NPIA
National Policing Improvement Agency

Digest

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The NPIA Digest is a journal produced each month by the Legal Services Department. The NPIA 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. During the production of the NPIA Digest, information is included from Governmental and quasi-governmental bodies, criminal justice organisations and research bodies. As such, the NPIA Digest should prove an invaluable guide to those responsible for strategic decision making, operational planning and police training.

This edition contains a summary of the Bills mentioned in this year's Queen's Speech including the Policing and Crime Bill; Equality Bill; Borders, Immigration and Citizenship Bill and Coroners and Justice Bill. It also includes details of the Bribery Bill which is to be introduced in this parliamentary session. There is a summary of the Counter-Terrorism Act 2008, a new power to close premises involved in persistent anti-social behaviour and new legislation to protect victims of forced marriage and prevent others from forced marriages.

There are also a number of articles outlining recently published Government and Parliamentary reports and initiatives including; the Government Summary and Responses to the Green Paper Consultation 'From the Neighbourhood to the National: Policing Our Communities Together', the Government Response to the Magee Review of Criminality Information, the introduction of a 'Fair Rules for Strong Communities' strategy and new measures to deal with irresponsible drinking.

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

The Case law is produced in association with lawtel From Sweet & Maxwell

Contents

The Queen's Speech 2008

On 3 December 2008, HM The Queen outlined her Government's plans for legislation in her annual speech at the State Opening of Parliament. The bills that relate to the criminal justice system, policing, crime and security or that may by their introduction have some impact upon policing are briefly set out below:

Policing and Crime Bill

The purpose of the bill is to increase the effectiveness and public accountability of Policing; to protect particularly vulnerable members of our society including women and children; to prevent crime and disorder from taking root in our communities; to reduce crime by improving the recovery of criminal assets and international judicial co-operation; and to enhance security planning at UK airports.

The main provisions of the bill include:

- Protection of the public by facilitating and strengthening collaborative working of police forces at all levels from local neighbourhood policing through to the regional and national levels;
- Protection of vulnerable groups, particularly women and children by tackling demand for prostitution and strengthening arrangements around sex offender prevention orders and foreign travel orders;
- Prevent low level crime and disorder taking root in communities by tightening controls around lap dancing clubs and the misuse of alcohol, including the sale of alcohol;
- Strengthen the ability to fight serious and organised crime through improved recovery of criminal assets and improved international judicial co-operation; and
- Provide greater clarity for all in airport security by improving inter-agency co-operation in establishing airport security arrangements.

A more detailed analysis of this bill will appear in the next edition of the NPIA *Digest*.

Equality Bill

The purpose of the Bill is to ensure everyone has a fair chance in life. This is important to individuals, for a strong society and a competitive economy. The Equality Bill will promote equality, fight discrimination in all its forms, including age discrimination, and introduce transparency in the workplace which is key to tackling the gender pay gap.

The Bill will promote fairness and equality of opportunity; tackle disadvantage and discrimination; and modernise and strengthen the law to make it fit for the challenges that society faces today and in the future.

The main elements of the Bill are:

- Banning age discrimination in the provision of goods, facilities or services and public functions. Things that benefit older people, such as free bus passes, will still be allowed;
- Increasing transparency in the workplace;
- Making Britain fairer through a single equality duty, which will require public bodies to consider the diverse needs and requirements of their workforce, and the communities they serve, when developing employment policies and when planning services;
- Extending positive action measures to allow employers to make their organisation or business more representative;
- Allowing political parties to use all-women shortlists beyond 2015; and
- Reducing nine major pieces of legislation, and around 100 statutory instruments into a single Act, making the law more accessible and easier to understand.

Borders, Immigration and Citizenship Bill

The purpose of the Bill is to strengthen border controls, by bringing together customs and immigration powers, and to ensure that newcomers to the United Kingdom earn the right to stay. It will strengthen the law and support the development of the UK Border Agency.

The main elements of the Bill are:

- Better integration of customs and immigration functions within the new Border Agency to strengthen the UK border;
- Ensuring migrants earn the right to stay by implementing the new path to citizenship, with progress slowed down if migrants do not make an effort to integrate or commit even minor crimes.
- A firm but fair system by implementing a new duty for the UK Border Agency to safeguard the welfare of children. Ensuring fairness in nationality cases by removing the historical cut-off point for enabling children of British mothers born before 1961 to become British themselves, and recognising our obligation to the armed forces by enabling those serving overseas to register their children as British.

The main provisions of the Bill are:

- Supporting legislation to underpin the UK Border Agency's operations which will mean:
  - Increasing operational effectiveness of the UK Border; and
  - Set out the new path to citizenship and ensure that newcomers to the UK earn the right to stay.

Coroners and Justice Bill

The main purpose of the Bill is to deliver a more effective, transparent and responsive justice and coroner service for victims, witnesses, bereaved families and the wider public.

The main elements of the Bill are:

- Creation of a new national coroner service, led by a new Chief Coroner, moving towards whole time coroners working within flexible jurisdictions and to national minimum standards, with powers to commission non-invasive post-mortems where appropriate, and complying with a charter of services for bereaved families; and
- Creation of a new system of secondary certification of deaths that are not referred to the coroner, covering both burials and cremations.

Reform of the law on homicide and, in particular:

- Abolishing the existing partial defence of provocation and replacing it with two new partial defences of killing in response to a fear of serious violence, and killing in response to words or conduct which caused the defendant to have a justifiable sense of being seriously wronged;
- Modernising the partial defence of diminished responsibility based on the concept of a 'recognised medical condition';
- Clarifying the offence of infanticide;
- Simplifying and modernising the offence of assisting suicide;
- Establish a new Sentencing Council for England and Wales, in place of the Sentencing Guidelines Council, with a strengthened remit to promote consistency in sentencing practice;
- Enabling the courts to pass an indeterminate sentence for public protection for certain terrorist offences;
- Preventing criminals from profiting from books and other publications about their crimes through the introduction of a civil recovery scheme;
- Amendments to the Data Protection Act to strengthen the inspection powers of the Information Commissioner and to remove barriers to the sharing of information where there is a strong public interest in doing so;
- Re-enacting the provisions of the emergency Criminal Evidence (Witness Anonymity) Act 2008 so that the courts may continue to grant anonymity to vulnerable or intimidated witnesses where this is consistent with a defendant's right to a fair trial, and making provision for the courts to grant Investigative Witness Anonymity Orders in certain gun and knife crime cases;
- Extending the use of special measures in criminal proceedings (such as the use of live video links and screens around the witness box) so that vulnerable and intimidated witnesses can give their best evidence; and

- Amendments to sentencing and other legislation to support implementation of the Framework Decision on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.

The main provisions of the Bill are:

- Increased public confidence in the criminal law and the fairness and effectiveness of the wider justice system;
- Giving vulnerable and intimidated witnesses, including in respect of gun and gang related violence, the best possible protection, right from the early stages of the criminal justice process;
- A more consistent and transparent sentencing framework;
- Stronger inspection powers to improve public confidence in the way that their data is held and used and the removal of barriers to effective data sharing to support improved public services and the fight against crime and terrorism;
- Significantly improving the service bereaved families receive from a reformed coroner system;
- Giving those who are suddenly or unexpectedly bereaved opportunities to participate in coroners' investigations, including rights to information and access to a straightforward appeals system; and
- Reassuring all those who are bereaved that there is independent checking of the causes of death given on death certificates.

The transcript of the Queen's Speech can be found at http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/81203-0001.htm#08120346000175

The Government's legislative programme for 2008/09 can be found at http://www.commonsleader.gov.uk/output/Page2641.asp

Government Measures on Irresponsible Drinking

The government announced on 3 December 2008 that it had plans to introduce a new mandatory code of practice to target the most irresponsible retail practices involving the sale of alcohol. Amongst the proposals is the introduction of a ban on 'All you can drink' promotions in pubs and bars.

The ban is just one measure in a new £4.5 million crackdown on alcohol-fuelled crime and disorder. This announcement follows an independent review which found that many retailers are not adhering to their own voluntary standards for selling and marketing alcohol responsibly.

The proposed new code of practice includes the following measures:

- Banning offers such as 'All you can drink for £10';
- Outlawing promotions to certain groups, e.g. 'Women only';

- Not requiring customers to buy very large amounts of alcohol in the supermarket to take advantage of price discounts; and
- Making sure consumers can see the unit content of alcohol purchases.

The government will spend £3 million targeting specific alcohol-related problems in 190 areas. A further £1.5 million will go to 'priority areas', to help them deal with underage sales and confiscation of alcohol from minors. It will also fund public campaigns to let people know what action is being taken to reduce alcohol-related crime and disorder in their area.

The responses to the consultation on whether to have a mandatory alcohol retail code can be found at http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH_086412

Government Summary and Responses to Green Paper Consultation 'From the Neighbourhood to the National: Policing Our Communities Together'

The Home Office published a summary of Green Paper consultation responses and next steps on 28 November 2008. The key points of each of the seven chapters of this report made during the consultation are set out, including the next steps to be taken by Government. The chapter headings of the report are as follows:

- Foreword and Introduction;
- Chapter 1: Improving the connection between the public and the police;
- Chapter 2: Reducing bureaucracy and developing technology;
- Chapter 3: Defining roles and leadership in the police service;
- Chapter 4: Focussing on development and deployment;
- Chapter 5 & 6: Co-ordinating change in policing and reinforcing collaboration between forces; and
- Chapter 7: Improving performance in policing.

Foreword and Introduction

The Home Secretary introduces the report with references to the proposals of the Policing Green Paper which was published in July 2008 and acknowledged that whilst there was not unanimous agreement with them there were significant areas of agreement between the public, police and government e.g. the need for high quality customer service every time and desire to reduce bureaucracy.

Chapter 1: Improving the connection between the public and the police

The key comments from the Consultation were:

Policing Pledge and Community Engagement

- Very strong support for the Policing Pledge, including both the national and local element, particularly because it will explain clearly what the public can expect from the police;
- Work is already under way by ACPO and individual forces and authorities to deliver a Pledge that meets the intention of the Green Paper;
- Strong support for a model that provides a clear national framework, supported by force-wide and more local neighbourhood level pledges/ charters that can be tailored to needs, circumstances and operational capability across the country;
- The police need to be more visible in communities and there should be more research into the most appropriate forms of community engagement;
- The police should attend more public events and should engage more widely, including with hard to reach groups;
- Local people must get as much information as possible, including 'crime maps', regular updates on local action taken and follow-up for victims and witnesses;
- The police need to do more to respond specifically to issues highlighted by the local media;
- Ministry of Justice, Department for Communities and Local Government and other Government Departments as well as the Home Office will need to work together if Integrated Offender Management is going to realise its potential;
- The police should receive training on engaging with volunteers and communities and there should be specific objectives for officers on 'public engagement'; and
- Strong emphasis that the police and the Government's commitment that the Pledge should not be managed as a new set of targets must be respected.

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PCSO Roles and Powers

- Strong endorsement of the contribution made by PCSOs. A desire for more clarity about the roles and powers of PCSOs. A general view that they should not take on powers that could potentially compromise their role.

Government Response and Next Steps

- The Policing Pledge is a central part of what the Government sees as a new relationship between the service, the Government and the public. It makes clear what the public can expect from the police, the standards they have a right to demand and the ways in which they can get involved and find out more;
- The Government believe that Crime and Policing Representatives will provide clear and transparent governance structures that will simplify the system so the public can readily understand how to influence their policing and will be able to do so. The Government believes this will greatly improve the connection between the public and the police, and therefore confidence in policing. The Government has also noted that the APA's own IPSOS MORI polling showed that 55% actively support this policy and only 19% disagreed with it; and
- Government will also respond to the helpful suggestions from the LGA, the APA and others, and consider how best to involve key members of the public, such as tenant and resident group leaders, Neighbourhood Watch co-ordinators, community activists or new Community Crime Fighters, in the work of local Crime and Disorder Reduction Partnerships.

Major milestones

The report sets out the major milestones for this section which are:

December 2008	Evaluation of PCSO powers completed.
January 2009	Policing Pledge, including crime mapping, in place everywhere in England and Wales.
January 2009	Confidence targets set for each force.
December 2009	3600 Community Crime Fighters trained and active in local communities.

Chapter 2: Reducing bureaucracy and developing technology

The key comments from the Consultation were:

Designing more Effective Processes

- Support for the Government's intention to cut red tape and free up officer time and acknowledgment for what has been achieved so far, including the creation of a new independent Reducing Bureaucracy Advocate;
- Support for the funding commitments provided in the Green Paper for PCSOs and mobile data devices;
- Recognition of the benefits to be had from providing better information services for citizens and frontline officers as well as ensuring that systems and technology in the future are used to support frontline delivery;
- Consideration needs to be given to the development of more standardised forms for common processes and the service needs to be consulted on this;
- Local processes should be monitored to make sure that they do not add to the bureaucratic burden of nationally standardised processes;
- Senior officers and others in forces also have a responsibility to take seriously and act upon the administrative problems that are highlighted by officers that prevent them from carrying out their duties effectively;
- There should be more administrative staff to do paperwork and to allow police officers to spend more time on patrol; and
- Strong support for the greater utilisation of IT solutions and accompanying investment in this by the Government.

Tackling Risk Aversion

- More needs to be done to demonstrate the commitment of Government to review the requirements of the Criminal Justice System and the activities of the various regulators and auditors, with a view to making the processes less bureaucratic;
- The police need to be less risk averse in their approach to bureaucracy. Management of risk should be an important part of police culture;
- Police officers should exercise greater discretion in their duties and be able to use their professional judgement more; and
- Some risk aversion is appropriate at times, particularly in respect to monitoring issues. For example, support for reforming the stop and search process was balanced by the view that the service should continue to monitor proportionality.

Government Response and Next Steps

- The Green Paper confirmed the Government's commitment to reducing bureaucracy and developing technology to free up officer time. This was in recognition of the fact that we expect a great deal from the police and

so it is vitally important that they are able to do their jobs in the most efficient way possible, without being constrained by unnecessary bureaucracy;

- The Government confirms the importance of the development of convergence plans for police IT. These are needed to develop the best possible support for police officers and staff in their work, and to enable better information for, and partnership with, the public;
- Pilot schemes using a shortened stop and account process by recording only the ethnicity of the person stopped during these encounters and removing the complete a lengthy form;
- Increasing productivity is fundamental to ensuring that the police deliver the best possible service to the public. With the strengthened emphasis on local accountability, each Police Authority is now responsible for agreeing ambitious local targets for efficiency and productivity and holding its force to account for delivering sufficient improvements; and
- A review of the burden of data collection on police forces is underway and due to be published shortly.

Major milestones

December 2008	Practitioner led Bureaucracy Reference Group established to allow front line officer to advise on where red tape can be reduced.
December 2008	Revised Efficiency and Productivity Strategy finalised.
January 2009	National roll out of shortened crime recording and stop and account procedures to free up office time.
February 2009	Publication of Jan Berry's full report, which will include recommendations on standardised processes.
March 2009	All police authorities should have set their forces ambitious efficiency targets (to be considered in police authority inspections from April 2009).
April 2009	Implementation of the new strategy for police information technology.
Early 2010	National roll-out of mobile fingerprinting technology to save time for police officers and the public.
By March 2010	Roll out of mobile data to frontline officers - significantly increasing the amount of time officers can spend out on the frontline.

Chapter 3: Defining roles and leadership in the police service

The key comments from the Consultation:

Police Roles and Training

- Welcomed the Government's confirmation of the centrality of the Office of the Constable to the police service, and that all police officers should start at the rank of Constable;
- It was important to focus on Sergeants, other frontline supervisors and Inspectors - as the Green Paper set out there is a need for clear national standards and accreditation, and enhanced training and development;
- There was support for an increase of 6,000 Special Constables with the proviso that this should not be a direct replacement for full-time officers; and
- There was support for the proposed consultation on how new constables are trained but want this to take account of the local partnership environment, including public, private and voluntary sectors as well as opportunities for training alongside other partners, especially where customer service is critical.

Chief Officer Appointments

- The revised Senior Appointments Panel (SAP) should not restrict Chief Officers in the posts they apply for, nor reduce the role of local Police Authorities in selecting Chief Officers;
- Some respondents felt the SAP should remain under the chairmanship of HM Chief Inspector of Constabulary, while others welcomed the change to an independent chair;
- The skills required to be a Chief Officer are not acknowledged in the current appointment arrangements;
- Regular publication of written reports from the revised SAP appointments process was welcomed; and
- There were mixed views about the requirement that Chief Constables must have served at Chief Officer rank in another force, and whether, if that requirement remained, there should be a possibility of making exceptions.

Chief Constable / Commissioner Performance Development Reviews

- There were contrasting views as to whether transferring to the Police Authority the lead on Chief Constable and Commissioner PDRs was welcome or not. Some parties believed it was an appropriate support to accountability to the Police Authority, whilst others wanted to retain the HMIC lead, fearing a loss of professional insight and the proposed arrangements might make the Police Authority-Chief Officer relationship more like that of an employer and employee; and
- Fundamental overhaul of Performance Development Review system was welcomed.

Government Response and Next Steps

- A more transparent selection, accreditation and appointment system will enable better talent management and ensure advancement is equally open to all police officers;
- Broad experience of the police service is important to the role of Chief Constable. The Government confirms its view that in general it is very important that a Chief Constable should have served at chief officer rank in another force for at least two years and that the Government will expect the SAP to set a high bar in considering any cases for an exception. Certainly no officer aspiring to lead a force should assume that the position can be reached without two years' service as a Chief Officer in another force;
- The Government will also focus on the development of police officers and staff at ranks other than chief officer. The NPIA will examine how to simplify and improve performance and development reviews for all police leaders; and
- Whilst moving to a single top down target and more emphasis on good local management, it becomes even more important that a Police Authority can hold its Chief Constable or Commissioner to account (as already required by the Police Act 1996), and that they have the tools to do so. Accordingly, the Government proposed in the Green Paper that the Police Authority should have the lead role in writing the Performance and Development Review for Chief Constables and Commissioners. The Green Paper flagged the importance of HMIC having a continuing role in this process, notably on national and operational issues.

Major milestones

January - March 2009	Business policing leadership skills (with priorities) defined (followed by other skills areas); Introduction of Regional Co-ordinators for Special Constabulary to set up local recruitment campaigns to reach target of 20,000 Specials by 2011; and Promotion to Sergeant and Inspector: confirmation of licensing arrangements to enhance the new National Police Promotions Framework.
April - June 2009	National College of Police Leadership and its Board of Governors set up.
Through to Summer 2009	Identification of key needs for appointment system with the stakeholders who will use the system - including police authorities, candidates and their representatives. This feeds into a framework for the new Senior Appointments Panel to consider.
Autumn 2009 (Subject to Parliament)	New Senior Appointments Panel begins work, with first co-ordinated appointment round.

October - December 2009	Chief Officer Performance and Development Reviews promulgated for 2009-10.
2010	Launch of graduate fast-track scheme.

Chapter 4: Focussing on development and deployment

The key comments from the Consultation:

- Everyone working in neighbourhood policing needs tailored training on customer service/engagement and facilitation skills;
- The Green Paper's advocacy of the most effective and efficient use of the workforce, matched to skills, was supported. There was no support for setting national targets on workforce mix;
- There were some concerns regarding outstanding issues of police staff terms and conditions;
- QUEST and deployment work, as highlighted in the Green Paper, provide significant opportunities to improve service delivery;
- The 2010 HMIC workforce inspection should be linked to Value for Money inspections;
- There was strong support for the three-year equality, diversity and human rights strategy to provide a more consistent approach to equality and diversity delivered in partnership. Local target setting and moving away from a national target was seen as positive by many, although a number of community stakeholders remained attracted to national target setting;
- The proposals for directly elected Police Authorities presented some risks for those communities and officers from diverse backgrounds. Individuals with a purely local focus might seek to skew forces towards single agendas that could exclude parts of the diverse local population that they serve; and
- There was some concern that the proposal to develop a single equality standard had been developed in isolation and taking insufficient account of other developments, such as the forthcoming Single Equalities Bill.

Government Response and Next Steps

- Good development and deployment of officers and staff has a key part to play in achieving the Government's aims of increasing public confidence and police responsiveness;
- The Government confirms that police officer and staff Performance and Development Reviews (PDRs) will be simplified;
- To further underpin delivery for the public, the Government confirms that HMIC will conduct a major workforce inspection, to be called 'Working for the Public', in 2010. The inspection will cover six main elements which are:

- Better customer service;
- Listening to the frontline;
- Equality standards;
- Good deployment of officers and staff;
- Getting the best possible workforce mix; and
- Sergeants, and other frontline supervisors, who play the core leadership role in making all this happen on the ground.

- Approach will be underpinned by support from the NPIA, including through the People Strategy for the Police Service; and
- The Government confirms its support for the tripartite 3-year Equality, Diversity and Human Rights Strategy currently being developed.

Major milestones

Before end of 2008	Publication of the NPIA National Workforce Modernisation Programme Interim Report to share lessons learnt from demonstration sites; and Good practice guide on shift patterns and deployment published.
January - March 2009	Deployment toolkit and comparative information on workforce mix published. Development of standards and methodology for 2010 HMIC Workforce Inspection.
April - June 2009	Joint Home Office, HMIC and NPIA workshops for forces to provide support on priority workforce areas; and Implementation of 3-year Equality and Diversity Strategy and Equality Standards (following discussion with stakeholders).
2010	HMIC Workforce Inspection - Working for the Public.

Chapter 5 & 6: Co-ordinating change in policing & reinforcing collaboration between forces

The key comments from the Consultation:

- It is critical to ensure that the police can respond to serious, regional and national crime as well as to local crimes and anti-social behaviour. Concern from some that the Green Paper might 'privilege' the local;
- It was said that the general public want the police to have freedom to deliver locally and for the Government to support them nationally by setting national minimum standards;

- The model for decision-making will determine whether decisions should be taken at the national, regional or local level, decided through the National Policing Board, which could include wider representation from Government departments and staff associations. ACPO should assist in deciding items of national level importance;
- The NPB should maintain strong links with local Government to ensure joined-up working, but needs to define its relationship with other key bodies such as the Crime Reduction Delivery Board and the National Criminal Justice Board;
- There is a need to ensure protection against 'top-slicing' funding for national and regional goals;
- There is a need for supra-force level co-ordination for Counter-Terrorism, Protective Services, and Border Control;
- There was a general agreement that forces will be expected to collaborate where there is an operational and business imperative. Co-operation will be vital to avoid criminals taking advantage of gaps between forces;
- It was suggested that a national border police service should be created to police the UK's borders. However, others questioned whether the operational benefits from such a move had been clearly demonstrated, and raised issues around the costs and potential disruption of creating a new structure at a time when the UK Border Agency was still bedding in; and
- Police forces and authorities should work more closely with the UK Border Agency and other partners to explore opportunities for joint working, to ensure that a systems based approach to security is delivered at the border whilst maximising opportunities for efficiency savings.

Government response and next steps

- The Government welcomes the broad agreement in the Green Paper responses that collaboration between police forces is the way to increase operational and organisational effectiveness in key areas of policing and secure better value for money. Government also welcomes the finding in the recent Home Affairs Select Committee Report 9, which supported the approach to strengthening collaboration and requiring joint working where it proves necessary;
- The Home Secretary has asked Her Majesty's Inspectorate of Constabulary to work with key policing stakeholders to explore further when it is right for decisions on particular policing functions to be made at the national, regional and local level; what appropriate delivery frameworks above force level would be needed to deliver these functions jointly; and to explore the respective roles of police forces, police authorities, national bodies (APA and ACPO) and the Home Office in this area. The Home Secretary has asked HMIC to report its findings to the National Policing Board early in 2009; and
- A tripartite Protective Services Improvement Programme, supported by £35m of Government funding over the Comprehensive Spending Review

period, is already taking forward a range of work to improve the effectiveness of a range of police protective services, including serious organised crime.

Major milestones

November 2008	HMIC commences scoping work on Collaboration and decision making frameworks.
Early 2009	Initial Findings and Recommendations on Next Steps are submitted to the National Policing Board for consideration.
Subject to Parliamentary time - seek early opportunity to:	Introduce statutory guidance developed in key areas such as HR and procurement; and Introduce legislation used to underpin and support proposals for co-ordinated and consistent collaborative frameworks above force level.
September 2008 - December 2009	Lessons learnt on collaboration are disseminated to police forces and police authorities via guidance notes, seminars and a dedicated website.

Chapter 7: Improving performance in policing

The key comments from the consultation:

- There was strong endorsement for the move to set individual force targets from central Government on only one issue, especially if it was backed up effectively by less interference from the centre and greater flexibility for forces and authorities to manage and respond to issues;
- The focus on local issues and confidence was welcome but issues at regional and national level also needed to be dealt with;
- Flexibility at the local level would be essential if forces and authorities were to tackle the issues of most concern to local communities;
- Confidence is a very difficult thing to measure and clarity would be needed on how changes in confidence levels would be directly attributable to the actions of the police;
- It would be essential that all of this work ties in closely with Local Area Agreements which are the main means of agreeing local priorities;
- The Home Office and NPIA should urgently consider and articulate the potential 'unintended consequences' arising from the single target; and
- Support for the intention to strengthen and expand the role of HMIC, so long as HMIC remains professionally staffed and led whilst retaining its statutory independence.

Changes for the Public

- Government knows from the Casey Review that the public wants to have more information about what's happening in their local area, and how their local force is performing. Local performance will be communicated via local crime information and crime mapping and through greater use of community meetings; and
- The local policing pledge will clearly set out service standards, identify and set out locally agreed priorities and will provide contact details for local policing teams who will be the first point of contact when raising issues of concern.

Changes for the Police Forces

- Forces will have greater freedom and flexibility to manage their own performance. One top down numerical target, a reduction in central data requirements, significant improvements in technology, our continued commitment to cut unnecessary bureaucracy matched with improved leadership development for forces will ensure that they are better able to manage performance and deliver efficient and effective policing in their area;
- Forces will need to demonstrate to the public, to their police authority, to the Inspectorate and to Government that they are tackling all of the issues that matter: from locally raised issues around Anti-Social Behaviour and volume crime to operational effectiveness, value for money, getting the right workforce mix or contributing effectively to serious cross force issues such as Counter Terrorism and protective services. They will have to demonstrate clearly that they are delivering good service and improving performance and that they have clear plans in place for continuing to drive up service standards; and
- To support effective prioritisation, problem solving, and accountability, forces will need to continue to collect, share and analyse information about the issues facing communities.

Changes for Police Authorities

- Police Authorities have a hugely important job to do to ensure that the service continues to improve outcomes for the public and, with new directly elected members, will have an even more important role than in the past. As the principal means through which communities will hold their forces to account, Police Authorities will need to develop their capacity and capability to ensure continuous improvement in the efficiency and effectiveness of their police force; and
- Helping Police Authorities to challenge themselves to deliver better results will be a key focus for Government. From April 2009 for the first time Police Authorities will be jointly inspected by HMIC and the Audit Commission across the full range of their activities.

Changes for HMIC

- From April 2009 HMIC will shift from exerting professional influence over the service to providing public assurance about quality and standards. Focussing on the whole range of police business - from the local to the national and all points between - HMIC will take over responsibility for the analysis and assessment of police performance - using APACS and the National Indicator Set as the core data. Critically HMIC will be responsible for identifying performance issues and triggering appropriate support or intervention; and
- Inspections will fall into one of four categories:
  - New planned inspection programme work - specifically workforce, Police Authority, Policing Pledge and Value for Money inspections;
  - Existing planned work - specifically detention in custody, protective services and serious and organised crime;
  - Risk based inspection work - using assessment of performance data to identify those issues and forces or authorities which require closer scrutiny; and
  - Work commissioned by the Home Secretary on specific issues or themes.

Changes for NPIA

- The NPIA will be refocused to support and assist the performance improvement process. Information on best practice, practical advice on how to improve delivery, including that on effective performance management and national oversight for improvements in technology, training and development will all be available from NPIA, giving forces and authorities a powerful resource to help them improve. Individual forces and authorities will be expected to commission that support where needed, preferably before significant problems emerge, but certainly after any adverse HMIC report; and
- At the core of this new role will be the creation of a flexible resource, primarily drawn down from approved/accredited practitioners in forces who could be called upon - under overall NPIA management - to assist forces/police authorities in improvement plans following new style HMIC inspections. Such a resource will, though, be underpinned by a permanent and irreducible core of experienced NPIA staff dedicated to coordinating improvement work with individual forces, ensuring the right levels of support are applied. This team would also be responsible for liaison with senior ACPO/police authority members in a force as well as maintaining close relations with HMIC.

Changes for the Home Office

- The Home Office will no longer carry out ongoing performance assessments of police forces, nor publish annual assessments. In future these assessments will be the responsibility of HMIC. Likewise, the Home Office will no longer provide direct support to forces in order to help

improve their performance; this will be NPIA's responsibility. The Home Office Police and Crime Standards Directorate which was previously responsible for these activities, was phased out with effect from 14 November 2008.

Major milestones

November 2008	PCSD phased out.
From November 2008	New Police Authority inspection methodologies piloted.
January 2009	Confidence targets set for each force.
Spring 2009	New HMCIC appointed.
April 2009	HMIC transition to new role and Police Authority inspections to begin.
March 2010	First new format annual report published.

The full report 'From the Neighbourhood to the National: Policing Our Communities Together - Summary of Green Paper Consultation Responses and Next Steps' can be found at http://police.homeoffice.gov.uk/police-reform/policegp/

Government Response to the Magee Review of Criminality Information

The Government published its response to Sir Ian Magee's Review of Criminality Information on 8 December 2008. The report sets out in an action plan the terms of the Government's intentions in respect of the recommendations made by the review to improve the handling of criminality information in support of public protection.

An overview of the Government's response is as follows:

Genesis of the Review

Following an inquiry early in 2007 into the handling of notifications by other European countries of criminal convictions relating to UK citizens, the Home Secretary asked Sir Ian Magee to examine and recommend necessary improvements for recording and sharing information about criminality within the UK and between the UK and other countries in the interests of public protection.

The Terms of Reference for the Review were to:

- Scope the problem and assess what is broken and where the deficiencies lie;
- Test understanding of the problems and issues with key stakeholders, and seek consensus on where the principal roles and responsibilities should lie at a strategic level; and

- Draw conclusions and make recommendations for improving the recording and sharing of criminality data, with a clear eye on what is realistic and achievable.

Lessons Learned from the Review

The Review highlights the need for agreement across Government departments, agencies and services on a clear strategic direction for the management and use of criminality information both domestically and internationally. There also needs to be effective governance to clarify responsibilities for the management of criminality information and help to address risks around information handling and security before they turn into immediate problems. Data sharing and data protection are not conflicting objectives.

As is clear from the Review, public protection relies on a whole range of organisations across Government and agencies working together effectively.

What difference does the Review make to the public?

Implementing the recommendations from this Review will have real and positive impacts on the public, building on action already taken to share criminality information to tackle crime and protect the public; for example, helping to ensure that:

- Those who are in jobs looking after children and vulnerable adults have been properly vetted based on all the necessary information;
- Applicants for UK Visas have their fingerprints checked against criminal records held on the Police National Computer and where there is a match UK Border Agency staff are provided with the criminal history so those who are prolific offenders or otherwise raise public protection concerns can be denied entry;
- The risk of a prisoner being released from prison when they may be wanted by the police on other matters is reduced;
- UK nationals who have committed sex offences abroad can be identified via exchange of criminal records and therefore on their return to the UK can be managed in the community via the Multi-Agency Public Protection Arrangements (MAPPA);
- Foreign nationals who pose a risk to the public are prioritised for removal from the UK;
- Police are able to check EU nationals' previous criminal records meaning that they will not be able to hide their past and the courts can make appropriate bail and sentencing decisions; and
- To continue to develop processes so that public protection organisations properly capture, securely store and appropriately use and share criminality information.

Summary of the Recommendations

The Review of Criminality Information produced a package of recommendations covering nine key areas. This package includes a mix of high level strategic recommendations to bring about systemic change to how criminality information is managed in the future, and pragmatic early steps that can be taken to improve some front line business processes.

It is suggested that a strategic direction for criminality information management and oversight should be established across the Public Protection Network with clear goals, performance assessment and an improvement agenda which adheres to key principles.

The governance recommendations look to support coherence within the strategic direction and its core principles. They are based around a Ministerial group (chaired by the Home Secretary) to take overall responsibility, a Home Office led implementation team, an independent Commission to champion efficient and appropriate information management and the existing agencies and Departments which will lead on delivery.

On the issue of leadership, the Review emphasises the importance of leaders at all levels demonstrating awareness of the magnitude of information management, with a clear link to improving the capture of accurate data and ensuring appropriate sharing.

There are practical recommendations made regarding risk management which include relevant departments and organisations giving explicit consideration to the potential impact of their decisions on risks to public protection as a whole. This recommendation includes the development of mechanisms within each organisation to enable escalation of significant front line risks to public protection.

On the topic of investment, the focus is on ensuring a much more joined up approach across the Public Protection Network. In particular, Investment Boards in the various public protection organisations should take much more account of wider public protection priorities in making funding decisions.

In relation to technology, a full review of IT systems as they relate to criminality information management is recommended. Priority should be given to enhancing IT integration and to programmes that increase information sharing. An assessment process should be used to help ensure the effectiveness of IT developments and a new emphasis put on engaging with suppliers to make sure they understand cross-cutting requirements. There is also the need for greater clarity around governance of, and access to, the Police National Computer, and where possible, the implementation of the remaining recommendations from the Bichard Inquiry should be expedited.

The Review recognised the added complexity of operating in the international dimension, and makes a number of recommendations for improvement. The key issues are:

- The development of a strategic direction for the UK on international exchange of criminality information so that all concerned are clear about what the UK requires;

- A set of initiatives to ensure improved UK use of international mechanisms for exchanging criminality information; and
- A more joined-up approach to engaging with international proposals on the management of criminality information, with full involvement from international experts, senior policy makers and relevant delivery organisations.

Steps to implement the Magee Recommendations

The key early steps are:

- Leaders will make their own statements of intent to emphasise to their staff the importance of management of criminality information (by December 2008);
- A strategic direction for the improvement of criminality information management will be agreed across Government by the National Criminal Justice Board (in January 2009);
- Agreement of a strategy across the public protection network for the international exchange of criminality information (by the end of January 2009). This will include reaching a common agreement on what criminality information is required and for what purposes which will enable the Public Protection Network to identify priority areas for opening up new channels for exchange;
- The UK will seek to lead the way in Europe on exchanging criminality information with a pilot for the secure electronic exchange of this information with other EU Member States and look for other ways that can speed up the transfer of data so that frontline Public Protection Network staff dealing with EU nationals have the information they need to make decisions relating to protection of the public;
- An Independent Advisor is to be appointed to advise how public protection organisations can work together across boundaries to improve, and make best use of, the information they collect to tackle crime. Further, the Independent Advisor will challenge the organisations in the Public Protection Network if they have not taken action to implement the Magee recommendations;
- Enhancement of procedures so that there is a much stronger focus on identifying criminality information-related risks to public protection and managing them in partnership across the Public Protection Network. Guidance will be provided to public protection organisations by April 2009;
- Enhance training for staff at all levels to ensure it gives a real focus to the importance of criminality information management by September 2009;
- Complete the work to deliver against the key outstanding recommendations from the Bichard Inquiry which hinge upon effective use and sharing of criminality information; and
- There will be a review information systems to identify opportunities for changes to business processes, particularly where tactical IT fixes are

needed, and to ensure that there is a programme of continuous improvement.

Sir Ian Magee will review the Government's progress in the Spring 2009 and progress reports will be provided every six months to Government.

The full report can be found at http://police.homeoffice.gov.uk/publications/about-us/government-response-magee-review?view=Binary

Police Funding Announcement

The Home Office announced on 26 November 2008 that the provisional police funding settlement for 2009/10 has been made. Ministers declared last year that a three year police funding settlement for 2008/09 to 2010/11 provided a background of stability and continuity against which the police and all stakeholders could plan, in partnership, with much greater certainty and confidence.

The Government is now entering a period of consultation which runs until 7 January 2009 following which a final decision on funding for 2009/10 will be made.

Further information on police funding can be found at http://www.police.homeoffice.gov.uk/finance-and-business-planning/index.html/

Fair Rules for Strong Communities

The Prime Minister set out the Government's 'Fair rules' agenda on 2 December 2008, outlining a wide range of policy initiatives designed to support strong communities. The 'Fair Rules for Strong Communities' strategy made on the eve of the Queen's speech set out a series of reforms covering welfare reform, crime and policing, children and young people, business rules, immigration and communities, which are designed to bring people together and steer the country through the global economic downturn.

The strategy included over fifty measures to strengthen the rules that tie communities together, strengthen enforcement, and provide for clearer consequences for rule-breakers.

The measures outlined for crime and policing include:

- A tougher community payback scheme. Offenders will wear a uniform and undertake hard community work for several hours a day, with communities themselves directly identifying local projects;
- A new Victims' Commissioner to give victims and witnesses a stronger voice in the justice system, protecting their interests and ensuring fair treatment;
- Steps to support people who do the right thing, including funding for a Community Crime Fighters programme to train 3,600 members of the

public who are already active in their communities and want to do more to make them safer; and

- Ensuring that public sector workers and other authority figures are empowered and supported in upholding fair rules. New powers have already given to teachers, for example to search pupils. Assaulting someone who is providing a public service is now an aggravating factor that may lead to a tougher sentence.

The measures set out for children and young people include:

- A joined-up Youth Crime Action Plan to deal with the small minority of young people who break the rules. This combines tough enforcement with earlier and better prevention, and non-negotiable support for those who need it most.

The measures put forward for the empowerment of communities include:

- Giving people a greater say over their local police, including the introduction of directly elected policing representatives.

The 'Fair Rules for Strong Communities' strategy document can be found at http://www.number10.gov.uk/wp-content/uploads/fair-rules-for-strong-communities.pdf

Innovative Advertising Campaign to Highlight the Risks of Taking Cocaine

A new TV and online FRANK advertising campaign was launched by the Government on 4 December 2008 which highlights the dangers of cocaine use.

The campaign is centred on 'Pablo the drug mule dog', who died as he was being used to smuggle cocaine into the country. The dog is shown waking from the dead as he goes on a mission to find out the truth about the risks and consequences of taking the drug. The advertisements are aimed at 15-18 year olds and signpost young people to the FRANK website.

Approximately 80% of the cocaine used in the UK comes from Colombia, where increased production of the drug is driving armed violence, kidnapping, terrorism, use of illegal landmines and having a devastating environmental impact through deforestation and water contamination.

The UK Government supports the Colombian Government's 'Shared Responsibility' campaign to demonstrate the devastating environmental impact of cocaine production, fuelled by the demand for cocaine here in the UK.

FRANK will also launch a new action pack to help those working with young people to understand the complexity of issues surrounding cocaine and how they can link their work to the new campaign. Full of information, facts and statistics and activity ideas, it explains what the law says, why cocaine is a problem and the dangers associated with its use.

The FRANK action pack can be downloaded from http://www.drugs.homeoffice.gov.uk/

The Government's Drug strategy 'Drugs: protecting families and communities' was published in February 2008 and can be found at http://drugs.homeoffice.gov.uk/publication-search/drug-strategy/drug-strategy-2008

Report on Progress Towards Disability Equality

The publication of the Office for Disability Issues (ODI) Annual Report 2008 'Turning equality into reality' on 1 December 2008 provides an update on their role in leading work to deliver the government's vision of equality for disabled people for 2025. It sets out where progress has been made and the priorities for the coming year.

The progress of the ODI towards their objectives is calculated by a series of indicators which are published as an annex to the annual report. These indicators are a starting point in measuring progress towards disability equality.

The main areas covered by the indicators are:

- Disabled children and young people;
- Employment outcomes and opportunities;
- Disability poverty;
- Discrimination and attitudes;
- Participation in positive activities;
- Access and use of goods and services;
- Accessibility and suitability of housing; and
- Crime and justice.

The key points under the heading of crime and justice are:

- A number of government initiatives to address hate crime, including hate crime against disabled people, are underway; and
- The Home Office is working with stakeholders to develop a cross-government strategy to tackle hate crime.

The full Office for Disability Issues Annual Report 2008 'Turning equality into reality' can be found at
http://www.officefordisability.gov.uk/docs/odi-annual-report-2008.pdf

Counter-Terrorism Act 2008

The Counter-Terrorism Bill received Royal Assent on 26 November 2008. The Act amends the law in relation to terrorism in a number of distinct ways. There are provisions relating to:

- Gathering and sharing of information for counter-terrorism and other purposes, including the disclosure of information to and by the intelligence services;
- Post-charge questioning of terrorism suspects;
- Prosecution of terrorism offences and punishment of convicted terrorists;
- Notification requirements for persons convicted of terrorism-related offences;
- Powers to act against terrorist financing, money laundering and certain other activities;
- Reviews of certain Treasury decisions; inquiries dealing with sensitive information; and various other miscellaneous measures;
- New powers and offences will be created by the provisions of the Act and existing terrorism legislation will be amended and reformed.

However, this Act does not extend the maximum period of detention for a terrorist suspect beyond the existing limit of 28 days.

The Act's Parts are set out as follows:

- **Part 1: Powers to gather and share information**

  This part of the Act contains provisions for new powers relating to the removal of documents for examination in the context of a search under existing terrorism legislation. It also provides a power for a constable to take fingerprints and samples from individuals subject to control orders and amends the law relating to the retention and use of fingerprints and DNA samples. It also contains provisions on the disclosure of information to and by the intelligence services and their use of such information;

- **Part 2: Post-charge questioning of terrorist suspects**

  The second part of the Act provides that terrorist suspects may be questioned after they have been charged. The questioning will be authorised by a judge and adverse inferences from the silence of the suspect may be drawn by a court in England and Wales or Northern Ireland;

- **Part 3: Prosecution and Punishment of offences**

  This part of the Act provides for specified terrorism offences committed anywhere in the UK to be tried in any part of the UK. It also requires the Attorney General's or Advocate General for Northern Ireland's consent for prosecution of certain terrorism offences committed outside the UK. This Part also deals with sentences for terrorism cases tried under the general

criminal law: the court is to treat a terrorist connection as an aggravating factor when considering sentence. It also extends the forfeiture regime applicable in terrorist cases;

- **Part 4: Notification requirements**

  The fourth part of the Act makes provision about the notification of information to the police by certain individuals convicted of terrorism or terrorism-related offences. When in the community, such individuals must provide the police with certain personal information must notify any subsequent changes to this information and confirm its accuracy annually. And under Schedule 5, a court may, on application, impose a foreign travel restriction order on an individual subject to the notification requirements, restricting that person's overseas travel;

- **Part 5: Terrorist financing and Money laundering**

  This part of the Act confers powers on the Treasury to direct persons operating in the financial sector to take certain actions in respect of transactions or business with persons in a country of money laundering, terrorist financing or proliferation concern;

- **Part 6: Financial restrictions proceedings**

  The sixth part of the Act creates a statutory basis for a person affected by certain kinds of Treasury decision to apply to have the decision set aside. The Treasury decisions to which this part relates are those made under:

  - UN Terrorism Orders;
  - Part 2 of the Anti-terrorism, Crime and Security Act 2001; or
  - Schedule 7 to this Act.

  The Act also provides for Rules of Court to make provision about such applications, in particular for the procedure which is to apply where the reason for the Treasury's decision (or part of it) cannot be disclosed to the applicant because disclosure would be contrary to the public interest (i.e. it involves "closed source material"). Closed source material relevant to the Treasury's decision would be considered at a closed hearing, for which a special advocate (who has been security-vetted) would represent the interests of the applicant, with the detailed procedure set out in Rules of Court made under this part;

- **Part 7: Miscellaneous provisions**

  This part of the Act amends the Regulation of Investigatory Powers Act 2000 to allow intercept material to be disclosed in exceptional circumstances to counsel to an inquiry held under the Inquiries Act 2005 (in addition to the inquiry panel); it amends the definition of terrorism in section 1 of the Terrorism Act 2000 ("the 2000 Act") (and various other pieces of terrorism legislation) by inserting a reference to a racial cause.

  This Part also creates an offence of eliciting, publishing or communicating information about members of the armed forces, members of the intelligence services or constables which is likely to be of use to terrorists,

and amends the offence of failing to disclose information about a suspected terrorist finance offence. It also includes some amendments to the control order system under the Prevention of Terrorism Act 2005, minor amendments to the provisions on pre-charge detention of terrorist suspects under the 2000 Act, amendments to provisions on forfeiture of terrorist cash, a new scheme for the recovery of costs of policing at gas facilities and a provision on the appointment of special advocates in Northern Ireland; and

- **Part 8: Supplementary provisions**

  This part of the Act contains supplementary provisions including the meaning of the following terms:

  - Terrorism;
  - Offence having a terrorist connection;
  - Ancillary offence; and
  - Service court and Service offence.

The Counter-Terrorism Act 2008 can be found at
http://www.opsi.gov.uk/acts/acts2008/pdf/ukpga_20080028_en.pdf

The Explanatory Notes for this Act can be found at
http://www.opsi.gov.uk/acts/acts2008/en/ukpgaen_20080028_en.pdf

New Power to Close Problem Premises

The Home Secretary introduced a new power to close premises involved in persistent anti-social behaviour which came into force on 1 December 2008. In some communities there are particular premises that are a constant focus for severe anti-social behaviour, making the lives of those living nearby difficult. Section 118 of the Criminal Justice and Immigration Act (CJIA) 2008 introduces premises closure orders which allows courts to temporarily close premises associated with significant and persistent disorder or persistent serious nuisance. The new power commenced on 1 December 2008.

The premises closure orders (PCOs) are tenure neutral powers that can be used to offer communities immediate respite by temporarily closing premises for three months that are responsible for:

- Significant and persistent disorder; or
- Persistent serious nuisance to a community.

The CJIA (Schedule 20) inserts these powers into a new Part 1A of the Anti-Social Behaviour Act 2003 which provides for issuing closure notices and making closure orders. The purpose of the powers is to provide:

- Immediate respite to communities suffering from misery caused by anti-social neighbours; and
- A means with which to engage perpetrators and tackle the underlying causes and put an end to the nuisance behaviour.

This facility allows the Police and local authorities to apply to magistrates' courts to close privately owned, rented, commercial and local authority premises. The new PCO extends crack house closure powers, which have been used successfully to close over 1,000 crack houses and bring respite to hundreds of local communities since they were introduced in 2004, to other premises associated with persistent nuisance.

It is intended that these powers should only be used as a last resort, where other interventions have been used or considered and rejected for good reason, and where implications, for example, for children or vulnerable adults in the premises, have been carefully considered. The powers should not be used as an eviction tool or a fast track to eviction.

More information and guidance about the use of this power can be found at http://www.respect.gov.uk/members/article.aspx?id=12676

Draft Bribery Bill

This bill was not mentioned in Queen's Speech but it is to be introduced as a draft the 2008/09 parliamentary session. The Government's draft Bribery Bill will be informed by the recommendations of the Law Commission set out in their report 'Reforming Bribery' published on 20 November 2008.

The purpose of the Bill is to reform the criminal law to provide a new, modern and comprehensive scheme of bribery offences that will enable the courts and prosecutors to provide a more effective response to bribery in the 21st century at home and abroad.

The main elements of the Law Commission's recommendations are:

- Core bribery offences dealing with generality of both active and passive bribery i.e. the offering, promising or giving of bribes and the requesting, agreeing to receive or acceptance of bribes;
- Discrete offences dealing with the bribery of foreign public officials in order to obtain a business advantage and liability of companies for failures to prevent bribery committed on their behalf; and
- A requirement that prosecutions for bribery cannot proceed without the consent of the Director of the relevant prosecuting authority rather than the consent of the Attorney General as provided by existing law.

The main provisions of the Bill are:

- Empowerment of the police, prosecutors and courts to tackle bribery effectively wherever it occurs. Bribery is a global problem and an insidious threat to ethical standards in public life and in business;
- More transparency and accountability in international business transactions. The reform of the law will help greater collaboration with international partners in tackling the threat that bribery poses to economic progress and development around the world; and
- A more effective legal framework to combat foreign bribery and clearer compliance with international obligations. Law reform is one of the key

elements of the UK Government's strategy against foreign bribery coordinated by the Justice Secretary in his new role as the Government's anti-corruption champion. The strategy will establish a regulatory and policy framework to combat foreign bribery.

The draft Bribery Bill can be found as part of the Government's legislative programme for 2008/09 at
http://www.commonsleader.gov.uk/output/Page2641.asp

Disqualified Drivers Targeted by New Safety Laws

The introduction of new regulations laid before Parliament on 25 November 2008 will lead to disqualified drivers being kept off UK and Irish roads. The move will mean that UK drivers disqualified for an offence in the Republic of Ireland will no longer escape that punishment when they return home. Likewise, disqualifications earned by Irish drivers whilst in the UK will be recognised and enforced when they return to Ireland.

The agreement was the first to be drawn up under the terms of the 1998 European Convention on driving disqualifications. The regulations to bring the agreement into law in Great Britain were laid before Parliament and mutual recognition of disqualifications between the three administrations should be in place by the Spring of 2009.

The full press release can be found at
http://www.wired-gov.net/wg/wg-news-1.nsf/0/D5455BA3D92BFDF08025750C00472E7E?OpenDocument

New Law to Protect Victims of Forced Marriages

New legislation to protect victims of forced marriage and prevent others from the same fate came into force on 24 November 2008. The Forced Marriage (Civil Protection) Act 2007 will enable courts to prevent forced marriages and order those responsible for forcing another into marriage to change their behaviour or face imprisonment. It also provides recourse for those already forced into marriage.

Under the Act, a Forced Marriage Protection Order will contain terms that are designed to protect the victim in their particular circumstances. Any failure to comply with an order could lead to imprisonment.

Examples of the types of orders the court may make to prevent a forced marriage from occurring are:

- To hand over passports;
- To stop intimidation and violence;
- To reveal the whereabouts of a person; and
- To stop someone from being taken abroad.

The Act has been framed to enable the courts to act with discretion, to deal flexibly and sensitively with the circumstances of each individual case. It

employs civil remedies that offer protection to victims without criminalising members of their family.

The Government also published statutory guidance setting out the strategic responsibilities of agencies in England and Wales who may be involved with handling cases of forced marriage. The statutory guidance can be found at http://www.fco.gov.uk/resources/en/pdf/3849543/forced-marriage-right-to-choose

The Forced Marriage (Civil Protection) Act can be found at http://www.opsi.gov.uk/acts/acts2007/20070020.htm

New Offence of Possession of Extreme Pornographic Images

A new offence of possession of extreme pornographic images is due to come into force on 26 January 2009 in England, Wales and Northern Ireland. The offence is set out in Part 5, Sections 63 to 67 of the Criminal Justice and Immigration Act (CJIA) 2008.

The introduction of this new offence is not intended to extend the law to cover additional material beyond what is illegal to publish under the Obscene Publications Act (OPA) 1959.

Indeed, this offence covers a more limited range of material than the OPA. It creates a possession offence in respect of a sub-set of extreme pornographic material which is defined in Section 63 of CJIA.

There are three elements to the offence. An image must come within the terms of all three elements before it will fall foul of the offence. Those elements are:

- That the image is pornographic;
- That the image is grossly offensive, disgusting, or otherwise of an obscene character, and
- That the image portrays in an explicit and realistic way, one of the following extreme acts:
  - An act which threatens a person's life;
  - An act which results in or is likely to result in serious injury to a person's anus, breast or genitals;
  - An act involving sexual interference with a human corpse;
  - A person performing an act of intercourse or oral sex with an animal (whether dead or alive);

  and a reasonable person looking at the image would think that the people and animals portrayed were real.

The key to accurately assessing Section 63 is to apply all three elements to any example under consideration. To focus on just one element in isolation

inevitably leads to false conclusions about what is caught. These three elements, when taken together, should ensure that the offence only covers material which it is an offence to publish under the OPA 1959.

There is more information and a basic explanation of the structure and content of the offence available at
http://www.nio.gov.uk/further_information_on_the_new_offence_of_possession_of_extreme_pornographic_images.pdf

The Explanatory Notes for this Act are available at
http://www.opsi.gov.uk/acts/acts2008/en/ukpgaen_20080004_en.pdf

Record Numbers of People Serving Community Punishments

A report published on 25 November 2008 by the Centre for Crime and Justice Studies at King's College London reveals that record numbers of people are serving court orders in the community.

The report 'Community Sentences Digest (Second edition)' highlights that in 2007, 162,648 people started court orders in the community, the highest ever recorded number. It represents a 36% increase in the decade since 1997. The orders include both community sentences and Suspended Sentence Orders.

The report states that prison overcrowding is known. However, what is not widely known is that community sentence caseloads are also overcrowded. The effect of which is far less graphic than images of overcrowded prisons but its impact upon society can be equally damaging.

The report notes that the ratio of offenders to qualified probation officers has risen from 31:1 to 40:1, with staff supervising caseloads which are, on average, much larger than those of practitioners in youth offending teams. It also highlights high sickness levels amongst the probation workforce. In 2007-2008, the average number of sick days for each employee was 12.1, one of the highest in the public sector.

The full report 'Community Sentences Digest (Second edition)' can be found at http://www.crimeandjustice.org.uk/communitysentencesdigest2008.html

Joint Inspectorate Reports on Arrangements for Charging Criminal Offences

The first major independent report on the arrangements which gave Crown Prosecution Service (CPS) lawyers the authority to determine the charge in all but the most minor cases, following examination of evidence and other case material provided to them by police officers was published on 27 November 2008. This report 'The Joint Thematic Review of the new Charging Arrangements' was published by HM Crown Prosecution Service Inspectorate (HMCPSI) and HM Inspectorate of Constabulary (HMIC).

Under Statutory Charging, introduced nationally in 2006, CPS prosecutors are based in police stations to provide face to face advice between 9am and 5pm. Outside of those hours, and at weekends, CPS Direct, a dedicated telephone service, provides officers with this level of service every day of the year. HMCPSI also published its report on the inspection of CPS Direct which praises the quality of service and advice, and overall police satisfaction with the service.

The joint thematic report acknowledges the progress made and highlights elements of the process that can be improved. The report on charging looked at the way in which the arrangements had been implemented, the way in which the advice was given to police officers, the quality of that advice, the supervision and quality assurance of the process by police, the outcomes

based on a sample of cases and an examination of data drawn from the CPS Case Management System.

The issues highlighted by the report include:

- Early access to charging advice being sought by front-line officers in London is already being tackled by CPS London Direct. This is a telephone advice service using modern technology. It is substantially reducing the number of planned appointments which have to be postponed because more urgent custody cases require immediate decisions; this has been described by police as a 'life-saver';
- Tests are starting this month on similar processes which will be introduced in other CPS areas to improve access to early advice, particularly in cases where the need for face to face advice is not critical;
- Following a successful pilot at seven sites, work is proceeding on the national rollout of the 'Streamlined Process', which is already producing significant benefits for the police in reducing administrative time to prepare a prosecution file that is proportionate to the needs of the case; and
- Achieving the balance for 2,800 prosecutors to service the needs of up to 140,000 front line police officers is a challenge, but learning from the success of CPS Direct and the London model, the CPS will make innovative use of technology and better processes to substantially improve access.

The full report 'The Joint Thematic Review of the new Charging Arrangements' can be found at http://inspectorates.homeoffice.gov.uk/hmic/inspections/thematic/thematic_report/

HMIC Reports on Neighbourhood Policing and Developing Citizen Focus

Her Majesty's Inspectorate of Constabulary published its thematic report on Neighbourhood Policing and developing citizen focus on 28 November 2008. The report 'Her Majesty's Inspectorate of Constabulary - serving neighbourhoods and individuals' followed an inspection of all 43 police forces to assess the progress made in embedding the Neighbourhood Policing programme since it began in 2005, until its full roll-out in March 2008.

Neighbourhood Policing is now a core part of policing across England and Wales but the report suggests that progress varies considerably between forces. The inspection found that the programme has been adopted across the country, with 3,600 teams now dedicated to Neighbourhood Policing.

The report expresses praise for several forces for their 'excellent' work and considers that all forces have now achieved the basic standard of making sure Neighbourhood Policing is a core part of their work. However, the inspection also concluded that progress in Neighbourhood Policing varies considerably between forces and that more work needs to be done to fully embed the programme.

The key findings of the report include:

- 2.1% increase of people who think that their local police do a good or excellent job;
- Strong corporate governance, led by a chief officer with Police Authority engagement, ensuring consistency across force areas and between Basic Command Units, but taking account of local needs and national governance;
- Engagement with communities through meetings and using other engagement opportunities so that local people help to shape their local policing priorities;
- Forces with the most embedded Neighbourhood Policing apply the same weight to measures of confidence and satisfaction as to their performance in crime reduction and detection; and
- Progress varies considerably between forces, possibly due to the extent they engage with their local community and joint problem solving.

The report also looked at the development of Citizen Focus Policing which is a newer policing approach designed to take the needs of the citizen into account when designing and delivering policing services. This Citizen Focus Policing approach is thought to be responsible for improvements in satisfaction with the overall policing service but that there was still potential for higher satisfaction levels to be achieved.

The full report 'Her Majesty's Inspectorate of Constabulary - serving neighbourhoods and individuals' can be found at http://inspectorates.homeoffice.gov.uk/hmic/

Christmas Drink Drive Campaign Launched

The THINK! campaign launched its latest phase in readiness to deter drivers from drinking and driving over the Christmas period. The THINK! campaign has developed new radio, internet and in-pub advertising which were launched on 1 December 2008 to remind drivers, and young men in particular of the seriousness of the consequences of drinking and driving.

This Christmas many police forces will be using digital breath testing equipment, funded by a £2million investment by the Department for Transport, which allows officers to record information about drink driving electronically.

The statistics on accidents involving drinking and driving in Great Britain in 2007 can be found at http://www.dft.gov.uk/pgr/statistics/datatablespublications/accidents/casualtiesgbar/roadcasualtiesgreatbritain20071

The Department for Transport are also seeking views and evidence on the question of reducing the legal alcohol limit. The Road Safety Compliance consultation which is considering this issue is available for responses until 27 February 2009 at http://www.dft.gov.uk/consultations/open/compliance/

Campaign to Tackle Domestic Violence over Christmas Period

A new enforcement campaign to protect and support victims of domestic violence over the Christmas period was launched on 16 December 2008 by the Home Secretary and the Association of Chief Police Officers' Brian Moore. The initiative is supported by an advertising campaign to highlight the hidden issue of domestic abuse.

The Domestic Violence Enforcement Campaign (DVEC) will run in ten police force areas over Christmas, a period when women are at increased risk. DVEC will run from 21 December until 5 January 2009 and has received £100,000 of Home Office funding. The initiative takes place in ten Basic Command Units which are; South Wales, Northamptonshire North, Mid Kent, Cornwall and Isle of Scilly, East Sussex, Newham, Calderdale, Wiltshire, Northern Warwickshire and Sefton.

The campaign builds on the success of previous DVECs and encourages increased police-led activity in higher risk areas during seasonal peaks. This will include:

- Innovative tactics such as the use of body-worn video cameras by police;
- Dedicated Domestic Abuse response vehicles;
- Increased frontline policing and more specialist advice for those officers at scenes of domestic abuse;
- Identification and targeting of the ten highest risk perpetrators in each area and to include proactive bail checks based on intelligence and data; and

- Identification through Multi-Agency Risk Assessment Conferences of the ten highest risk victims in each area.

The Home Secretary also announced that next year she will launch a cross government consultation on violence against women and investigate the following aspects of domestic violence:

- What more can be done to prevent this type of violence;
- How to challenge attitudes that may uphold it; and
- How to reduce the fear of serious violence that infringes many women's ability to go freely about their daily lives.

The full press release can be found at http://www.whitehallpages.net/modules.php?op=modload&name=News&file=article&sid=158411&topic=166&newlang=eng

Perceptions of Anti-Social Behaviour: Findings from the 2007/08 British Crime Survey

The publication of the 'Perceptions of anti-social behaviour: Findings from the 2007/08 British Crime Survey' and its Supplementary Volume 1 to Crime in England and Wales 2007/08 on 27 November 2008 by the Home Office provides more detailed information on perceptions of anti-social behaviour (ASB) among adults living in private households in England and Wales, based on data from the British Crime Survey (BCS).

The statistical bulletin examines variations in perceptions of ASB and the link between perceptions and experience of ASB, as well as presenting information on the location, timing and reporting of ASB incidents.

The BCS has produced an overall summary measure of high level of perceived ASB since 2001/02.

The summary is constructed from responses to questions asking how much of a problem the following seven strands of ASB are in the local area:

- Teenagers hanging around on the street;
- Vandalism, graffiti and other deliberate damage to property or vehicles;
- People being drunk or rowdy in public places;
- People using or dealing drugs;
- Rubbish or litter lying around;
- Noisy neighbours or loud parties; and
- Abandoned or burnt-out cars.

The key findings from the 2007/08 bulletin are:

- The proportion of adults with a high level of perceived ASB has fallen from 19 per cent in 2001/02 to 16 per cent in 2007/08, as a result of decreases in five of the individual ASB strands that make up this measure. For example, the proportion perceiving problems with drug use or dealing has decreased from 31 per cent in 2001/02 to 26 per cent in 2007/08;
- Only perceptions of drunk or rowdy behaviour have increased in this same period (from 22% to 25%), while perceptions of noisy neighbours or loud parties have remained stable at 10 per cent;
- Perceptions of ASB vary considerably by demographic, socio-economic and lifestyle characteristics, with area-based characteristics showing the strongest variation with perceptions of ASB. For example:
  - The likelihood of perceiving problems with ASB in the local area increased with rising levels of deprivation; and
  - 45% of people living in Hard Pressed (i.e. low-income families, residents in council areas, people living in high-rise, and inner-city estates) areas and 40% of those living in Moderate Means (i.e. Asian

communities, post-industrial families and skilled manual workers) areas perceived teenagers hanging around to be a problem in their local area, compared with 18% of residents in Wealthy Achievers (i.e. wealthy executives, affluent older people and well-off families) areas;

- Being a victim of crime was related to an increased likelihood of people perceiving problems with ASB. For example:
  - Those who had been victimised in the last 12 months were twice as likely to perceive problems with vandalism or graffiti than those who had not been (44% compared with 22%);
- Experience of ASB was strongly linked to perceptions of ASB, although the strength of this relationship varied by type of ASB; 96 per cent of those who perceived problems with teenagers hanging around had personally experienced this behaviour in the last 12 months compared with 48% of those who perceived problems with people using or dealing drugs;
- The majority of incidents of ASB went unreported, with those who had experienced noisy or nuisance neighbours being the most likely to complain to someone; 49% of them had complained about the problem compared with 23% who had experienced drunk or rowdy behaviour.

In general, only a small proportion of people who complained about ASB found that it improved the situation.

The full report 'Perceptions of anti-social behaviour: Findings from the 2007/08 British Crime Survey - Supplementary Volume 1 to Crime in England and Wales 2007/08' can be found at
http://www.homeoffice.gov.uk/rds/pdfs08/hosb1508.pdf

ECHR: S and Marper v United Kingdom

On 4 December 2008 the European Court of Human Rights delivered its judgment in the case of S and Marper v the United Kingdom. This case looked at the retention by the police of the two applicants' fingerprints, cellular samples and DNA profiles after criminal proceedings against them were terminated by an acquittal and discontinued.

The Court concluded that the retention of both cellular samples and DNA profiles amounted, given the personal information contained, to an interference with the applicants' right to respect for their private lives, within the meaning of Article 8(1) of the European Convention on Human Rights. Likewise, although accepted as involving less information, fingerprints still contained unique information about the individual concerned and their retention constituted an interference with the right to respect for private life.

The retention of the applicants' samples, DNA profiles and fingerprints was found to have a clear basis in domestic law. The Court also ruled that the retention pursued a legitimate purpose, namely the detection, and therefore the prevention, of crime.

The Court concluded, however, that the blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected, but not convicted of offences, failed to strike a fair balance between the competing public and private interests. The retention constituted a disproportionate interference with the applicants' right to respect for private life and could not be regarded as necessary in a democratic society. There had therefore been a violation of Article 8 of the European Convention on Human Rights.

The Government is currently considering the judgement.

The Judgment is available at http://cmiskp.echr.coe.int////tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=74847&sessionId=17087753&skin=hudoc-en&attachment=true

The Home Secretary commented on the judgement during her speech to the Intellect Trade Association on 16 December 2008. The speech can be read in full at http://press.homeoffice.gov.uk/Speeches/home-sec-protecting-rights

Praise for Police, Clubs and Fans for Tackling Football-related Violence

Police officers, clubs and fans were praised by Home Office Minister Vernon Coaker on 25 November 2008 for tackling football-related violence last season following publication of the statistics on 'Football-Related Arrests and Banning Orders: Season 2007-08'. The figures reveal that there were 3,842 arrests last season at all international and domestic games, with no arrests at 67% of matches.

The latest statistics indicate that just 0.01% of 37 million football supporters attending matches in England and Wales in the last year were arrested for football-related violence. The report showed that despite increased British participation in the Champions League and UEFA Cup competitions only 25 arrests were made last year of the 120,000 fans travelling away to support their teams.

The latest statistics reveal that during the 2007/08 season:

- 3,842 arrests made for football-related offences at domestic and international matches in England and Wales;
- There were an average of 1.21 arrests per match;
- The number of football banning orders imposed by 30 October 2008 was 3,172 which represents 1,048 new orders imposed last year;
- 94% of individuals whose banning orders have expired are assessed by police as no longer posing a risk to football disorder; and
- Arrests for racist chanting were down 43% to 23%, the lowest level on record.

The Home Office Minister said in response to the statistics "Football violence and disorder has no place in the modern game and we are determined to crack down on those who attempt to ruin the sport for the vast majority of genuine fans. I am delighted that the police, the clubs and the fans are working together to help clampdown on football violence in and out of the grounds".

The statistics on 'Football-Related Arrests and Banning Orders for Season 2007/08' can be found at
http://www.homeoffice.gov.uk/crime-victims/reducing-crime/football-disorder/

Home Secretary makes Statement on Tasers

The Home Office announced on 24 November 2008 that funding for 10,000 new Taser guns would be made available for use by the police service. The planned roll-out will extend the use of Tasers beyond firearms officers to police response officers, following a period of trials.

The trials provided non-firearms authorised police officers the option to deploy Taser in violent situations. The subsequent usage of Tasers did not lead to a surge in public complaints about its use, according to the Independent Police Complaints Commission (IPCC). The results of the year long pilot of 10 forces

in England and Wales where Taser was issued to specially trained units showed that of 36 cases considered during the pilot only 2 related to complaints about the use of Taser by non-firearms officers.

The IPCC did find that in its overall monitoring of the roll out of Taser most complaints from the public related to the use of the equipment in 'drive-stun' mode (directly against the body) and that there is a need for more guidance and better training on this.

The Home Secretary said "Each day police officers put themselves in danger to protect the public, so I am committed to providing the police with the tools they tell me they need to fight crime and keep the public and themselves safe. I am also proud that we have one of the few police services around the world that do not regularly carry firearms and I want to keep it that way".

An agreement with the Home Office has been reached to allow chief officers of all forces in England and Wales, from 1 December 2008, to extend Taser use to specially trained units in accordance with Association of Chief Police Officers policy and guidance. The guidance sets out that Taser can only be used where officers would be facing violence or threats of violence of such severity that they would need to use force to protect the public, themselves and/or the subject(s).

Further information about police weaponry can be found at http://scienceandresearch.homeoffice.gov.uk/hosdb/police-equipment-technology/police-weaponry/?view=Standard

The full IPCC report on cases involving the use of Taser between 1 April 2004 and 30 September 2008 can be found at http://www.ipcc.gov.uk/index/resources/research/reports_firearms.htm

Participatory Budgeting

A trial run for the Participatory Budgeting process has taken place in Barnsley, South Yorkshire by the adaptation of the Police Authority's Activity Based Costing awards scheme through which they provide grants for local projects. The event, known as 'Citizen's Award Grants', was held on 15 November 2008.

During the event members of the public heard 21 presentations and voted to distribute £10,000 among 14 initiatives which will contribute towards local policing priorities in their neighbourhoods.

It is believed to be the first such scheme to give members of the public the chance to have their say on how small amounts of police funding can be used in their communities. It is hoped the scheme will roll out across South Yorkshire in the future.

The Home Office plans to issue an invitation to all forces and police authorities to bid for £20,000 to launch Community Safety Participatory Budgeting pilots. For further information about the pilots please contact Bob Macey on 020 7035 1866 or email: Bob.Macey@homeoffice.gsi.gov.uk

More details about the South Yorkshire scheme can be found at http://www.southyorks.gov.uk/index.asp?id=2138

Drug Intervention Programme Factsheet

A new Drug Interventions Programme (DIP) factsheet, 'DIP - Nipping it in the bud' was published in November 2008. The factsheet explains how use of the DIP condition in the police conditional cautioning process can help stop drug related offending behaviour.

DIP is a swift and effective alternative to prosecution, the Conditional Caution with a Drug Interventions Programme (DIP) condition provides an early opportunity to identify drug-misusing offenders and engage them in appropriate treatment and support before they spiral into a more serious cycle of drug misuse and crime.

This is the second in a series of factsheets produced to put the spotlight on key topics linked to the Drug Interventions Programme. The first factsheet, 'DIP - The positive impact', published in August 2008 looked at the evidence demonstrating how the programme is making a real difference. The next one will focus on housing issues as part of resettlement of DIP clients and is expected to be published in January 2009.

The factsheet 'DIP - Nipping it in the bud' can be found at http://drugs.homeoffice.gov.uk/publication-search/dip/dip-conditional-cautioning?view=Binary

The first factsheet 'DIP - The positive impact' can be found at http://drugs.homeoffice.gov.uk/publication-search/dip/dip-impact-august-08?view=Binary

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.

How a Tax Disc is Obtained From a Car by Constable is an Issue in a Conviction for Fraudulent Use of a Vehicle Excise Licence

R (on the application of SPARKE) v MOLD CROWN COURT (2008)

DC (Latham LJ, Underhill J) 17/11/2008

Road Traffic - Criminal Law

Reasons: Sufficiency Of Evidence: Vehicle Licences: Vehicle Licensing Offences: Display Of Vehicle Excise Licence: Determination Of Licence Displayed

A Crown Court was entitled to find on the evidence before it that an individual's conviction for fraudulent use of a vehicle excise licence should be upheld.

The claimant motor car dealer (S) applied for judicial review of a decision of a Crown Court to uphold his conviction for the fraudulent use of a vehicle excise licence. S had sold a motor vehicle at auction and retained its expired vehicle excise licence or tax disc. Thereafter S purchased another vehicle at auction. As he drove away, he was stopped by a police constable who had noticed that the vehicle's tax disc had expired. The constable went to his patrol vehicle to contact the DVLA regarding the removal of S's vehicle from the highway and when he returned he obtained the expired tax disc from S. At S's trial in the magistrates' court, the constable maintained that he had removed the tax disc from the vehicle. On S's appeal to the Crown Court the constable stated that S had in fact handed the tax disc to him. S maintained that he had inadvertently handed over the expired tax disc that belonged to the first vehicle rather than the tax disc that was on the vehicle in question. The Crown Court dismissed S's appeal and held that it was satisfied on the evidence that the tax disc which formed the basis of the charge was the one on the vehicle when it was stopped. In particular the Crown Court noted that the constable had given evidence that S had handed the disc to him in circumstances that made it plain it was the one on the car, S's demeanour expressed no surprise about the tax disc when it was handed over but rather he was accepting, and S's contention that he had handed over the wrong disc was fanciful.

HELD

The instant court could only interfere with the Crown Court's decision if it contained a vitiating error of law or the decision was one which the Crown Court could not properly have come to on the material before it. There was no error of law in the Crown Court's decision and there was sufficient valid evidence for it to have reached the conclusion that it did. In particular the Crown Court had heard the witnesses in the case and had had the opportunity to assess the validity of S's position.

APPLICATION REFUSED

Factors Taken into Account in Decision to Prosecute Under S. 5 of the Sexual Offences Act 2003 Rather Than S. 13

R (on the application of TOLHURST) v CROWN PROSECUTION SERVICE (2008)

QBD (Admin) (Latham LJ, Sullivan J) 12/11/2008

Criminal Procedure - Criminal Law

Child Sex Offences: Codes: Indictments: Appropriateness Of Offence Charged: S.9 Sexual Offences Act 2003: S.13 Sexual Offences Act 2003: S.5 Sexual Offences Act 2003

A decision of the Crown Prosecution Service to prosecute an individual for an offence of the rape of a child under 13 years of age rather than an offence of sexual activity with a child under 13 was not perverse.

The claimant (T) applied for judicial review of a decision of the defendant CPS to prosecute him for an offence of the rape of a child under 13 years of age. T, who was nearly 18 years old at the time of the offence, had pleaded guilty on the basis that he had believed that the complainant was 15 years old. That plea was accepted by the CPS. In fact, the complainant was aged 12 at the date of the offence. The sexual intercourse was consensual and occurred only once. After T pleaded guilty, he unsuccessfully sought to change his plea of guilt in the Crown Court. T also sought to amend the indictment against him to an offence contrary to the Sexual Offences Act 2003 s.9 and s.13, namely an offence of sexual activity with a child under 13. The CPS refused to change the indictment and conveyed its decision to T by letter in which it stated that in reaching the decision consideration had been given both to the Code for Crown Prosecutors and to the fact that C had previously been interviewed by the police with regard to a relationship that he had with a girl under the age of consent. T contended that in the circumstances it was inappropriate to prosecute him under s.5 of the Act.

HELD

An application for judicial review ought to be very rarely inserted into the criminal process unless there was a very good reason to do so, R v DPP Ex p Kebilene (2000) 2 AC 326 HL applied. Applications for judicial review interfered with the process of orderly criminal trials in a way that could lead to injustice. In the instant case, the judicial review proceedings had led to great delay in bringing the trial of T to an end. Although the instant case exemplified the vice of bringing such judicial review proceedings, that was not to say that the court had no jurisdiction to hear the instant case as a decision of the CPS was amenable to judicial review subject to the principles outlined in Kebilene, Kebilene applied. T's basic case was that the letter from the CPS was an inadequate and flawed response to a request for a reconsideration of the Crown's position. In particular, T asserted that the letter failed to adequately deal with the CPS's code as applied to sexual offences. The difficulty for T was that he could not point to any particular factor in the case, in his favour, which should have been taken into account but had not been, that would allow the court to properly interfere with the CPS's decision. There

were a number of points that were against T. In particular, T had against him the significant difference in age, the fact that although the sexual intercourse was consensual it was opportunistic, the fact that the offence had given rise to considerable distress in the complainant's family and the fact that T had had a "shot across his bows" in relation to his previous sexual relationship with a girl under the age of consent. Accordingly, having regard to the points against T, it was difficult to see how the CPS's decision could be described as a perverse decision.

APPLICATION REFUSED

Meaning of the Word 'Proceedings' in Relation to Confiscations Orders

CROWN PROSECUTION SERVICE v LEANNE MOULDEN (2008)

CA (Crim Div) (Pill LJ, Jack J, Judge Rogers QC) 11/11/2008

Criminal Procedure

Benefit From Criminal Conduct: Confiscation Orders: Criminal Proceedings: Indictments: Prosecution Appeals: Confiscation Orders Relating To Two Indictments: Treatment As Two Sets Of Proceedings: Meaning Of "Proceedings" In S.6(2)(A) Proceeds Of Crime Act 2002: Proceeds Of Crime Act 2002: Criminal Justice Act 1988: S.6(2)(A) Proceeds Of Crime Act 2002: Art.3(1) Proceeds Of Crime Act 2002 (Commencement No. 5, Transitional Provisions, Savings And Amendment) Order 2003: S.72aa Criminal Justice Act 1988: S.31 Proceeds Of Crime Act 2002

A judge making confiscation orders in relation to offences contained in two separate indictments had been correct to treat them as two sets of proceedings, as the word "proceedings" in the Proceeds of Crime Act 2002 s.6(2)(a) meant proceedings under a single indictment. Therefore she had correctly made two orders: one under the Criminal Justice Act 1988 in relation to offences committed before the commencement of the 2002 Act, and another under the 2002 Act in relation to an offence committed after that date.

The appellant Crown appealed against confiscation orders imposed against the respondent (M). M had pleaded guilty, on one indictment, to two counts of attempting to obtain a service by deception and one count of obtaining a service by deception. On the same day she also pleaded guilty, on a separate indictment, to a further count of obtaining services by deception. The offences on the first indictment were all committed before the commencement of the Proceeds of Crime Act 2002; the offence on the second indictment was committed after its commencement. Following sentencing a confiscation order was made under the Criminal Justice Act 1988 on the first indictment and another was made under the 2002 Act on the second indictment. The judge, in making those confiscation orders, had decided that the word "proceedings" in s.6(2)(a) of the 2002 Act did not mean "any proceedings", and that the two indictments were two separate sets of proceedings. The Crown submitted that there was a single set of proceedings before the sentencing judge, notwithstanding the presence of two indictments: the 2002 Act created a single code in relation to confiscation proceedings, and that code should not be fragmented so as to make different offences amenable to different statutes as that would be unnecessary and unjustified. The Crown further submitted that because some of the offences had been committed before the commencement of the 2002 Act the effect of the Proceeds of Crime Act 2002 (Commencement No. 5, Transitional Provisions, Savings and Amendment) Order 2003 art.3(1) was that all of M's offences dealt with at the sentencing hearing were subject to the regime in the 1988 Act, including s.72AA, meaning that M's benefit from criminal conduct was far greater than the judge had found. M submitted that

s.31 of the 2002 Act did not retrospectively create a prosecution right of appeal against an order under the 1988 Act.

HELD

(1) The judge had been correct in holding that there were two confiscation orders: one under the 1988 Act and one under the 2002 Act. As a matter of construction, the expression "proceedings before the Crown Court" in s.6(2)(a) of the 2002 Act meant proceedings under a single indictment. The term "proceedings", as used in s.6, did not cover everything, in whatever form, before the court on the date sentence was to be imposed. The expression "the offences mentioned in s.6(2)" in art.3(1) of the 2003 Order did not include offences subject to a separate indictment including only offences committed on or after the commencement of the 2002 Act. The judge had been correct to make two orders, one under each Act, and she had applied the correct test to each of them. Therefore the appeal against the order under the 2002 Act failed.

(2) There was no prosecution right of appeal against the order under the 1988 Act.

APPEAL DISMISSED

Driver Not Convicted of Driving Whilst Disqualified Due to Lack of Evidence of Driver's Disqualification at Relevant Date

MILLS v DIRECTOR OF PUBLIC PROSECUTIONS (2008)

DC (Scott Baker LJ, Maddison J) 3/12/2008

Criminal Procedure - Criminal Evidence

Case Management: Disqualification From Driving: Driving While Disqualified: Previous Convictions For Driving Offences: Lack Of Admissible Evidence Of Driver's Disqualification At Relevant Date

Magistrates had not been entitled to convict a driver of driving while disqualified where there had been no admissible evidence of his disqualification from driving before the court.

The appellant (M) appealed by way of case stated against a decision of a magistrates' court to convict him of driving while disqualified. After his arrest, M had been interviewed by the police, and had given no reply to the question of whether he was disqualified from driving. A directions hearing, and then a hearing to admit evidence of previous convictions for driving while disqualified, took place. Such evidence was adduced but the details of only the convictions, not the sentences imposed, were included. At no point was there any formal admission that M had been disqualified from driving on the date in question, nor was any certificate of disqualification put into evidence. However, at the

substantive hearing the magistrates held that they were satisfied beyond reasonable doubt, given the way in which the case had been managed and run, that M had been disqualified from driving at the material time. They said that at the previous case management hearings both parties were so agreed. The question for the consideration of the high court was whether the magistrates were entitled to convict M on the basis of the way the case had been managed, and the particulars of previous convictions before them.

HELD

It was likely that what had occurred was that at the previous case management hearings it was made clear that the substantive issue before the court was going to be whether or not M was driving the vehicle on the relevant date. The instant court suspected that nothing was said either way as to whether he was disqualified from driving on that date, but that it was simply inferred that it was not an issue and would be an agreed fact at the hearing. Of course it was possible that there was an informal admission at the case management hearings but there was no evidence to that effect. In answer to the question posed, the evidence of previous convictions did not specify any period of disqualification imposed and, therefore, the magistrates were not entitled to rely on the particulars before them. Nor were they entitled to convict M on the basis of the way the case was managed with regard to the issue of whether M was disqualified. The position was that the prosecution had to prove its case. The conclusion that there was no admissible evidence of disqualification was inescapable.

APPEAL ALLOWED

Details of Offences For Which an Individual Had Been Charged But Acquitted Were Wrongfully Included in His Enhanced Criminal Record Certificate

R (on the application of S) (Claimant) v CHIEF CONSTABLE OF WEST MERCIA (Defendant) & CRIMINAL RECORDS BUREAU (Interested Party_ (2008)

QBD (Admin) (Wyn Williams J) 18/11/2008

Police - Criminal Procedure

Decisions: Disclosure: Enhanced Criminal Record Certificates: Mistaken Identity: Reasonableness Of Disclosure Of Criminal Charges

Details of offences with which an individual had been charged, but acquitted, were wrongfully included in his enhanced criminal record certificate as, in deciding to disclose those details, the decision-maker failed to have regard to the reasons for the acquittal and it was irrational or unreasonable to conclude that he had committed the offences.

The claimant (S) applied for judicial review of the decision of the defendant chief constable to disclose in his enhanced criminal record certificate details of charges brought against him for five public order offences. S had been charged with the offences, which involved a male exposing himself to females on different occasions. He had presented evidence to the magistrates to show that he had been elsewhere on one of the dates concerned. As a result, he had been acquitted. When S later applied for a job as a coach at a local rugby club, he had applied for a copy of his certificate. The criminal records bureau had lost the file relating to the criminal proceedings but a member of the chief constable's staff (B) decided to disclose information stored in computer records. That information comprised details of the offences, but not the proceedings, so B had been unaware of the reasons for the acquittal. The deputy chief constable upheld the decision to disclose the information, considering that the allegations might have been true and that it might be relevant to S's suitability to coach children. However, a re-worded, more detailed entry for the certificate was proposed. S submitted that, as the magistrates had acquitted him of the charges and in their reasons had effectively exonerated him, it had been irrational or unreasonable for the chief constable or his delegated subordinates to conclude that he might be guilty of the offences.

HELD

(1) B's decision had been unreasonable in the Wednesbury sense. In the circumstances, no decision-maker could have made a decision to the effect that the allegations made against S might be true, when they had no information to explain why S had been acquitted by a criminal court after a trial on charges founded upon the allegations. Furthermore, a reasonable decision-maker would not have disclosed the existence of the allegations without first taking reasonable steps to ascertain whether they might be true. B had failed to take into account why S had been acquitted; she should have made enquiries of the prosecuting advocate at

the very least, and then taken account of such information, before deciding whether to disclose the allegations.

(2) The case against S had never been presented on the basis that there had been more than one person involved, and such a scenario seemed wholly improbable. The deputy chief constable had acted unreasonably or irrationally if his approach had been that S might have committed some, but not all, of the offences. Very strong grounds existed to suggest that S had not been the offender. It had been recognised that a good reason for non-disclosure of an allegation which might otherwise be justifiably disclosed would be where the chief constable formed the view that the case probably involved mistaken identity, R (on the application of X) v Chief Constable of the West Midlands (2004) EWCA Civ 1068, (2005) 1 WLR 65 applied. A reasonable decision-maker in the position of the deputy chief constable would have concluded that it was probably a case of mistaken identity. It had, therefore, been irrational or unreasonable in the Wednesbury sense for the deputy chief constable to conclude that it might be true that S was the offender. The fact that an employer could legitimately elicit relevant information by appropriate questions was not determinative of whether the chief constable should give disclosure.

JUDGMENT FOR CLAIMANT

Reasonable Grounds for Suspicion in an Arrest for Suspicion of Rape

CHIEF CONSTABLE OF WEST YORKSHIRE v ARMSTRONG (2008)

CA (Civ Div) (Arden LJ, Hallett LJ, Blackburne J) 5/12/2008

Police - Torts

Arrest: Police Inquiries: Suspicion: Wrongful Arrest: Arrest On Suspicion Of Rape: Reasonable Grounds For Suspicion

In a claim for damages for false imprisonment, false arrest, and trespass to land and goods involving a claimant who was arrested on suspicion of rape and was subsequently exonerated, the judge had erred in law in holding that the police officer who made the decision to arrest had no reasonable grounds for suspecting him.

The appellant chief constable appealed against a decision awarding damages to the respondent (X) for false imprisonment, false arrest, and trespass to land and goods. An allegation of rape had been made to the police and a description of the attacker given. The victim stated that he was a white man aged 19 years or under, of slim build, with brown hair and clean shaven. She gave a description of his clothing and said that he told her that he liked to be called Daniel, not Danny, and that following the attack he had stolen the contents of her handbag, telling her he was normally a thief and not a rapist.

An investigating officer who knew X's family realised that the description sounded like X and informed a senior officer. The senior officer noted that X went to nightclubs, might have been a doorman, had two previous convictions for theft, lived near the site of the attack, fitted the general description, had worn similar clothing and liked to be known as Daniel not Danny. On that basis the senior officer concluded that there were reasonable grounds for suspecting him and X was arrested the following day at his home. X was later exonerated and issued proceedings. The judge held that the police officers had failed to carry out a proper investigation before arresting X and did not have reasonable grounds for arresting him. He held that X was in his mid-twenties, unshaven and of large build. He rejected as irrelevant most of the other reasons for arrest and ruled that the fact that X preferred to be called Daniel and lived within walking distance of the attack was not enough to justify arrest.

HELD

The judge was wrong and had erred in law in holding that the police had no reasonable grounds for suspecting that X was the rapist. The thoroughness of an investigation was relevant in all of the circumstances, and there would sometimes be circumstances where the matter was not urgent and where it was incumbent on the police to make further inquiries. However, it was important to remember that an arrest might be effected early on in an investigation and that it might not always be possible to carry out further investigations, O'Hara v Chief Constable of the Royal Ulster Constabulary (1997) AC 286 HL applied and Raissi v Commissioner of Police of the Metropolis (2008) EWCA Civ 1237, (2008) 105(45) LSG 19 considered. The judge had erred by pitching the level of suspicion too high. Whilst the judge had stated the correct test in law, he had not applied it correctly, as he had applied it too strictly. He had erred by failing to put the decision to arrest of the senior officer in the proper context. There was a rapist on the loose, there had been a vicious attack and the senior officer had the protection of the public at the front of his mind. He had to act swiftly to prevent another attack and to preserve any evidence. The information received by the senior officer was important, from a reliable source and appeared to match significantly the description of the rapist. The judge had also erred by considering the reasons for arrest individually; when making his decision, the senior officer had based it on the cumulative effect of the reasons.

APPEAL ALLOWED

Cycle Rides Held at the Same Time and Beginning at the Same Place Each Month Held to Be a Commonly or Customarily Held Procession for the Purpose of The Public Order Act 1986

KAY v COMMISSIONER OF POLICE OF THE METROPOLIS (2008)

HL (Lord Phillips of Worth Matravers, Lord Rodger of Earlsferry, Baroness Hale of Richmond, Lord Carswell, Lord Brown of Eaton-under-Heywood) 26/11/2008

Human Rights

Bicycles: Exemptions: Notification: Processions: Application Of S.11 Public Order Act 1986 To Procession With No Predetermined Route: S.11 Public Order Act 1986

A mass cycle ride, beginning at the same place and held at the same time each month but with no predetermined route, was, assuming the Public Order Act 1986 s.11 applied, a commonly or customarily held procession within the meaning of s.11(2) and so no notice of it had to be given. Although the rides did not follow the same route each time, they had so many common features that any person would consider that the same procession took place each month.

The appellant cyclist (K) appealed against a decision ((2007) EWCA Civ 477, (2007) 1 WLR 2915) that monthly mass cycle rides, starting from the same meeting point at the same time each month but following a different route on each occasion, were not commonly or customarily held processions for the purposes of the Public Order Act 1986 s.11(2). K was a regular participant in Critical Mass ©, a cycle ride which had begun at a fixed time and place every month for a number of years, and which had no predetermined route. The police asserted that C was a procession for which notice was required under s.11 of the Act. The Divisional Court accepted K's challenge to the police's assertion on the grounds that C was a procession commonly or customarily held within s.11(2), but the Court of Appeal reversed that decision. The respondent commissioner argued that s.11(2) could not apply, because each time that C occurred, it followed a different route: unless a procession followed the same route each time, it could not be described as the same procession. There was an implied obligation in s.11 for a procession to have a predetermined route; that was necessary to give effect to an object of the legislation, namely giving the police advance notice of processions so as to enable them to prevent them from resulting in public disorder. It was not possible lawfully to establish a procession without a predetermined route, since s.11 required notice of a procession and that the notice had to include a proposed route.

HELD

(1) Proceeding on the basis that C was a procession to which s.11 applied, s.11(2) applied to it as a procession that was commonly or customarily held. A procession had to move along a route, Flockhart v Robinson (1950) 2 KB 498 DC considered, and if it took place along the same route

at regular intervals, that fact would be material to the question of whether it was the same procession. However, a fixed and known route was not an essential characteristic of a procession commonly or customarily held. The rides had so many common features that any person would consider that each month the same procession took place and, on the natural meaning of the words, that it was a commonly or customarily held procession. Section 11 did not require notice to be given of every procession capable of creating a disturbance. The fact that, on their natural meaning, the words of s.11(2) were wide enough to exclude some processions in respect of which the police did not have all the information they would wish was no reason to give those words an unnatural meaning.

(2) (Obiter) Although K had accepted that s.11 applied, it was unlikely that C, once established, involved any advance planning or organisation, in which case s.11 had no application to it. Section 11(1) applied to "any proposal to hold a public procession", and an offence under s.11(7) would be committed by the organisers of the procession only if there was no compliance. No offence could be committed unless a procession took place without an antecedent proposal to hold it, nor could an offence be committed if there were no organisers of the procession. The submission that organisers proposing to hold a new procession without a predetermined route could not lawfully do so could not be accepted. If Parliament had intended to outlaw processions of that kind, it would not have done so in a section creating a system of notification; it would have done so specifically.

APPEAL ALLOWED

The Near Suicide of a Prisoner in Custody Triggered an Obligation on the State to Initiate an Enhanced Investigation under Article 2 of ECHR

R (on the application of JL) v SECRETARY OF STATE FOR JUSTICE (2008)

HL (Lord Phillips of Worth Matravers, Lord Rodger of Earlsferry, Lord Walker of Gestingthorpe, Lord Brown of Eaton-under-Heywood, Lord Mance) 26/11/2008

Penology And Criminology - Human Rights

Attempts: Death In Custody: Duty To Undertake Effective Investigation: Prisoners: Public Inquiries: Right To Life: Self-Harm: Suicide: Prisoner Attempting To Commit Suicide And Sustaining Serious Injury: Nature Of Investigation Required By Art.2 European Convention On Human Rights 1950: Art.2 European Convention On Human Rights

A near-suicide of a prisoner in custody which left him with the possibility of a serious long-term injury automatically triggered an obligation on the state

under the European Convention on Human Rights 1950 art.2 to institute an enhanced investigation. However, not every such investigation was required, in order to comply with art.2, to amount to the type of investigation identified in R (on the application of D) v Secretary of State for the Home Department (2006) EWCA Civ 143, (2006) 3 All ER 946.

The appellant secretary of state appealed against a decision ((2007) EWCA Civ 767, (2008) 1 WLR 158) that he had been required to conduct an investigation in compliance with the European Convention on Human Rights 1950 art.2 into the near-suicide of the respondent prisoner (L). In the Court of Appeal, Waller L.J. had held that, unless it was plain from the independent investigation that the state or its agents could bear no responsibility for a suicide or near-suicide in custody, a further investigation would be required with the ingredients identified in R (on the application of D) v Secretary of State for the Home Department (2006) EWCA Civ 143, (2006) 3 All ER 946. The secretary of state was concerned by the resource implications if the principles identified by Waller L.J. were applied generally. It was common ground that, where a suicide or near-suicide in custody took place, there must be an initial investigation of the facts, and that might give rise to the requirement for a further investigation. The issues for determination were (i) whether the initial investigation must be independent, or whether it could be carried out by the prison authorities themselves; (ii) whether a further investigation must be held whenever it was not plain from the initial investigation that the state bore no responsibility for the near-suicide, or only where the initial investigation demonstrated that there was an arguable case that the state was at fault; (iii) where a further investigation was required, whether it necessarily had to be a "D-type inquiry".

HELD

(1) A near-suicide of a prisoner in custody which left him with the possibility of a serious long-term injury automatically triggered an obligation on the state under art.2 to institute an enhanced investigation, R (on the application of Gentle) v Prime Minister (2008) UKHL 20, (2008) 2 WLR 879 considered, Reeves v Commissioner of Police of the Metropolis (2000) 1 AC 360 HL and R (on the application of Middleton) v HM Coroner for Western Somerset (2004) UKHL 10, (2004) 2 AC 182 applied. That obligation could not be discharged by an internal investigation of the facts. In some circumstances an initial investigation would satisfy the requirements of art.2. In others a further investigation would be necessary, which might well require to be a D-type inquiry. It was desirable that the initial investigation should be sufficiently rigorous to satisfy the requirements of an enhanced investigation where possible. A D-type inquiry would necessarily be more protracted and expensive. An internal investigation which did not disclose an arguable case of fault on the part of the state would not preclude the need for an enhanced investigation. This was because, firstly, the object of the investigation went beyond ascertaining whether state agents had been at fault; its primary purpose was to learn lessons for the future. Secondly, if the investigation was to be impartial and seen to be impartial, it should be carried out by a person who was independent of the prison authorities. It was unavoidable that the very first steps in investigating an incident would

be internal to the Prison Service. However, the need to set up an independent investigation in compliance with art.2 would be apparent as soon as the prison authorities became aware of circumstances which suggested that a prisoner had attempted suicide and was going to be incapacitated. At that point the Prison Service should take steps to establish the independent investigation. To satisfy the requirements of art.2, besides being independent and involving the family of the victim, investigations must be initiated by the state, be promptly and expeditiously carried out, and provide for a sufficient element of public scrutiny, Ramsahai v Netherlands (52391/99) (2008) 46 EHRR 43 ECHR (Grand Chamber) considered. It was not desirable to be prescriptive beyond that point. Generally speaking there was no need for inquiries into near-suicides to take place in public, although the independent investigator's report would itself be made public. The necessity for a D-type inquiry would be comparatively rare.

(2) (Per Lord Brown) A D-type inquiry went far beyond what could reasonably be judged necessary to satisfy the art.2 procedural duty arising in any save the most exceptional near-suicide cases. D had been wrongly decided. The remarks made by Lord Bingham in R (on the application of Amin (Imtiaz)) v Secretary of State for the Home Department (2003) UKHL 51, (2004) 1 AC 653 about public investigations were made in the immediate context of cellmate killings. It was quite impossible to regard his remarks as authority for the wider proposition that a D-type inquiry which took oral evidence in public was ordinarily required in near-suicide cases, D and Amin considered.

APPEAL DISMISSED

SI 2993/2008 The Criminal Justice and Immigration Act 2008 (Commencement No. 4 and Saving Provision) Order 2008

In force on **1 December 2008 and 26 January 2009** respectively, this Order brings into force the provisions of the Criminal Justice and Immigration Act 2008 set out at article 2(1) and (2). Article 3 contains saving provisions in relation to the amendments to the police misconduct and performance procedures and the investigation of complaints of police misconduct etc.

In force on 1 December 2008 are the following:

- (a) section 61 (Compensation for miscarriages of justice);
- (b) section 118 (Closure orders: premises associated with persistent disorder or nuisance);
- (c) section 126(1) and (3) (Police misconduct and performance procedures) insofar as it relates to the entries specified in sub-paragraph (h);
- (d) section 127 (Investigation of complaints of police misconduct etc.) insofar as it relates to the provisions specified in sub-paragraph (i);
- (e) section 148(2) (Consequential etc. amendments and transitional and saving provisions) insofar as it relates to the provisions in sub-paragraph (j);
- (f) section 149 (Repeals and revocations) insofar as it relates to the entries in sub-paragraph (k);
- (g) Schedule 20 (Closure orders: premises associated with persistent disorder or nuisance);
- (h) in Schedule 22 (Police misconduct and performance procedures):
  - (i) paragraphs 3, 4, 7 and 8 to the extent not already in force; and
  - (ii) paragraphs 5, 9, 11 and 17 to 21;
- (i) in Schedule 23 (Investigation of complaints of police misconduct etc.):
  - (i) paragraphs 4, 6 to 11 and 13 to 18; and
  - (ii) paragraphs 5, 12 and 19 to the extent not already in force;
- (j) paragraphs 22 and 35(1), (2)(a) and (3) of Schedule 27 (Transitory, transitional and saving provisions); and
- (k) in Schedule 28 (Repeals and revocations), the entries related to:
  - (i) section 50(4) of, and paragraph 6 of Schedule 6 to, the Police Act 1996(2);
  - (ii) Schedule 3 to the Police Reform Act 2002(3); and
  - (iii) paragraph 119 of Schedule 21 to the Legal Services Act 2007(4).

In force on 26 January 2009 are the following:

- (a) section 63 (Possession of extreme pornographic images);
- (b) section 64 (Exclusion of classified films etc.);
- (c) section 65 (Defences: general);
- (d) section 66 (Defence: participation in consensual acts);
- (e) section 67 (Penalties etc. for possession of extreme pornographic images);
- (f) section 68 (Special rules relating to providers of information society services);
- (g) section 71 (Maximum penalty for publication etc. of obscene articles);
- (h) section 148(1) and (2) (Consequential etc. amendments and transitional and saving provision) insofar as it relates to the provisions specified in paragraphs (j) and (k);
- (i) Schedule 14 (Special rules relating to providers of information society services);
- (j) paragraph 58 of Schedule 26 (Minor and consequential amendments);and
- (k) paragraphs 23 and 25 of Schedule 27 (Transitory, transitional and saving provision).

The saving provision under article 3 is as follows:

- The Police Act 1996 and the Police Reform Act 2002 shall continue to apply in relation to specified matters as if the amendments in paragraphs 3 to 5, 7 to 9 and 11 of Schedule 22 and in paragraphs 4 to 10, 12 to 15 and 17 to 19 of Schedule 23 to the 2008 Act had not been made.
- In this article:

  (a) "specified matter" means:

    (i) conduct which may be or is being dealt with under the Police (Conduct) Regulations 2004(5);

    (ii) conduct which may be or is being dealt with under the Police (Complaints and Misconduct) Regulations 2004(6) as they are in force on the date this Order is made and which has come to the attention of the Independent Police Complaints Commission and the appropriate authority before 1 December 2008;

    (iii) performance or attendance which may be or is being dealt with under the Police (Efficiency) Regulations 1999(7); or

    (iv) anything which may be or is being dealt with under the Police Appeals Tribunals Rules 1999(8);

  (b) "appropriate authority" has the same meaning as in the Police (Complaints and Misconduct) Regulations 2004.

SI 3008/2008 The Race Relations Act 1976 (Amendment) Regulations 2008

In force on **22 December 2008**. These Regulations amend the Race Relations Act 1976 ("the Act"). They do so in order to give full effect (in Great Britain) to Article 2(2)(b) (indirect discrimination) of Council Directive 2000/43 EC of 29 June 2000 concerning the principle of equal treatment between persons, irrespective of racial or ethnic origin, in the areas of employment (and related matters), social protection, social advantage, education and access to and supply of, goods and services which are available to the public, including housing.

Regulation 2 amends the Directive-based definition of indirect discrimination on grounds of race or ethnic or national origins which applies in those areas covered by the Directive.

An Impact Assessment of the effect these Regulations will have on business and the voluntary sector and a Transposition Note showing how the relevant Article of the Directive has been implemented in Great Britain are available to the public, free of charge, from http://www.equalities.gov.uk

SI 3009/2008 The Crime (International Co-Operation) Act 2003 (Commencement No. 4) Order 2008

The provisions of this SI come into force once the convention on driving disqualifications applies between the United Kingdom and Ireland. This will be 90 days after the later of the notifications from these two Member States has been deposited with the Secretary General of the Council of the European Union, under Article 15(4) of the convention. This date will be notified in the London, Edinburgh and Belfast Gazettes. The date will also be notified on the Department for Transport website.

Article 3 commences the repeal of provisions in the Powers of Criminal Courts (Sentencing) Act 2000 by section 91(2) and Schedule 6 of the Act and comes into force on **17 December 2008**.

This Order brings into force the provisions of the Crime (International Co-operation) Act 2003 ("the Act") specified in articles 2 and 3, which relate to the mutual recognition of driving disqualifications as between the United Kingdom and Ireland. The Act gives effect to the Convention drawn up on the basis of Article K.3 of the Treaty of European Union on Driving Disqualifications signed on 17 June 1998 (EC 98/C 216/01) ("the convention on driving disqualifications").

SI 3010/2008 The Mutual Recognition of Driving Disqualifications (Great Britain and Ireland) Regulations 2008

In force on the date specified in Article 2(1) of the Crime (International Co-operation) Act 2003 (Commencement No 4) Order 2008(2) above. i.e. 90 days after the later of the notifications from these two Member States.

These Regulations are made under Part 3 of the Crime (International Co-operation) Act 2003 ("the Act"), which provides for mutual recognition of driving disqualifications between Member States of the European Union. Part 3 will be commenced in relation to Ireland on a date to be appointed, which

will be advertised in the London, Edinburgh and Belfast Gazettes. The commencement date will also be notified on the Department for Transport website.

Regulation 2 prescribes the period of disqualification treated as being served in Ireland.

Regulation 3 prescribes a corresponding condition, for the purposes of section 57(4) (b) of the Act.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website at http://www.opsi.gov.uk.

SI 3012/2008 The Civil Contingencies Act 2004 (Amendment of List of Responders) Order 2008

In force on**1 April 2009**. This Order amends Part 1 of Schedule 1 to the Civil Contingencies Act 2004 (which lists Category 1 responders for the purposes of Part 1 of that Act). The Order provides that NHS foundation trusts are Category 1 responders, if and insofar as they have the function of providing ambulance services, or hospital accommodation and services in relation to accidents and emergencies.

SI 3136/2008 The IK Borders Act 2007 (Commencement No. 5) Order 2008

In force on **6 January 2009**. This Order brings into force section 21 of the UK Borders Act 2007 which concerns the issuing of a code of practice, designed to ensure that in exercising functions, the Border and Immigration Agency takes appropriate steps to ensure that while children are in the UK, they are safe from harm. On the same date, this Order also brings into force sections 51, 52 and 53 of the Act for all remaining purposes. These provisions concern the Chief Inspector of the Border and Immigration Agency.

SI 3146/2008 The Police and Criminal Evidence Act 1984 (Codes of Practice) (Revisions to Code A) (No. 2) Order 2008

In force on **1 January 2009**. This Order brings into operation the revision of paragraph 4 of the Police and Criminal Evidence Act 1984 Code of Practice for the exercise by: police officers of statutory powers of stop and search; police officers and police staff of requirements to record public encounters ("PACE Code A"). The Order also brings into operation the clarification in paragraphs 2.2 and 2.3 of Code A regarding reasonable suspicion not being based on single factors alone. Paragraphs 4.10A and 4.10B of PACE Code A are also amended to clarify the position on providing receipts for stops and searches.

The revision of paragraph 4 of PACE Code A (recording requirements including recording of encounters not governed by statutory powers), together with the consequential deletion of Annexes D and E will mean that constables will no longer be required to record all encounters not governed by statutory powers. The constables will only need to record information on the ethnicity of a person who is the subject of such an encounter. A receipt will also be made available to the person.

SI 3158/2008 The UK Borders Act 2007 (Code of Practice on Children) Order 2008

In force on **6 January 2009**. This Order brings into force the Code of Practice on Children issued by the Secretary of State for the Home Department. This Code of Practice is designed to ensure that in exercising functions in the United Kingdom, the UK Border Agency takes appropriate steps to ensure that while children are in the United Kingdom they are safe from harm. Since the UK Borders Act 2007 gained royal assent, the Border and Immigration Agency has changed its title to the UK Border Agency.

SI 3065/2008 The Domestic Violence, Crime and Victims Act 2004 (Commencement No. 10) Order 2008

In force on **14 December 2008**. This order brings into force Section 46 of the Domestic Violence, Crime and Victims Act 2004. This section concerns victims of mentally disordered persons being made aware of their discharge or absence. It inserts a new 69A and 69B into the Justice (Northern Ireland) Act 2002.