NPIA
National Policing Improvement Agency

Digest

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DIVERSITY Criminal Justice

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

This month's edition contains articles on a number of Government plans for the period 2008/11, these include; a revised National Community Safety Plan; a Strategic Plan for Reducing Re-Offending for Adults; and a Children's Plan.

A number of articles in relation to the Proceeds of Crime Act 2002 are also covered, including; a revised Investigation Code of Practice; a revised Search Code of Practice; revision of the obligations to report money laundering (known as the 'consent regime'); and the first annual report on the Suspicious Activity Reports (SARs) regime.

This issue also contains a number of articles that will particularly impact on custody areas, these include; revised PACE Codes; a number of legal aid reforms in respect of information to be provided to detainees and the contacting of solicitors; guidance on the arrangements for the safety and security of solicitors and other legal representatives in custody areas; and a report into deaths during or following police contact.

Other issues covered include Government counter- terrorism proposals; police funding; the Pitt Review; intended reforms in respect of rape cases; and roll-out of the pre-trial witness interview scheme.

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

Case law in association with lawtel From Sweet & Maxwell

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Guidance for People within the Police Service in Relation to the Articulation and Expression of Religious Beliefs in the Workplace

The ACPO Cabinet has agreed and published a guidance document which sets out key principles and guidance in order to help people working within the police service to understand and deal with issues that arise in relation to the expression of faith in the workplace.

The document recognises that, as responsible and intelligent adults, staff may wish to discuss controversial issues at appropriate times within the working day. But it points out that it is not acceptable for staff who wish to express their religious or other beliefs within the workplace to do so in a way that amounts to discrimination against other members of staff or in a way that other staff find intimidating, hostile, degrading, humiliating or offensive. It reminds officers and staff that such behaviour is likely to constitute either an offence against the Code of Conduct for Police Officers (if he/she is a police officer) or an act of misconduct (if he/she is a member of the police staff); or that it may also constitute a breach of either the Employment Equality (Religion or Belief) Regulations 2003 or the Employment Equality (Sexual Orientation) Regulations 2003.

The guidance will be circulated to force by ACPO.

Consultation on the Next Three Years of Learning Disability Policy

The Department of Health has published a consultation paper, 'Valuing people now: from progress to transformation - a consultation on the next three years of learning disability policy', which sets out the Government's priorities for the provision of services for people with learning disabilities, over the years 2008-2011.

The paper considers what has happened over the last six years in terms of national policy, local delivery and any new issues that need to be addressed, against the Government's vision set out in its White Paper 'Valuing People' (2001).

The paper focuses on the priorities of personalisation; what people do during the day; better health; access to housing; and making sure that change happens. In addition, it covers other important issues such as hate crime and relationships.

It identifies a number of issues and challenges in respect of the reporting and recording of hate crime in connection with people with learning disabilities, including:

- Many people with learning disabilities find it difficult to report crime because police processes can be inaccessible or unwelcoming.

- That, due to the fact that hate crime data generally does not identify that a person with a learning disability was the victim, the police and local crime and disorder reduction partnerships do not realise what a problem hate crime against people with learning disabilities is, because they do not see it recorded.
- Often, when a person with a learning disability reports a hate crime, the matter is referred to adult protection procedures and not treated as a crime.

It intends to address these issues by:

- The Home Office, in partnership with the Department of Health, producing guidance for the criminal justice system and local authorities.
- Providing Home Office grants to support voluntary sector initiatives on hate crime.

The consultation will run until 11 March 2008. It can be found in full at http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_081014

The ODI Annual Report 2007 - 'Working Towards Disability Equality'

The Office for Disability Issues (ODI) has published its second annual report, which provides an update on the role of the ODI in leading work to deliver the government's vision of equality for disabled people by 2025.

The report sets out the range of work initiated by the ODI over the past year, including the launch of Equality 2025, a new advisory body to government.

During 2008 the ODI plans to:

- Launch a five-year independent living strategy, aimed at giving disabled people more choice and control over the services and support they need.
- Support Equality 2025 in establishing new ways of bringing the voices of disabled people into government and of influencing policy.
- Secure ratification by Government of the United Nations Convention on Disability Rights.
- Assist departments in producing the Secretary of State reports required by the Disability Equality Duty on the progress made by public bodies in their respective policy sectors.
- Work closely with the new Government Equalities Office to respond to the Equalities Review and ensure the proposed single equality act promotes equality for disabled people.
- Develop an effective working relationship with the new Equality and Human Rights Commission.
- Work across government and with disabled people to finalise plans for the first British Longitudinal Survey dedicated to disability issues.

The report can be found in full at http://www.officefordisability.gov.uk/publications/report/2007/pdf/annual-report.pdf

Government Action Plan on Tackling the Over-Representation of Young Black People in the Criminal Justice System

The Government has published an action plan, 'Delivering Improved Outcomes for Young Black People in the Criminal Justice System', which sets out the detail of the proposed governance structure, programme management, monitoring and reporting arrangements that will drive and support delivery and enable it to monitor and report progress on reducing unfair disproportionality in the CJS for young black people.

The Action plan is in response to the Home Affairs Select Committee report 'Young Black People and the Criminal Justice System', (covered in the July edition of the *Digest*).

The Action plan also contains a table demonstrating how each of the commitments made in the Government response maps onto the new Public Service Agreements (PSAs) and identifying the PSA delivery agreement number and lead Government Department. In relation to actions by the National Policing Improvement Agency these are:

PSA 8 - Maximise employment opportunity for all

- An evaluation and assessment of current positive action initiatives to be carried out that will underpin the NPIA Equality Diversity and Human Rights Unit Knowledge Management Project.

PSA 21 - Build more cohesive, empowered and active communities

- Neighbourhood policing teams to work with schools and local partners where particular schools, locations or pupils are identified as problematic

PSA 24 - Deliver a more effective, transparent and responsive CJS for victims and the public

- NPIA Stop and Search Delivery Board and the Community Panel Strategy and Work Plan to reflect the need to ensure that Stop and Search is only used when operationally appropriate to do so by integrating principles of Practice Oriented Package (POP) within general operational planning
- Use of POP to be promoted in all forces.
- Benefits management strategy to be developed to assess impact of diversity learning programmes.
- Community trust and confidence toolkit to enable effective monitoring of forces' progress on perceptions of policing.
- Carry out an equality impact assessment to identify potential adverse effects contained within the NDNAD and the DNA Good Practice Guide.

- Full cost-benefit analysis of palm-pilot trial to be undertaken.

The Action plan can be found in full at http://www.justice.gov.uk/docs/delivering-improved-outcomes.pdf

Consultation on Building Stronger Communities through Inter Faith Dialogue and Interaction

The Government has published a consultation paper, 'Face-to-Face and Side-by-Side' which is seeking views on how Government can best support faith communities' engagement with one another and with their local communities. The consultation is part of the Government's response to the independent Commission on Integration and Cohesion's report 'Our Shared Future' which set out a number of practical recommendations on how to build cohesion and a shared sense of belonging including confirming the important role that inter faith activity has to play in building integration and cohesion, as well as the need for more constructive conversations between those of faith and those of none.

The consultation will run until 7 March 2008. Responses to it will be used to help develop the final strategy and to inform plans for implementation. The final strategy and the summary of consultation responses will available in late spring 2008.

The consultation paper can be found in full at http://www.communities.gov.uk/publications/communities/interfaithdialogue

Project to Broaden the use of the Police and Law Enforcement Suite of National Occupational Standards

Skills for Justice is carrying out a project aimed at broadening the use of the existing Police and Law Enforcement suite of National Occupational Standards (NOS) making them applicable for other law enforcement agencies such as SOCA, Border and Immigration Agency, and HM Revenue and Customs.

Following work by a number of project working groups, several draft NOS have been published for wider consultation. These cover the following areas:

- Surveillance.
- Custody.
- Covert human intelligence sourced (CHIS).
- Investigations.
- Intelligence.
- Operations.
- Disclosure, exhibits and evidence.

The draft NOS will be available for comment until 18 January 2008. Following the consultation period, Skills for Justice will be looking for practitioners who have current operational experience in these areas to join further project working groups in February 2008, the aims of which are to:

- Contribute to the review and development of the NOS for wider law enforcement.
- Ensure good communication between the working group and their organisations, and represent the views of organisations to the group.
- Advise the Project Manager of specific aspects of the project, e.g. whom to consult, and how and when to consult them.
- Agree and provide letters of support for the final drafts of NOS (strengthen NOS submission for UKCG approval).

Further details can be obtained from the Project Manager, Clare Naseby, by email on clare.naseby@skillsforjustice.com or by telephone on 0114 231 7391 /07920 597789.

Guidance for Safer Working Practice for Adults who Work with Children and Young People

A generic guidance document, commissioned by the Department for Children, Schools and Families (DCSF), which provides clear advice on appropriate and safe behaviours for all adults working with children in paid or unpaid capacities, has been published. Although not intended to replace or take priority over advice or codes of conduct produced by employers or national bodies, it should complement existing professional procedures, protocols and guidance which relate to specific roles, responsibilities or professional practices.

The guidance can be found in full at http://www.go-se.gov.uk/497648/docs/411784/GuidanceSaferWorkingPractices

Study Report on Methods to Assess and Report on the Value of Learning

The Chartered Institute of Personnel and Development (CIPD), in conjunction with the University of Portsmouth Business School, have published the results of a study into how organisations are developing a range of different methods to assess and report on the value of learning.

The report, 'Value and Evaluation: From return on investment to return on expectation', concludes that effective value and evaluation processes require practitioners to develop and use measures that are relevant to organisational stakeholders and the needs of the business. It finds that measures of 'return on expectation', rather than return on investment, are more likely to meet these needs.

The report can be found in full at http://www.cipd.co.uk/NR/rdonlyres/94842E50-F775-4154-975F-8D4BE72846C7/0/valoflearnnwmodvalca.pdf

The Police and Criminal Evidence Act 1984 (Codes of Practice) Order 2008

On 17 December 2007 amended draft PACE Codes of Practice (Codes A to E) were laid before Parliament together with 'The Police and Criminal Evidence Act 1984 (Codes of Practice) Order 2008'.

Subject to Parliamentary approval, it is expected that the Order which appoints the date on which the revised codes of practice under Section 60(1)(a) and 66(1)(a) to (d) of PACE will come into force (superseding the existing codes of practice) on I February 2008.

The changes primarily:

- Clarify stop and search.
- Implement Lord Carter's review of legal aid procurement.
- Enable the police to caution suspects in Welsh where appropriate.
- Enable the audio recording of interviews on secure digital network to be piloted.

They also reflect other minor legislative changes and make other corrections to the previous codes of practice.

Copies of the draft Order, an explanatory memorandum and full details of the changes to the Codes can be found at http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/?view=Standard

Serious Crime Act 2007 - Update

The Serious Crime Act 2007 received Royal Assent on 30 October 2007. The details of the Bill as originally introduced to Parliament on 16 January 2007 were covered in the January 2007 edition of the *Digest*.

A number of changes were made to the Bill in the legislative process. Differences between the Act at Royal Assent and the original text of the Bill are highlighted below.

Part 1 - Serious Crime Prevention Orders (SCPOs)

Section 1 of the Act lists an involvement in 'serious crime' as one of the requirements to be met before an SCPO can be granted. Serious crime (in relation to England and Wales) is defined in Section 2 (Section 3 for Northern Ireland) to include the offences listed in Part 1 of Schedule 1 to the Act (Part 2 of Schedule 1 for Northern Ireland). Since the original text of the Bill, this list has been amended. It now also includes:

- Armed robbery.
- An offence under Section 17 of the Theft Act 1968 (false accounting).
- Offences in relation to public revenue.

The original clause 5(5) of the Bill gave examples of requirements which can be imposed under an SCPO, including requirements to answer questions, provide information, or produce documents to a law enforcement officer (LEO). It did not specify how the requirements should be performed.

Section 5(5) as enacted allows the LEO to specify how these requirements (including timing, location, manner, and for questions or information, form) are to be performed. As a result of this change, the original clause 5(7) of the Bill has been omitted from the Act, which was a wide clause specifying that any requirements given were part of the order, even if not explicitly stated in the order.

Clause 24 of the Bill originally provided that an appeal could be made in relation to a decision of the Crown Court only with leave of the Court of Appeal. As enacted, Section 24 still requires leave of the Court of Appeal **unless** the judge who made the decision in question grants a certificate stating the matter is fit for appeal.

This method of appeal operates instead of any power to appeal under Sections 9 or 10 of the Criminal Appeal Act 1968 or Section 8 of the Criminal Appeal (Northern Ireland) Act 1980. The Secretary of State has the power to make orders corresponding to these other powers, particularly as regards payment of costs.

Another change to Section 24 from the original bill is the addition of a further appeal against a decision of the Court of Appeal made under subsections 1 and 2, to the Supreme Court. This appeal requires leave of the Court of Appeal or the Supreme Court, and can be made by any party to the proceedings before the Court of Appeal.

Sections 27, 28 and 29 relate to the power to wind up companies. Clause 27 of the Bill applied this power to England and Wales only. Section 27 as enacted now applies to England, Wales and Scotland. Section 28 deals with this power in Northern Ireland. A new Section 29 appears in the Act, which details supplementary provisions to the power to wind up companies.

A new Section 34 appears in the Act, which concerns limitations on the restrictions which can be imposed upon a provider of information society services, in line with the Directive on electronic commerce (2000/31/EC).

Section 36 details procedures in the Crown Court and has been amended slightly from the text of the original clause 34 of the Bill. Section 36 states that the Crown Court is a criminal court for proceedings under Sections 19, 20 and 21 (serious crime prevention orders made by the Crown Court) and so the applicable rules will be the Criminal Procedure Rules. The Bill applied the Civil Procedure Rules to proceedings in the Crown Court.

The new Section 38 provides that any provision of information, answering of questions or production of documents as required by an SCPO does not breach any duty of confidence or restriction on disclosure (subject to the limitations in sections 11 to 14).

A further addition is Section 39. This allows a law enforcement agency to enter into an arrangement with person to monitor whether an SCPO is being complied with (an 'authorised monitor'). The SPCO may allow the authorised monitor to receive information from the subject as if they were the LEO (subsection 3).

The SCPO may impose requirements on the subject of the order to pay towards the costs incurred by the law enforcement agency through using the authorised monitor. A new section 40 also appears in the Act which makes further provision about costs in relation to authorised monitors.

PART 2 - Encouraging or Assisting Crime

A new subsection (6) has been inserted into Section 49 (originally clause 44 of the Bill). This provides that the Secretary of State may by order amend Schedule 3 (listed offences to be disregarded in deciding whether an act is capable of encouraging or assisting the commission of offences for sections 45 and 46).

The Bill originally contained a clause 45, which provided a defence for a person who proves that they acted to prevent the commission of that offence or another offence, or to prevent or limit the occurrence of harm, and it was reasonable for him to act as he did. This clause does not appear in the Act.

Section 50 as enacted differs slightly from the original clause 46 of the Bill. When determining if a person claiming this defence was acting reasonably, the court must now consider the seriousness of the anticipated or specified offences, any purpose for which he claims to have been acting and any authority by which he claims to have been acting.

Section 52 as enacted (originally clause 48) now states that the jurisdiction provisions in Part 2 are without prejudice to any jurisdictional rules in relation to other offences. So, for example, the Sexual Offences Act 2003 makes specific provisions in relation to jurisdiction, so these would govern an offence of encouraging or assisting an offence under that Act.

Section 57 has been substantially altered from the original clause 52. It now sets out the offences which a person can be found guilty in the alternative when tried for an offence under Sections 44, 45 or 46. The provisions are to have the same effect as the rules on alternative verdicts for trials on indictment for the offences which have been encouraged or assisted.

The section now makes provision for a defendant to plead guilty to an offence of encouraging or assisting an offence which encompasses the offence originally charged - for example a defendant may plead guilty to an offence of encouraging or assisting theft, when originally charged with encouraging or assisting robbery.

A new Section 60 appears in the Act which was not in the original Bill. This gives effect to Schedule 5, amending enactments relating to service law.

Section 62 appears in the Act to amend Section 18 of the Corporate Manslaughter and Corporate Homicide Act 2007, to provide that a person cannot be guilty of encouraging or assisting crime if the substantive offence is one of corporate manslaughter.

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

Chapter 1 - Prevention of Fraud

A new Section 71 appears in the Act which requires the Secretary of State to prepare and maintain a Code of Practice on disclosure of information for the purposes of preventing fraud, in consultation with specified bodies. Public authorities are obliged to have regard to this code when disclosing such information.

Chapter 2 - Proceeds of Crime

Sections 82 to 85 did not appear in the original text of the Bill. Section 82 amends the Proceeds of Crime Act 2002. It provides that management receivers and enforcement receivers have the power to sell or dispose of assets which are perishable, or should be disposed of before their value diminishes, without having to give an opportunity to make representations to a person with an interest in the assets.

Section 83 amends the Proceeds of Crime Act 2002 by creating a new type of receiver in civil recovery proceedings, who can be appointed to deal with property subject to a property freezing order. The amendments detail the receiver's functions, powers and supervision requirements.

Section 84 provides a power for prosecutors to appear in cash recovery proceedings. This is achieved by amending the Proceeds of Crime Act 2002 and the Commissioners for Revenue and Customs Act 2005.

Section 85 provides that HMRC may disclose information to specified bodies for the purpose of civil recovery of the proceeds of crime. This information would otherwise be protected from disclosure by the Commissioners for Revenue and Customs Act 2005.

Chapter 3 - Other Measures

Chapter 3 of Part 3 was originally named 'Regulation of Investigatory Powers'. This has now changed due to the addition of Section 87.

Section 87 extends Section 60 of the Criminal Justice and Public Order Act 1994. It provides that an authorisation to stop and search in a specified locality can be given when:

- A serious violent incident has occurred;
- The police believe the weapon used in this incident is being carried in the locality; and
- It is expedient to give an authorisation to find the weapon.

This authorisation may be given orally if it is not practicable to be given in writing; however a written authorisation must then be completed as soon as practicable.

Part 4 - General and Final Provisions

Section 89 deals with the power to make orders under the Act, specifying that this shall be done by statutory instrument. It has been amended slightly to include the Treasury in the list of parties that can make orders.

The Act can be found in full at http://www.opsi.gov.uk/acts/acts2007a

Counter Terrorism Bill

The Government has published a number of documents in connection with the counter-terrorism proposals it intends to include in the forthcoming Counter Terrorism Bill, which is expected to be published early in the New Year.

The documents include:

- A report on the proposals for a counter-terrorism bill, by the independent reviewer of terrorism legislation Lord Carlile of Berriew QC. http://security.homeoffice.gov.uk/news-publications/publication-search/general/lord-carlile-report
- A paper summarising the results of the public consultation on the proposals for the Counter Terrorism Bill. http://security.homeoffice.gov.uk/news-publications/publication-search/general/summary-of-responses
- A paper setting out the Government's pre-charge detention proposal. http://security.homeoffice.gov.uk/news-publications/publication-search/general/pre-charge-detention/pre-charge-detention-proposal?view=Binary

The Government's present position is that it still believes that there is a need to legislate to allow, where the need arises in exceptional cases, to hold terrorist suspects without charge for more than the current 28 days. It believes that the new proposal it is putting forward will address many of the concerns that have been raised during the consultation period. It has published its proposal with the intention of discussing it further both inside Parliament and with the wider community, with the aim of achieving a consensus on the way forward.

The proposal is to legislate in the Counter Terrorism Bill to increase the pre-charge detention limit to 42 days only for a strictly limited period of time and in response to a specific operational situation.

The higher limit will only come into force where there is a specific operation exceptionally requiring the powers, and then remain in force only where there are compelling operational reasons.

The decision to bring a higher limit into force will only be made by the Home Secretary, following receipt of a joint report from the Director of Public Prosecutions and the police setting out their reasonable grounds for believing that more than 28 days will be required to obtain, preserve or examine relevant evidence and stating that the investigation is being carried out diligently and expeditiously.

The higher limit would therefore not be made available unless the Home Secretary was satisfied it was required in relation to a specific operation and would only remain in force for a limited period.

If, after considering all the relevant operational advice, the Home Secretary decides to bring into force the higher limit, it will come into effect on the day on which he or she signs the order making the higher limit available.

The Home Secretary's decision will be subject to judicial review.

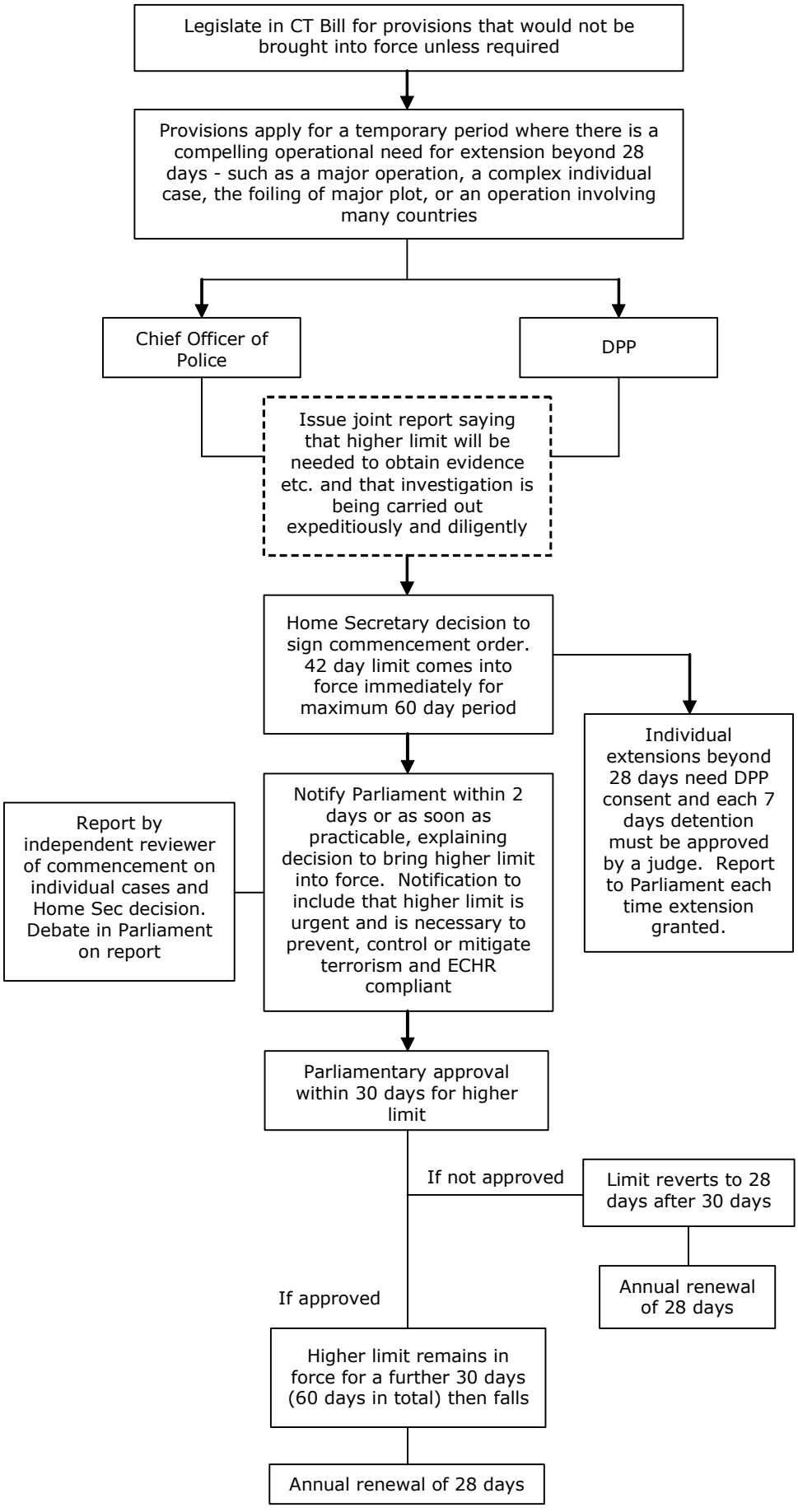
The Home Secretary will be required to provide a statement (containing a number of agreed conditions) to Parliament within two days of, or as soon as practicable after, bringing the higher limit into force.

The higher limit will then need to be agreed following a debate in both Houses of Parliament within 30 days of it coming into force. If not approved, the limit would revert after 30 days to the lower limit.

Even if the agreement of Parliament is obtained, the higher limit would fall automatically after a further 30 days.

The maximum amount of time that the higher limit will therefore remain in force would be 60 days and only then if it had been debated and approved by Parliament.

A diagram showing how this proposal would work is set out overleaf.



Investigation Code of Practice Issued under the Proceeds of Crime Act 2002

The Home Office has published a consultation paper which seeks views on a draft Code of Practice issued under Section 377 of the Proceeds of Crime Act 2002 (POCA), which provides guidance on the use of the powers of investigation which are provided by POCA. It will apply to all those (except prosecutors) who have functions under Chapter 2 of Part 8 of POCA to apply for or execute the powers of investigation, namely:

- The Director General of the Serious Organised Crime Agency (SOCA) and members of staff of SOCA.
- Accredited financial investigators (AFIs).
- Constables.
- Officers of Her Majesty's Revenue and Customs (HMRC).

When ratified, the Code will replace the existing Code, which came into force on 24 February 2003. The update of the existing Code is necessary due to amendments made to the investigation provisions by the Serious Crime Act 2007 and developments under the Codes issued under the Police and Criminal Evidence Act 1984.

The closing date for comments is 25 January 2008, after which it is expected that a summary of responses received will be published within three months.

The consultation paper and the draft code of practice can be found in full at http://www.homeoffice.gov.uk/documents/code-of-practice?view=Binary

Please note there is a separate consultation document on a Code of Practice in connection with the search powers conferred by Section 289 of POCA to search persons and premises for cash (see following article).

Both the consultation papers mention an NPIA three-day training event to cover all the new provisions that the Serious Crime Act 2007 has made to POCA. This is slightly misleading: the course referred to is a three-day course that is being run on two dates in February by the Asset Recovery Agency Centre of Excellence, to train AFIs on cash seizure. Familiarisation of the revised Codes will be only one component of that course. Due to the imminent move of the ARA Centre of Excellence to the NPIA, the course material will be under an NPIA cover.

As from 1 April 2008, the Asset Recovery Agency Centre of Excellence will become part of the National Policing Improvement Agency and will be known as the Proceeds of Crime Centre (PCC). This will deliver financial investigator training to the police forces and other relevant bodies; training on the revised Codes will be part of that training.

It is currently expected that the relevant provisions in the Serious Crime Act 2007 and the UK Borders Act 2007 that relate to both revised Codes will be brought into effect in April 2008.

Search Code of Practice Issued Under Section 292 of the Proceeds of Crime Act 2002

The Home Office has published a consultation paper which seeks views on a draft Code of Practice issued under Section 292 of the Proceeds of Crime Act 2002 (POCA), which provides guidance on the operation of the powers under Section 289 of POCA to search for cash which is suspected of being either the proceeds of or intended for use in crime.

The Code, when ratified, will replace the existing code which came into force on 30 December 2002. The reason for the revised Code is that provisions in Section 79 of the Serious Crime Act 2007 and Section 24 of the UK Borders Act 2007 extend the search and seizure of cash powers in Section 289 to a wider range of investigators. Previously, such powers to seize cash derived from or intended for use in crime and to secure its forfeiture in magistrates' court proceedings were only available to the police and officers of HM Revenue and Customs (previously HM Customs and Excise).

When the provisions in Section 79 of the Serious Crime Act 2007 and Section 24 of the UK Borders Act 2007 are brought into force, these search and seizure powers will also be available to:

- Accredited financial investigators (in relation to England and Wales and Northern Ireland only) who have been trained and accredited by the National Policing Improvement Agency under Section 3 of POCA to undertake these functions.
- Immigration officers (including an immigration officer in Scotland) if he/she has reasonable grounds for suspecting that the cash is connected to an offence under the Immigration Acts.

The closing date for comments is 25 January 2008, after which it is expected that a summary of responses received will be published within three months.

The consultation paper and the draft code of practice can be found in full at http://www.homeoffice.gov.uk/documents/search-code-practice.pdf?view=Binary

Consultation on Obligations to Report Money Laundering under the Proceeds of Crime Act 2002

The Home Office has published a consultation paper which seeks views on whether the law on the obligations to report money laundering (known as the 'consent regime') under the Proceeds of Crime Act 2002 needs to be changed.

The Government has recognised that the 'consent regime' has been and remains a source of some concern for parts of the regulated sector, in particular the banking sector. The consultation paper examines the extent to which there is a problem, and outlines a series of approaches to address the various concerns that have been raised with the intention of helping it to decide whether to preserve the current regime and find ways to improve the way it works, or whether it should make some legislative changes.

The Consultation Period will end on 11 March 2008. It is expected that a summary of responses will be published within 3 months of the closing date. The consultation paper can be found in full at http://www.homeoffice.gov.uk/documents/cons-2007-consent-regime?view=Binary

Review of the Law of Homicide

The Justice Minister, Maria Eagle, has announced the Governments intention for the next stage in the review of the law of homicide after having considered the Law Commission's recommendations (covered in the January 2006 *Digest*).

Over the next few months it intends to talk to key stakeholders, both inside and outside the criminal justice system, to seek their views on the Law Commission's recommendations in the following areas:

- Reformed partial defences to murder of diminished responsibility and provocation (including the use of excessive force in self-defence).
- Reformed offences of complicity in relation to homicide.
- Improved procedures for dealing with infanticide.

It then intends to publish draft clauses for consultation in summer 2008 prior to introducing any necessary legislation.

Introduction of the Forced Marriage (Civil Protection) Act 2007

The Parliamentary Under-Secretary of State for Justice, Bridget Prentice, has announced that the Government intend to commence the introduction of provisions in the Forced Marriage (Civil Protection) Act 2007 from autumn 2008.

Prior to this date the Government intend to consult on how to ensure that the Act is implemented effectively. It has recently published a consultation paper on the important aspect of enabling orders to be made in circumstances when victims feel unable or unwilling to make an application themselves.

The Act enables a victim or a relevant third party to make an application for a Forced Marriage Protection Order without the court's permission. Any other person may only apply if they obtain the court's permission first. A relevant third party is a person (or an organisation), specified by the Lord Chancellor who may apply on behalf of another without obtaining the permission of the court.

The consultation is focused on the role of the relevant third party. It asks for responses on what need there is for relevant third parties, what type of people or organisations should act and what safeguards are needed. It also invites practical suggestions on how the making of an application can be adapted to meet the needs of those who use the Act.

The consultation will run until 14 March 2008. It can be found at http://www.justice.gov.uk/publications/cp3107.htm

Samurai Swords to be Added to the List of Weapons Prohibited under Section 141 of the Criminal Justice Act 1988

Following a consultation on the banning of offensive weapons (covered in the March 2007 *Digest*), the Government has announced its intention to make an order by statutory instrument adding samurai swords to the list of weapons to which Section 141 of the Criminal Justice Act 1988 applies.

The Order will include exemptions for collectors of genuine Japanese swords and swords used by martial arts enthusiasts. It is currently planned that this Order will be made and come into force in March April 2008.

The responses to the consultation can be found at http://www.homeoffice.gov.uk/documents/cons-2007-ban-offensive-weapons/cons-resp-banning-off-weapons?view=Binary

The Removal, Storage and Disposal of Vehicles by Traffic Officers and the Secretary of State for Transport

The Highways Agency has published a consultation paper, seeking views on proposed draft regulations to deal with the removal, storage and disposal of vehicles by traffic officers and the Secretary of State for Transport.

The proposed Removal and Disposal of Vehicles by Traffic Officers (England) Regulations include powers that:

- Provide traffic officers designated under Section 2 of the Traffic Management Act 2004 with powers to request, remove or arrange the removal from the Strategic Road Network (and roads affecting it) of vehicles that are parked illegally, abandoned, and broken down, which are causing danger or obstruction to other road users.
- Give the Secretary of State for Transport the power to store and dispose of vehicles that have been or appear to have been abandoned, and that have been removed by traffic officers.
- Give the Secretary of State for Transport the power to charge for the removal, storage and disposal of certain vehicles removed by traffic officers.

The new proposals will not affect current police powers in respect of the removal and disposal of vehicles from roads. The police will still have primacy over certain incidents on the network, e.g. where criminal activity is suspected or where a fatal or serious injury has occurred.

The powers that are to be given to traffic officers and the Secretary of State for Transport are similar to powers that the police currently have under the Removal and Disposal of Vehicles Regulations 1986.

Where a vehicle has broken down, traffic officers will enquire whether the motorist is able to make their own suitable arrangements, which they may do

if they are able to. Where a motorist is unable to make their own suitable arrangement, traffic officers, where requested by the motorist, will help to facilitate suitable recovery. Any arrangements made by the motorist must be suitable in terms of safety to other road users. If arrangements are deemed to be unsuitable, traffic officers may intervene in the interests of safety and to protect other road users.

The closing date of the consultation is 21 February 2008. Subject to the results of the consultation, it is envisaged that the Regulations would be introduced in mid-2008. The consultation can be found in full at http://www.highways.gov.uk/roads/documents/Vehicle_Recovery_Consultation_Paper.pdf

Proposal to Introduce a Simplified Process for Minor Variations to Premises Licences and Club Premises Certificates under the Licensing Act 2003

The Government is proposing to amend Parts 3 and 4 of the Licensing Act 2003 to make provision for a simplified process for 'minor' variations (changes) to premises licences and club premises certificates, which would allow applicants to make small alterations to their licences or certificates for a fee and without having to advertise the variation or copy it to all responsible authorities.

At present, holders of licences or certificates must copy applications to vary to up to nine 'responsible authorities' (RAs) at a cost of between £20 and £40, depending on the nature of the variation, size of plan, etc. RAs may make representations to the licensing authority on the application if they have concerns relating to the licensing objectives. They will usually comment on issues within their particular area of expertise, but are not limited to doing so. Statutory RAs are currently:

- The chief officer of police.
- The local fire and rescue authority.
- The local authority with responsibility for environmental health.
- The local enforcement agency for the Health and Safety at Work etc Act 1974 (either the local authority or the Health and Safety Executive).
- The Maritime and Coastguard Agency.
- The relevant child protection body.
- The local planning authority.
- The local weights and measures authority (trading standards).
- Any licensing authority, other than the relevant licensing authority, in whose area any part of the premises is situated.

The Department for Culture, Media and Sport has published a consultation paper seeking views on this proposal.

This consultation document discusses three options. The options are:

- Option 1 - Amend the Act to introduce a new process for minor variations, broadly defined as any variation that does not impact adversely on the promotion of the licensing objectives. Leave licensing authorities to decide whether a variation is 'minor' within the broad parameters described above and having regard to general criteria and case studies provided in the statutory Guidance made under the 2003 Act. Licensing authorities required to consult relevant responsible authorities as they judge necessary, depending on the individual circumstances of the variation.
- Option 2 - Amend the Act to introduce a new minor variations process as above, but constrain licensing authority discretion by specifying on the face of the Act which variations should be included in, and/or excluded from, a minor variations process. Licensing authorities required to consult relevant responsible authorities, as they judge necessary, depending on the individual circumstances of the variation.
- Option 3 - No change.

At this stage, the Government prefers Option 1. The consultation period ends on 20 February 2008. The consultation document can be found in full at http://www.culture.gov.uk/NR/rdonlyres/82682AAD-9285-442B-897E-2ABB8C9A1585/0/cons_minorvvariations_plcpc.pdf

The National Community Safety Plan 2008/11

The Government has published a revised National Community Safety Plan to cover the period 2008-11. The Plan sets out the Government's community safety priorities for this period and reflects the priorities set out in the Government's crime strategy document, 'Cutting Crime: A New Partnership 2008-11', which was featured in the August 2007 *Digest*. It has also been revised to ensure that it is clearly in line with the new with the new set of Public Service Agreements (PSAs) announced in the Comprehensive Spending Review 2007 (covered in the November 2007 *Digest*).

The National Community Safety Plan is for members of all local partnerships with a role in delivering community safety. In particular, it is for Crime and Disorder Reduction Partnerships (CDRPs), but will also be relevant to Local Strategic Partnerships (LSPs) and Local Criminal Justice Boards (LCJBs).

The plan applies to England and also to Wales, but only where it relates to non-devolved policing issues.

The revised plan is not radically different in direction from the 'National Community Safety Plan 2006-09' but there is some shift in emphasis on certain themes. It details how it is intended to concentrate on four particular themes over the next four years, these being:

- A stronger focus on tackling more serious violence.
- Greater flexibility for local partners to concentrate on local priorities.
- Increasing community confidence that our communities are safe places to be.
- The need to reflect the increased threat to communities posed by violent extremists.

The plan includes a timetable of key events in the delivery of the plan, the new PSAs and the overall crime strategy. These include:

January 2008

- Negotiation of priorities based on departmental and Government Office discussions and local authority/LSP consultations.
- Publication of new Local Area Agreement (England)(LAAs) intervention toolkit.
- Sir Ronnie Flanagan's Review of Policing final report due.
- Publication of a Staying Safe Action Plan.
- Publication of a Tackling Violence Action Plan.

February 2008

- Local authorities submit revised LAA outcomes framework to Government Offices.

- Publication of updated action plans for domestic and sexual violence (to sit underneath the overarching Tackling Violence Action Plan).
- Country-wide consultation closes on the Comprehensive Area Assessment (CAA).

March 2008

- Publication of a gangs toolkit.
- Promotion and review of Home Office/ACPO knife crime guidance.
- Launch of knife awareness campaign.
- Publication of place-shaping guidance that describes how LSPs support the delivery of LAAs.

April 2008

- Introduction of the Assessments of Policing and Community Safety (APACS) performance framework, which will monitor and assess the crime reduction and community safety work of the police and their partners.
- CDRP reform plans and arrangements in place.
- Publication of a police Green Paper (provisional date yet to be fully confirmed). This is intended to strengthen the framework that enables and supports the police service and its partners to deliver effectively for the public.
- Full roll-out of neighbourhood policing complete.
- Three-year rolling policing plans published by police authorities.
- New cross-government alcohol communications strategy launched.
- Development of new CAA intervention approach.
- Implementation of new Drug Strategy begins.
- Publication of a Youth Crime Action Plan.
- Local alcohol strategies in place.

June 2008

- Government Office regional directors make LAA recommendations to the Government; ministerial sign-off of LAAs.
- End of Phase 2 (implementation) of LAA process.

July 2008

- Start of Phase 3 of LAA process (delivery).
- Local crime information available at sub-Basic Command Unit level.

August 2008

- Start of programme of priority reviews to assess the effectiveness of the new crime strategy in local context.

The National Community Safety Plan 2008/11 can be found in full at http://www.crimereduction.homeoffice.gov.uk/activecommunities/activecommunities088.pdf

Strategic Plan for Reducing Re-Offending for Adults for 2008-11

The Ministry of Justice has published a consultation paper on a strategic plan for reducing re-offending for adults for the three years 2008-11. The finalised plan is expected to be published in spring 2008, to coincide with the new Public Service Agreement (PSA) targets. The plan is intended to underpin the crime strategy, 'Cutting Crime, A New Partnership 2008-11' and to support delivery of the Government's new cross-cutting PSA targets, particularly the Make Communities Safer PSA4, and to support PSA5 Socially Exclude Adults, PSA6 Justice and PSA7 Alcohol and Drugs.

It is envisaged that the Plan will:

- Set out a clear vision and direction of travel for tackling the challenges of reducing the volume and severity of re-offending over the Comprehensive Spending Review period (2008-11).
- Articulate priorities for reducing re-offending and how these will contribute to the delivery of various central government departments PSAs.
- Set out the national (England and Wales) level of ambition for reducing re-offending to be achieved by 2011 (when compared to 2004 levels).

The consultation period will run until 18 February 2008 and the paper can be found at http://noms.justice.gov.uk/news-publications-events/publications/consultations/RRSP_2008-2011/?view=Standard&pubID=510183

The Government has also published three other consultations alongside the above consultation. These are:

- NOMS Third Sector Action Plan - This consultation asks for advice and comments from third sector organisations, Ministry of Justice officials, funders and commissioners, and other interested individuals and groups on a draft third sector action plan. It sets out current government expectations and references relevant publications, especially those from the Office of the Third Sector, Cabinet Office. It can be found at http://noms.justice.gov.uk/news-publications-events/publications/consultations/BWC_third_sector_08/Third_Sector_AP_consultation_08
- A joint Ministry of Justice/Department of Health consultation, 'Improving Health, Supporting Justice' - which seeks views on how health and social care services can be improved for people subject to the criminal justice system (see later article).

- 'Believing We Can' - This seeks views on how to promote the work of faith-based organisations with both adult and young offenders, and further actions that government could take to strengthen engagement with the faith-based sector as well as its role in service delivery. Responses from this consultation will be used to inform government in respect of the 'Strategic plan for reducing re-offending for adults 2008-11' and the NOMS 'Third Sector Action Plan'. It can be found at http://noms.justice.gov.uk/news-publications-events/publications/consultations/BWC_third_sector_08/BWC_08

The Children's Plan

The Government has published a Children's Plan which sets out its plans for the next ten years under each of the Department for Children, Schools and Families', strategic objectives. It also includes a chapter setting out how it intends to make these reforms happen.

To help families strike the right balance between keeping children safe and allowing them the freedom they need the Government intend to:

- Publish Dr Tanya Byron's review on the potential risks to children from exposure to harmful or inappropriate content on the internet and in video games
- Commission an independent assessment of the impact of the commercial world on children's wellbeing.
- Fund a new home safety equipment scheme to prevent the accidents which happen to young children in the home.
- Encourage local authorities to create 20mph zones, where appropriate.
- Strengthen the complaints procedure for parents whose children experience bullying.

Other commitments in the plan which relate to children and the criminal justice system include:

- Spending £20 million over the next three years to use Acceptable Behaviour Contracts as a measure to prevent young people engaging in antisocial behaviour and to ensure young people receive support to improve their behaviour at the same time as an Antisocial Behaviour Order.
- Publishing a youth alcohol action plan in spring 2008 (around the same time as the new Drugs Strategy) which is intended to help improve alcohol education in schools; tackle parental alcohol misuse which can influence young people's own consumption; and consider the case for further action on alcohol advertising.
- Allocating, with the Home Office, £66 million over the next three years to target children most at risk those most at risk.

- Piloting of a Youth Restorative Justice Disposal, the aim of which is to address behaviour at an early stage and to prevent re-offending. It is also hoped this will also help prevent escalating cases to court too quickly where a young person's future prospect's may be jeopardised and will also allow police to deal with minor cases more speedily and efficiently. The disposal scheme will ensure that first time offenders aged between 10 and 17 who have committed a low level minor offence have to explain their actions and apologise (either orally or written form) to their victim.
- Publishing a Green Paper in 2008 looking at what happens when young offenders leave custody and consult on how to improve the education they receive in custody.

The plan can be found in full at http://www.dfes.gov.uk/publications/childrensplan/

New Practice Guidance to Safeguard Children Who May Have Been Trafficked

The Home Office and the Department for Children, Schools and Families have published a new guidance document entitled, 'Working together to safeguard children who may have been trafficked'. This is intended to provide professionals within agencies who come into contact with children with information on child trafficking and advice for safeguarding children whom they believe may have been trafficked. It is also intended to supplement the 'Working together to safeguard children guidance', published in April 2006.

The document outlines the reasons for child trafficking, the methods used by traffickers, the roles and functions of relevant agencies and how practitioners should follow procedures to ensure the safety and well-being of children who it is suspected have been trafficked. It can be found at http://publications.everychildmatters.gov.uk/eOrderingDownload/DCSF-Child%20Traffic-Complete.pdf

Consultation on How Health and Social Care Services can be improved for People subject to the Criminal Justice System

The Department of Health, the Department of Children, Schools and Families, the Ministry of Justice, theYouth Justice Board and the Home Office are involved in a joint initiative into how health and social care services can be improved for people subject to the criminal justice system. A consultation paper has been published as a part of the process.

The paper, 'Improving Health, Supporting Justice', sets out why a national strategy is needed that covers all areas of the criminal justice system and invites views on its strategy.

Part 2 of the paper looks at the police, police custody and Crown Prosecution Service and sets out the Government's aspirations in relation to these areas and what it intends to do in a number of areas to achieve these. They include:

Partnership

- Exploring the opportunities for closer links between health care provision within police custody suites and the wider NHS.
- Supporting the development of guidance on model protocols between police and health and social care services, to ensure effective referrals and improved service delivery.
- Reviewing overlapping police and health/social care key performance indicators, to identify shared priorities and performance management.

Practice

- Supporting the standardisation of skills and knowledge for all police, police staff and CPS staff on health, mental health and risk management issues via National Policing Improvement Agency (NPIA) guidance being developed by HO, NPIA, ACPO and other stakeholders.
- Exploring ways to improve out-of-hours services for mentally disordered offenders who are detained at police stations at weekends and during the night.

Guidance and Research

- Examining the potential for the piloting of differing models of health care provision in police custody suites.
- Examining the health and social care contribution to neighbourhood policing, to support excluded groups pre-offence and post-arrest by improving integration and access to local services.
- Promoting wider recognition of the very different health and social care needs of women and children and young people in contact with the police.
- Where children and young people receive reprimands or final warnings from the police, promoting better integration of those young people into universal and targeted children's services to ensure the promotion of their well-being.
- Exploring the concept of 'places of care' to provide secure accommodation in cooperation with other agencies.
- Undertaking an exploration of the health opportunities for those acting as a frontline contact for those with drug and alcohol problems, with a particular emphasis on roads policing.
- Developing systems to improve the learning from deaths in other custodial environments working alongside the Preventing Deaths in Custody forum of the Independent Police Complaints Commission.

Policy

- Considering different options for improving services, including exploring the feasibility for the transfer of responsibility for commissioning of health services from the police to the NHS.

The consultation will run until 4 March 2008. It can be found in full at http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_080816

Revised Guidance for Schools on the Use of Force to Control or Restrain Pupils

The Department for Children, Schools and Families (DCSF) has published new guidance on the use of force to control or restrain pupils, which replaces and supersedes DfES Circular 10/98.

The non-statutory guidance is aimed at head teachers and staff with specific responsibilities for pupil behaviour. The DCSF strongly recommends that schools follow the guidance in particular to reduce the likelihood of staff being successfully challenged in the courts.

The guidance document can be found in full at http://www.teachernet.gov.uk/_doc/12187/ACFD89B.pdf

Problem of UK Internal Trafficking

The Home Office has commissioned work to examine the internal trafficking of girls in their teens or younger. A working group, the UK Internal Trafficking Group, will examine the scale of the problem of British girls being lured into prostitution. A film is also being made to be shown in schools to warn children of the dangers.

The UK Human Trafficking Centre (UKHTC) in Sheffield has recently appointed a dedicated detective sergeant to work on internal trafficking cases.

Campaigners who have being highlighting the problem have said that, in some cases, girls as young as 10 are believed to have been groomed by youths pretending to be boyfriends. They are then passed on and end up in prostitution.

One of the main campaign groups is the Coalition for the Removal of Pimping (CROP), a voluntary organisation whose aim is to end the sexual exploitation of children and young people by pimps and traffickers. CROP is currently running a campaign to make safeguarding children from sexual exploitation a performance target for police and Local Safeguarding Children Boards. Its website contains information on sexual exploitation, including details of warning signs which suggest that a child might be at risk of being groomed for sexual exploitation. Website address is http://www.crop1.org.uk/

Data on the Number of Fixed Penalty Notices Issued by English Local Authorities 2006/07

The Department for Environment, Food and Rural Affairs (DEFRA) has published data on the number of fixed penalty notices issued by English local authorities during the period 2006/07, based on returns from 349 of the 355 authorities.

The figures show that:

- A total of 54,015 fixed penalties were issued.
- A total of £1,997,897.14 was collected from these fines.
- The overall payment rate achieved for all penalties issued rose to 72.4% in 2006/07, from 57% in 2005/6.
- The main offences for which fixed penalties were issued were litter (43,624), dogs fouling (3,675), nuisance parking (1,657), waste transfer (1,354) and fly posting (1,133).
- Of the 1,657 fixed penalties issued for nuisance parking, 1,536 were issued by one authority, West Oxfordshire District Council.
- The number of fixed penalty notices for litter rose by 32% from the year 2005/6.

The data includes a breakdown of each of the local authorities in relation to each offence for which fixed penalties have been issued. The data can be viewed in full at http://www.defra.gov.uk/environment/localenv/legislation/fpn/fpn-apr06mar07.xls

Survey of Number of Drivers Using Hand-Held Mobile Phones

The results of survey commissioned by the Department for Transport and conducted by TRL, an independent research, consultancy, advice and testing foundation on all aspects of transport, have been published.

Surveys were conducted at 30 sites in the South East of England that were chosen to represent the full range of conditions on British roads. They included motorways, dual carriageways and single carriageway roads and were located in towns, villages and on country roads. The single carriageway roads included A, B, C and Unclassified roads. The speed limits varied from 20mph to 70mph. Findings from the survey show:

- 1% of car drivers were observed using a hand-held mobile while driving, compared with 1.7% last year.
- Other drivers using hand-held mobiles dropped from 2.9% to 2.4%.
- Phone use continued to be substantially lower on Saturdays than on weekdays.

Further details from the report can be found via http://www.trl.co.uk/store/report_list.asp?pid=211

The Interim Conclusions of the Pitt Review - Learning Lessons from the 2007 Floods

Sir Michael Pitt has published an interim report of his review of the floods that affected the country in 2007.

The interim report contains 15 'urgent recommendations' to be implemented as soon as possible to reduce the impact of any flooding that might occur in the near future. These cover the areas of managing flood risk, groundwater monitoring, local and national planning and response, public information, and public preparedness.

Additionally, the report draws 72 interim conclusions, awaiting further information and evidence before being put forward in firm recommendations next summer.

The interim report invites comments on its findings so far in advance of the planned publication of the final report in summer 2008. The consultation will run until 31 March 2008.

In addition the Pitt Review Team members will present the Interim Report and the initial recommendations at relevant industry conferences and events in early 2008.

Points in the interim conclusions that particularly impact on police forces include:

- Where a Gold Command is established, the police, unless agreed otherwise locally, should convene and lead the multi-agency response.
- Gold Commands should be established at an early stage on a precautionary basis where there is a risk of serious flooding.
- A national flooding exercise should take place at the earliest opportunity in order to test the new arrangements which central government departments are putting into place to deal with flooding and infrastructure emergencies.
- Local Resilience Forums should be made aware of recent Cabinet Office guidance setting out the transition to recovery. Recovery sub-groups should be established from the onset of major emergencies and in due course there should be formal handover from Gold Command to the local Recovery Coordinating Group(s), normally chaired by the Chief Executive of the affected local authority.
- In relation to information sharing and cooperation, the Civil Contingencies Act and Regulations should be extended to require Category 2 responders to more formally contribute information on critical sites, their vulnerability and the impact of their loss.

- Category 2 responders should be required to participate fully at Gold and Silver Commands and that the Government should deliver this through the Civil Contingencies Act or other regulatory regimes.
- There is a clear need to check that those sites which have an important role in response to flooding (and other major emergencies) e.g. police stations, have sufficient resilience against flooding and the loss of electricity and water supplies to enable them to be used.

Category 2 responders are: a person or body listed in Part 3 of Schedule 1 to the Civil Contingencies Act 2004. These are cooperating responders who are less likely to be involved in the heart of multi-agency planning work, but will be heavily involved in preparing for incidents affecting their sectors. The Act requires them to cooperate and share information with other Category 1 and 2 responders.

The interim report also raises concerns it identified from emergency responders consulted during the course of the Review that they had an inadequate understanding of:

- The location of critical sites.
- The mapping of their vulnerability to flooding.
- The consequences of their loss.
- Their dependencies on other critical infrastructure assets.

Responders considered these to be fundamental weaknesses in local emergency response. The review recognises that there will always be security concerns over making information on critical infrastructure sites too readily available. But suggests that based on the experience from summer 2007, that a better balance needs to be struck between security and sharing information so as to improve preparedness at all levels in order to protect the public.

The report can be found in full at http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/flooding_review/flood_report_web.pdf

Proposed Government Reforms in Respect of Rape Cases

The Government has announced a number of measures it intends to take that will impact on how rape cases are heard in court, with a view to improving the outcome for victims in rape cases.

The measures are contained in the post-consultation report for the consultation paper, 'Convicting Rapists and Protecting Victims - Justice for Victims of Rape', which ran from 29 March 2006 to 31 July 2006.

The measures include:

- Inviting the Judicial Studies Board to consider whether judges who sit on rape cases would be assisted by appropriate specimen directions on the issue of capacity and consent.
- Considering whether to update guidance on the Sexual Offences Act 2003, to take account of the Court of Appeal judgment in R v Bree (see May 2007 *Digest* for summary of case).
- Setting up a panel of judges, doctors and academics to work on a project to consider further how general expert material could be presented in a controlled and consistent way, with a view to dispelling myths around rape victims' behaviour and to try and put forward a package to inform the jury without interfering with the fairness of a trial. If this can be achieved, the Government is prepared to legislate, if necessary, to allow such material to be presented to juries.
- Introducing legislation, when Parliamentary time allows, to allow as admissible evidence all relevant evidence of complaints made by victims, whatever the crime being tried, and irrespective of time passed since the alleged conduct. However, it is intended that the existing safeguards for such evidence to be excluded on a case-by-case basis will be retained.
- When Parliamentary time permits, amending the legislation to provide for automatic admissibility of video-recorded statements by complainants in rape and serious sex offence cases. However, under this proposal it is intended that a complainant would retain their present ability to opt out of special measures and that they should be fully consulted by prosecutors before any decision is made to use a video-recording in court. Decisions will continue to be taken by prosecutors on a case-by-case basis, with the aim of ensuring that the best evidence is presented to the court in each case.
- Introducing legislation, when Parliamentary time allows, to broaden the discretion that the prosecutor has to ask supplementary questions of all vulnerable or intimidated witnesses where a video-recorded statement is admitted as evidence-in-chief. It is intended that this discretion will be subject to both legislative and non-legislative safeguards to protect the witnesses from unnecessary questions.

The post-consultation report can be found at
http://www.attorneygeneral.gov.uk/attachments/Rape%20Consultation%20Summary%20Nov%202007.pdf

National Roll Out of the Pre-Trial Witness Interview Scheme

The Attorney General and the Solicitor General have announced that the pre-trial witness interview scheme, which has been trialled in four pilot areas, is to be rolled out nationally.

The pre-trial interview itself is designed to address three key purposes:

- To assess the reliability of the witness's evidence.
- To assist the prosecutor in understanding complex evidence.
- To explain court process and procedures.

Pre-trial interviews must not be held for the purpose of improving a witness's evidence or performance.

Prosecutors (outside of those already participating in the pilot areas) will be trained and the Crown Prosecution Service is looking to have the scheme rolled out by April 2008.

Persons who may conduct a pre-trial interview are:

- A Crown Prosecutor designated by the Chief Crown Prosecutor for their area or Head of Division.
- An independent advocate on the authority of a designated Crown Prosecutor.

A Code of Practice issued by the Director of Public Prosecutions has already been prepared and published and has been used in the four pilot areas. It applies to all pre-trial interviews. It does not apply to other meetings with witnesses, such as special measures meetings, court familiarisation visits or meetings to explain a decision to discontinue a case or to significantly alter a charge.

Some main points from the Code of Practice that will be of particular interest to police officers and police staff include:

- Where a prosecutor conducts a pre-trial interview to assess the reliability of a witness's evidence, the witness may be asked about the content of his/her statement or other issues that relate to reliability. This may include taking the witness through his/her statement, asking questions to clarify and expand evidence, asking questions relating to character, exploring new evidence or probing the witness's account.
- A pre-trial interview may take place at any stage of the proceedings (including pre-charge) until the witness starts to give evidence at trial. However, no interview should be conducted until the witness has provided to the police a signed witness statement or has taken part in a visually-recorded evidential interview.
- Once a prosecutor has decided that a pre-trial interview is appropriate, it should be conducted as soon as reasonably practicable.

- Before a pre-trial interview takes place, the prosecutor should consult the Senior Investigating Officer (or the officer in the case if there is no SIO). The prosecutor will require confirmation that the person to be interviewed is not, and is not likely to become, a suspect in the case. If there is any possibility that the witness may come under suspicion, the interview must not take place until that possibility ceases to exist.
- If, during an interview, the witness comes under suspicion, whether in relation to the offence then under investigation or another offence, the prosecutor must terminate the interview immediately. The prosecutor can also terminate the interview for other reasons (such as hostility) at any time.
- The presence of a police officer will not normally be appropriate but, exceptionally, the prosecutor or other designated person conducting the interview may request the presence of a police officer if they deem this necessary. The officer attending the interview must be familiar with the case, but if possible he or she should not be the officer who obtained the witness's original statement. An officer attending an interview under these circumstances should play no part in the questioning of the witness. If, as a result of something said in interview, the officer and prosecutor need to confer about an evidential point, the interview should be suspended and the discussion take place in the absence of the witness.
- The witness may be accompanied by a supporter. The prosecutor must satisfy himself that the supporter has no actual or potential involvement in the case and has no personal knowledge of the matters likely to be discussed.
- The attendance of a witness at a pre-trial interview is voluntary and cannot be compelled. If a witness declines to attend a pre-trial interview, this fact and any reasons advanced by the witness should normally be disclosed to the defence in accordance with the prosecutor's disclosure obligations.
- A witness must not be interviewed in the presence of any other witness in the case (except the officer in the case where he or she is present at the invitation of the person conducting the interview).
- It will only be in exceptional cases that pre-trial interviews are considered for children and vulnerable witnesses.
- A comprehensive audio recording of the interview must be made. If a witness has previously given a visually-recorded evidential interview, the pre-trial interview may also be video-recorded.
- Where, in the course of an interview, the witness provides further evidence which is material to the case, a further witness statement should be taken (or visual interview conducted) by a police officer and served upon the defence.
- The disclosure officer will be notified of any unused material generated through this process and will record it on the appropriate disclosure schedule.

- The record of a pre-trial interview will generally be unused material and disclosure should be determined by the application of the appropriate statutory test(s). A record of a pre-trial interview will normally meet these tests.

During the pilot scheme, subject to the application of Public Interest Immunity, the recording of the interview was supplied automatically to the defence as unused material. When a recording was supplied to the defence a transcript was not be prepared.

The pre-trial witness interviews code of practice can be found in full at http://www.cps.gov.uk/victims_witnesses/interviews.html#01

Criminal Statistics for England and Wales 2006

The Ministry of Justice has published the annual crime statistics reports for England and Wales 2006. The reports relate to offenders dealt with by formal police cautions, reprimands or warnings, and criminal court proceedings in England and Wales. They include a main volume and five volumes of supplementary tables.

Key points for 2006 include:

- Of the 5.4 million crimes recorded by the police, just under 1.5 million were detected. Of these, just under 1.4 million crimes were detected using sanction detections and 80,000 crimes were detected through other methods (non-sanction detections).
- The overall detection rate in 2006/07 (i.e. including sanction and non-sanction detections) was 27%, the same as 2005/06.
- There were 1.77 million offenders found guilty in 2006. Of those, over half a million were convicted or cautioned for indictable offences.
- 350,000 offenders were cautioned for offences (17% more than in 2005).
- Of the cautions issued, 129,100 were given to juveniles as a reprimand or final warning (an 8% increase compared to 2005).
- There were 201,197 penalty notices for disorder (PNDs) and 80,500 warnings for cannabis possession issued.
- The police held an estimated 123,000 persons in custody until their first appearance, about 15% of all those arrested and charged.
- There were 142,000 prosecutions for failing to surrender to bail in 2006, compared with 157,000 in 2005.
- 31% of those committed for trial to the Crown Court were committed in custody. Of these, 72% subsequently pleaded guilty.
- Magistrates' courts dealt with 1.78 million defendants, 64% of whom pleaded guilty.

- The Crown Court dealt with 75,700 defendants. Of these, 66% pleaded guilty. Of those pleading not guilty, 34% were convicted.
- 962,000 offenders were fined, 191,000 offenders given community sentences and 96,000 offenders given custodial sentences during 2006.

The statistical reports can be found in full at http://www.justice.gov.uk/publications/criminalannual.htm

Proposal to Revise the Rules on Appeal from Magistrates' Courts to the Crown Court about Conviction or Sentence

The Criminal Procedure Rule Committee is considering a proposal to revise and simplify the rules in Part 63 (appeal to the Crown Court against conviction and sentence) of the Criminal Procedure Rules 2005.

The new rules would apply to the exercise of all rights of appeal in criminal cases from magistrates' courts to the Crown Court, the object being to make the rules correspond broadly with other appeal rules which the Committee has recently amended and others it intends to amend.

Earlier this year, the Committee revised and simplified the rules in Parts 65 to 70 of the Criminal Procedure Rules 2005 by way of the Criminal Procedure (Amendment No. 2) Rules 2007 (S.I. 2317/2007). This came into force on 1 October and introduced new rules for appeals to the Court of Appeal and about applications to change a guilty plea.

It is also intended in the near future to revise Part 74, the rules about appeals from the Court of Appeal to the House of Lords, in a similar fashion.

The new rules in Part 63:

- List all the existing rights of appeal to the Crown Court affecting conviction, sentence and kindred orders (which the current Part 63 does not).
- Require an appellant to serve an appeal notice on the magistrates' court officer and every other party not more than 21 days after sentence (or the deferment of sentence) or the order (or failure to make an order) about which the appellant wants to appeal.
- State that an appeal notice must be in the form set out in the Practice Direction.
- Set out all the information that must be included in the appeal notice, including: details of the conviction, the sentence, the order or the failure to make an order which the appellant wants to appeal; the reasons for the appeal and a summary of the issues.
- Relax the current time limit for abandoning an appeal without the permission of the Crown Court (currently three days before the hearing).

The consultation period closes on 22 February 2008. The consultation paper can be found at http://www.justice.gov.uk/docs/criminal-procedure-rules-pt63-invitation.pdf

Performance Report on the Criminal Injuries Compensation Authorities Handling of Claims

The National Audit Office (NAO) has published a new report entitled, 'Compensating Victims of Violent Crime' on the performance of the Criminal Injuries Compensation Authorities (CICA) handling of claims. The report finds CICA's performance has declined since the last NAO report on it in 2000 and it has not consistently met its targets over that period.

It shows that in 2006/07 CICA received 61,000 applications for compensation and paid out £192 million to victims. However, the average time to resolve a case has increased by over 40%, from 364 days in 1998-99 to 515 days in 2006-07. Over the same period there was a fall of 23% in the number of applications the Authority receives each year, in line with the fall in violent crime over the same period.

It finds that CICA's processes, which apply in 80% of cases, are bureaucratic and repetitive. Around half of all applications are unsuccessful, the same rate as in 2000, despite work to reduce ineligible claims.

The report finds that CICA is working more closely with police forces in the areas covered by new case-working pilots to identify ways to speed up response times taken by each police force in England and Wales to respond to initial requests for information from CICA. These pilots include the Authority sharing data on average time to respond to information to forces and the use of secure email to pass and receive information requests.

Suggestions to help speed up response times by police forces to CICA which are suggested in the report following the NAO consulting with ACO include:

- Forces setting up a central team and database to manage requests.
- Integrating responding to the CICA's information requests into the force's performance system. Information on the number of requests and how quickly they are answered is already available on the Ministry of Justice Criminal Justice Management Information System (CJMIS) for all police forces in England and Wales.

The report can be found in full at http://www.nao.org.uk/publications/nao_reports/07-08/0708100.pdf

Lord Carter's Review of Prisons

The Ministry of Justice (MoJ) has published Lord Carter's report, following his review of prisons. The report, 'Securing the future - proposals for the efficient and sustainable use of custody in England and Wales', contains a number of recommendations which are intended to provide the Government with a long-term strategy, as well as measures to help manage the immediate pressures that the prison system is facing, in particular from overcrowding in the system.

Key recommendations include:

- Immediately beginning a significant expansion of the current prison building programme, in order that up to 6,500 additional new places, on top of the significant expansion already planned, can be provided by the end of 2012.
- Planning and developing larger, state-of-the-art prisons, so that from 2012 there can be approximately 5,000 new places, allowing for a programme of closures of old, inefficient and ineffective prisons, offering better value for money and much improved chances of reducing re-offending and crime.
- Developing a structured sentencing framework and permanent Sentencing Commission with judicial leadership, to improve the transparency, predictability and consistency of sentencing and the criminal justice system. Also, making immediate changes to existing sentencing legislation to modify the use of custody for certain types of low risk offenders and offences and encourage use of alternative remedies.
- Introducing a more efficient approach to the way operations and headquarters' overheads are structured and managed.

The report can be found in full at http://www.justice.gov.uk/publications/securing-the-future.htm

On 5 December the Secretary of State for Justice and Lord Chancellor, Jack Straw, informed MPs in Parliament that, in the light of Lord Carter's recommendations, the Government would be providing additional £1.2bn on top of the £1.5bn already committed, to bring an additional 10,500 places by 2014. He also said that they would also build new Titan prisons, and were also looking into building a new prison ship that would bring the net prison capacity to 96,000 places.

He also announced that he had asked Lord Bradley to carry out a review on diverting prisoners with mental health problems into more appropriate facilities.

Review of Police Pay

Following part one of Sir Clive Booth's review on police officer pay arrangements, part two has now been published by the Home Secretary in a written ministerial statement. Part two reviews the effectiveness of the police pay machinery and focuses on determining pay in the police service.

In this second part Sir Clive recommends that:

- A pay review body for police officers should be created.
- The pay of police officers and police staff should continue to be determined by separate mechanisms.
- The existing Police Staff Council machinery should be retained for the time being.
- That chief officers are covered by the proposed pay review body for police officers, but if that is not created chief officers should become one of the groups covered by the Senior Salaries Review Body.

The Government has welcomed Sir Clive's report and accepts that a pay review body for police officers, including chief officers, should be created. They also accept that the pay of police officers and police staff should continue to be determined separately and that the Police Staff Council should be retained. In the near future the government will consult on proposals for implementing the necessary changes to police pay arrangements.

There port can be found in full at http://police.homeoffice.gov.uk/human-resources/policepayreview/

Following an emergency meeting of Police Federation delegates in Westminster, officers voted to ask their colleagues in a formal ballot whether they should begin to seek the same rights as other workers. A spokesman for the Police Federation of England and Wales has said that the vote would be conducted among all officers, including those in Scotland and Northern Ireland. The ballot is likely to take place in the first three months of 2008.

Allocation of Police Grant for England and Wales from 2008/09 to 2010/11

The Home Secretary has announced the Government's proposals for the police funding settlement for the three years from 2008/09. The proposals will now be subject to consideration of any representations and to the approval of the House of Commons.

The total provision for policing revenue grants in 2008/09 will be £9,227m, an overall increase of 2.9%. Provision is also made for 2.9% in 2009/10 and 2.7% in 2010/11.

Police revenue funding settlement 2008/09 to 2010/11 compared with 2007/08

	2007/08 £m	2008/09 £m	2009/10 £m	2010/11 £m
Home Office general grant	4,428	4,543	4,666	4,792
DCLG/WAG general grant	3,397	3,488	3,583	3,680
Welsh Top-Up	13	15	16	16
Total general Formula Grant	**7,838**	**8,046**	**8,265**	**8,488**
% increase in general grant		**2.7%**	**2.7%**	**2.7%**
Total Specific Grants	**1,130**	**1,181**	**1,227**	**1,263**
Total Government funding for police authorities	**8,968**	**9,227**	**9,492**	**9,751**
% increase in total Government revenue funding		**2.9%**	**2.9%**	**2.7%**

The breakdown of specific grant allocations is set out below

Specific grant allocations 2007/08 to 2010/11

	2007/08 £m	2008/09 £m	2009/10 £m	2010/11 £m
Crime Fighting Fund	277	277	277	277
Neighborhood Policing Fund and Community Support Officers	315	324	332	341
Police Counter Terrorism	472	524	552	579
Basic Command Units	50	40	50	50
Initial Police Learning and Development programme	16	16	16	16
Grand Total	**1,130**	**1,181**	**1,227**	**1,263**
		+4.5%	**+3.9%**	**+2.9%**

Further points worthy of note in relation to these specific grants include:

- To ensure that Neighbourhood Policing is fully embedded across England and Wales, the Government has accepted Sir Ronnie Flanagan's recommendation to maintain the ring-fence on Neighbourhood Policing funding in 2008/09. A total of £324 million will be made available in 2008/09 and will then increase by an average of 2.7% in each following year.
- The Basic Command Unit Fund will again be continued. During 2008, the Government will be consulting with the police and other key delivery partners on best to use BCU Funds to support local delivery of PSA targets and crime strategy.

- Funding for the Initial Police Learning & Development Programme (IPLDP) will be moved from ring fenced status to a 'rule 2 grant' and will be distributed on the basis of each force's allocations in the last two years.

The full funding settlements for all 43 police forces in England and Wales can be found in full at http://police.homeoffice.gov.uk/finance-and-business-planning/index.html/?version=3

Report on Police Use of Resources 2006/07

The Audit Commission and Wales Audit Office have published a performance report on the Police use of resources (PURE). Independent auditors from the independent two offices carry out assessments across five themes:

- Financial reporting;
- Financial management.
- Financial standing.
- Internal control.
- Value for money.

The report shows that there has been an improvement in the use of police resources of the overall PURE assessment results for 2006/07 compared to 2005/06. Key findings show that:

- All police authorities are now performing at least adequately (Level 2) in their use of resources.
- 7 police authorities are now performing strongly (Level 4) compared to none in 2005/06.
- 79% of police authorities are performing well (Level 3) or strongly (Level 4), compared to 65% in 2005/06.
- Internal control continues to be the weakest scoring theme of the PURE review. Although there are now no police authorities with inadequate performance, none are performing strongly and 18 police authorities and forces can still do more to achieve high standards of governance and accountability.

The full scores for each police force and authority for 2006/07 are contained in an Appendix to the report.

The report comments that police authorities and forces will need to maximise their available resources even further if they are to deliver neighbourhood policing to all local areas by 2008 and to tackle national threats, such as serious and organised crime, as well as counter-terrorism. It makes a number of specific recommendations, these being:

Police authorities

- Need to ensure that forces are making the best use of resources.
- Should ensure that value for money is a prime consideration when setting priorities for safer and stronger communities.
- Use their scrutiny role to ensure that the force works strategically and effectively with local service partners, directing resources to local priorities in the best way.
- Need to ensure that internal controls for the authority and force are in place and effective. In particular, they need to review the effectiveness of audit committees and promote high standards of ethical conduct by members and officers.

Police forces

- Need to maximise their available resources to deliver local priorities.
- Should use performance and financial data to benchmark and challenge how resources are used to deliver policing priorities.
- Work with partners to determine the best method for delivering safer and stronger communities within the force and local area.

The report can be found in full at http://www.audit-commission.gov.uk/Products/NATIONAL-REPORT/7AB8C86D-3E9E-4ec6-9E60-A60C799BA437/PoliceUseOfResources2006-07.pdf

HOC 34/2007
Safety of Solicitors and Accredited and Probationary Representatives Working in Custody Suites at Police Stations

This Home Office Circular provides guidance on the arrangements for the safety and security of the custody suite, in particular in respect of solicitors and accredited and probationary representatives working in custody suites.

The guidance has been issued following a number of incidents having been brought to the attention of the Home Office and the Health and Safety Executive (HSE), highlighting the actual and potential risks faced by solicitors, particularly when carrying out private consultations with their clients in the custody area. The HSE has advised that the level of risk has on occasions been serious and of significant concern.

Forces are asked to consider formally integrating the guidance into working protocols between the force or local BCU commander and defence solicitors.

The guidance sets out the roles and responsibilities of police and solicitors, as both employers and employees, under the Management of Health and Safety at Work Regulations 1999 and the Health and Safety at Work etc Act 1974.

It stresses that risk assessment is a continuing process and that custody staff and solicitors should co-operate with each other throughout the period of custody.

It focuses heavily on the information exchange between the police and solicitors in the risk assessment process, pointing out and advising that:

- The custody officer is responsible for determining in each case the level of disclosure of details of a detainee's physical or mental condition and that this should take into account the potential risk to the detainee, the solicitor and others in the custody suite.
- The custody officer is responsible for disclosure of the risk and should not withhold information that would place the solicitor at risk.
- A custody officer can ask the solicitor to provide any information relevant to the risk assessment. The disclosure of this information will be subject to the solicitor's professional rules and obligations in relation to confidentiality, but the focus is on minimising risk for the detainee and those that come into contact with the detainee.
- If a solicitor has such information, including 'no known risk', it should be provided.
- A solicitor who has information that indicates the detainee may be a risk, or acquires such information during the course of a consultation, and that information can be disclosed, should disclose it at the earliest opportunity and not wait to be asked.
- In situations in which the solicitor considers that a level of risk exists but that the legal relationship with the detainee does not allow details of that information to be disclosed to police, it should not prevent the solicitor from indicating that a risk may exist and informing the police of the general nature of that risk without disclosing specific information.
- A solicitor should always inform the police if there are particular concerns which may require alternative or specific arrangements for the custody and care of the detainee.
- Since the risk may change during the period of detention, custody staff and solicitors should ensure that further information relevant to any risk assessment is exchanged without delay, so that the assessment can be reviewed and arrangements for managing the risk adapted accordingly.

The guidance also contains specific advice in relation to facilities provided for consultation at police stations. Some of the main points include:

- A detainee should not be left unsupervised in any place used for a consultation and should not be able to leave that place alone.
- A designated room should be made available for private consultations between solicitor and client. Model layouts are set out in the Home Office Police Buildings Design Guide, April 2006.

- It may be that a room is not available, either because there is no facility in the police station or, if there is, that all such rooms are being used by other solicitors. In the case of the latter, the custody officer should ask the solicitor to wait until a room becomes free, provided that delay would not jeopardise the conduct of the investigation. Any alternative arrangement should be subject to a risk assessment to ascertain that safety, security and privacy are not compromised. Any delays in providing suitable facilities should also, as appropriate, be brought to the attention of the detainee themselves, so as to manage their expectations.
- If a locked room is to be used for a consultation, it should comply with the Home Office Design Guide, PD3.05.03 "Interview and Consultation Rooms: Communications and Alarms".

The content of the guidance was subject to discussions with the Association of Chief Police Officers, the Bar Council, the Law Society, Criminal Law Solicitors Association, ILEX and the Health and Safety Executive. It is intended to be read in conjunction with Section 2 of 'Guidance on the Safer Detention and Handling of Persons in Police Custody' which is available at http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/safer_detention/)

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

Impact of Legal Aid Reforms on Custody Suite Procedures

In January 2008, a number of legal aid reforms are taking effect that will impact on police custody suite procedures, in respect of information to be provided to detainees and the contacting of solicitors.

On 14 January 2008, the Duty Solicitor Call Centre (DSCC) will be renamed the Defence Solicitor Call Centre and will be responsible for dealing with all requests for publicly-funded legal advice, whether the duty or a named solicitor has been requested.

From 14 January, if a detainee wants to pay privately for legal advice, the custody staff will contact the solicitor or his firm direct and inform them that the detainee wishes to pay for legal advice. If the detainee requests publicly-funded legal advice, whether from a duty or a named solicitor, custody staff will contact DSCC (except in the circumstances explained below).

In order to ascertain what a detainee wishes to do, questions will need to be asked of the detainee. The Legal Services Commission, in consultation with ACPO, has provided some suggested wording for custody staff. The suggested wording is:

You are entitled to free and independent legal advice while you are at the police station or you can pay privately for a legal adviser to represent you.

This does not alter your right to choose a solicitor free of charge.

Do you want legal advice?

Do you want legal advice free of charge?

Do you want to pay for legal advice?

If the detainee wants free legal advice, the further following question should be asked:

Do you want to consult with a specific solicitor?

If the answer is yes, custody staff should obtain the details and forward them to the DSCC.

If the answer is no, the DSCC will allocate it to the duty solicitor.

The only exception to the custody staff contacting DSCC is if either the named adviser or the duty solicitor are present at the custody suite when the request is made: then requests can be made directly to them. In these circumstances, the duty solicitor/legal adviser has a duty to inform the DSCC within 24 hours that this has occurred.

It is expected that, as from 1 February 2008, the CDS Direct service, which provides telephone advice for less serious offences, will be expanded to cover cases where the detainee requests a named adviser. It is currently expected that the CDS Direct service will be piloted in the police areas of Greater Manchester, West Midlands and West Yorkshire prior to being expanded nationally on or around 21 April 2008.

This expansion is subject to certain minor amendments to PACE Code C, which are presently being prepared for parliamentary approval (see article on page 11). This change should not impact significantly on policing but it is likely that, on occasions, custody officers will have to explain to detainees why their solicitor will not be attending.

Upon receipt of a telephone call, the DSCC will assess the case and either:

- Refer the case to CDS Direct.
- Contact the named solicitor.
- Allocate the case to a duty solicitor.

DSCC will update custody suites every hour, if necessary, regarding the situation in relation to a solicitor. If within two hours of contacting a named solicitor, the DSCC does not receive a reply from them, the DSCC will allocate the case to a duty solicitor.

These changes do not in any way affect the current PACE requirements in Code C, in particular paragraph 6.6, which sets out the circumstances in which a detainee who has requested legal advice may be interviewed or continue to be interviewed before they have received such advice.

Two email addresses have been set up to receive feedback on the system, one for feedback on DSCC, the other for CDS Direct. They are not intended to be used for live cases. They are police.dsccfeedback@firstassist.co.uk police.cdsfeedback@firstassist.co.uk

Consultation on Assessments of Policing and Community Safety (APACS)

The Home Office has launched a formal consultation on proposals for the Assessments of Policing and Community Safety (APACS) which will be introduced for 2008/09. APACS will be the new performance assessment framework for the police, working alone or in partnership.

The framework will cover those areas where local Drug Action Team (DAT) partnerships work with the police on alcohol and drugs. It is important that local DAT partnerships have the opportunity to consider the proposals and respond as part of the consultation process.

APACS will focus on the priorities set out in the Home Office Public Service Agreements (PSAs) for 2008-11 that will be delivered in whole or in part through the police working alone or in partnerships, including priorities set out in PSAs 25 (alcohol and drugs) and 23 (Make Communities Safer).

The consultation proposals are set out in two separate but linked documents. The first document, 'Assessments of Policing and Community Safety (APACS): Strategic Consultation' explores overall functions, approach, roles and responsibilities within the wider performance arrangements across Government, such as the National Indicator Set. This consultation will run for 12 weeks and responses are sought by Friday 29 February 2008.

The second document, 'Assessments of Policing and Community Safety (APACS): Technical Consultation', seeks feedback on the technical detail underpinning the proposed performance indicators and domain structure for APACS for 2008/09. This consultation will run for 6 weeks and responses are sought by Friday 18 January 2008.

The two respective documents can be found at
http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/2007-12-07_APACS_strategic_1.pdf

http://police.homeoffice.gov.uk/news-and-publications/publication/police-reform/2007-12-07_APACS_technical_1.pdf

Deaths During or Following Police Contact: Statistics for England and Wales 2006/07

The Independent Police Complaints Commission has published its annual report on the number of deaths during and following police contact in 2006/07.

In 2006/07 there were 82 deaths during or following police contact, of which:

- 36 were Road Traffic Fatalities;
- 1 was a Fatal Police Shooting;
- 27 were Deaths In or Following Police Custody; and
- 18 were Deaths During or Following Other Police Contact.

The report breaks down these statistics in each of these areas, findings show:

- In 2006/07 there were 35 police-related road traffic incidents that resulted in the deaths of 36 individuals. 19 died during or shortly after a police pursuit; 13 died when a vehicle seemingly made off at speed from a patrolling vehicle or failed to stop when asked to do so by officers; and 3 pedestrians died after being hit by a pursued vehicle.
- The one person fatally shot in 2006/07 was a 41-year-old male of white British background.
- Of the 27 people who died in or following police custody; 21 were reported to be white; 2 were of Asian origin; 3 were from a Black background, and the ethnicity of one individual was not stated. Drugs or alcohol were apparently linked to 22 of the 27 fatalities.
- Of the 18 individuals who died during or following other police contact; 5 deaths resulted when the individual actively tried to avoid contact with officers; 4 died during a siege situation; 3 deaths were alleged murders; 3 died after officers had attended and left the scene following concerns regarding the person's behaviour or welfare; and the 3 remaining deaths were individuals who apparently took their own life during or after contact with the police.

The report can be found in full at http://www.ipcc.gov.uk/death_report_2006-07.pdf

Suspicious Activity Reports Regime Annual Report 2007

The Suspicious Activity Reports Regime Committee has prepared and submitted the first annual report to Home Office and HM Treasury on the Suspicious Activity Reports (SARs) regime. The submission of an annual report was recommended by Sir Stephen Lander, following his review of the SARs regime in 2006.

The report considers:

- The progress made against the recommendations in Sir Steven Lander's review report.
- The current health of the regime.
- The next steps in its development.

The report found that considerable progress has been made against the majority of the Lander review recommendations, but found that the overall use of SARs remains patchy, with some significant areas of weakness. It concludes that developments need to be concentrated on making it easier for end users to better exploit SARs and SARs-derived information. The report can be viewed in full at http://www.soca.gov.uk/assessPublications/downloads/SARsAnnualReview221107.pdf

New Protective Services Demonstration Sites

The Minister of State for Security, Counter-Terrorism, Crime and Policing, Tony McNulty, has announced that three more initiatives are being included as Demonstrator Sites for the Protective Capabilities programme.

The new supported initiatives are collaborative projects being conducted by the following forces:

- Staffordshire, Warwickshire, West Mercia, and West Midlands - will operate a Regional Intelligence Project intended to develop enhanced joint intelligence structures.
- Derbyshire, Leicestershire, Lincolnshire, Northamptonshire, and Nottinghamshire - will operate a Specialist Operational Capacity and Capability programme which is intended to identify and take forward joint specialist requirements for protective services.
- Humberside, North Yorkshire, South Yorkshire, and West Yorkshire - will undertake Fast-Time tasking, coordinating and resourcing arrangements.

(The 10 original Demonstrator Sites for the Protective Capabilities programme were covered in an article in the August 2007 *Digest*).

Research Report into Paedophilia

The Centre for Addiction and Mental Health (CAMH) has released the results of a study which used magnetic resonance imaging (MRI) and a sophisticated computer analysis technique to compare a group of paedophiles with a group of non-sexual criminals to try to identify which brain regions distinguish paedophilic from non-paedophilic men.

The results showed that paedophiles had significantly less of a substance called "white matter" which is responsible for wiring the different parts of the brain together. The report suggests that much more research attention should be paid to how the brain governs sexual interests and that this could potentially yield strategies for preventing the development of paedophilia.

The study has been published in the Journal of Psychiatric Research.

Updated Best Practice Handbook of NSPCC Procedures and Core Standards

The NSPCC has updated its best practice handbook for practitioners and managers providing services for children and young people. In the interests of openness and good practice, the NSPCC publishes the handbook on their internet site for partner agencies and other interested parties. It can be found at http://www.nspcc.org.uk/Inform/resourcesforprofessionals/PSPs/PSPs_wda48961.html

Research Report on Issues that can affect the Criminalisation of Children

The Institute for Public Policy Research (IPPR) has announced that in January it will be publishing a research report entitled, 'Make me a criminal'. The IPPR has already announced that the report warns of certain activities which are associated with offending, including:

- Regular, unsupervised socialising with peers in disadvantaged, high-crime areas.
- Regularly socialising with older anti-social teenagers, without adult supervision.

It finds that a number of existing approaches can be counter-productive and actually encourage youth crime, in particular:

- Early or isolated use of ASBOs.
- Juvenile curfews.
- Boot camps.

In respect of the use of ASBOs, it argues that:

- ASBOs should not be used on children younger than 12 unless accompanied by family or parenting orders.

- All children, including older children (13-18), should be assessed before being given an ASBO.
- ASBOs for children should be scaled back to between six months and two years, instead of the current two to ten years.
- Anti-social behaviour legislation should be reformed, so that the most-at risk parents are targeted with tailored support and services to divert their children from crime.

The report also recommends:

- New supervision in play areas (like new style 'play rangers' or traditional park-keepers).
- More welfare teams of professionals (like social workers, behavioural psychologists and family welfare officers) located in schools where children are at greatest risk of underachievement and anti-social behaviour.
- New staffed adventure playgrounds in disadvantaged areas.

When published in full, the report will be available at http://www.ippr.org/

Fuel Protests

The pressure group Transaction 2007 (a reincarnation of the old Transaction 2000 Group) has recently organised protests at oil refineries to protest after fuel pieces have risen to over £1 a litre. In 2000 blockade protests at oil refineries resulted in petrol supplies running low in retail outlets and the Government were forced to use the Army to get fuel out of depots.

Further information on Transaction 2007 and it aims can be fund at http://www.transaction-2007.com/

CASE LAW

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

Section 2 PACE - Importance of Officers to Give Name and Station Details Prior to Conducting a Search

R v CHRISTOPHER BRISTOL (2007)

CA (Crim Div) (Thomas LJ, Silber J, Cooke J) 4/12/2007

Police - Criminal Procedure

Obstruction Of Police: Pace Codes Of Practice: Police Powers And Duties: Stop And Search: Need For Officer To Give Name And Station Details Prior To Search: S.2 Police And Criminal Evidence Act 1984: S.23 Misuse Of Drugs Act 1971

On the facts and in the particular circumstances of the case, a drug search conducted by police officers was a breach of the Police and Criminal Evidence Act 1984 s.2 and was therefore unlawful. Accordingly the judge had erred in failing to withdraw the case from the jury on the basis that the section had not been complied with.

The appellant (B) appealed against a conviction for obstructing a police officer in the exercise of his duty. Two police officers had seen B in the street and believed him to be the subject of an exclusion order. One of the officers (M) noticed that B had something in his mouth. M asked B to open his mouth and saw what he believed to be a wrap of drugs. M asserted that he physically intervened to prevent B swallowing and instructed him to "spit it out". Other officers arrived on the scene and B was grounded and handcuffed. B was searched but no drugs were found on his person and a hospital check showed no signs of recent drug use. No tests were carried out to determine the contents of B's stomach. At trial B submitted that the case should be withdrawn from the jury on the basis that the search had been conducted in breach of the Police and Criminal Evidence Act 1984 s.2. The judge ruled that consideration of the issue as to whether or not the search had been lawful was a matter for the jury. He directed the jury that M was required to take reasonable steps and that they had to look at the incident as a whole to consider if M conveyed all the information that he could reasonably have done. B submitted that the judge erred in leaving the issue as to whether or not the search was lawful to the jury and gave insufficient weight to the relevant case law.

HELD

The power to search an individual fell under the Misuse of Drugs Act 1971 s.23, which meant that s.2 of the 1984 Act applied. B accepted that M had been entitled to exercise the power under s.23 of the 1971 Act and the prosecution accepted that s.2 of the 1984 Act applied to the manner of the search. It was common ground that where there was a breach of s.2 of the 1984 Act the search would be unlawful and a defendant could not be convicted, O (A Juvenile) v DPP (1999) 163 JP 725 applied. The law was in doubt and s.2(3) of the 1984 Act was underlined by clear words in Osman. Therefore the question in the instant case was whether or not there was any evidence that M took reasonable steps before the search to give B his name, the police station to which he was attached and the nature of the search as required by s.2(3) of the 1984 Act. All M had to do was state his name, the police station, "drugs search" and "spit it out" in order to comply with the procedures. There was no need for M to have said more than that but Parliament intended that at least that minimum was required. The requirements of s.2 of the 1984 Act were clear and Parliament had not legislated that police officers should impart information if it was reasonable to do so in the circumstances since it had specified that certain steps had to be taken. The strict formalities were in place to protect a person's civil liberties. Although the prosecution submitted that a liberal approach should be adopted, that was not what the 1984 Act said and there was no evidence that it would have been difficult for M to say the words required of him. On the particular facts of the instant case, there was no evidence that the words were said and Parliament had not contemplated that those steps should be omitted, Bonner v DPP (2004) EWHC 2415 (Admin), (2005) ACD 56 considered. In the circumstances the judge should have withdrawn B's case from the jury.

APPEAL ALLOWED

Reasonable Suspicion - Adequacy of Objective Information - Information Known to Others - Necessity

(1) SONIA RAISSI (2) MOHAMED RAISSI v COMMISSIONER OF POLICE OF THE METROPOLIS (2007)

QBD (McCombe J) 30/11/2007

Criminal Law - Torts

Damages: False Imprisonment: Necessity: Suspicion: Terrorism: Unlawful Arrest: Reasonable Grounds For Suspicion: Whether Knowledge Of Superior Officer Sufficient For Arresting Officer To Rely On: S.41(1) Terrorism Act 2000

If information given to an arresting officer by a superior was insufficient to supply to the arresting officer reasonable grounds for suspicion of the arrested person, it would not avail the arresting officer to claim that he thought that his

superior probably did have other information justifying the arrest that he had not been informed of. If it were otherwise the safeguard against arbitrary arrest and detention of which the court spoke in O'Hara v Chief Constable of the Royal Ulster Constabulary (1997) AC 286 would not exist and it would be only a short step from justifying an arrest on the basis simply of "obeying orders" which was so emphatically rejected in that case.

The claimants (S and M) sought damages for wrongful arrest and false imprisonment against the defendant commissioner. S and M had been arrested and detained on suspicion of involvement in the terrorist attacks in the United States on September 11, 2001. S and M were respectively the wife and brother of a man (L) who was suspected of being involved in the attacks. There was evidence that S was abroad with L at a time when he might well have been thought to have been engaged in training with one of the known perpetrators of the attacks. M lived in a neighbouring county to L and they had access to each other's houses. The claimants were not charged and were released after interview and detention. S was detained for 4.5 days and M was detained for 41 hours. S and M had been arrested by two police officers (O and B respectively). Each of the officers relied, in making their judgment whether to arrest or not, on the fact that more senior officers might have other additional information to which they were not privy. The issue was whether, assuming that the arresting officer had the necessary suspicion that the suspect was involved in acts of terrorism, there was reasonable cause for that suspicion. The commissioner submitted that the threshold of reasonable suspicion was relatively low and that the defence of necessity applied, based on the need of the police to react for the protection of the public in the light of a unique and unprecedented act of terror and the possibility of further similar offences. S and M submitted that no such defence existed to a claim such as the instant and that it would be extraordinary that if the police had no reasonable grounds for arresting a person for an offence, they could have resort to some undefined defence of supposed necessity.

HELD

(1) On the evidence the statements truly represented what each of the arresting officers had in mind when the arrests were made. The question was whether the information that the officers had was sufficient to enable each to have reasonable grounds for suspecting that the relevant claimant was a "terrorist" within the meaning of the Terrorism Act 2000 s.41(1). The starting point for an assessment as to whether reasonable grounds for suspicion justifying arrest had been established was the decision in O'Hara v Chief Constable of the Royal Ulster Constabulary (1997) AC 286. If information given to an arresting officer at a briefing by a superior was insufficient to supply to the arresting officer reasonable grounds for suspicion of the arrested person, it would not avail the arresting officer to claim that he thought that his superior probably did have other information justifying the arrest that he had not been informed of. If it were otherwise the safeguard against arbitrary arrest and detention of which the court spoke in O'Hara would not exist and it would be only a short step from justifying an arrest on the basis simply of "obeying orders" which was so emphatically rejected in that case, O'Hara applied. The

factors that O had in mind at the time of arrest amply justified S's arrest. S was not merely the wife of a prime suspect but had been with L in a foreign country at a time when he might well have been thought to be engaged in the same training as one of the known perpetrators of the attacks. It must have been reasonable to suspect that, if L was possibly involved, S might also have been complicit in the offences. M's case was quite different. B knew that his superiors thought M was a suspect but did not know what that view was based on. B was not entitled to act on surmise as to additional information that senior officers might have but which was not passed on to him. M was arrested because B knew that he was the brother of a suspect and that their relationship was close. Those grounds were not sufficient to justify his arrest.

(2) In English law no arrest was lawful unless the person arrested was informed of the reason for his detention at the time of the arrest or as soon as practicable thereafter. Neither S nor M had been informed that he or she was being arrested on any other ground than suspicion of being concerned in the commission, preparation or instigation of acts of terrorism. Neither of them was told that he or she was being arrested on some general ground of necessity. Therefore no defence of necessity, if such a defence was known to the law, was available.

JUDGMENT FOR CLAIMANTS IN PART

Guidance on Sections 71 to 75 of the Serious Organised Crime and Police Act 2005 - Discounted Sentences

R v P: R v BLACKBURN (2007)

CA (Crim Div) (Sir Igor Judge (President QB), Pitchers J, Sir Richard Curtis) 22/10/2007

Sentencing

Informers: Review Of Sentence: Sentencing Guidelines: Sentencing Powers: Serious Offences: Discounted Sentences: Operation Of S.71 To S.75 Serious Organised Crime And Police Act 2005: S.71 Serious Organised Crime And Police Act 2005: S.75 Serious Organised Crime And Police Act 2005: S.74 Serious Organised Crime And Police Act 2005: S.74(2) Serious Organised Crime And Police Act 2005

The court examined and gave guidance upon the Serious Organised Crime and Police Act 2005 s.71 to s.75, particularly the provisions relating to review of discounted sentences.

The court was required to address for the first time the Serious Organised Crime and Police Act 2005 s.71 to s.75 in two unrelated cases where the appellants appealed against their respective sentences imposed after they had entered into and adhered to a written agreement with a prosecutor. While

awaiting trial in 2005 for offences of conspiracy arising from the importation of controlled drugs, P had supplied information relating to an unrelated murder investigation. His 17-year sentence of imprisonment had been reduced to 15 years to reflect his assistance. When the Act subsequently came into force, P had entered into an agreement for the purposes of s.71 and had provided more information, which had resulted in him being charged with further offences, for which sentences of imprisonment of four years were to run concurrently with the original sentence. His 15-year sentence had been reviewed and a sentence of five years substituted, but his eventual release date was to be calculated by the date of his guilty plea to the later offences and not by the reduced sentence imposed on the review. In the second case, B had provided evidence that had been critical to a murder conviction and he appealed against a total sentence of four years' imprisonment for drugs offences.

HELD

(1) The Act provided a formal and comprehensive framework of general application for reviews of sentences, whenever imposed, regardless of when the crimes in question were committed. Provided defendants admitted their own criminality in full, the process was not confined to offenders who provided assistance in relation to crimes with which they had been involved.

(2) Section 74 provided for a process of post-sentence review. In each of the specified situations, a defendant could be re-sentenced in the Crown Court. Where possible, that decision was to be made by the original sentencing judge. The decision was subject to appeal in the instant court.

(3) The review itself was not an appeal against sentence, but was a fresh process. The court was not inhibited by the fact that it might already have heard and decided an appeal against the original sentence.

(4) Where a review arose from a defendant's failure to comply with an agreement made under the Act, to honour a reduction in sentence would not be right. Equally, a sentence was not to be increased as a punishment for non-compliance.

(5) Where a review was under consideration after sentence, it was important to ask why the offer of assistance had been delayed. However, unless the delay had diminished the value of the assistance, a defendant was not to be penalised by a lesser reduction in sentence, and any reduction had to be proportionate.

(6) The existing "text" system could still be used in relation to those who were unable or unwilling to enter into the formalised process envisaged by the Act. However, any discount of sentence was likely to be correspondingly reduced to reflect the diminished value of the assistance.

(7) The power under s.75 to exclude the media from the review was to be used with great caution, particularly where the review arose under s.74(2). The court gave examples of practical alternatives, which were to be adopted where possible.

(8) General principles established by previous authorities about the appropriate level of discount were still valid. The court examined important factors in any sentencing decision, and the weight to be attached to those factors. It emphasised that, in relation to sentencing under the Act, a mathematical approach was liable to produce an inappropriate result. The principle of totality was fundamental. It also outlined the importance of concurrent sentencing for offences admitted by a defendant as part of the agreement, which would otherwise not have been attributed to him. The Act did not, however, provide immunity from punishment, and defendants should not escape punishment altogether. The level of reduction would almost never exceed three quarters of the total sentence which would otherwise have been imposed.

(9) P's total sentence remained at five years' imprisonment, but the four-year period imposed concurrently following his obligation to disclose his criminality was reduced to three years. B's sentence of four years' imprisonment was reduced to one of two-and-a-half years.

APPEALS ALLOWED

Section 41 Youth Justice and Criminal Evidence Act 1999 Applies to Trials for Sexual Offences Committed Before the Sexual Offences Act 2003 Came into Force

R v C (2007)

CA (Crim Div) (Sir Igor Judge (President QB), Pitchford J, Openshaw J) 7/11/2007

Criminal Evidence - Criminal Law

Cross-Examination: Indecent Assault: Rape: Sexual Behaviour: Sexual Offences: Victims: Sexual Offences Act 2003: S.41 Youth Justice And Criminal Evidence Act 1999

The statutory restriction on evidence or questions about a complainant's previous sexual history contained in the Youth Justice and Criminal Evidence Act 1999 s.41 applied to the trial of the sexual offences which were committed before the Sexual Offences Act 2003 came into force.

The appellant (C) appealed against his convictions for rape, indecent assault and assault occasioning actual bodily harm. The alleged offences had been committed against C's wife (W). The Sexual Offences Act 2003 was not in force at either the time that the offences were committed or at the time that W complained. At trial C's counsel applied for leave to cross-examine W about certain areas of her alleged sexual activities. The judge, relying on the Youth Justice and Criminal Evidence Act 1999 s.41, refused to allow W to be cross-examined about an argument arising from an alleged affair with a sixteen-year-old boy. The judge refused the application on the basis that the purpose

of that proposed cross-examination was to attack W's credibility. The trial proceeded on the premise that the restrictions on cross-examination of W, pursuant to s.41 of the 1999 Act, were in force. An issue arose as whether the jurisdiction of the court under s.41 of the 1999 Act was available to be exercised at all given that the offences were committed before May 1, 2004 when the 2003 Act came into force. C contended that there was no express direction in the 2003 Act that s.41 of the 1999 Act was of application in the trial of sexual offences that were committed before the 2003 Act came into force.

HELD

Section 41 of the 1999 Act applied to the trial of the offences with which C was charged. The protective features of s.41 had not been repealed, disapplied, or amended by the 2003 Act. Rather they had been extended to the newly defined and extended range of offences contained in the 2003 Act. Section 41 remained in full force and continued to apply to trials for sexual crimes which had taken place before the 2003 Act was implemented. Whilst there was a lacuna in the 2003 Act in relation to the application of s.41, that could easily have been filled by a short saving provision stating expressly what was plainly implied or understood, namely that after the 2003 Act came into force s.41 would continue to apply to trials of offences which took place before that date. The absence of such a provision did not lead to the conclusion that legislation expressly designed to make new provisions for the prevention of sexual offences somehow disapplied the protective provisions of the 1999 Act to trials involving that particular group of complainants. The virtually universally discredited common law rules relating to cross-examination in the instant class of case were not resuscitated merely because of an adventitious discrepancy between the date when the offences were committed and the trial. In the instant case it was entirely reasonable for the trial judge to assume that the purpose or the main purpose for the issue in relation to which cross-examination had not been permitted was to impugn the credibility of W as a witness, R v C (2005) EWCA Crim 3533, (2006) 1 Cr App R 28 and Inco Europe Ltd v First Choice Distribution (2000) 1 WLR 586 considered.

APPEAL DISMISSED

Examination of Power to Extend Detention under the Terrorism Act 2000

CHRISTOPHER OWEN WARD v POLICE SERVICE OF NORTHERN IRELAND (2007)

HL (NI) (Lord Bingham of Cornhill, Lord Hope of Craighead, Baroness Hale of Richmond, Lord Carswell, Lord Brown of Eaton-under-Heywood) 21/11/2007

Criminal Procedure

Exclusion From Court: Judicial Decision-Making: Statutory Interpretation: Terrorist Investigations: Warrants Of Further Detention: Exclusion Of Detained Person From Court During Hearing Of Request For Further Detention: Sch.8 Terrorism Act 2000: Meaning Of "A Person" In Sch.8 Para.34(2)(D): Sch.8 Para.28(3) Terrorism Act 2000: Sch.8 Para.34(3) Terrorism Act 2000: Sch.8 Para.32(1a)(A) Terrorism Act 2000: S.41 Terrorism Act 2000: Sch.8 Para.36 Terrorism Act 2000: Sch.8 Para.34 Terrorism Act 2000: Sch.8 Para.33 Terrorism Act 2000: Sch.8 Para.31 Terrorism Act 2000: Sch.8 Para.33(3) Terrorism Act 2000: Sch.8 Para.34(2)(D) Terrorism Act 2000: Sch.8 Para.34(4) Terrorism Act 2000

The court examined and clarified the power to extend a period of detention under the Terrorism Act 2000 Sch.8 para.31 to para. 34 and para.36. The process was subject to a carefully constructed timetable and carefully constructed safeguards. In the instant case, the judge had not abused the power conferred by para.33(3) in excluding the detained person from court while establishing whether the test for an extension had been met.

The appellant (W) appealed against the refusal of his application for judicial review of an extension to a warrant of detention. W had been arrested under the Terrorism Act 2000 s.41. He had been detained and questioned. His detention had twice been extended under Sch.8 para.32(1A)(a) of the Act. At the hearing of the third request for an extension, the respondent police had stated that it was important to interview W about five outstanding topics. The judge wished to be satisfied that the topics were new and had agreed to exclude W and his solicitor from the hearing for 10 minutes so that the matter could be explored in detail in their absence. The extension had been granted without W or his solicitor being informed of what had transpired during their absence. The application for judicial review had been made on the ground that, in excluding W from the proceedings, the judge had acted outside the powers conferred on him by Sch.8 para.33. The certified questions for the instant court were i) whether, at the hearing of an application for an extension of a warrant of further detention under Sch.8 para.36 of the Act, para.33(3) conferred a freestanding power on a judicial authority to exclude the person to whom the application related and his or her representative from the hearing of the application or whether the power had to be read subject to the provisions of Sch.8 para.34; (ii) whether, where the person to whom the application related and his or her representative had been excluded from the hearing under the power contained in para.33(3), the judicial authority was lawfully

empowered to withhold from the excluded person any information presented to the judicial authority during the period of their exclusion, in the absence of any application having been made under para.34 for information to be withheld; (iii) whether, upon the hearing of an application for an extension of a warrant of further detention under para.36, information could be lawfully withheld from the person to whom the application related and his or her representative other than under the authority of para.34.

HELD

(1) The court declined to answer the certified questions because the propositions that they contained were expressed too broadly: the power in para.33(3) was available where the judicial authority wished to be satisfied that further detention was necessary to obtain relevant evidence by questioning the person to whom the application related. However, it had to be read subject to para.34, so that where the power to order that specified information be withheld from that person was available, an order to withhold it had to be sought under that paragraph.

(2) The context for the power to exclude in para.33(3) was that there was no rule of law requiring the police to reveal to a suspect the questions that they wished to put to him at interview, nor were they required to reveal in advance the general topics they wished to cover. Hearings had to be conducted fairly but advance notice was not a pre-requisite of fairness. The power conferred by para.33(3) was not limited in the same way as para.28(3) and on the face of its wording, the judge had been entitled to exclude W and his solicitor from the hearing. That power operated, not against the detained person, but for his benefit, because the need to carefully and diligently scrutinise the grounds for an application meant that it would not be to the detained person's disadvantage to be excluded while the judicial authorities established whether the exacting test in para.32 for an extension was satisfied. A judicial authority had to be careful not to exercise the power in a manner that was not in the interests of a detained person.

(3) An application under para.34 ought ordinarily to be made before the beginning of a hearing so that the amount of information to be received by a detained person was settled in advance. On the facts, none of the grounds listed in para.34 was relevant to the question whether information about the topics on which W was still to be interviewed should be withheld from him and his solicitor. Properly construed, the reference to "a person" in para.34(2)(d) meant somebody other than the detained person, since a detained person had already been "apprehended" and his apprehension could therefore not be made more difficult. Also, there was contrast between the phrase "a person" in para.34(2)(d) and the phrase "the detained person" in para.34(3) and para.34(4). If para.34(2)(d) had been intended to refer to the detained person it would have included words to make that clear.

APPEAL DISMISSED

Proceeds of Crime - Assessment of Benefit from Criminal Activity - Mortgages

R v MILROY NADARAJAH (2007)

CA (Crim Div) (Pill LJ, Hedley J, Sir Richard Curtis) 16/11/2007

Criminal Law

Benefit From Criminal Conduct: Confiscation Orders: Assessment Of Benefit From Criminal Activity: Factors To Be Taken Into Account: Proceeds Of Crime Act 2002: S.7 Proceeds Of Crime Act 2002

A confiscation order was excessive where a mortgage sum advanced to an individual should have been taken into account when considering his benefit from criminal conduct rather than at the later stage of determining the recoverable amount. In the absence of further enquiry it was not appropriate to rely on the assumption that the mortgage sum had been obtained as a result of his general criminal conduct.

The appellant (N) appealed against a confiscation order of £1,251,696 imposed following his conviction for conspiracy to supply Class A controlled drugs. N had been caught delivering cocaine with a street value of £1.2 million to premises and pleaded guilty to supplying Class A controlled drugs. The prosecution instituted confiscation proceedings pursuant to the Proceeds of Crime Act 2002. A money counting machine was found at N's residence together with cash, watches and the keys to a Porsche and other vehicles. At the confiscation hearing the judge held that he was entitled to consider evidence about N's general criminal conduct, as well as the supply of drugs that N had been apprehended making. The judge concluded that N had benefited to the figure of £2,074,991. That figure was reduced by 25 per cent by the judge when considering the recoverable amount under s.7 of the Act. When determining the recoverable amount under s.7 of the Act, but not earlier, the judge took the realisable value of N's residence, put at £839,896 after the repayment of the mortgage and costs. On appeal the prosecution conceded that the judge erred in basing the benefit to N on the total value of the N's residence rather than on the equity in the property. N contended that the confiscation order was excessive and that the appropriate sum was £337,493. In particular N contended that the amount of a mortgage of £540,000 advanced to him should be excluded from the calculation, and that the relevant value of his interest in the property was £360,000, which was the deposit paid by him at the time of purchase. The prosecution contended that the mortgage advance should be taken into account and that the sum was a discrete sum which had been obtained as a result of N's criminal conduct.

HELD

The mortgage sum advanced to N should have been taken into account when considering N's benefit from the conduct concerned rather than at the later stage of determining the recoverable amount. In the absence of further enquiry at the confiscation hearing it was not appropriate, at the instant stage in the litigation, to rely on the assumption that the mortgage sum had been

obtained as a result of his general criminal conduct. With respect to N's residence the benefit figure should have been based on the value of the equity at the material time, as was conceded by the prosecution. The relevant figure was the greater of the value at the time the property was obtained and the value at the time of the confiscation order, R v Scragg (Michael Garett) (2006) EWCA Crim 2916 applied. That equity had been assessed at £500,000 at the confiscation hearings on the basis of valuations, including those submitted by N. Accordingly the appropriate figure for the confiscation order was £723,741. That reflected N's equity of £500,000, plus £375,000 paid by N for drugs and £89,990.84 for unexplained deposits by N.

APPEAL ALLOWED

Hunting Act 2004 is Compliant with European Convention on Human Rights

R (ON THE APPLICATION OF COUNTRYSIDE ALLIANCE & ORS) V ATTORNEY GENERAL & ANOR (2007)

Hl (Lord Bingham Of Cornhill, Lord Hope Of Craighead, Lord Rodger Of Earlsferry, Baroness Hale Of Richmond, Lord Brown Of Eaton-Under-Heywood) 28/11/2007

Animals - European Union - Human Rights

Free Movement Of Goods: Freedom Of Assembly And Association: Freedom To Provide Services: Hunting: Justification: Peaceful Enjoyment Of Possessions: Proportionality: Right To Respect For Home: Right To Respect For Private And Family Life: Ban On Hunting With Dogs: Compatibility Of Hunting Act 2004 With Convention Rights And Ec Law: Foxhunting: Art.11 European Convention On Human Rights: Protocol 1 Art.1 European Convention On Human Rights: Hunting Act 2004: Art.49 Treaty Establishing The European Community (Nice Version): Art.46 Treaty Establishing The European Community (Nice Version): Art.8 European Convention On Human Rights: Art.30 Treaty Establishing The European Community (Nice Version): Art.28 Treaty Establishing The European Community (Nice Version): Art.14 European Convention On Human Rights

The ban on certain types of hunting under the Hunting Act 2004 was consistent with EC law and did not infringe the European Convention on Human Rights 1950 Art.8 or Art.11.

The appellants (H and E) appealed against a decision ((2007) EWCA Civ 817) that the Hunting Act 2004 was neither incompatible with the European Convention on Human Rights 1950 nor inconsistent with the EC Treaty (Nice). The Act prohibited the hunting with dogs of certain wild mammals, including foxes and hares. H included those involved in hunting for their occupation or livelihood, and landowners who either permitted hunting across their land or managed their land for that purpose. E included Irish dog breeders who had formerly sold their dogs in the United Kingdom, and UK providers of livery services and hunting-based holidays for those visiting from other EU member states. H argued that the hunting ban infringed their rights under Art.8 of the Convention as it adversely affected their private life, cultural lifestyle, the use of their home, and would result in the loss of their livelihood. They submitted that the Act infringed their rights under Art.11 to assemble and associate to hunt foxes, and interfered with their property rights under Protocol 1 Art.1. They also argued that the Act subjected them to adverse treatment, on the grounds of their "other" status under Art.14 compared to those who did not wish to hunt. E contended that the Act was inconsistent with Art.28 and Art.49 of the EC Treaty and sought references to the European Court of Justice on the issues of whether a national measure prohibiting the economic activity of hunting within the territory of a member state engaged Art.28 in circumstances where the prohibition had the predictable effect of diminishing the market for a product used wholly or mainly for that activity and thereby eliminated or reduced cross-border trade in that product, and whether a

national measure prohibiting hunting within the territory of a member state engaged Art.49 in circumstances where, as a predictable consequence of the prohibition, providers of hunting-related services were prevented from providing such services.

HELD

(1) The instant case was far removed from the values that Art.8 existed to protect. Fox hunting was a very public activity. H's references to notions of privacy, personal autonomy and choice were so remote from the instant case as to give no helpful guidance, Pretty v United Kingdom (2346/02) (2002) 2 FLR 45 and Peck v United Kingdom (44647/98) (2003) EMLR 15 distinguished. It was one thing to recognise that the meaning of "home" should not be too strictly defined, but was quite another to suggest that the expression could cover land over which the owner permitted a sport to be conducted that would never in any ordinary usage be described as "home", Niemietz v Germany (A/251-B) (1993) 16 EHRR 97 and Giacomelli v Italy (59909/00) (2007) 45 EHRR 38 considered.

(2) H's position was no different from that of other people who wished to assemble in a public place for sporting or recreational purposes. It fell well short of the kind of assembly whose protection was fundamental to the proper functioning of a modern democracy. Article 11 was not therefore engaged. Even were Art.8 and Art.11 engaged, the interference would be justified since it was in accordance with the law, was for the protection of morals and was necessary in a democratic society. There were many who did not consider that there was a pressing social need for the hunting ban, but a majority of the country's democratically elected representatives had decided otherwise. The democratic process was liable to be subverted if, on a question of moral and political judgment, opponents of the Act achieved through the courts what they could not achieve in Parliament. The Act was proportionate to the end that it sought to achieve.

(3) Although the Act did not deprive H of their possessions, it did restrict the use to which certain property could be put. That interference was, however, justifiable, and respect had to be paid to the recent and closely considered judgment of Parliament.

(4) Even if H had been the subject of adverse treatment compared to those who did not hunt, such treatment could not be linked to any personal characteristic of any of the appellants or anything that could meaningfully be described as "status". Article 14 was not therefore engaged.

(5) Whilst the court inclined to the view that Art.49 of the EC Treaty was engaged, the matter was not acte clair. Moreover, although the Court of Appeal had concluded that the Act did not engage Art.28, it was hard to say that such a conclusion was clear beyond the bounds of reasonable argument. However, no good purpose would be served by seeking a preliminary ruling from the ECJ if the hunting restrictions were justified on the grounds of public policy under Art.30 and Art.46.

(6) The Act was a measure of social reform not directed to the regulation of commercial activity and was justifiable, Omega Spielhallen- und Automatenaufstellungs GmbH v Bundesstadt Bonn (C36/02) (2004) ECR I-9609 considered. The interference with free movement of goods and services between other member states was incidental. Taken overall the prohibitions satisfied the requirement of proportionality in accordance with community law.

APPEALS DISMISSED

Power to Reject Decision of Reviewing Officer - Lawfulness of Decision

R (on the application of RICHARD BOLT) (Claimant) v CHIEF CONSTABLE OF MERSEYSIDE (Defendant) & CHIEF CONSTABLE OF NORTH WALES (Interested party) (2007)

QBD (Admin) (Underhill J) 16/11/2007

Police

Dishonesty: Dismissal And Disciplinary Procedures: Misconduct: Police: Review Officers: Scope Of Review: Lawfulness Of Decision: Reg.37(1) Police (Conduct) Regulations 1999: Reg.37(2) Police (Conduct) Regulations 1999: Police (Conduct) Regulations 1999

The scheme of the Police (Conduct) Regulations 1999 did not give a chief officer who had not himself conducted a review of a disciplinary panel's decision the power to reject a decision of the officer who had done so, but in an individual case the decision reached by the officer reviewing the panel's decision was not one to which he could properly have come and, therefore, it could not be sustained in law.

The claimant (B) sought a declaration that the defendant chief constable (X) had unlawfully refused to implement a decision reached by a reviewing chief constable (Y) that B should be reinstated as a police constable. B had been a police constable with X's force. A disciplinary panel found that B had accompanied another officer (L), when both were on duty and in a police van, on a visit to an ex-police officer who lived outside their patrol area. They had visited him on at least two previous occasions, on at least one of which their purpose was to collect pornographic material. During the journey, the officers were flagged down by a man who reported that he had just been attacked, and who pointed out the alleged robber. The latter was detained and B, while ringing to make a police check on him, gave his location as a road within his legitimate patrol area. Later, B claimed that he had been satisfied by the alleged offender's account and so had released him. No record was made of the incident. B said he had not been dishonest, but he was charged with having breached the police code of conduct, and the panel decided that he should be dismissed. B applied for a review of that decision. Owing to the notoriety within the police force of the charges involving L, the review was conducted by Y, a chief constable of another force. Y found that, although B was properly convicted, the punishment was excessive and that B should be reinstated. B submitted that, where a review was conducted by an officer other than the chief officer, it was, on the true interpretation of the Police (Conduct) Regulations 1999 reg.37(1) or reg.37(2), not open to the chief officer to reject the decision of the officer conducting the review. X contended that, while B completed the prescribed form requesting a review of the findings and punishments in respect of all charges, in the supporting detailed submissions the challenge against sanction was not addressed as in relation to the main charge and, therefore, Y had no power to review the sanction imposed in relation to that charge.

HELD

(1) As the prescribed form made an express challenge to the sanctions on all three charges, only a clear and unequivocal withdrawal of that challenge would suffice.

(2) The scheme of the regulations did not give a chief officer who had not himself conducted a review the power to reject the decision of the officer who had done so. In cases where another officer conducted a review under reg.37(1) or reg.37(2), he must do so in the place of the chief officer and in the capacity of reviewing officer.

(3) In short, the panel's findings were that B had knowingly participated in a deliberate omission to investigate a serious reported crime because he feared that doing so would reveal other misconduct on his part. As part of that cover-up he had lied about his whereabouts to the colleague whom he asked to carry out a check. He had maintained his lies in the subsequent investigation and at the hearing. That conduct was rightly and inevitably characterised by the panel as dishonest. While not every untruth or half-truth told by a police officer, however trivial and whatever the circumstances, would necessarily constitute misconduct justifying dismissal, the misconduct found by the panel, and B's subsequent lies about it, constituted deliberate dishonesty in an operational context. As paragraph 1 of the police code of conduct rightly emphasised, integrity was a fundamental requirement for a police officer. Y's decision to overturn the panel's decision was not one to which he could properly have come. Dismissal was not an inappropriate penalty in the light of the panel's findings. It must be in the nature of a review, as opposed to a full appeal, that the chief officer conducting it should not overturn the decision of the original panel as to the appropriate sanction simply because he would have taken a different view, but only where the sanction imposed by the panel was so plainly excessive as to be properly characterised as unfair. While Y appeared to go that far, the court could not agree with him.

JUDGMENT FOR DEFENDANT

SI 3299/2007 The Money Laundering (Amendment) Regulations 2007

In force **15 December**. These Regulations make minor amendments to the Money Laundering Regulations 2007 (S.I. 2157/2007). They:

- Specify that "communications" in relation to the grounds of confidentiality of communications in Scotland means communications between a lawyer and his client or in contemplation or in connection with legal proceedings.
- Provide for the treatment of determinations by the Commissioners for Revenue and Customs to refer matters to the Scottish prosecuting authorities as assigned matters within the meaning of Section 1(1) of the Customs and Excise Management Act 1979.
- Add the International Association of Book-keepers as a supervisory authority who may supervise persons regulated by it for compliance with the 2007 Regulations.

SI 3377/2007 The Proscribed Organisations Appeal Commission (Procedure) (Amendment) Rules 2007

In force **1 December**. These Rules amend the Proscribed Organisations Appeal Commission (Procedure) Rules 2007 (S.I. 2007/1286) to make a minor change to rule 30 of those Rules, which deals with applications for permission to appeal from a decision of the Commission to an appellate court under Section 6 of the Terrorism Act 2000. The change means that each party will have the same period in which to apply, i.e. no later than 10 days after the day on which the applicant received the Commission's final determination.

SI 3398/2007 The Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007

In force **26 December**. These regulations implement, in part, Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. The regulations update the Terrorism Act 2000 and the Proceeds of Crime Act 2002, to bring them into line with Chapter 3 of the Directive.

It makes the following amendments to the Terrorism Act 2000:

- Inserts Section 21ZA, which provides a defence to the offences in Sections 15 to 18 of the Terrorism Act 2000, if the person has made a disclosure to an authorised officer before becoming involved in a transaction or an arrangement and the person acts with the consent of the authorised officer.
- Inserts Section 21ZB, which provides a further defence to the offences in Sections 15 to 18 to cover those who become involved in a transaction or an arrangement and then make a disclosure, so long as there is a reasonable excuse for failure to make a disclosure in advance.
- Inserts Section 21ZC, which provides a defence for those who have a reasonable excuse for failure to make a disclosure.

- Inserts a new Section 21D, which contains a new offence of tipping off.
- Inserts new Sections 21E to 21G, which set out the exceptions for the offence of tipping off.
- Amends Section 21A of the Terrorism Act 2000 to give effect to Article 23.2 of the Directive, which provides that Member States are not required to apply the reporting obligations to legal and other professionals when giving legal advice.
- Amends Sections 21A and 21B of the Terrorism Act 2000 in order to give full effect to the requirements of Article 22.1 of the Directive. Article 22.1 requires those covered by the Directive to make reports of knowledge and suspicions of money laundering and terrorist financing that have been attempted as well as committed.
- Inserts a new Section 21C to allow reports of suspicious activity may be made to persons other than the Serious Organised Crime Agency.

It makes the following amendments to the Proceeds of Crime Act 2002:

- Inserts a new Section 339ZA to allow reports of suspicious activity to be made to persons other than the Serious Organised Crime Agency.
- Repeals the existing offence of tipping off in Section 333.
- Inserts a new Section 333A into the Proceeds of Crime Act 2002 to create a new offence of tipping off to cover the regulated sector.

SI 3440/2007 The Immigration (Designation of Travel Bans) (Amendment) Order 2007

In force **12 December**. This Order amends the Immigration (Designation of Travel Bans) Order 2000 by substituting the Schedule contained in that Order with a new Schedule. Any person named by or under an instrument listed in the new Schedule or falling within a description in such an instrument will be excluded from the United Kingdom (subject to the exceptions specified in article 3 of the 2000 Order).

The Order also revokes the Immigration (Designation of Travel Bans) (Amendment) Order 2006.

SI 3447/2007 The Immigration, Asylum and Nationality Act 2006 (Data Sharing Code of Practice) (Revocation) Order 2007

In force **31 December**. This Order revokes the Immigration, Asylum and Nationality Act 2006 (Data Sharing Code of Practice) Order 2007.

SI 3451/2007 The Criminal Justice Act 2003 (Commencement No 18 and Transitional Provisions) Order 2007

In force **7 December**. This Order brings into force the provisions of the Criminal Justice Act 2003 that enable courts to direct that a witness may give evidence through a live link where this is considered to be in the interests of the efficient or effective administration of justice. The provisions are:

- Section 51 (live links in criminal proceedings).
- Section 52 (effect of, and rescission of, direction).
- Section 54 (warning to jury).
- Section 56 (interpretation of Part 8).

The provisions are only brought into force in relation to proceedings in the Crown Court for the following sexual offences that begin on or after 7 December 2007:

- An offence under Part 1 of the Sexual Offences Act 2003 (rape, assault by penetration, sexual assault etc.).
- Rape or burglary with intent to rape.
- An offence under any of Sections 2 to 12 and 14 to 17 of the Sexual Offences Act 1956 (unlawful intercourse, indecent assault, forcible abduction etc.).
- An offence under section 128 of the Mental Health Act 1959 (unlawful intercourse with person receiving treatment for mental disorder by member of hospital staff etc.).
- An offence under Section 1 of the Indecency with Children Act 1960 (indecent conduct towards child under 14).
- An offence under Section 54 of the Criminal Law Act 1977 (incitement of child under 16 to commit incest).

A court may only direct that a live link may be used if it has been notified under Section 51(4)(b) of the Criminal Justice Act 2003 that suitable facilities for receiving evidence through a live link are available in the area in which it appears to the court that the proceedings will take place.

Notes

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