clause 40 creates a new offence of encouraging or assisting an offence believing it will be committed. A person commits this offence if he does an act capable of encouraging or assisting the commission of an offence and he believes that the offence will be committed and that his act will encourage or assist its commissioning. The mode of trial for this offence will be determined as if the person had been charged with committing the anticipated offence as a principal.
- Clause 41 creates the new offence of encouraging or assisting offences believing that one or more will be committed. A person commits this offence if he does an act capable of encouraging or assisting the commission of one or more of a number of offences and he believes that one or more of these offences will be committed (but has no belief as to which) and that his act will encourage or assist the commission of one of them. It is not necessary for a person to have a belief as to which offence will be encouraged or assisted. An indictment or change for this offence must specify the offences that it is alleged the accused believed might be committed. This offence will be tried on indictment.

Clause 53 sets out the penalties that will apply to the offences created by Clauses 39, 40 and 41. The maximum penalty for encouraging and assisting an offence of murder (whether under Clause 39, 40 or 41) will be life imprisonment. In all other cases, the general rule is that the maximum penalty available for an offence under Clauses 39, 40 or 41 will be the same as the maximum available on conviction for the relevant anticipated offence. In relation to Clause 41, this applies where a person has been found guilty in relation to one offence only.

The Bill makes it clear what needs to be proved in order to establish guilt for each of these offences.

- ♦ In order to establish that a person did an act capable of encouraging or assisting an offence, it is sufficient to demonstrate that he did an act intending to encourage or assist an act which would amount to the commission of an offence, or believing that an act would be done which would amount to the commission of an offence.
- ♦ If the offence that it is alleged a person intended or believed would be encouraged or assisted requires proof of fault, it must be proved that the person who provided encouragement or assistance either believed that, were another person to do the act, that person would have the necessary fault or he was reckless as to whether or not another person would have the necessary fault or he himself would have the necessary fault (if he were to do the act himself). In these situations a person cannot escape liability purely because it is impossible for him/her to commit the offence.
- If the offence that it is alleged a person intended or believed would be encouraged or assisted requires proof of particular circumstances or consequences, it will also be necessary to demonstrate that a person who provides encouragement or assistance either believed, or was reckless as to whether, were another person to do the act, that person would do so in those circumstances or with those consequences.

A person believes that a criminal offence, or a number of criminal offences, will be committed if he believes that the criminal offence, or that one or more criminal offences, would be done if certain conditions are met.

All of the above offences can be committed regardless of whether the encouragement or assistance has effect. The Bill also provides that if a person's act is capable of encouraging or assisting a number of criminal offences, and he either intends or believes that each of those offences will happen, he can be prosecuted and convicted in relation to every offence that he intends to encourage or assist, or believes will be encouraged or assisted. A person may, in relation to the same act, commit an offence under more than one provision in Part 2.

Clause 48 sets out that a person may be convicted of the offences in Clauses 39, 40 and 41, regardless of his own location, if he knew or believed that the act which would amount to the commission of an offence would take place, at least in part, in England and Wales. If it is not possible to establish this, it may be possible to convict a person of the offences in Clauses 39, 40 and 41 if the facts of the case fall within paragraph 1, 2 or 3 of Schedule 4.

- Paragraph 1 provides jurisdiction where a person does an act in England and Wales, capable of encouraging or assisting an offence, and knows or believes that what he anticipates might take place outside of England and Wales but the offence is one for which a perpetrator could be tried in England and Wales if the anticipated offence were committed outside of England and Wales, or relevant conditions exist that would make it so triable.
- Paragraph 2 provides jurisdiction where a person does an act in England and Wales, capable of encouraging or assisting an offence, and knows or believes that what he anticipates might take place in a country outside of England and Wales but what he anticipates is also an offence under the law in force in that country.
- Paragraph 3 provides jurisdiction where a person does an act outside of England and Wales, capable of encouraging or assisting an offence, and knows or believes that what he anticipates might take place outside of England and Wales but the offence is one for which it would be possible to prosecute the person who provides encouragement or assistance in England and Wales if he were to commit the offence as a principal in that place.

Legislation

Where jurisdiction does not fall within Clause 48 (and therefore comes within the provisions set out in Schedule 4), the Attorney General must give his consent to a prosecution in England and Wales.

A person cannot be guilty of encouraging or assisting an offence under Clause 40 or 41 believing that an offence under Clause 39, 40 or 41 or those offences listed in Schedule 3 will happen. The offences listed in Schedule 3 are generally statutory forms of incitement. This means it will not be an offence to encourage or assist another person believing that that person will commit the offence of encouraging or assisting another to commit an offence.

The Bill provides two defences to the above offences:

- It will be a defence to the above offences if the person charged proves that he acted in order to prevent the commission of the offence or another offence or to prevent or limit harm. It must also be reasonable for him to have acted in that way.
- ♦ It will be a defence to the offences in Clauses 40 and 41 if the person charged with those offences acted reasonably, that is that in the circumstances he was aware of, or in the circumstances he reasonably believed existed, it was reasonable for him to act as he did.

Clause 47 also sets out an exemption from liability where, in relation to an offence that is a 'protective' offence, the person who does the act capable of encouraging or assisting that offence falls within the category of persons that offence was designed to protect and could be considered to be the victim.

Clause 55 amends the Police and Justice Act 2006 to allow for computer misuse enabling offences to be dealt with instead by the new offences under Part 2. Other consequential amendments relating to the new offences are contained in Schedule 5 of the Bill.

Part 3 - Other measures to prevent or disrupt serious and other crime

Chapter 1 - Prevention of Fraud

One of the measures introduced by the Bill to prevent fraud is the power it gives public authorities to disclose information of any kind to an anti-fraud organisation for the purposes of preventing fraud. They can do so without breaching any obligations of confidence, although provisions of the Data Protection Act 1998 and the Regulation of Investigatory Powers Act 2000 will still apply. It will be an offence to further disclose such protected information unless the person reasonably believed the disclosure was lawful or that the information had already and lawfully been made public.

The Bill also inserts a new paragraph in Schedule 3 of the Data Protection Act 1998, to allow processing of sensitive personal data through an anti-fraud organisation, where the processing is necessary for preventing fraud.

Clause 65 gives effect to Schedule 6 of the Bill. This inserts a new Part 2A into the Audit Commission Act 1998, under which the Audit Commission has the power to carry out data-matching exercises or to arrange for another organisation to do this on their behalf, for the purposes of assisting in the prevention and detection of fraud. A data-matching exercise involves the comparison of sets of data whereby matches will indicate fraudulent activity.

Chapter 2 - Proceeds of Crime

This chapter makes a number of amendments to the Proceeds of Crime Act 2002 (POCA). Clause 66 provides for the abolition of the Assets Recovery Agency (ARA). This shall be achieved by way of statutory instrument. Further details relating to the abolition are given in Schedule 7. This Schedule amends the Proceeds of Crime Act 2002 and other relevant legislation to repeal or transfer functions currently conferred on the Assets Recovery Agency and its Director. It provides that:

- ♦ The role of the Director of ARA in respect of confiscation and restraint orders is repealed.
- Powers under Part 5 of POCA (civil recovery of the proceeds of unlawful conduct) are transferred to the Serious Organised Crime Agency (SOCA), the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions and the Director of the Serious Fraud Office.
- Powers under Parts 6 and 8 of POCA are transferred to SOCA.
- ◆ The role of the ARA to train, accredit and monitor performance of financial investigators is transferred to the National Policing Improvement Agency (NPIA).
- ♦ The provisions in Sections 435-438 of POCA on the use and disclosure of information by or to the Director of ARA are repealed.
- A new Section 2A is inserted into POCA, under which SOCA and the Directors are required to exercise their functions under POCA in the way best calculated to contribute to the reduction of crime.

Schedule 8 of the Bill also provides that the Secretary of State may make a scheme to provide for the transfer of the Director and staff of the ARA, together with its property, rights, liabilities and other matters to SOCA or the NPIA.

The Bill also allows the use of production orders and search and seizure warrants (under POCA) in detained cash investigations. These investigations look at the provenance or intended destination of cash seized under Chapter 3 of Part 5 of POCA.

Chapter 2 also extends the powers of accredited financial investigators, to give them new investigation powers under Part 8 of POCA to:

- Seize any property subject to a restraint order to prevent its removal from England and Wales or Northern Ireland.
- Seize and seek the forfeiture of cash under Chapter 3 of Part 5 of POCA.
- Search for cash on a person or premises and seize such cash if it is suspected that it
 is the proceeds of unlawful conduct or intended for use in such conduct.
- Apply for detention of cash and apply for its forfeiture before the magistrates' court.
- Execute search and seizure warrants.

As accredited financial investigators will be undertaking invasive powers, offences of assaulting, resisting or wilfully obstructing them in the course of their duties are created by the new section inserted by Clause 73(2) into POCA. However, an accredited financial investigator will not have the power of arrest. A person found guilty of any of these offences will be liable to a term of imprisonment not exceeding 51 weeks or a fine or both.

Legislation

Chapter 3 - Regulation of Investigatory Powers

Chapter 3 brings into effect Schedule 11 of the Bill. This Schedule extends certain investigatory powers under the Police Act 1997 and the Regulation of Investigatory Powers Act 2000 (listed in the Schedule) to officers of Her Majesty's Revenue and Customs.

Part 4 - General and Final Provisions

This Part deals with miscellaneous and general provisions within the Bill. It states that the provisions of the Bill (other than Clauses 76, 77, 78(2), 78(3) and 80) will be brought into force by means of commencement orders made by the Secretary of State.

A full copy of the Bill can be found at

http://www.publications.parliament.uk/pa/pabills/200607/serious_crime.htm

Road Safety Act 2006

The Government has announced that it is intending to implement certain provisions in the Road Safety Act 2006 on 27 February 2007. The provisions that are intended to be introduced on this date by way of statutory instrument are:

- Section 26 Breach of requirements as to control of vehicle, mobile phones, etc.
- Section 36 Driving tests.
- Section 40 Fee for renewal of photocard licence and issue of certain alternative licences.
- Section 50 Safety arrangements at level crossings.

At the time of publication the Statutory Instrument to bring these provisions into force has not gone through the parliamentary process.

Offences to be Added to Schedules 3 and 5 of the Sexual Offences Act 2003

At the time of publication of this *Digest*, The Sexual Offences Act 2003 (Amendment of Schedules 3 and 5) Order 2007 is awaiting approval by the House of Commons, having already been approved on 24 January 2007 in the House of Lords.

The Order if approved will move three offences from Schedules 5 to Schedule 3 of the Sexual Offences Act 2003. These offences being:

- Section 48 of the Sexual Offences Act 2003 (causing or inciting child prostitution or pornography).
- Section 49 of the Sexual Offences Act 2003 (controlling a child prostitute or a child involved in pornography).
- Section 50 of the Sexual Offences Act 2003 (arranging or facilitating child prostitution or pornography).

The Order also adds the following offences to Schedule 5 of the Sexual Offences Act 2006:

- Common law offence of outraging public decency.
- Section 1 of the Theft Act 1968 (theft).

- ♦ Section 9(1)(a) of the Theft Act 1968 (burglary with intent to steal, inflict grievous bodily harm or do unlawful damage).
- Section 1 of the Child Abduction Act 1984 (abduction of child by parent, etc).
- Section 2 of the Child Abduction Act 1984 (abduction of child by other persons).
- Section 2 of the Protection from Harassment Act 1997 (harassment).
- Section 85(3) or (4) of the Postal Services Act 2000 (prohibition on sending certain articles by post).
- Section 127(1) of the Communications Act 2003 (improper use of public electronic communications network).

The draft statutory instrument in respect of this order can be viewed at http://www.opsi.gov.uk/si/dsis2007.htm

This has been included in this month's *Digest* as it is expected to be approved imminently and will be brought into force 14 days after its approval in the House of Commons.

The UK Statute Law Database

The UK Statute Law Database (SLD) is an online official, authoritative database of revised UK primary legislation for public use, which has been set up by the Statutory Publications Office, which is part of the Department for Constitutional Affairs.

The database offers users a range of advanced search and navigation functions across over 30,000 items of UK primary and secondary legislation. The database contains primary legislation that was in force at 1 February 1991 and primary and secondary legislation that has been produced since that date.

Database content includes:

- UK Public General Acts.
- UK Local Acts.
- Acts of the Scottish Parliament.
- Acts of the Northern Ireland Assembly.
- Statutory Instruments.
- Welsh Statutory Instruments.
- Scottish Statutory Instruments.
- Statutory Rules of Northern Ireland.
- General Synod Measures.

The SLD can be found at http://www.statutelaw.gov.uk.

On 7 September 2006, the House of Commons Modernisation Committee report was published. It recommended wider use of pre-legislative scrutiny, to allow outside bodies more of a chance to influence Bills before they are introduced to Parliament officially. It also recommended that members who serve on this committee at pre-legislative stage of a Bill should be invited back to serve on the Public Bill Committee once the Bill is being considered clause by clause as a full Bill.

On 1 November 2006, the House of Commons agreed to a new way to scrutinise Bills at Committee stage in the Commons. It was agreed to replace the old Standing Committees with new 'Public Bill Committees', which are free to take evidence from interested parties at this official stage of the legislative process.

These changes at Committee stage are potentially very important for lobby groups and other stakeholders.

The changes will only apply to Bills that start in the House of Commons and that have their Commons Second Reading after 1 January 2007. Any Bills that have had their Second Reading in 2006 will be treated as before (although in a newly named General Committee) and all Bills that start in the Lords will not normally have an evidence session-based Committee stage.

It is understood that there will be the possibility that Bills heavily amended in the upper House will be allowed the chance to receive evidence at Committee stage in the Commons, but this will be the exception rather than the rule.

There will be a formal break between the evidence-taking and the legislative parts of the Public Bill Committee agenda. However it will be possible to take some legislative sessions and then come back to evidence-taking mode but, again, this will be the exception.

As before, the programme motion will be put before Second Reading and will specify an end date for the Committee to work from. This end date is taken as a given, and the programming sub-committee will then work back from this date when deciding how many evidence sessions they should hold. It should be expected that the overall number of sessions will increase; but there will not be a direct correlation between the number of evidence sessions and the total number of sessions in total. It is hoped that the existence of evidence-taking sessions, especially with ministers, will enable a quicker and more efficient scrutiny of Bills, as there will be less of a need for 'probing amendments'.

Normally, the first evidence session will be with the minister and his or her officials. Other sessions will be with lobby groups and other stakeholders, up to a maximum of four sessions lasting not more than three hours each. The programming sub-committee will propose how many evidence-taking sessions they will hold at their first meeting and will then invite who they want to hear evidence from. The House of Commons Scrutiny Unit will announce who it has chosen to give evidence.

The House of Commons Scrutiny Unit will receive and collate written evidence for the Committee Stage of the Bill. It will take this evidence at any time.

The legislative phase is chaired by a member of the Chairman's Panel as before.

The notice period for the tabling of amendments will be extended by one day from two to three days.

Exceptions to this are Bills that would normally go to a Committee of the whole House and those that have to be passed urgently or constitutionally or politically controversial will not hear evidence at Committee stage.

Private Members' Bills will also not be able to take evidence at Committee stage.

Legislation

Energy Saving (Daylight) Bill

The Energy Saving (Daylight) Bill has been published. It contains proposals to advance time by one hour throughout the year to create lighter evenings for an experimental period.

It would create a committee, known as the Daylight Saving Review Panel, to monitor and report on the effects of this Act, in particular with reference to:

- The number of road traffic accidents.
- Levels of energy consumption.
- Levels of ill health.
- Areas that the Panel believes to have been affected by the provisions of this Act.

It is proposed that if the Bill is passed it would come into force:

- In England at two o'clock in the morning of 26 October 2008.
- In Wales on such day (if any) as Welsh Ministers may, by order, appoint.
- In Northern Ireland, if the Northern Ireland Assembly is not suspended, on such day (if any) as may be prescribed by Northern Ireland subordinate legislation.
- In Scotland, on such day (if any) as Scottish Ministers may, by order, appoint.

It would expire at two o'clock in the morning of 25 October 2011.

The Bill and details of its progression through the legislative process can be found at http://www.publications.parliament.uk/pa/pabills/200607/energy_saving_daylight.htm

A House of Commons Library Research Paper has been published in relation to the Bill. Library research papers are compiled for the benefit of Members of Parliament and their personal staff. This paper can be found at

http://www.parliament.uk/commons/lib/research/rp2007/rp07-009.pdf

Freedom of Information (Amendment) Bill

The Freedom of Information (Amendment) Bill, a Private Member's Bill introduced by MP David Maclean, has been published. Its purpose is to amend the Freedom of Information Act 2000, to exempt from its provisions the House of Commons and House of Lords and correspondence between Members of Parliament and public authorities.

The Bill can be found in full at http://www.publications.parliament.uk/pa/pabills/20060/freedom_of_information_amendment.htm

Sustainable Communities Bill

The Sustainable Communities Bill, a Private Member's Bill introduced by MP Nick Hurd, has been published. The Bill contains provisions for the Secretary of State to:

- Publish action plans in connection with promoting the sustainability of local communities and to enable local authorities and local communities to participate in the formulation and implementation of those plans.
- Require the Secretary of State to provide information on government spending in local authority areas to local authorities upon request.
- Approve and implement local spending plans produced by local authorities.

The Bill can be found in full at http://www.publications.parliament.uk/pa/pabills/200607/sustainable_communities.htm

Human Rights Act 1998 (Meaning of Public Authority) Bill

MP Andrew Dismore has introduced a Bill to clarify the meaning of "public authority" in Section 6 of the Human Rights Act 1998. The Human Rights Act 1998 (Meaning of Public Authority) Bill was read for the first time in Parliament on 9 January. It was ordered to be read a second time on Friday 15 June, and to be printed.

HOC 42/2006

The Fraud Act 2006: Repeal of the Deception Offences in the Theft Acts 1968 - 1996

Home Office Circular 42/2006 contains details of the Fraud Act 2006, which came into force on 15 January 2007. The Circular is intended to provide guidance; and requests that recipients of the Circular note the changes in the law of fraud and implement and communicate promptly the changes in the law to relevant staff.

The Circular also refers to the City of London Police training package on the Act, covered in the article on page 7.

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

Plan to Implement Sections 1 and 2 of the Domestic Violence, Crime and Victims Act 2004

The Minister of State for the Department for Constitutional Affairs, Harriet Harman, has announced that the Government plans to implement Sections 1 and 12 of the Domestic Violence, Crime and Victims Act 2004 on 1 July 2007.

Section 1 of the Act inserts a new sub-section 42A into the Family Law Act 1996, which makes the breach of civil orders made under that Act a criminal offence punishable by up to five years' imprisonment.

Under the Family Law Act 1996, victims can apply to a court for two types of order, a non-molestation order and an occupation order.

A non-molestation order forbids someone from using or threatening violence and/or harassing, pestering or intimidating the applicant.

An occupation order enforces the applicant's entitlement to remain in occupation of the home, makes the respondent leave the home, or regulates the occupation by both parties.

Section 12 of the Domestic Violence, Crime and Victims Act 2004 extends the powers on restraining orders under the Protection from Harassment Act 1997 to cover all violent offences. It also provides the courts with the power to make an order where a person is charged, pending trial, or where a person is not convicted but the court considers that it is necessary to make an order to protect the victim. The benefit is that a court may make a restraining order even if a defendant has been acquitted of other charges but the court considers there is sufficient evidence of harassment that it is necessary to protect a person from harassment by the defendant.

Sovernment and Parliamentary News

Tobacco Purchase Age to Rise to 18

The Government has announced that it intends to increase the legal age for the purchase of tobacco products from 16 to 18 years of age, from 1 October 2007.

The power to make this legislative change is contained in Section 13 of the Health Act 2006. The current law controlling the sale of tobacco to children under 16 is set out in the Children and Young Persons Act 1933, as amended by the Children and Young Persons (Protection from Tobacco) Act 1991.

Section 13 of the Health Act states:

The Secretary of State may from time to time by order amend the following enactments by substituting, in each place where a person's age is specified, a different age specified in the order:

- (a) Section 7 of the Children and Young Persons Act 1933 (sale of tobacco etc. to persons under 16).
- (b) Section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991 (display of warning statements in retail premises and on vending machines).

The age specified in such an order cannot be lower than 16 or higher than 18.

Proposal to Merge Assets Recovery Agency with SOCA

The Government has proposed that the Assets Recovery Agency (ARA) be merged with the Serious Organised Crime Agency (SOCA).

ARA's Centre of Excellence, which trains and accredits financial investigators, will be moved to the new National Policing Improvement Agency.

The Government also proposes to extend the power to launch civil recovery proceedings under the Proceeds of Crime Act 2002 to prosecutors in England and Wales in the Crown Prosecution Service, the Revenue and Customs Prosecutions Office and the Serious Fraud Office. It will also be extended to the Public Prosecution Service in Northern Ireland.

Subject to the passing of the necessary legislation, the merger provisions are likely to come into force from April 2008 (see article on Serious Crime Bill on page 18).

Drivers' Hours and Tachograph Rules for Road Passenger Vehicles in the UK and Europe

The Department for Transport (DfT) and the Vehicle and Operator Services Agency have published an updated guidance document in relation to the hours that drivers of road passenger vehicles in the UK and Europe can work, and also in respect of the associated tachograph requirements.

The updated guidance has been produced as a result of a new EC Regulation on drivers' hours (Regulation (EC) 561/2006) which was agreed in December 2005, the main requirements of which will come into force on 11 April 2007.

The new Regulation clarifies weekly driving limits; requires more frequent and evenly spread breaks; increases daily rest requirements; and updates exemptions and national derogations.

Some elements, mainly relating to changes to the existing tachograph rules, came into force on 1 May 2006. These included a change to the number of tachograph charts that drivers are required to carry with them for the purposes of roadside checks and the mandatory fitment of digital tachographs in any in-scope vehicles first put into service on or after 1 May 2006.

The following table shows which rules apply to certain vehicle types.

Type Of Driving

Total number of seats including driver

Less than	10 to 13	14 to 17	18 or over
10			

Private, non PSV and permit vehicles

Police, fire and armed forces purposes

Public 'services' or 'utilities'

UK journeys – Business use (e.g. crew bus) and permit vehicles driven by employee drivers

UK journeys – Private use and permit vehicles driven by volunteer drivers

International journeys (including private use)

None	None	None	None
None	None	Domestic	Domestic
None	Domestic	Domestic	EC
None	None	None	EC
None	EC/AETR	EC/AETR	EC/AETR

PSV regular services (local/non-local services)

Route not exceeding 50 km

National operation (route exceeding 50 km)

International operation (route exceeding 50 km)

Domestic	Domestic	Domestic	Domestic
Domestic	Domestic	Domestic	EC
Domestic in UK	EC/AETR	EC/AETR	EC/AETR

PSV non-regular services

National (e.g. excursions and tours, private hire)

International (e.g. shuttle or occasional services)

Domestic	Domestic	Domestic	EC
Domestic in UK	EC/AETR	EC/AETR	EC/AETR

AETR Rules are aligned with the EC rules and relate to international journeys to certain non-EC countries (listed in the document). AETR is the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport.

Some of the main EC rules changes which will come into force on 11 April 2007 include:

- A weekly driving time limit of 56 hours.
- Maximum 90 hours driving time in any two consecutive weeks.
- After four and a half hours' driving, a driver must take a break of at least 45 minutes. The break is a period during which the driver may not perform other work and is exclusively used for recuperation. This break may be split into smaller periods and distributed throughout the four and half hours. In this case, the first period must be at least 15 minutes, and the second period must be at least 30 minutes.

In respect of vehicles not required to be fitted with tachographs, as from 11 April 2007 the following are some of the exemptions that will be introduced or that will be amended or added to existing exemptions (amendments/additions shown in bold):

- Vehicles not capable of exceeding 40kmh (previously 30kmh).
- Vehicles with between 10 and 17 seats used exclusively for the non-commercial carriage of passengers.
- Vehicles used for driving instruction and examination with a view to obtaining a driving licence or a certificate of professional competence, provided that they are not being used for the commercial carriage of goods or passengers.

DfT is currently consulting on a derogation which will exempt vehicles used exclusively on roads inside hub facilities such as ports, inter-ports and railway terminals.

The document can be found in full via http://www.vosa.gov.uk/vosacorp/publications/manualsandguides/drivershoursandtachographguides.htm

Drivers' Hours and Tachograph Rules for Goods Vehicles in the UK and Europe

The Department for Transport (DfT) and the Vehicle and Operator Services Agency have published an updated guidance document in relation to the hours that drivers of goods vehicles in the UK and Europe can work and also in respect of the associated tachograph requirements.

Similarly to the updated guidance in relation to road passenger vehicles (covered in previous article), the updated guidance has been produced as a result of a new EC Regulation on drivers' hours (Regulation (EC) 561/2006) which was agreed in December 2005, the main requirements of which will come into force on 11 April 2007. The guidance provides advice to drivers and operators of goods vehicles, whether used privately or commercially. It explains the rules for drivers' hours and the keeping of records, and replaces booklet GV 262.

The new EC rules will apply to drivers of most vehicles used for the carriage of goods (including dual purpose vehicles), where the maximum permissible weight of the vehicle, including any trailer or semi-trailer, exceeds 3.5 tonnes and where it is used either:

- Entirely within the UK.
- Between the UK and other EC countries.
- Journeys to, or through, the countries subject to AETR Rules.

AETR Rules are aligned with the EC rules and relate to international journeys to certain non-EC countries (listed in the document).

In relation to drivers' hours, some of the main EC rules changes which will come into force on 11 April 2007 include:

- A weekly driving time limit of 56 hours.
- Maximum 90 hour's driving time in any two consecutive weeks.
- After four and a half hours' driving, a driver must take a break of at least 45 minutes. The break is a period during which the driver may not perform other work and is exclusively used for recuperation. This break may be split into smaller periods and distributed throughout the four and a half hours. In this case, the first period must be at least 15 minutes, and the second period must be at least 30 minutes.

In respect of vehicles not required to be fitted with tachographs, as from 11 April 2007 the following are some of the exemptions that will be introduced or that will be amended or added to existing exemptions (amendments/additions shown in bold):

- Vehicles not capable of exceeding 40kmh (previously 30kmh).
- Vehicles owned or hired without a driver by the armed services, civil defence services, fire services, and forces responsible for maintaining public order **but** only when the carriage is undertaken as a consequence of the tasks assigned to these services and is under their control.
- Vehicles used in emergencies or rescue operations including vehicles used in the non-commercial transport of humanitarian aid.
- Specialised breakdown vehicles, but only when operating within a 100km radius of their base.
- Vehicles or combination of vehicles with a maximum permissible mass not exceeding 7.5 tonnes used for the non-commercial carriage of goods.
- Commercial vehicles which have historic status according to the legislation of the member state in which they are driven and which are used for the non-commercial carriage of goods for personal use. (The DfT is currently consulting on what constitutes a historic vehicle).
- Vehicles used or hired, without a driver, by agricultural, horticultural, forestry, farming or fishery undertakings for carrying goods as part of their own entrepreneurial activity within a radius of up to 100 km from the base of the undertaking.
- Agricultural tractors and forestry tractors used for agricultural or forestry activities, within a radius of up to 100 km from the base of the undertaking which owns, hires or leases the vehicle.
- Vehicles which are used to carry live animals between a farm and a local market and vice versa or from a market to a local slaughterhouse within a radius of up to 50km.
- Specialised vehicles transporting circus and funfair equipment.
- Vehicles used for driving instruction and examination with a view to obtaining a driving licence or a certificate of professional competence, provided that they are not being used for the commercial carriage of goods or passengers.

Sovernment and Parliamentary News

One change that should be noted is that the current derogation exemption of vehicles used as shops at local markets or for door-to door selling, or used for mobile banking, exchange or saving transactions, for worship, for the lending of books, records or cassettes, or cultural events or exhibitions, and specially fitted for such uses, is being removed and replaced with a new derogation exemption which reads:

 Specially fitted mobile project vehicles, the primary purpose of which is use as an educational facility when stationary.

The DfT is currently consulting on a derogation which will exempt vehicles used exclusively on roads inside hub facilities such as ports, inter-ports and railway terminals.

The document can be found in full via http://www.vosa.gov.uk/vosacorp/publications/manualsandguides/drivershoursandtachographguides.htm

Draft Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2007

The Government has drafted amended freedom of information (FOI) and data protection fees regulations, which it has now published as part of a consultation exercise.

These new Regulations would be made under the powers conferred by Sections 9, 12 and 13 of the Freedom of Information Act 2000, and Sections 9A and 67 of the Data Protection Act 1998.

The consultation is aimed at members of the public, public authorities, the media, and campaign groups who have an interest in the proposed changes and will end on 8 March 2007.

The intention of the new Regulations, which it is proposed will revoke the 2004 Regulations of the same name, is to allow public authorities to take into account more accurately the work involved in dealing with FOI requests, thereby allowing them to provide the right balance between access to information for all and the delivery of other public services.

The draft Regulations introduce:

- An increase in activities that can count towards the appropriate limit.
- An extension of the existing provisions for aggregation to allow public authorities to aggregate the costs of all requests received from a person, or persons acting in concert or in pursuance of a campaign, within 60 working days in certain circumstances.

The new activities that public authorities will be allowed to include in its appropriate limit calculation are:

The costs of examining (e.g. reading) the requested information, or a document containing it, to ascertain the nature or content of the information. A public authority would be able to include the costs of examining information on one occasion only. This would also apply to subject access requests under the Data Protection Act 1998 for "unstructured personal data" (as defined in Section 9A of that Act).

- ◆ The costs of time spent consulting with any person or persons except the applicant. This would include consultation with other public authorities. A public authority would only be able to include the costs of consultation time it would reasonably expect to spend in determining the applicability of exemptions in part II of the Act, and/or to determine whether the public interest falls in favour of maintaining a qualified exemption.
- ♦ The costs of time it reasonably expects to spend in considering the applicability of exemptions in part II of the Act to the requested information, and/or whether the public interest falls in favour of maintaining a qualified exemption.

The new regulations also introduce certain costing mechanisms that limit the extent to which a public authority can include the costs of time spent on necessary consultation and consideration.

Following the consultation and any subsequent amendments, the draft Regulations will be subject to the negative resolution procedure in Parliament.

The consultation and the draft regulations can be found at http://www.dca.gov.uk/consult/dpr2007/cp2806.htm

Consultation on Proposals for Revised Guidance to Licensing Authorities

The Secretary of State for the Department for Culture, Media and Sport (DCMS) has published a consultation paper, together with a revised guidance to licensing authorities on the discharge of their functions under the Licensing Act 2003.

The Licensing Act 2003 requires the Secretary of State to issue licensing guidance to licensing authorities on the discharge of their functions under the Act. Licensing authorities are required to have regard to this guidance in carrying out their licensing functions, but may depart from it when they reason to do so. The guidance cannot change the requirements of the primary or secondary legislation.

The original guidance was published in July 2004 and parts of it were updated in June 2006. The consultation paper seeks views on a number of proposed changes to the guidance, some of which the DCMS supports, others which it does not. Some of the proposed changes include:

- Greater emphasis that there should be no presumption in favour of longer opening hours and that the four main objectives of the Act should be paramount in considering any licensing application.
- An expanded section on incidental music, to help local authorities to determine whether music falls into this category and is therefore not licensable.
- ♦ A recommendation that personal licence holders (those responsible for alcohol sales on a licensed premises) should provide written, rather than verbal, authorisations for the sale of alcohol in their absence.
- ♦ A clarification of the role of councillors in the licensing process, for example to explain when those with a 'prejudicial' interest in an application should withdraw from the decision-making process.

The current guidance includes, at Chapter 11, advice to police officers on the operation of new closure powers in Part 8 of the Licensing Act 2003. Due to the Act limiting the purpose of the statutory guidance to guidance to licensing authorities (and not the police) about the carrying out of their licensing functions under the Act, it is proposed that this non-statutory element should be removed from the main guidance and incorporated in specific advice for police officers on dealing with problems at licensed premises, which will be developed with the Home Office and ACPO and disseminated to all police forces.

It is also proposed that Chapter 12 of the current guidance, which describes offences relating to the sale and supply of alcohol to children, and Chapter 14, which describes other offences under the Act, should be removed, as they are seen as somewhat repetitious of the contents of the Act itself.

The closing date for consultation representations is 11 April 2007.

The consultation paper and the revised draft guidance are available at http://www.culture.gov.uk/Reference_library/Consultations/
2007_current_consultations/section_182_licensing_consultation.htm

Crime Prevention Work by Parish and Town Councils

The Commission for Rural Communities has published a report containing the results of a study that examined the involvement of parish and town councils in the crime reduction process.

The study found that around 18% of town councils and 37% of parish councils rarely or never discuss the impacts on crime and disorder before taking decisions, thereby failing to fulfil their statutory duties under Section 17 of the Crime and Disorder Act 1998. Despite this, it found that many parish and town councils are probably doing more than was the case 5 or 10 years ago in addressing crime and the fear of crime within their communities.

The report outlines case studies of good and interesting practice and gives recommendations for making parish and town councils more effective partners in reducing crime.

It recommends that parish and town councils should:

- Review the extent to which they are meeting their statutory responsibilities under the Crime and Disorder Act 1998.
- ♦ Look again (or for the first time) at the 2002 guidance report, 'Section 17 of the Crime and Disorder Act 1998: a practical guide for parish and town councils' available at http://www.crimereduction.gov.uk/legislation.htm.

It also recommends that local authorities, the police and Crime and Disorder Reduction Partnerships should review what more they could be doing to consult and co-operate effectively with the parish sector.

The report can be found in full at http://www.ruralcommunities.gov.uk/files/parishes%20and%20crime%20prevention%20Dec%2006.pdf

Guidance on Setting up Sanctuary Schemes for Domestic Violence Victims

The Department for Communities and Local Government and the Local Government Association have published a guidance document entitled, 'Options for Setting up a Sanctuary Scheme', aimed at helping local authorities and other key stakeholders to set up and run effective schemes to help victims of domestic violence and to promote and share good practice in relation to such schemes.

Sanctuary schemes enable victims of domestic violence to remain in their own accommodation, where it is safe for them to do so, where it is their choice and where the perpetrator does not live in the accommodation. A sanctuary scheme provides a safe room, or sanctuary, within a home fitted with safety measures, including the installation of alarms, mortice locks, security lights, reinforced door frame, emergency lights and CCTV.

The addresses with a safe room are flagged on police computers to ensure a swift response if an incident occurs.

The Government is trying to encourage more local authorities to offer sanctuary schemes, quoting figures which show that existing schemes have been successful in reducing homelessness because of domestic violence and also lead to a decrease in the number of families in temporary accommodation because of domestic violence.

The document can be found at http://www.communities.gov.uk/index.asp?id=1502478

Young People and Crime: Findings from the 2005 Offending, Crime and Justice Survey

Home Office Statistical Bulletin 17/06 presents the first findings from the 2005 Offending, Crime and Justice Survey. It focuses on levels and trends in youth offending, anti-social behaviour and victimisation among young people aged from 10 to 25 living in the general household population in England and Wales. It does not cover young people living in institutions, including prisons, or the homeless, and thus omits some high offending groups.

Some of the main findings in the report show that:

- ♦ 75% of young people had not offended in the last 12 months.
- Of the 25% that committed offences in the last 12 months, the most common offence categories were assault and 'other thefts'.
- ♦ 7% of all young people were classified as frequent offenders, i.e. they had committed an offence six or more times in the last 12 months. This group was responsible for the vast majority (83%) of all offences measured in the survey.
- Males were more likely to have offended in the last 12 months than females (30% compared to 21%).
- The prevalence of male offending peaked among 16 to 19 year-olds, whilst for females the prevalence peaked earlier, at age 14 to 15.
- ♦ 4% of young people had carried a knife in the last 12 months. Males were significantly more likely than females to have carried a knife (5% versus 2%).

The report can be found in full via http://www.homeoffice.gov.uk/rds/hosbpubs1.html

Sovernment and Parliamentary News

Study into the Market in and Use of Illegal Firearms

The Research, Development and Statistics Department of the Home Office has published a detailed research study and a findings report on the market in and use of illegal firearms.

The research study is based on in-depth interviews with 80 imprisoned and recently convicted male Firearms Act offenders aged 18 to 30, focussing on London, Greater Manchester, Nottinghamshire and the West Midlands.

Findings from the study reveal that the offenders:

- Sourced firearms from illegal importation, 'leakage' from legitimate sources (e.g. burgled shotguns) and the conversion of widely-available imitation firearms.
- Found the availability of purpose-made ammunition to be relatively scarce and tended to rely on improvised or illegally manufactured ammunition.
- Criminal contacts were pre-eminent in determining firearm availability. At least 12 of the interviewees mentioned the existence of specialist criminal 'armourers'.
- Circulated illegal firearms, particularly within gangs and other collectives.

It found that the illegal drug markets underpin the criminal economy and represent the most important theme in relation to the illegal use of firearms. Firearms possession was reported in relation to robberies of drug dealers, territorial disputes, personal protection and sanctioning of drug market participants.

The two documents, Findings 279 'Gun crime: the market in and use of illegal firearms' and Home Office Research Study 298 'Gun crime: the market in and use of illegal firearms' can be found at http://www.homeoffice.gov.uk/rds/pubsintro1.html

Other Crime Related Reports

The Home Office Research, Development and Statistics Department have recently published a number of crime related reports. These include:

- ♦ Home Office Statistical Bulletin 01/07 Crime in England and Wales: Quarterly Update to September 2006. This update presents the most recent crime statistics from two different sources: the British Crime Survey (BCS) and police recorded crime. Both data sets represent the most up-to date information, but they cover different time periods. The BCS results are from interviews conducted in the period October 2005 to September 2006; police recorded crime refers to the July to September 2006 quarter.
- Home Office Statistical Bulletin 02/07 Homicides, Firearm Offences and Intimate Violence 2005/06 (Supplementary Volume 1 to Crime in England and Wales 2005/06). This contains chapters on homicides and firearm offences, which contain mostly statistics of crimes recorded by the police. There is also a chapter on intimate violence containing results from the 2005/06 BCS self-completion module on domestic violence, sexual assault and stalking.
- ♦ Distraction burglary: Recorded crime data 2005/06 (supplement to HOSB 12/06). This is the second report on distraction burglary published by the Home Office. The first report was published as an online supplement to Home Office Statistical Bulletin 14/04 in October 2004.

- Crime in England and Wales 2005/06: Supplementary Tables: Nature of burglary, theft, criminal damage, vehicle and violent crime. This document presents, in table form, findings from BCS interviews conducted in the 2005/06 financial year and gives a picture of the nature of burglary, vehicle-related theft and violent crime. It also provides detail on other types of theft and on criminal damage.
- Online report 02/07 Seasonality in recorded crime: preliminary findings. This report contains preliminary findings of analysis to identify seasonal patterns in police recorded crime.
- Online report 03/07 The use of Geographic Information Systems by crime analysts in England and Wales. This report presents findings from a survey of crime analysts designed to assess the extent to which Geographic Information Systems (GIS) are being used by crime analysts in police forces and Crime and Disorder Reduction Partnerships (CDRPs).

All the reports can be found at http://www.homeoffice.gov.uk/rds/whatsnew1.html

Review of the Eyesight Testing Requirements and Medical Licensing for Drivers

In answer to a recent Parliamentary question on the subject of the effectiveness of the current distance vision test, Dr Stephen Ladyman, the Minister of State for Transport, announced that a review of the eyesight testing requirements for drivers is being undertaken, alongside a review of medical licensing, and that it is intended to issue proposals for consultation in the Spring.

Draft Money Laundering Regulations

The Government has published the draft Money Laundering Regulations 2007 for consultation. These Regulations will repeal and replace the Money Laundering Regulations 2003 and are aimed at ensuring the UK has an effective response to money laundering at home and abroad.

The new regulations are effective across the 'regulated sector', which includes the financial sector, professionals such as lawyers and accountants, casinos, trust and company service providers and estate agents.

They will introduce: strict tests to ensure that people running money services businesses are fit and proper, extra checks on high risk customers, a strengthened and risk-based regime in casinos, and a requirement to establish the source of wealth for those in high risk situations.

The public consultation is open until 2 April 2007. The Government is expected to implement the regulations by December 2007.

In the next few weeks, the Government is also expected to publish an anti-money laundering and counter-terrorist financing strategy document, which will build on the previous anti-money laundering strategy document launched in 2004.

The draft regulations and the consultation paper can be found at http://www.hm-treasury.gov.uk/consultations_and_legislation/money_laundering_directive/consult_thirdmoney_2007.cfm

Rovernment and Parliamentary News

HM Revenue & Customs Annual Report

HM Revenue and Customs (HMRC) Annual Report 2005/06 has been published. The report gives details of the Department's performance for the first full year of operations, since HMRC was formally established by Act of Parliament on 18 April 2005.

Copies of the report are available at http://www.hmrc.gov.uk/about/reports.htm

Consultation on HMRC Criminal Investigation Powers

A consultation paper, 'Modernising powers, deterrents and safeguards: criminal investigation powers' has been published and sets out Government proposals to update HM Revenue and Customs' (HMRC) criminal investigation powers and accompanying safeguards.

Currently, HMRC relies on provisions inherited from its predecessor Departments, the Inland Revenue and HM Customs and Excise, which evolved over a considerable period of time, and involve substantial differences between different areas and taxes.

Criminal investigation powers are only available to the specialist teams in HMRC who actually undertake criminal investigation work. They are not available to other HMRC staff undertaking routine assurance or compliance work. HMRC has reorganised recently, to ensure a clear separation between the criminal investigation work and all its other responsibilities which affect the vast majority of taxpayers. The changes set out in the clauses would reinforce the separation and specifically restrict access to these statutory powers to specialist officers authorised by the Commissioners of HMRC.

Under the new approach, HMRC's investigatory powers in England, Wales and Northern Ireland would be based on the Police and Criminal Evidence Act 1984 (PACE), while a statutory code would be introduced for Scotland, where PACE does not apply.

The document also contains proposals for a single structure for penalties for completing incorrect tax returns to apply to Income Tax, Corporation Tax, Capital Gains Tax, VAT and employers' PAYE and NICs.

The consultation period will run until 13 March 2007.

Provisions in Chapter 3 of the Serious Crime Bill will extend certain investigatory powers under the Police Act 1997 and the Regulation of Investigatory Powers Act 2000 to HMRC officers (see article on page 19).

The paper can be found via http://www.hmrc.gov.uk/consultations/index.htm

Director's Guidance on Charging in Relation to the Fraud Act 2006

The Director of Public Prosecutions' guidance to police officers and Crown Prosecutors on charging', issued under Section 37A of the Police and Criminal Evidence Act 1984 has been amended.

The amendment adds Fraud Act 2006 offences to Annex A of the 'Director's Guidance on Charging', meaning that all Fraud Act 2006 offences or circumstances must always be referred to a Crown Prosecutor for early consultation and charging decision, whether admitted or not.

The existing provisions of Annex A in relation to offences involving deception, contrary to the Theft Acts 1968 and 1978, remains in place in relation to offences committed before 15 January 2007.

The guidance, which has not yet been updated in respect of adding the fraud Act 2006 offences to Annex A of the document, can be found at http://www.cps.gov.uk/ publications/directors_guidance/dpp_guidance.html

CPS Fraud Prosecution Service

The Crown Prosecution Service has published an advice leaflet which sets out the role of the Fraud Prosecution Service (FPS).

The FPS provides a specialist prosecution and advisory service for serious fraud cases in London and elsewhere in England and Wales. In general, it handles cases that are either:

- Complex.
- Sensitive.
- High profile.
- Involve large sums of money (normally more than £250,000).

As well as handling its own caseload, the FPS provides legal advice and technical guidance on fraud cases to prosecutors and police.

The FPS consists of two teams, one operating from the main office at Southwark Bridge, London (contact number 020 7023 6500), the second from an office in York (contact number 01904 545400), which handles cases from the northern part of the country.

Where pre-charge advice is sought under the charging scheme, police submissions must include a completed MG 3 form and all other appropriate documentation.

The following applies in relation to referring cases to the FPS:

- London Cases should be submitted to the charging administrator to be registered. They are then considered by the Director or Assistant Director to ensure they fall within the FPS criteria. If they fail to meet the criteria, the senior investigating officer will be informed and the papers returned or passed to the appropriate CPS London team to handle.
- South (those CPS Areas south of Cheshire, Greater Manchester, South Yorkshire and Humberside) - the Chief Crown Prosecutor (CCP), senior casework lawyer (SCL) or relevant unit head should contact the Director or Assistant Director.

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North (all Areas north of Wales, West Mercia, Staffordshire, Derbyshire, Nottinghamshire and Lincolnshire) - the CCP, SCL or relevant unit head should contact the Director or Assistant Director in the first instance. In their absence they should contact Antony Barry or Miles Barker at the northern office of the FPS.

If cases fail to meet the criteria for referral, the Director or Assistant Director will inform the Area to enable appropriate alternative arrangements to be made.

In exceptional circumstances, senior police officers may refer cases when urgent advice is required. Usually, however, initial contact should be made through the appropriate senior lawyer in the Area.

Independent Audit Report on Criminal Justice Under the Labour Government

The independent charity, the Centre for Crime and Justice Studies, has published a report which critically assesses changes to the criminal justice system since 1997 and considers to what extent the Labour Government has delivered on the agenda it set itself. In particular, it looks at spending levels on criminal justice and the Government's performance against a range of key targets, including crime levels, re-offending, bringing more offences to justice and anti-social behaviour. It also considers progress on the three big issues of policing, youth justice and drugs.

The report finds that Government claims in respect of its success against its agenda are far less clear-cut than it has tended to claim.

On the issue of policing, it found that:

- Increases in the police budget enabled the Government to expand police numbers rapidly. But it questions whether this represents a prudent investment of public funds in the interests of crime reduction.
- Attempts to expand and diversify policing in other ways, for example, through the recruitment of Police Community Support Officers (PCSOs) and more black and minority ethnic people, have been far less successful.
- ♦ The increase in the number of PCSOs has slowed and the original 2005 election pledge for there to be 24,000 in place by March 2008 has been scrapped.
- More BME people are joining the police, but often in lower status and lower paid jobs.
- Despite a significant increase in civilian staff, there is little evidence that police officers are spending more time on the frontline and less time on paperwork.

Other key findings of the audit include:

- Criminal justice spending: Labour has substantially increased spending. The UK now spends proportionately more on law and order than any other country in the OECD, including the United States, France and Germany. But questions remain over the productivity of the criminal justice system and the value for money that taxpayers are getting for their investment.
- Crime reduction: On paper, nearly all targets have been met; in reality Labour's record on various overall crime reduction targets is at best mixed. At worst, its crime reduction claims are misleading, ignoring many serious crimes, for example, homicide, which has increased significantly.

- ♦ The justice gap: Labour has met its targets on bringing more offences to justice, but this has not been achieved as a result of increases in successful convictions. Overall there are only three convictions for every 100 estimated offences.
- Re-offending: The targets have all been modified, missed or dropped. Furthermore, the Government use of reconvictions as a proxy measure of re-offending has resulted in confusion and a lack of clarity over definitions and targets.
- ♦ Anti-social behaviour (ASB): Currently the target on ASB perception is being met, though this masks significant variation both regionally and demographically. There are also important questions about the validity of the target. The number of ASBOs has increased but an early ambition of 5,000 being issued every year has not been met.
- Youth justice: Targets on speeding up the court process for young offenders have been met, but there are considerable regional variations and the time from arrest to sentence appears to be rising once again. Little or no progress has been made against targets to reduce the number of children in custody.
- Drugs: The number of people participating in drug treatment programmes has increased significantly. Targets on drugs and young people and on the harm caused by illegal drugs have also been met. However, there are questions to be raised about the degree of disconnect between Labour's policies on drugs, and targets in terms of real levels of drug use, availability and associated harms.

The report can be found in full at http://www.kcl.ac.uk/depsta/rel/ccjs/pubs.html

Consultation on Restricting the Use of Backed for Bail Warrants

The Home Office has published a consultation paper seeking views on how to restrict the use of 'warrants backed for bail', in order to help speed the return to court of bailed defendants who fail to appear.

It covers Fail to Appear (FTA) warrants, issued under:

- Section 7 of the Bail Act 1976.
- Section 13 of the Magistrates' Courts Act 1980 (MCA).

Magistrates obtain their power to back a warrant for bail under Section 117 of the MCA 1980. The Crown Court obtains its power to back a warrant for bail under Section 81 of the Supreme Court Act 1981. However, as FTA warrants backed for bail are only very rarely issued by the Crown Court, the consultation concentrates on magistrates' courts.

The consultation paper provides some background information relevant to the consultation exercise; analyses the problems posed by backed for bail warrants; sets out what action is already being taken to reduce the use of backed for bail warrants, including good practice and planned legislation, and sets out five potential legislative options on which it is seeking views, which are:

- Remove entirely the Court's power to issue a warrant backed for bail.
- Restrict the Court's power to issue backed for bail warrants when the substantive offence is 'serious'.
- Restrict the Court's power to issue backed for bail warrants when the defendant is deemed 'serious' (although the substantive offence may be minor).

- Restrict the Court's power to issue backed for bail warrants when the defendant has a poor bail history.
- Remove the Court's power to issue repeat backed for bail warrants in the same proceedings.

Responses are requested by 19 March 2007.

The consultation paper can be found in full at http://www.cjsonline.gov.uk/the_cjs/ whats_new/news-3492.html

Home Office Police Grant Report 2007-08

The Home Office has published the Police Grant Report (England and Wales) 2007-08. The report sets out the determination for 2007-08 of the aggregate amount of grants that the Home Office proposes to pay under Section 46(2) of the Police Act 1996, and the amount to be paid to the Greater London authority for the Metropolitan Police Authority.

General grant allocations, which include the Home Office police grant and the revenue support grant from the Department for Communities and Local Government and Welsh Assembly Government, for each police authority for 2007-08 are set out in the table.

The report can be found at

http://police.homeoffice.gov.uk/finance-and-business-planning/index.html/

Joint HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary Review of Police Complaints Cases

Her Majesty's Crown Prosecution Service Inspectorate and Her Majesty's Inspectorate of Constabulary have published a thematic report entitled 'Justice In Policing', following their review of the quality of handling of cases involving alleged criminal misconduct by a person serving with the police (sometimes referred to as police complaints cases). In particular, this covers:

- The timeliness of investigations, submission of papers to the Crown Prosecution Service (CPS) and decision-making.
- The quality, integrity and consistency of decision-making and casework handling generally.
- ◆ The relationship, in the context of police complaints cases, between CPS Headquarters (Policy Directorate and Special Crime Division), CPS Areas, the Independent Police Complaints Commission (IPCC) and Professional Standards Departments (PSD).

Albeit the review found that the arrangements for investigating and the handling of police complaints cases result in sound decision-making and case preparation, it does identify a number of weaknesses, mainly in the manner in which they are managed. It attributes these weaknesses for the most part to the lack of any clear and consistent ownership of policy or operational issues within the directorates of CPS Headquarters. It comments that police complaints cases are currently handled outside the main CPS business processes to an unacceptable extent; and states that a system of regional units should be considered as a possible way forward.

The report finds that the arrangements for the investigation and consideration of cases involving alleged criminal misconduct by persons serving with the police, set out in a series of service level agreements between CPS Areas and police forces (based on a model agreement developed by the Association of Chief Police Officers (ACPO) and CPS Headquarters), are not operating satisfactorily.

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Other findings of the report include:

- The standard of files submitted by the police varies considerably. Although some exceed what is necessary, a significant number do not fully meet the required standard. Only half of the files examined were submitted to the CPS in a timely manner.
- ◆ A lack of clarity surrounds the criteria for referral by investigators of cases to the Crown Prosecution Service for a decision as to whether there is sufficient evidence to prosecute in any particular case. Many practitioners consider that the threshold for referral under the Police Reform Act 2002 is too low. This has led to differing and inconsistent approaches being adopted and, at worst, cases being referred to the CPS where there is little or no evidence that an identifiable individual has committed a criminal offence. This adds delays into the complaints system and affects public confidence in it.
- Stakeholders expressed legitimate concerns about the time taken by the CPS to make a decision on a case. This could add to the delays identified in the submission of files to the CPS.
- There is a degree of confusion as to the extent to which it is appropriate to take account of the likely outcome of any disciplinary proceedings, when determining whether a prosecution of a person serving with the police would be in the public interest.
- ♦ There do not appear to be mechanisms which enable CPS managers to know how much of this work the CPS receives and how well it is being handled.
- The law in relation to the limitation periods on summary offences such as common assault (which requires that criminal proceedings must commence within 6 months of an offence being committed), and the sub judice rule can be barriers to effective investigation, case progression and satisfactory disposal of a cases. Together they may cause cases to be time-barred before the investigation can be concluded and a file sent to the CPS.

The report makes a number of recommendations, including:

- Police forces and CPS Areas should ensure that they have in place an up-to-date signed Service Level Agreement (SLA), which should be regularly reviewed and updated.
- SLAs should clearly set out the different arrangements for advice in cases involving
 police officers and others, on and off duty conduct, behaviour outside force area, and
 matters investigated by PSDs, the IPCC, and officers based on division in a Basic (or
 Borough) Command Unit (BCU).
- ◆ The criterion for referral of a case to the CPS contained within Schedule 3, Paragraph 24 of the Police Reform Act 2002, that a criminal offence 'may' have been committed, be reviewed by the Home Office and replaced by a clearer test which requires CPS consideration of cases only when there is some evidence on which a decision to prosecute could be based.
- Creating a right on the part of the complainant to have a decision by a police force not to submit a file to the CPS reviewed by the IPCC.
- File builds by the police and IPCC need to be proportionate, and in appropriate cases, designated lawyers in the CPS should guide investigators as to their requirements.
- PSDs and their CPS counterparts should formalise a joint performance management regime, based on a national template developed by ACPO and CPS Headquarters.

- Where sub judice is likely to be an issue, there should be early consultation and advice as between the investigating officer, IPCC (where involved) and the CPS.
- Chief officers and the CPS should ensure that they have mechanisms in place to monitor prosecution decision-making and case outcomes so as to identify any bias which may exist, whether from the perspective of a complainant or that of a person who is the subject of an allegation.

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

Updated ACPO Cannabis Guidance

The Association of Chief Police Officers (ACPO) has published updated guidance to officers dealing with offences of possession of cannabis, to help towards a consistent national approach to the policing of possession of cannabis as a Class C drug.

The revised guidance replaces the term 'Street Warning' with 'Cannabis Warning', due to the former term causing confusions with other forms of warning, such as the formal warning or formal cautioning procedure or final warnings for young people, and the fact that some officers interpreting it as being a warning that could only be given on the street, when in reality, it can be given anywhere.

It states that, as a general guide, when police find a person in possession of a small amount of cannabis, they should:

- Investigate the circumstances surrounding the alleged possession, including any lawful excuse.
- ♦ Eliminate any suspicion of a more serious offence, such as possession with intent to supply. (The amount of cannabis in possession of the offender is irrelevant if there is other evidence of intent to supply).
- Seize cannabis and secure evidence according to local procedure and compliance with PACE and its Codes.
- Complete contemporaneous notes of the incident that are PACE compliant and cover the points to prove for the offence, in line with local procedures.
- Complete local recording systems, such as stop/search forms, property seized logs and criminal intelligence reports.
- Ensure a record is made of the crime within local crime recording procedures. Under Home Office counting rules this will be treated as a sanctioned detection, providing the correct procedures have been followed.

If an offender admits possession, and there is no evidence of intent to supply to others, the officer should consider whether dealing with the offender by way of a Cannabis Warning would be a proportionate and appropriate method of disposal. If the officer decides to proceed with a cannabis warning, the offender should be warned that:

- A record of the investigation will be made at the police station.
- ♦ The offence of possession will be recorded against them, for statistical purposes, as a detected crime, but that the procedure does not constitute a criminal record against them.

Young people aged 10 to 17 years of age cannot be given a Cannabis Warning. They must be dealt with under the provisions of Section 65 of the Crime and Disorder Act 1998.

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The guidelines do not encourage the same offender being repeatedly warned for possession of cannabis. Where it can be verified that an offender has received two previous cannabis warnings, then a further warning should not be considered. Where this is the case, the officer must consider the options available for prosecuting the suspect; and arrest may then be necessary to enable the prompt and effective investigation of the offence or of the persons conduct. The rationale for any arrest must be carefully recorded.

Where there are local partnership agreements in place for policing schools, colleges or youth clubs, the guidance advises that these local agreements should take precedence over these guidelines.

The guidance can be found in full via http://www.acpo.police.uk/policies.asp

HOC 43/2006

Guidance on the Process of Information Sharing on Sex Offenders Travelling Between the UK and Ireland

As covered in the December issue of the *Digest*, the United Kingdom has signed a Memorandum of Understanding (MOU) with the Republic of Ireland relating to the exchange of information on registered sex offenders who intend to travel between the two states. Home Office Circular 43/2006 sets out details of the procedures to be followed.

Under the terms of the MOU, police forces in the UK will inform the Garda in the Republic of Ireland when an offender notifies them of his intention to travel there. When an offender notifies the Garda of an intention to travel to the United Kingdom, the Garda will notify the UK police. Information exchanged under this memorandum is confidential.

Such information will be exchanged through three points of contact:

- The National Central Bureau for Interpol for England, Wales and Scotland.
- The Police Service of Northern Ireland for Northern Ireland.
- An Garda Síochána for Ireland.

Information exchanged under this understanding must only be used for the specified purposes of the memorandum and only by the authorities with a statutory duty to pursue those purposes. The purposes are:

- ♦ The protection of the public from the risks presented by sex offenders.
- The investigation of serious sexual offences.

Procedures for Forces in England, Wales and Scotland to Notify Republic of Ireland

When police in England, Wales and Scotland are notified of an offender's intention to travel to the Republic of Ireland they should:

- Inform the offender that police in the Republic of Ireland will be notified of his intention to travel there, as a matter of routine.
- Communicate the notification to Interpol through the force's International Liaison
 Officer, using the standard International Enquiry form, by e-mail to
 Iondon@soca.x.gsi.gov.uk.

In circumstances where a force receives intelligence that a dangerous offender is to travel within 24 hours or has already travelled to the Republic of Ireland, it should communicate this to Interpol directly using the standard International Enquiry form or a correctly graded intelligence log and by phoning 020 7238 8115 to confirm receipt.

As a matter of practice, it is important that forces notifying Interpol supply a photo of the offender to assist police in the Republic of Ireland in identifying the offender.

Procedure for Police in Northern Ireland to Notify Republic of Ireland

Police in Northern Ireland should follow the protocol set out in the Agreement for Sharing of Personal Information that has been developed between Northern Ireland and the Republic of Ireland.

Receiving a Notification from Republic of Ireland

If an offender in the Republic of Ireland notifies the Garda of his intention to travel to the United Kingdom, this will be communicated to An Garda Síochána who will pass the information to the National Central Bureau for Interpol or the Police Service of Northern Ireland, who will then be responsible for informing the force(s) in the area(s) to which the offender intends to travel.

If an offender from the Republic of Ireland is travelling to the UK and intending to reside on a long-term basis, the police may consider it necessary to apply for a notification order. Such an order makes an offender who has committed a sexual offence abroad subject to the same notification requirements that would apply if that offender had offended in the UK.

Action to Prevent an Offender Travelling to Republic of Ireland

If an offender has been convicted of an offence in Schedule 3 of the Sexual Offences Act 2003 where the victim was under 16, or other offences specified in Section 116 of the Sexual Offences Act 2003, and there is evidence that he would present a risk to children in the Republic of Ireland, it is possible to apply for a Foreign Travel Order to stop him travelling to the Republic of Ireland, or other countries if this is necessary.

Further guidance on Part 2 of the Sexual Offences Act 2003 can be found at http://www.crimereduction.gov.uk/sexual/sexual027a.pdf

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

HOC 44/2006

The Police Pension Scheme - The Police Pensions Regulations 2006 and the New Police Pension Scheme 2006

Home Office Circular 44/2006 provides information on the Police Pensions Regulations 2006 (see SI 3415/2006), which provides the statutory basis for the new pension scheme for the police service which came into effect on 6 April 2006. A hard copy of the SI is being sent to each force.

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

HOC 2/2007

The Introduction of Police (Amendment) (No 2) Regulations 2006

Home Office Circular 2/2007 publicises the introduction of the Police Amendment (No 2) Regulations 2006 (see SI 3449/06).

The new Regulations amend the Police Regulations 2003 with effect from 1 February 2007, except for:

- Regulation 6, which has effect from 16 April 2003.
- Regulation 8, which has effect from 24 July 2003.
- Regulation 9, which has effect from 1 April 2004.

Retrospective effect is permitted by Section 50(5) of the Police Act 1996.

Business interests incompatible with membership of a police force

Regulation 2 of the 2006 Regulations makes certain amendments to Regulation 7 of the 2003 Regulations so that this now reads:

- **7.** (1) If a member of a police force proposes to have, or has, a business interest within the meaning of this regulation, the member shall forthwith give written notice of that interest to the chief officer unless that business interest has previously been disclosed.
- (1A) If a member of a police force is or becomes aware that a relative included in his family proposes to have, or has, a business interest within the meaning of this regulation which in the opinion of that member interferes, or could be seen as interfering, with the impartial discharge of his duties, then that member shall forthwith give written notice of that interest to the chief officer unless that business interest has previously been disclosed.
- (2) On receipt of a notice given under paragraph (1) or (1A) or a referral given under paragraph (5A), the chief officer shall determine whether or not the interest in question is compatible with the member concerned remaining a member of the force and, within 28 days of the receipt of that notice or, as the case may be, that referral, shall notify the member in writing of his decision.
- (2A) In making a determination under paragraph (2) the chief officer shall have regard to whether as a result of the interest in question the member's conduct fails, or would fail, to meet the appropriate standard set out in the Code of Conduct in Schedule 1 to the Police (Conduct) Regulations 2004
- (3) Within 10 days of being notified of the chief officer's decision as aforesaid, or within such longer period as the police authority may in all the circumstances allow, the member concerned may appeal to the police authority against that decision by sending written notice of his appeal to the police authority.
- (4) Upon receipt of such notice, the police authority shall forthwith require the chief officer to submit to them, within the next following 10 days, a notice setting out the reasons for his decision and copies of any documents on which he relies in support of that decision; and the police authority shall send to the member concerned copies of such notice and documents and shall afford him a reasonable opportunity, being in no case less than 14 days, to comment thereon.

Police News

- (5) Where a member of a police force has appealed to the police authority under paragraph (3) the police authority shall subject to paragraph (5A), within 28 days of receiving his comments on the notice and any other documents submitted by the chief officer under paragraph (4), or of the expiration of the period afforded for making comments if none have by then been received, give him written notice of their determination of the appeal but, where they have upheld the decision of the chief officer and, within 10 days of being so notified or within such longer period as the police authority may in all the circumstances allow, the member makes written request to the police authority for the reference of the matter to the Secretary of State, the matter shall be so referred and, unless and until the determination of the police authority is confirmed by the Secretary of State, it shall be of no effect and in particular, no action in pursuance thereof shall be taken under paragraph (6).
- (5A) In a case where it appears to the police authority that—
- (a) the member has adduced substantive reasons why he or a relative included in his family should be permitted to have the business interest in question and those reasons have not been considered by the chief officer, or
- (b) in reaching his determination under paragraph (2) the chief officer failed to apply fair procedures,

then the authority may refer the matter back to the chief officer for re-determination under paragraph (2).

(6) Where a member of a police force, or a relative included in his family, has a business interest within the meaning of this regulation which the chief officer has determined, under paragraph (2), to be incompatible with his remaining a member of the force and either the member has not appealed against that decision under paragraph (3) or, subject to paragraph (5), on such appeal, the police authority has upheld that decision, then, the chief officer may, subject to the approval of the police authority, dispense with the services of that member; and before giving such approval, the police authority shall give the member concerned an opportunity to make representations and shall consider any representations so made.

Business interests: supplementary

Regulation 3 of the 2006 Regulations makes certain amendments to Regulation 8 of the 2003 Regulations so that this now reads:

- **8.** (1) For the purposes of regulation 7, a member of a police force or, as the case may be, a relative included in his family, shall have a business interest if -
- (a) the member holds any office or employment for hire or gain (otherwise than as a member of a police force) or carries on any business; or
- (c) the member, his spouse or civil partner (in each case not being separated from him) or any relative included in his family living with him holds, or possesses a pecuniary interest in, any such licence or permit as is mentioned in paragraph (2);

and a reference to a relative included in a member's family shall include a reference to his spouse, parent, son, daughter, brother, sister, civil partner or any person living with the member as if they were his spouse or civil partner.

(2) The licence or permit referred to in paragraph (1)(c) is a licence or permit granted in pursuance of the law relating to liquor licensing, refreshment houses or betting and gaming or regulating places of entertainment in the area of the police force in question.

- (3) If a member of a police force or a relative included in his family has a business interest within the meaning of regulation 7 and, on that interest being notified or disclosed as mentioned in regulation 7(1) or (1A), the chief officer has, by written notice, required the member to furnish particulars of such changes in that interest, as respects its nature, extent or otherwise, as may be mentioned in the notice then, in the event of any such change in that interest being proposed or occurring, regulation 7 shall have effect as though the changed interest were a newly proposed, or newly acquired, interest which has not been notified or disclosed as aforesaid.
- (4) In its application to a chief constable, deputy chief constable or assistant chief constable, regulation 7 and this regulation shall have effect as if -
- (a) for any reference therein to the chief officer there were substituted a reference to the police authority;
- (b) for any reference in regulation 7(3), (5) or (6) to an appeal there were substituted a reference to a request for reconsideration; and
- (c) the references in regulation 7(6) to the approval of the police authority were omitted;

but a police authority shall not dispense with the services of a chief constable, deputy chief constable or assistant chief constable under regulation 7 without giving him an opportunity of making representations and shall consider any representations so made.

(5) In its application to a member of the metropolitan police force, regulation 7 and this regulation shall have effect as if for any reference to the chief officer there were substituted a reference to an assistant commissioner of police of the metropolis; except that nothing in this paragraph shall affect the power of the commissioner, subject to the approval of the police authority, to dispense with the services of a member of the metropolitan police force in pursuance of regulation 7(6).

Regulation 4 of the 2006 Regulations amends regulation 15 of the 2003 Regulations to provide that the personal record to be kept of each police officer shall contain particulars of his civil partnership (if any).

Regulation 5 of the 2006 Regulations amends Regulation 22 of the 2003 Regulations to also give the Secretary of State power to make determinations relating to night work for the purposes of the Working Time Regulations 1998 and the periods which are to be treated as if they were additional periods of working time for the purposes of Regulation 2(1) of the Working Time Regulations 1998.

Regulation 6 of the 2006 Regulations amends Regulation 24 of the 2003 Regulations in respect of the circumstances in which an officer's maternity leave counts as service for the purposes of her pay, and sets out the circumstances in which periods of adoption leave, maternity support leave and adoption support leave are to so count.

Regulation 7 of the 2006 Regulations amends Regulation 33 of the 2003 Regulations, giving the Secretary of State power to make determinations relating to adoption support leave and career breaks.

(See also following article on HOC 1/2007 in respect of adoption leave).

Regulation 8 of the 2006 Regulations amends Regulation 35 of the 2003 Regulations and gives the Secretary of State power to make a determination that would give police authorities a discretion to reimburse to chief officers the tax payable in relation to removal expenses.

Regulation 9 of the 2006 Regulations amends Schedule 2 of the 2003 Regulations to replace the Police (Conduct) (Senior Officers) Regulations 1999 with the Police (Conduct) Regulations 2004.

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

HOC 1/2007 Adoption Leave Policy for Police Officers

Home Office Circular 1/2007 publicises the Home Secretary's approval of the adoption leave policy for police officers, as agreed by the Police Negotiating Board on 1 September 2006 and set out in Police Negotiating Board Circular 06/5. The agreement supersedes the adoption leave arrangements set out in PNB circular 03/1.

Under the agreement:

- ♦ All police officers (irrespective of service) are entitled to a minimum of one week's adoption leave ("standard adoption leave") on full pay.
- ♦ All police officers who have a minimum of 26 weeks' service (by the week in which an approved match is made with a child as notified by an adoption agency) are entitled to a period of ordinary and additional adoption leave. The length of this leave can be up to one year, comprised of 26 weeks' ordinary adoption leave followed immediately by up to 26 weeks' additional adoption leave. The length of ordinary or additional adoption leave cannot be extended if more than one child is being adopted at the same time. It is inclusive of "standard adoption leave".
- Police officers who have a minimum of 26 weeks' but less than one year's continuous service (by the week in which an approved match is made with a child as notified by an adoption agency) are entitled to 26 weeks' statutory adoption pay followed by 26 weeks' unpaid leave.
- Police officers who have at least one year of continuous service (by the week in which an approved match is made with a child as notified by an adoption agency) are entitled to full pay for the first 13 weeks' adoption leave, then up to 13 weeks' leave at statutory adoption pay followed by 26 weeks unpaid leave.
- Adoption leave can start, at the earliest, from a fixed date up to 14 days before the expected date of placement and, at the latest, from the date the child is placed.
- Where a couple, whether both are officers or not, are adopting jointly, only one of the couple can take adoption leave:, it cannot be split between them or claimed by both. (The other partner may be able to claim adoption support leave and pay).
- The provisions governing ordinary and additional adoption leave do not apply to cases of adoption by step-parents and foster parents in respect of children previously living with the adoptive parents.
- Officers are required to give notice of their intention to take adoption leave within 7 days of being notified that they have been matched for adoption. They need to state when the child is expected to be placed and when they want their adoption leave to start. Where it is not reasonably practicable for the member to give notice within 7 days, the notice should be given as soon as is reasonably practicable.
- Officers intending to return to work after their full adoption leave do not have to give any further notification. Those who want to return before the end of their adoption leave period must give 28 days' notice of the date they intend to return.

- An officer who is an adopter's spouse or partner can take up to two weeks continuous adoption support leave, the first of which is on full pay.
- An officer, who has 26 weeks' continuous service at the notification week, will be entitled to be paid for the second week at statutory paternity pay rate. Where any period of paid adoption support leave coincides with statutory paternity pay periods, police adoption support pay will be offset by statutory paternity pay.
- Annual leave will continue to accrue during any adoption leave (whether comprising standard, ordinary or additional adoption leave), in line with the officer's normal entitlement. Officers may wish to take annual leave before their adoption leave commences, or convert part of the unpaid adoption leave to paid annual leave.
- ♦ An officer who is entitled to free accommodation may continue to reside rent free throughout adoption leave. If she/he does not return, i.e. resigns from the force or takes a career break, she/he will be required to vacate the premises.
- If a police officer resides in police property but is not entitled to housing/rent allowance, she/he will continue to pay rent as before during the whole of the adoption leave, whether paid or unpaid.
- For all members, a period of standard adoption leave and ordinary adoption leave will be pensionable, reckonable for incremental pay and leave purposes and for inclusion in any period of probationary service.
- All leave taken as adoption support leave will be pensionable, reckonable for incremental pay and leave purposes and for inclusion in any period of probationary service.
- ♦ All the provisions of this agreement will apply for officers serving part-time or jobsharing.
- An officer taking adoption leave has the right to return to work on the same conditions of service (e.g. hours, grade, etc). Wherever possible, posts should be re-organised or covered on a temporary basis to allow the officer to return to the post occupied before the leave, if they so wish. The assumption must be made that the officer will return to work following their indicated period of leave.
- Should a re-organisation take place when the officer is absent, the same procedures
 of consultation should apply as if they were present in the workplace.

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

Police News

Figures from the Christmas Drink and Drug Driving Campaign 2006

The figures from the joint Association of Chief Police Officers and Department for Transport annual Christmas period campaign on drink and drug driving have been published.

The figures reveal that drink and drug driving is still a problem, despite advertisement campaigns and increased enforcement activity.

The campaign, which ran throughout England and Wales for the whole of December 2006, showed that:

- ◆ 145,867 people were breath tested (an increase of about 10% on last year).
- 9,658 tested positive, refused or failed (6.6%). This represents a decrease of 0.3% on last year.
- ♦ 12,494 of the tests were conducted on drivers that had been involved in collisions that resulted in injury; of these, 915 tested positive (7.3%).
- ◆ 13,992 breath tests were conducted following damage only collisions; of these, 1,030 tested positive, refused or failed.
- 666 drivers were subject of fit tests, as a result of which 251 resulted in arrests.

ACPO and National Missing Persons Helpline Protocol Agreement

The Association of Chief Police Officers has signed a National Protocol Agreement with the National Missing Persons Helpline, to exchange, handle and respond to the issue of missing persons. The agreement, which will be used by police forces in England, Wales and Northern Ireland, is intended to underpin the ACPO document, 'Guidance on the Management, Recording and Investigation of Missing Persons 2005'.

Wearing of a Chemical, Biological, Radiological and Nuclear Protection Suit

In answer to a Parliamentary question from the MP for Sheffield Hallam, Mr Nick Clegg, concerning the powers of a police officer dressed in a chemical, biological, radiological and nuclear protection suit, the Home Secretary replied that an officer in protective equipment which has been officially provided to supplement the police uniform retains the full police powers of an officer in uniform.

Police News

Nominated Neighbour Scheme Project

Fife Constabulary has been trialling a nominated neighbour scheme, which is aimed at protecting elderly or vulnerable persons from bogus callers and con-artists calling at their addresses.

The scheme operates by the elderly or vulnerable person being given a yellow card containing the details of a 'nominated neighbour'. The card is shown to callers and directs the caller to the house of a neighbour (the nominated neighbour), who will check their identity. Only if satisfied the caller is genuine will the neighbour direct them to the elderly person's house, where they will remain with them while they finish their business. If concerned about the caller, the neighbour rings the police.

Follow-up research on the trial from May to July 2006 has shown that not one incident happened in the pilot areas during the three month trial, whilst in other areas in Fife not running the trial there were numerous offences committed, resulting in the loss of £40,000 of property. In the trial areas, the research shows that on a number of occasions, callers departed swiftly the minute the card was shown.

There are plans to roll the scheme out across Fife next year. This will be done through the Community Safety Partnership's Fife Cares Scheme, which gives support and security advice to elderly and vulnerable people. Again, it will target those most at risk from bogus callers.

News in Brief

Nuclear and Bio-Chemical Terrorism Insurance Offered

TT Club, the specialist transport insurance provider, has announced it will offer nuclear and bio-chemical terrorism cover, starting from 1 January 2007.

Cover will be available for physical loss, business interruption and liabilities, and will be applicable both in incidents involving actual damage caused by an incident or device and when an incident occurs or a device is discovered causing significant trade disruption but no physical damage.

The Club is offering cover for both direct and indirect business interruption, for example, members with goods delayed due to the closure of a third-party facility as a result of a nuclear or bio-chemical terrorism incident anywhere in the world.

Limit options will provide cover up to a maximum of US\$25m for any one incident per member. Indirect business interruption losses will be available for limits up to a maximum of \$5m, any one incident, per member. A pool aggregate limit for all claims in any one year of US\$100m is expected to be achieved.

Further details can b found at http://www.ttclub.com

Research Report on Impact of Mass Marketed Scams

The Office of Fair Trading has published a research report on the impact of mass marketed scams, focusing on:

- Prize draw/sweepstake scams.
- Foreign lottery scams.
- Work at home and business opportunity scams.
- Premium rate telephone prize scams.
- Miracle health and slimming cure scams.
- African advance fee frauds/foreign money making scams.
- Clairvoyant/psychic mailing scams.
- Property investor scams.
- Pyramid selling and chain letter scams.
- Bogus holiday club scams.
- Internet dialler scams.
- Career opportunity (model/author/inventor) scams.
- High risk investment scams.
- Internet matrix scheme scams.
- Loan scams.

News in Brief

The report finds that mass marketed scams are a huge problem, international in their scope, reach and organisation. It comments that cheap methods of mass communication, such as direct mail, telephone, email and the Internet bring great economic benefits, but they are also tools to perpetrate fraud and deception on a global scale.

The research showed that:

- ♦ Around 6.5% of the UK adult population (3.2 million people) fall victim to scams every year, to a cost of around £3.5 billion.
- Anyone can be taken in because scams are customised to fit the profile of the people being targeted. There really is a scam for everyone.
- Although older consumers are more likely to be targeted by a scam (over-55s accounting for almost half of people claiming to have been targeted), there is no evidence to suggest that older people are more likely to be victims.
- Fewer than 5% of people report scams to the authorities.

The report can be found in full via http://www.oft.gov.uk/News/Press+releases/2006/181-06.htm

Provisions to help tackle cross border scams were brought into force on 8 January 2007 by way of SI 3363/2006 (see SI section).

Case Law



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Aggravated and Exemplary Damages Awards against the Police

SUSAN ROWLANDS v CHIEF CONSTABLE OF MERSEYSIDE (2006)

[2006] EWCA Civ 1773

CA (Civ Div) (Ward LJ, Moore-Bick LJ, Richards LJ) 20/12/2006

Damages - Police - Torts

Abuse Of Power: Aggravated Damages: Chief Constables: Double Punishment: Exemplary Damages: False Imprisonment: Malicious Prosecution: Measure Of Damages: Police: Vicarious Liability: Action Against Police For False Imprisonment And Malicious Prosecution: S.88 Police Act 1996

The acts of a police officer in physically restraining the appellant, handcuffing her, procuring her detention and giving false evidence in an attempt to secure her conviction could be capable of supporting a finding that he had behaved in an oppressive, arbitrary and unconstitutional manner and the jury should have been able to consider an award of exemplary damages against the chief constable under the Police Act 1996 s.88 and in accordance with the principles set out in Commissioner of Police of the Metropolis v Thompson (1998) QB 498.

The appellant (R) appealed against the amount of damages awarded to her in proceedings brought by her against the respondent chief constable for assault, false imprisonment and malicious prosecution. Two police officers working under the direction and control of the respondent attended R's property and a neighbouring property in response to R's complaints that her neighbours were being noisy and troublesome. Following an altercation between R and one of the policemen (P), R was arrested in front of her children, placed in handcuffs and detained for about an hour-and-a-half. R was charged with obstructing a constable in the execution of his duty. P gave evidence against her at trial, but the court did not accept his evidence and acquitted R. She successfully brought proceedings against the chief constable and was awarded damages that included, amongst other things, damages for personal injury, pain and suffering, and for psychiatric harm. The judge commented to the jury that damages had been agreed between counsel. He also ruled that a separate award for aggravated damages was not appropriate, since the award for basic damages would fully compensate R for the persistent feelings of anger and injustice that she had suffered. He had also ruled that there was nothing exceptional in the case to justify an award for exemplary damages. The total damages awarded was £6,350. R submitted that in dealing with the damages, the judge had been wrong to:

- (1) Withdraw from the jury consideration of an award for damages for malicious prosecution, being under the misapprehension that the figure of £2,500 had already been agreed between counsel;
- (2) Hold that an award of aggravated damages would result in over-compensation;

(3) Withdraw from the jury consideration of the claim for exemplary damages. The chief constable submitted that it would be wrong in law to make an award of exemplary damages against the chief constable who, although vicariously liable, was not personally at fault.

HELD

- (1) On a reading of the exchanges between the parties in relation to damages for malicious prosecution, there was an indication by R's counsel that he had agreed to an award of £2,500, whether he had intended to do so or not.
- (2) It was necessary for the judge to identify the danger of double recovery in cases where an award of aggravated damages was made in favour of a claimant who was also claiming damages for psychiatric harm. However, it could not be accepted that the mere fact that a basic award included an element to compensate for psychiatric harm necessarily precluded an award of aggravated damages. An award of aggravated damages was essentially compensatory in nature, notwithstanding the fact that it could have a punitive effect by increasing the overall amount the defendant was ordered to pay, Commissioner of Police of the Metropolis v Thompson (1998) QB 498 applied. R's arrest and prosecution were of a kind that were liable to induce feelings of humiliation and resentment that could only have been exacerbated by the willingness of the police to give false evidence in support of an unjustified prosecution. The judge was wrong to withdraw from the jury consideration of that claim. Taking account of the guidelines in Thompson, the appropriate award was £6,000.
- (3) There was clear evidence before the jury that was capable of supporting a finding that P's behaviour did amount to oppressive, arbitrary and unconstitutional action, Holden v Chief Constable of Lancashire (1986) 3 WLR 1107 followed. As exemplary damages were punitive in nature, care had to be taken to avoid excessive punishment. The decision to bring an action against the chief constable alone avoided the difficulties in joining the individual wrongdoer as a defendant. An award of exemplary damages against a chief constable was simply a means of expressing the jury's "vigorous disapproval" of the conduct of the police force as an institution, even though the person responsible for meeting that award was not personally the wrongdoer. The power to award exemplary damages rested on policy and it was desirable as a matter of policy that courts should be able to make punitive awards against those who were vicariously liable for the conduct of their subordinates without being constrained by the financial means of those who had committed the wrongful acts. Only by that means could awards of an adequate amount be made against those who bore public responsibility for the conduct of the officers concerned. A substantial award of exemplary damages could be made against the chief constable under the Police Act 1996 s.88, in accordance with the principles set out in Thompson. Accordingly, the appropriate award of exemplary damages was £7,500. The total damages awarded was £19,850.

APPEALALLOWED



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Claim of Misfeasance in Public Office for Loss of Liberty

IBRAHIM KARAGOZLU v COMMISSIONER OF POLICE OF THE METROPOLIS (2006)

[2006] EWCA Civ 1691

CA (Civ Div) (Sir Anthony Clarke MR, Scott Baker LJ, Thomas LJ) 12/12/2006

Torts - Penology And Criminology

Category B Prisoners: Category D Prisoners: Misfeasance In Public Office: Open Prisons: Special Damage: Transfer Of Prisoner From Open To Closed Prison: Loss Of Liberty Amounting To Special Damage: Loss Of Residual Liberty Actionable In Misfeasance

Loss of liberty was a form of special or material damage sufficient to support a claim for misfeasance in public office if the other ingredients of the tort were made out, and loss of residual liberty, such as a further restriction on a claimant's liberty caused by movement from open to closed prison conditions, was also actionable in misfeasance.

The appellant (K) appealed against that part of the district judge's order striking out his claim for misfeasance in public office against the first defendant commissioner of police (C). K had been serving a sentence of imprisonment in an open prison as a Category D prisoner. In March 2002, following the receipt of information from the police that K's life might be in danger if he remained in open conditions, he was moved to a closed Category B prison. K complained about his transfer, contending that he was not in any danger, and asked that his case be investigated. In October 2002 K was returned to the open prison and re-categorised as a Category D prisoner. K subsequently sought damages, including aggravated and exemplary damages, against C in misfeasance and the second defendant Home Office in both misfeasance and negligence. As against C, K alleged that the information leading to his transfer was false and was known to be false, and had been passed to the prison service maliciously with the intention of causing him damage. The Home Office applied to strike out K's claim against it, and whilst C did not make a formal application to strike out the claim, he contended that, if that application was successful, K equally had no cause of action against him. The district judge struck out K's claims, having found, inter alia, as to misfeasance, that K had not shown material damage. It fell to be determined whether:

- A person who lost his freedom as a result of misfeasance had suffered damage sufficient to entitle him to recover general damages from the defendant;
- (2) If so, a prisoner who was moved from open conditions as a Category D prisoner to closed conditions as a Category B prisoner was such a person.

HELD

(1) Loss or damage was an essential ingredient of the tort of misfeasance, Watkins v Secretary of State for the Home Department (2006) UKHL 17, (2006) 2 AC 395 applied. A person who was unlawfully detained and lost his freedom as a result of the tort of false imprisonment was entitled to general damages, Commissioner of Police for the Metropolis v Thompson (1998) QB 498 applied. It was not correct in principle to distinguish between what was injury or damage for the purposes of false imprisonment on the one hand and for the purposes of the tort of misfeasance on the other. In the absence of a claim for identifiable loss, a successful claimant should be entitled to recover general damages for loss of liberty in the case of either tort, assessed in accordance with the guidelines laid down in Thompson. Thus, loss of liberty was a form of special or material damage sufficient to support a claim for misfeasance in public office if the other ingredients of the tort were made out.

Case Law - Evidence and Procedure

(2) Loss of residual liberty, such as a further restriction on a claimant's liberty caused by movement from open to closed prison conditions, was actionable in misfeasance if the other ingredients of the tort were established. In the instant case, K's particulars of injury had alleged relevant damage in the form of a significant loss of liberty, which he would have enjoyed if he remained a Category D prisoner at the open prison. K would have been much less confined while at the open prison and on day release than he had been after his transfer to the closed prison. That damage was a form of the special or material damage referred to in Watkins. K's claim against C would, therefore, be allowed to proceed, although whether it would succeed was a very different question depending upon whether K could establish the ingredients of the tort.

APPEALALLOWED



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Police Cell is not a 'dwelling' for the Purposes of the Public Order Act 1986

R v CF (2006)

CA (Crim Div) (Moses LJ, Goldring J, Judge Martin Stephens QC) 21/12/2006

Criminal law - Criminal Procedure

Causing Harassment Alarm Or Distress: Police Detention: Public Order Offences: Racially Aggravated Offences: Statutory Definition: Police Cell Not Constituting "Dwelling" In S.8 Public Order Act 1986: S.58 Criminal Justice Act 2003: S.4a Public Order Act 1986: S.8 Public Order Act 1986: S.28 Crime And Disorder Act 1998: S.31 Crime And Disorder Act 1998: S.61(4)(B) Criminal Justice Act 2003

A judge had been wrong to conclude that a police station cell constituted a dwelling within the meaning of the Public Order Act 1986 s.8 as the terms of that section were narrowly confined.

The Crown appealed against a terminating ruling made in the Crown Court under the Criminal Justice Act 2003 s.58. The respondent (C) had been detained in custody in a police cell and was alleged to have made a racially obscene remark to a police officer in the cell with her. She was indicted on a charge of causing racially aggravated harassment, alarm or distress contrary to the Public Order Act 1986 s.4A. Following submissions by C, the judge ruled that a prison cell constituted a dwelling within the meaning of s.8 of the 1986 Act, with the consequence that the offence was no longer made out and a terminating ruling made. The Crown submitted that the judge had erred in making a terminating ruling, as C had been detained compulsorily as a result of her behaviour and that a police cell did not constitute a dwelling under s.8 of the 1986 Act. C submitted that no public order offence had been committed because the actions complained of had occurred in a dwelling and the person alarmed had also been present in that dwelling; that the features of a police cell were similar to those that might be expected in a place to live, as a person could eat, sleep and perform their ablutions there; and it was irrelevant that she had been there under compulsion.

HELD

There had been no arrangement for the issue to be litigated prior to it going before a jury at trial and there ought to have been legal argument well before a jury was sworn if the issue was to be adverse to C. The court had to consider the relevant statutory provisions of the offence under the Crime and Disorder Act 1998 s.28 and s.31. Section 31 of the 1998 Act made specific reference to s.4A of the 1986 Act, which in turn identified where an offence may or may not take place. Section 8 of the 1986 Act defined a dwelling as a structure occupied as a person's home or other living accommodation. The areas of impunity were narrowly confined and there was no exception for "mere" accommodation. A police cell was not a home and was not "other" living accommodation even though a person detained in one may from time to time do the same things as he did at home. Therefore the judge had erred, as a police cell fell outside s.8 of the 1986 Act. A fresh trial was ordered pursuant to the s.61(4)(b) of the 2003 Act.

APPEALALLOWED



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Procedure for Authorising Demonstrations in Designated Areas is compatible with ECHR

(1) STEPHEN BLUM (2) AQIL SHAER (3) MAYA ANNE EVANS (4) MILAN RAI (Appellants) v (1) DIRECTOR OF PUBLIC PROSECUTIONS (2) CROWN PROSECUTION SERVICE (Respondents) & SECRETARY OF STATE FOR THE HOME DEPARTMENT (Intervener) (2006)

[2006] EWHC 3209 (Admin)

QBD (Admin) (Waller LJ (V-P), Lloyd Jones J) 20/12/2006

Criminal Law - Human Rights

Authorisations: Demonstrations In Vicinity Of Parliament: Freedom Of Peaceful Assembly: Compatibility Of Authorisation Procedure With Art.11 European Convention On Human Rights 1950: S.132(1)(B) Serious Organised Crime And Police Act 2005: S.134(2) Serious Organised Crime And Police Act 2005: Art.11 European Convention On Human Rights: Art.10 European Convention On Human Rights

The procedure under the Serious Organised Crime and Police Act 2005 s.134 for authorising demonstrations in a designated area was compliant with the European Convention on Human Rights 1950 Art.11, and there was no need for the state, in its various public authority guises, to justify the necessity to act on the individual facts of the case where a person had been charged with organising or taking part in an unauthorised demonstration in a designated area.

The first, second and third appellants appealed against their convictions for taking part in a demonstration in a public place in a designated area, contrary to the Serious Organised Crime and Police Act 2005 s.132(1)(b), where authorisation for the demonstration had not been given under s.134(2). The fourth appellant appealed against his conviction for organising an unauthorised demonstration in a public place in a designated area, contrary to s.132(1)(a) of the Act. The demonstrations had been peaceful and good-humoured. The appellants argued that the decision of the police to arrest, the decision of the CPS to prosecute and the decision of the court to convict had interfered with important Convention rights and therefore had to be justified under Convention law. They submitted that the police, the CPS and the courts should have looked not just at the failure to obtain authorisation but also at the conduct of the demonstrators.

HELD

Since each of the appellants had been charged simply with a failure to obtain authorisation, the starting point was to consider the proper attitude to an authorisation procedure. European jurisprudence showed that an authorisation procedure would normally be compliant with the requirements of the European Convention on Human Rights 1950 Art.11(1), Ziliberberg v Moldova unreported, May 4, 2004 applied. Once it was accepted that the sections requiring authorisation were compatible with Art.10 and Art.11 of the Convention, it simply could not be a legitimate line of argument to say "that may be so, but you must look at the activity taking place without authorisation, when considering whether there has been an infringement of Art.11 itself". Once an authorisation procedure was Art.11 compliant, Parliament had to be entitled to impose sanctions where authorisation had not been obtained; otherwise, the finding that the sections were compatible was illusory.

APPEALS DISMISSED



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Absence of National Identity Register will not Preclude Identity Card Offences

R v ADAMOU SOULE ALI: R v EUGENE BOMBATU (2007)

CA (Crim Div) (Hooper LJ, Gibbs J, Roderick Evans J) 23/1/2007

Criminal Law - Immigration

Identity Cards: Legislative Intention: National Identity Register: Possession Of False Identity Documents: Registrable Facts: Offences Under The Identity Cards Act 2006: S.25 Identity Cards Act 2006: S.25(1) Identity Cards Act 2006: S.5 Forgery And Counterfeiting Act 1981: S.1(4) Identity Cards Act 2006

A judge had been correct in his ruling that, notwithstanding the fact that a National Identity Register had not yet been created, an offence under the Identity Cards Act 2006 s.25(1) could be made out.

The applicants (S and B) sought leave to appeal against their convictions for possessing an identity document with the requisite intent contrary to the Identity Cards Act 2006 s.25. S and B had both, on separate occasions, presented themselves to French immigration officials at a United Kingdom port with French and Belgian national identity cards respectively, made out in false names. French officials concluded that the identity cards were not genuine and S and B were subsequently arrested by British police officers. Their applications were referred to the court by the Registrar as under s.25(2) of the 2006 Act the requisite intention was to use the documents for establishing "registrable facts" about themselves in the National Identity Register. The National Identity Register did not yet exist and the issue for the court was whether an offence could be made out under s.25(1). S and B submitted that since the National Identity Register had not yet been created by the government, no offence had been committed as they did not have the requisite intent under s.25(2). They argued that an offence could not be committed by a person who was not on the register and that the person to whom the false documents were handed had to be a person able to access that register.

HELD

Prior to the 2006 Act coming into force, the use of false documents in the manner done so by S and B was an offence under the Forgery and Counterfeiting Act 1981 s.5. The relevant subsections of that Act had since been repealed and the court had to consider if Parliament, under the 2006 Act, had created another offence that covered the actions of individuals such as S and B. It was clear that Parliament had intended for there to be an offence under s.25(1) of the new legislation. If there were facts capable of registration it did not matter whether the register existed or not. It was a simple matter of statutory construction and the definition of registrable facts in s.1(4) of the 2006 Act did not suggest that there had to be a register in existence or that a person had to be registered on it for an offence to be made out.

APPLICATIONS REFUSED



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Case Law - Traffic

Incomplete Breath Specimen

DIRECTOR OF PUBLIC PROSECUTIONS v DARWEN (2007)

DC (Thomas LJ, Stanley Burnton J) 24/1/2007

CRIMINAL LAW - ROAD TRAFFIC

Breath Samples: Breath Tests: Failing To Provide Specimen: Failing To Provide A Specimen: Requirement To Provide Sufficient Breath: S.7(6) Road Traffic Act 1988: S.11(3) Road Traffic Act 1988

A magistrates' court erred in law to hold that an individual had provided a specimen of breath that was sufficient to meet the requirements of the Road Traffic Act 1988 s.11(3), as required by s.7(1)(a) of the Act, despite not blowing directly and providing eight specimens of breath that a breath analysis machine registered as incomplete.

The appellant DPP appealed by way of case stated against the decision of a magistrates' court to acquit the respondent (D) of an offence of failing to provide a specimen of breath. contrary to the Road Traffic Act 1988 s.7(6). D had been required to produce a specimen of breath in relation to an offence of driving over the alcohol limit. D agreed to provide it, but he blew small amounts of breath into the breath analysis machine several times and withdrew the mouthpiece even though the police officer administering the test told him to keep blowing. What was blown into the machine was accurately analysed, but the results were incomplete. The police officer administered the test a second time. D made four attempts to blow, which resulted in some air going into the machine, but he again removed the mouthpiece and the machine stopped collecting air and again recorded the results as incomplete. At trial in the magistrates' court, D contended that he had provided breath and so was not guilty under s.7(6) of the Act of failing to provide a specimen of breath. The magistrates' court held that D was not guilty of an offence under s.7(6) of the Act, as he did provide up to eight samples of breath, albeit that they registered as incomplete because the breath supplied did not constitute "deep lung air". The question posed for the opinion of the High Court was whether the magistrates' court was correct in law in deciding that the specimens of breath supplied by D, which were rejected as incomplete by the breath analysis machine, were nonetheless sufficient to meet the requirements of s.11(3) of the Act and were, thus, specimens of breath as required by s.7(1)(a) of the Act.

HELD

The magistrates' court erred in holding that the specimens of breath provided by D were sufficient to meet the requirements of s.11(3) of the Act and were, thus, specimens of breath as required by s.7(1)(a) of the Act. From the facts it was clear that the police officer had required D to blow into the breath analysis machine and that D had removed the mouthpiece from the machine on eight occasions. It could not be said that D had produced a specimen of breath that was in accordance with s.11(3) of the Act, as: (a) D did not blow directly; and (b) the breath analysis machine made clear that the amount of air provided by D was insufficient, Zafar v DPP (2004) EWHC 2468 (QB), (2005) RTR 18 considered and DPP v Heywood (1998) RTR 1 applied. The matter was remitted to the magistrates' court with a direction to convict.

APPEALALLOWED



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Probationary Police Officer Allowed to Bring Claim of Racial and Religious Discrimination

K HASAN v COMMISSIONER OF POLICE OF THE METROPOLIS (2006)

EAT (Elias J) 22/11/2006

Discrimination - Police

Discrimination: Immunities: Metropolitan Police Commissioner: Probationary Employees: Unfair Dismissal: Dismissal Of Probationary Police Officers: Applicability Of Doctrine Of Immunity From Suit: Reg.13 Police Regulations 2003: Race Relations Act 1976: Employment Equality (Religion Or Belief) Regulations 2003

A decision of a police commissioner pursuant to the Police Regulations 2003 reg.13 relating to the discharge of a probationary police officer did not attract the doctrine of absolute immunity from suit, and a probationer affected by such a decision was not prevented from bringing a claim for race or religious discrimination.

The appellant employee (H) appealed against a decision of an employment tribunal that the decision of the respondent employer (P) to dismiss him attracted absolute immunity and precluded H from bringing a claim for race or religious discrimination. H had been a probationary police constable, but shortly before he was to be confirmed in his post internal proceedings were instituted against him pursuant to the Police Regulations 2003 reg.13 that resulted in P's deciding to dispense with H's services. H brought proceedings alleging acts of racial and religious harassment and discrimination, in particular that the decisions to institute proceedings against him and to dismiss him amounted to direct discrimination and victimisation discrimination contrary to the Race Relations Act 1976 and the Employment Equality (Religion or Belief) Regulations 2003. The employment tribunal held as a preliminary issue that, in relation to the reg.13 proceedings, it had no jurisdiction to hear H's claim in relation to the decision to dismiss because it concerned judicial proceedings that attracted the common law protection of absolute immunity from suit. H contended that the tribunal had misapplied the principles relating to the doctrine of absolute immunity and failed to appreciate the fundamental distinction between a disciplinary hearing and the procedures used in the instant case.

HELD

The employment tribunal had failed to direct itself properly in law and had erred in concluding that P's decision attracted the common law protection of absolute immunity from suit. There was no lis inter partes in the sense in which that was traditionally used in the context of legal proceedings. P was not resolving some dispute between contending parties according to certain established legal principles, but was exercising a very different and far more subjective judgment, namely assessing whether H was sufficiently efficient and well behaved to remain in the police force at all. That required consideration of a wide range of materials that went beyond those typically considered in a court of law. Such consideration was akin to an employer deciding whether a particular employee should remain in employment, but was not akin to a judicial judgment as it was far from the kind of issue that courts and tribunals typically had to determine. Moreover, there were none of the trappings that would normally be associated with a court of law at all: the proceedings were not adversarial, P was under no obligation to find any specific facts, there was no calling of any witnesses, no cross examination, no legal representation, and no duty to give reasons. Accordingly, it could not be said that P's position or function was analogous to that of a tribunal or court to which the doctrine of absolute immunity from suit would apply.

Case Law - Employment and Equal Opportunities

Further, the public interest was not served by denying H the right to bring a discrimination claim, Trapp v Mackie (1979) 1 WLR 377 and Heath v Commissioner of Police of the Metropolis (2004) EWCA Civ 943, (2005) ICR 329 applied.

APPEALALLOWED



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SI 3304/2006 The Local Elections (Principal Areas) (England and Wales) Rules 2006

In force **2 January** except, for the purposes of an election, if the last date for the publication of the notice of election for that election was, or will be, prior to 27 March 2007. These Rules provide for the conduct of elections of councillors of the council of a principal area, that is a county, county borough, district or London borough. They replace the Local Elections (Principal Areas) Rules 1986 which are revoked by Schedule 1 to these Rules.

The rules in Schedule 2 to these Rules, like the rules in Schedule 2 to the 1986 Rules, apply, with adaptations, alterations and exceptions, the parliamentary elections rules (contained in Schedule 1 to the Representation of the People Act 1983) for the purpose of the conduct of principal area elections. However, unlike the 1986 Rules, they apply the amendments made to the parliamentary elections rules by provisions of the Electoral Administration Act 2006. Under the Rules:

- Candidates may use their common names on nomination forms and ballot papers.
- The minimum age for a candidate is reduced from 21 to 18.
- Returning officers will be able to correct minor errors on nomination papers.
- Security markings on ballot papers are provided for; so, too, are unique identifying marks.
- Counterfoils on ballot papers are replaced by corresponding number lists.
- Requirements are imposed requiring postal voters and postal proxies to provide both their signature and date of birth when returning postal ballot papers.

The Rules reflect alterations as to:

- The circumstances in which a person may give a tendered vote. New requirements are introduced as to the information and accessibility of information to be provided by returning officers to electors.
- The retention and inspection of election documents after the poll.
- The persons who may be admitted to a polling station and the count to observe elections.

The Rules also make amendments to:

- Provide for transmission of information to a presiding officer of alterations to the electoral register taking effect on the day of the poll. Amendments consequential upon the introduction of a scheme for the anonymous registration of certain electors are made.
- All the existing forms prescribed for use at these elections.

Statutory Instruments

SI 3305/2006 The Local Elections (Parishes and Communities) (England and Wales) Rules 2006

In force **2 January** except, for the purposes of an election, if the last date for the publication of the notice of election for that election was, or will be, prior to 27 March 2007. These Rules provide for the conduct of parish and community council elections. They replace the Local Elections (Parishes and Communities) Rules 1986 which are revoked by Schedule 1 to these Rules.

The rules in Schedule 2 to these Rules, like the rules in Schedule 2 to the 1986 Rules, apply, with adaptations, alterations and exceptions, the parliamentary elections rules (contained in Schedule 1 to the Representation of the People Act 1983) for the purpose of the conduct of parish and community elections. However, unlike the 1986 Rules, they apply the amendments made to the parliamentary elections rules by provisions of the Electoral Administration Act 2006. Under the Rules:

- Candidates may use their common names on nomination forms and ballot papers.
- ♦ The minimum age for a candidate is reduced from 21 to 18.
- Returning officers will be able to correct minor errors on nomination papers.
- Security markings on ballot papers are provided for; so, too, are unique identifying marks.
- Counterfoils on ballot papers are replaced by corresponding number lists.
- Requirements are imposed requiring postal voters and postal proxies to provide both their signature and date of birth when returning postal ballot papers.

The Rules reflect alterations as to:

- ♦ The circumstances in which a person may give a tendered vote. New requirements are introduced as to the information and accessibility of information to be provided by returning officers to electors.
- ♦ The persons who may be admitted to a polling station and the count to observe elections.
- The retention and inspection of election documents after the poll.

The Rules also make amendments to:

- Provide for transmission of information to a presiding officer of alterations to the electoral register taking effect on the day of the poll. Amendments consequential upon the introduction of a scheme for the anonymous registration of certain electors are made.
- All the existing forms prescribed for use at these elections.

SI 3331/2006 The Misuse of Drugs Act 1971 (Amendment) Order 2006

In force **18 January**. This Order reclassifies methylamphetamine, previously a Class B drug, as a Class A drug.

SI 3361/2006 The Gambling Act 2005 (Commencement No 6 and Transitional Provisions) (Amendment) Order 2006

This Order amends the Gambling Act 2005 (Commencement No. 6 and Transitional Provisions) Order 2006. It deletes the reference to Section 285 in Schedule 2 to the Commencement Order (which lists the provisions coming into force on 30 April 2007). A reference to that section already appears in Schedule 1 (which lists the provisions coming into force on 1 January 2007). The Order also amends the reference to Section 80 in Schedule 1 to make it clear that that provision is brought into force on 1 January 2007 only to the extent that it is not already in force.

SI 3363/2006 The Enterprise Act 2002 (Amendment) Regulations 2006

In force **8 January**. These Regulations implement Articles 4(6) and 13(4) of Regulation (EC) No. 2006/2004 of the European Parliament and of the Council of 27 October 2004 (the "CPC Regulation") which creates a network of enforcers which are responsible for taking action to stamp out cross-border infringements of the EC consumer protection legislation.

Part 8 of the Enterprise Act 2002 confers some of the enforcement powers referred to in the CPC Regulation on certain bodies in relation to most of the EC consumer protection legislation. These Regulations amend Part 8 to ensure that the powers set out in Article 4(6) of the CPC Regulation may be exercised in accordance with the terms of the said Regulation.

- Regulation 17 adds entry and inspection powers to Part 8 of the 2002 Act, along with certain procedural safeguards and a criminal offence of obstructing officers of enforcers.
- Regulation 11 gives details of the bodies which are entitled to exercise those powers.
- Regulation 12 restricts the scope of CPC enforcers' activities by providing that they
 may only apply for an enforcement order in relation to Community infringements.
- ◆ Regulation 13 gives effect to Article 4(6)(e) of the CPC Regulation by giving CPC enforcers the power to publish (or to obtain an undertaking to publish) an undertaking obtained other than in connection with proceedings to obtain an enforcement order.
- Regulation 16 extends the power in section 226 of the 2002 Act to enable enforcers to obtain information in any form (in accordance with Article 4(6)(a) of the CPC Regulation).
- Regulation 20 clarifies how references to those bodies, where they already act as enforcers under Part 8 are to be interpreted.
- Regulation 21 ensures that the entry and inspection powers do not apply to premises occupied by the Crown.
- Regulation 22 adds the three pieces of Community legislation to Schedule 13 of the 2002 Act to which CPC applies but Part 8 does not.
- Regulation 23 ensures that certain powers and protections which the Financial Service Authority enjoys under the Financial Services and Markets Act 2000, which are necessary for the proper discharge of its functions under the CPC Regulation, will apply to the discharge of those functions.
- Regulation 28 applies the enhanced seizure powers contained in section 50 of the Criminal Justice and Police Act 2001 to the power of entry and inspection under warrant set out in regulation 17.

- Regulation 26(1) ensures that the definition of legal professional privilege in regulation 17 applies where the issue of privilege arises in the context of the exercise of powers under the 2001 Act by CPC enforcers.
- Regulation 29 implements Article 13(4) of the CPC Regulation by ensuring that the subject access provisions in the Data Protection Act 1998 do not obstruct the proper functioning of the CPC Regulation.

SI 3364/2006 The Police and Justice Act 2006 (Commencement No 1, Transitional and Saving Provisions) Order 2006

In force **15 January**. This Order brings into force certain provisions of the Police and Justice Act 2006. These include:

 Section 2 (Amendments to the Police Act 1996) in so far as it relates to paragraphs 1 to 6 and 8 of Schedule 2.

These provisions provide the Secretary of State with a power to make regulations in respect of police authority membership and make certain provision as to what is to be prescribed in those regulations. It is intended that those regulations will be made in Summer 2007 and that the new scheme will operate from 1 April 2008 (in the case of police authorities established under section 3 of the Police Act 1996) and from 3 July 2008 (in the case of the Metropolitan Police Authority).

Article 3 of the Order makes transitional and saving provisions that provide that the current Schedules 2, 2A, 3 and 3A of the Police Act 1996, that relate to police authorities, shall continue in force until 31 March 2008 or 2 July 2008. See also SI 3365/2006.

A key difference between the existing provision under the Police Act 1996 and that made under the 2006 Act is that the new regime reduces the mandatory number of lay justice members of police authorities.

Section 11 (power to detain pending DPP's decision about charging).

Section 11 amends Section 37 of the Police and Criminal Evidence Act 1984 so as to enable a custody officer to detain a person whilst the Director of Public Prosecutions (in practice the relevant duty CPS lawyer) is making a decision about charging. This amendment clarifies the power to detain; but it will be a matter for the custody officer to determine on an individual basis whether the person should be detained or granted bail whilst awaiting the outcome.

The Home Office has stated that it will be producing guidance on this subject, which will emphasise that detention whilst awaiting a decision to detain should normally be for no more than three hours. (At the time of publication of this *Digest* the guidance has not yet been published).

- Section 42 (amendments to the Extradition Act 2003 etc) in so far as it relates to the Schedule 13 (other than paragraphs 4, 5 and 6).
- Section 44 (transfer of prisoner under international arrangements not requiring his consent).
- Section 45 (attendance by accused at certain preliminary or sentencing hearings) other than to the extent it substitutes new Section 57C (use of live link at preliminary hearings where accused is at police station) of the 1998 Act and subject to article 4.
- Section 47 (evidence of vulnerable accused).
- Section 48 (appeals under Part 1 of the Criminal Appeal Act 1968).

- Section 52 (amendments and repeals) in so far as it relates to the entries in Schedule 14 referred to in sub-paragraph (k) and the entry in Schedule 15 referred to in subparagraph (l).
- Paragraphs 3, 4 and 61 of Schedule 14 (minor and consequential amendments).
- In Part II of Schedule 15 (repeals and revocations), the entry relating to Schedules 3 (police authorities: selection of independent members) and 3A (police authorities: selection of lay justice members) of the 1996 Act, subject to article 3.

SI 3365/2006 The Police and Justice Act 2006 (Supplementary and Transitional Provisions) Order 2006

In force **15 January**. This Order ensures that, until that new scheme in respect of membership, etc., of police authorities comes into operation, existing lay justice members of police authorities in England and Wales whose appointments would otherwise expire on or after 15 January 2007 shall have their appointments extended until 31 March 2008 or, in the case of the Metropolitan Police Authority, 2 July 2008. This is intended to avoid, where possible, the need to run an appointments process for the purposes of a short period of time only. This will be the case even where the lay justice is no longer assigned to the relevant local justice area as a result of his name being entered on the supplemental list under Section 13 of the Courts Act 2003 or where, consequently, he no longer principally resides or works within the police area of that police authority. Other provision in the Police Act 1996 regarding disqualification and resignation will continue to apply.

SI 3391/2006 The Gambling Act 2005 (Relevant Offences) (Amendment) Order 2006

In force **8 January**. This Order amends the list of offences that are treated as relevant offences for the purpose of the grant and maintenance of operating and personal licences under Parts 5 and 6 of the Gambling Act 2005.

Relevant offences are listed in Schedule 7 to the 2005 Act. Article 2 of the Order amends Schedule 7 to the 2005 Act by:

- Removing the definition of "sexual offence" in paragraph 8 and replacing it with descriptions of a number of offences of a sexual nature under the law of England and Wales (inserted paragraphs 8 and 8A).
- ♦ Adding an offence of abuse of trust under the Sexual Offences (Amendment) Act 2000 under the laws of England and Wales and Scotland (inserted paragraph 8B).
- Removing the definition of "violent offence" in paragraph 9 and replacing it with specific offences of a violent nature under the law of England and Wales (inserted paragraphs 9 and 9A).

These amendments include statutory offences that have been wholly or partially repealed.

SI 3393/2006 The Asylum (First List of Safe Countries) (Amendment) Order 2006

In force **1 January**. This Order adds Bulgaria and Romania to the list in Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (countries which are to be treated as safe for the purpose of determining whether a third country national, who has made an asylum or human rights claim in the United Kingdom, may be removed to one of them).

Statutory Instruments

SI 3410/2007 The Private Security Industry (Licences) (Amendment) Regulations 2006

In force **1 February**. These Regulations amend the Private Security Industry (Licences) Regulations 2004.

- Regulation 2(3) substitutes the definition of "category of licensable activity". The new definition clarifies the relationship between the categories of Door Supervisor, Cash and Valuables in Transit and Close Protection, amends the Public Space Surveillance (CCTV) category to ensure it applies to contractors on licensed premises, and amends the Security Guard category to clarify that it will apply to contractors on licensed premises where their activity does not also fall under paragraph 8 of Schedule 2 to the Act.
- Regulation 2(4) amends regulation 4(1) to ensure that it does not apply to keyholding activities.
- Regulation 2(5)(a), (c) and (d) amends regulation 4B of the 2004 Regulations to enable a front line licence issued in respect of the Public Space Surveillance (CCTV) category of licensable activities to cover the use of CCTV equipment which would otherwise fall under, and require a licence for, the Security Guard category of licensable activities.
- Regulation 2(5)(b) enables a non-front line licence in respect of any category of licensable activity to cover non-front line conduct in respect of any other category of licensable activities.
- Regulation 2(6) substitutes a new Schedule 3 (form of licence to act as manager, etc).

SI 3411/2006 The Private Security Industry Act 2001 (Duration of Licence) (No 2) Order 2006

In force **1 February**. This Order makes provision in respect of the duration of licences issued by the Security Industry Authority under section 8 of the Private Security Industry Act 2001.

- Article 3 of this Order provides that where such a licence is issued to persons engaged in front line licensable conduct in respect of those activities contained in paragraph 3 (immobilisation of vehicles) or paragraph 3A (restriction and removal of vehicles) of Schedule 2 to the 2001 Act, it shall remain in force for a period of one year beginning on the day on which it is granted. This provision was previously made under the 2006 Order in respect of England and Wales.
- Article 4 of this Order provides that where such a licence is issued to persons by way of renewal, it shall remain in force for the sum of the period of time for which a new licence in respect of that licensable conduct would be issued were it not for the renewal (either three years by virtue of section 8(8)(a) of the 2001 Act or one year by virtue of article 3 of this Order) and, subject to a maximum period of three months, the maximum period for which the previous licence could have remained in force after the renewal was granted had that previous licence remained in force for the full period of time for which it was issued.
- Article 5 revokes the 2006 Order but provides that the 2006 Order will continue to apply in respect of applications received before 1 February 2007.

SI 3412/2006 The Electoral Administration Act 2006 Commencement No 2, Transitional and Savings Provisions) Order 2006

This Order brought into force on **1 January**, in relation to England and Wales, the majority of the provisions of the Electoral Administration Act 2006 that have not yet been commenced. In some cases the provisions are brought into force for the limited purposes specified in the Order.

Article 5 of the Order brings into force Section 29 (Observation of proceedings and working practices) and related provisions of Schedule 1 to the Act on **31 January** in England and Wales and Scotland.

SI 3415/2006 The Police Pensions Regulations 2006

In force **1 February**. These Regulations make fresh provision in relation to pensions payable to police officers and to others, including surviving spouses or civil partners and children, in respect of deceased serving or retired officers.

The Regulations have effect from 6 April 2006 (the commencement date), apart from regulations 13(3)(b) and 78(7) which have effect from 1t February 2007. Retrospective effect is permitted by section 1(5) of the Police Pensions Act 1976.

The Regulations apply to:

- Police officers who first became such on or after the commencement date.
- Certain officers who first became such before the commencement date and rejoin the police service on or after that date following a break in service, subject to modifications in Schedule 2.
- Officers who remain in service as at the commencement date but who elect or had elected not to pay pension contributions; they may elect to pay contributions under these Regulations (regulation 6(3) and (4)).

The Police Pensions Regulations 1987 continue to have effect in relation to other police officers who first became such before the commencement date. Officers who remain in service as at the commencement date and are paying pension contributions under the 1987 Regulations may elect for these Regulations to apply instead and for earlier pensionable service to count towards pension awards under these Regulations (regulation 6(6) to (9)). Regulation 6(8) also enables other categories of serving officer who first became such before the commencement date, and who are entitled to accrued benefits under the 1987 Regulations, to make a transfer election so that earlier pensionable service will instead count towards pension awards under these Regulations. Schedule 3 makes provision for transfer elections and related matters.

Part 2 of the Regulations further requires pension contributions to be paid by police officers (regulation 7) subject to an election not to do so (regulation 9). That Part also provides for the reckoning of pensionable service, and governs the time of voluntary or compulsory retirement. The minimum age for voluntary retirement is 55 years.

Part 3 is concerned with the calculation of pensionable pay and aggregate pension contributions for the purposes of awards.

Part 4 makes provision for the pension awards which may be payable to police officers or in respect of deceased officers, and for the circumstances in which awards may be reviewed, withdrawn or forfeited.

Part 5 enables officers to purchase increased benefits or "added years".

Statutory Instruments

Part 6 applies to cases where there is a pension sharing order under the Welfare Reform and Pensions Act 1999 (or the corresponding Northern Ireland legislation) or the Civil Partnership Act 2004.

Part 7 contains provision for the determination of medical questions related to eligibility for awards.

Part 8 contains financial provisions including provisions on transfer values.

Part 9 makes provision for special cases: chief officers affected by alterations in police areas, servicemen (as defined in regulation 88) and transfers of police officers to or from a Scottish police force or the Police Service of Northern Ireland.

SI 3422/2006 The Criminal Justice Act 2003 (Commencement No 15) Order 2006

In force **8 January**. This order brings into force the following provisions of the Criminal Justice Act 2003:

- Section 50 (application of Part 7 to Northern Ireland), in so far as it applies to applications under section 44 (jury tampering) and trials ordered under section 44 or 46 (discharge of jury because of jury tampering).
- Section 331 (further minor and consequential amendments).
- ◆ In Schedule 36 (minor and consequential amendments), Part 4, in so far as not already in force, and paragraphs 91 (in so far as not already in force), 92(1) to (5) and (7) and 93.

SI 3423/2006 The Domestic Violence, Crime and Victims Act 2004 (Commencement No 7 and Transitional Provision) Order 2006

In force **8 January**. This Order brings into force the following provisions:

- Sections 17 to 21 (trial by jury of sample counts only);
- Section 30 (prosecution appeals);
- Section 56 (grants for assisting victims, witnesses, etc.);
- Section 58(1) (minor and consequential amendments) in so far as it relates to the provision referred to in paragraph (f);
- Schedule 1 (modifications of sections 17 to 20 for Northern Ireland); and
- Paragraph 62 of Schedule 10.

However, the coming into force of Sections 17 to 20 has no effect in relation to cases where, before 8 January 2006: the defendant has been committed for trial; a notice of transfer has been given under Section 4 of the Criminal Justice Act 1987 (serious or complex fraud) or Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988; a notice of transfer has been given under Section 53 of the Criminal Justice Act 1991 (cases involving children) or Article 4 of the Children's Evidence (Northern Ireland) Order 1995; or the prosecution evidence has been served on the defendant in a case sent for trial under Section 51 of the Crime and Disorder Act 1998.

SI 3449/2006 The Police (Amendment) (No 2) Regulations 2006

These Regulations amend the Police Regulations 2003 with effect from **1 February 2007**, except for:

- Regulation 6, which has effect from 16 April 2003.
- Regulation 8, which has effect from 24 July 2003.
- Regulation 9, which has effect from 1 April 2004.

This retrospective effect is permitted by section 50(5) of the Police Act 1996.

A more detailed explanation of these regulations can be found in the articles on Home Office Circular 1/2007 and 2/2007 on pages 48 and 45 respectively.

SI 3451/2006 The Extradition Act 2003 (Amendment to Designations) Order 2006

In force **22 December 2006**. This Order designates Bosnia and Herzegovina for the purposes of Sections 71(4), 73(5), 84(7) and 86(7) of the Extradition Act 2003. The effect of this is to alter the evidential requirements made of Bosnia and Herzegovina when they make an extradition request to the United Kingdom.

SI 29/2007 The Police and Justice Act 2006 (Commencement No 1, Transitional and Saving Provisions) (Amendment) Order 2007

In force **15 January**. This amends the Police and Justice Act 2006 (Commencement No.1, Transitional and Saving Provisions) Order 2006 to provide for the commencement of the additional consequential amendments set out in paragraphs 9, 10 and 62 of Schedule 14 to the Police and Justice Act 2006.

SI 30/2007 The Employment Act 2002 (Amendment of Schedules 3, 4 and 5) Order 2007

In force **6 April**. Part 3 of the Employment Act 2002 provides for statutory dispute resolution procedures, which are set out in Schedule 2 to the Act. There are procedures for both dismissal and disciplinary proceedings and grievance issues. These procedures apply to the jurisdictions which are listed in Schedules 3 and 4 to the Act. Section 38 requires an employment tribunal to award compensation in certain cases arising under the jurisdictions listed in Schedule 5.

This Order adds to the jurisdictions listed in Schedules 3, 4 and 5 to the Act those provisions which are referred to in article 3 of the Order. It contains transitional provisions, so that the dismissal and disciplinary procedures only apply where the employer first contemplated taking action after the Order comes into force, and the grievance procedure only applies where the grievance occurs after the Order comes into force, unless the grievance is a continuing matter and the employee has raised it with his employer or has presented a complaint to the employment tribunal before that date.

Statutory Instruments

SI 74/2007 The Violent Crime Reduction Act 2006 (Commencement No 1) Order 2007

In force **12 February**. This Order brings into force the following provisions of the Violent Crime Reduction Act 2006:

- Section 42 Increase of maximum sentences for offences of having knives, etc.
- Section 54 Forfeiture and detention of vehicles, etc.
- Section 55 Continuity of sexual offences law.
- Section 57 Amendment of s.82 of the Sexual Offences Act 2003.
- Schedule 4 Forfeiture and detention of vehicles, etc.

SI 95/2007 The Driving Licences (Exchangeable Licences) Order 2007

In force **31 January**. This Order designates the Faroe Islands under Section 108(2)(b) of the Road Traffic Act 1988 as making satisfactory provisions for the issue of certain classes of driving licence. This enables a person holding one of these licences to exchange it for a corresponding British licence.

The licences affected are those authorising the driving of mopeds, motor cars and small goods vehicles up to 3.5 tonnes maximum authorised mass (with or without a trailer), tractors, pedestrian controlled vehicles and mowing machines.

The Order also provides that a licence may not be exchanged for a British licence authorising the driving of vehicles with manual transmission unless the holder took a driving test on a vehicle with manual transmission. If the test was taken in a vehicle with automatic transmission, it will be exchangeable only so far as the licence authorises the driving of vehicles with automatic transmission.

SI 96/2007 The Driving Licences (Exchangeable Licences) (Amendment) Order 2007

In force **31 January**. This Order amends the Driving Licences (Exchangeable Licences) Order 1999 (S.I. 1999/1641) which designates various countries and territories as having satisfactory provision for the issue of driving licences. A person who holds a licence issued by one of these countries may exchange their licence for a corresponding British licence.

This Order amends the Schedule to the 1999 Order so as to remove Kenya from that list. The effect is that the holder of a Kenyan driving licence exchanged for the licence of a designated country or territory listed in the Schedule to the 1999 Order can no longer exchange that licence for a British one.

SI 114/2007 The Work at Height (Amendment) Regulations 2007

In force **6 April**. These Regulations amend the Work at Height Regulations 2005 (S.I. 2005/735).

Notes