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Digest

July 2006

Legal Validation and Research

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Legal Validation and Research Department

www.centrex.police.uk/digest

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

This edition contains several articles that are linked to the general subject areas of Terrorism, Criminal Justice System Reform and Employment.

Terrorism articles include, the introduction of provisions in the Terrorism Act 2006 which extend the maximum detention of terrorism suspects to 28 days, the new PACE Code H, which sets out the requirements for the detention, treatment and questioning of terrorism suspects, The Commons Home Affairs committee report on terrorism detention powers, the Governments recently published Counter-Terrorism strategy as well as details of the new Terrorism Threat Level system.

The Criminal Justice System (CJS) reform articles included are, the Governments proposals for CJS reform, the Lord Chancellors report on improving the effectiveness of the CJS, proposals to revise rules about witness summonses and orders, a consultation on proposed new powers to tackle organised and financial crime and advice on the use of interpreters in the CJS.

The main employment related articles included are in relation to the Age Discrimination regulations which come into force on 1 October this year and provisions in the Work and Families Act 2006.

Also included this month is an update of Private members Bills that are relevant in some way to the wider policing family. An update of current Parliamentary Bills will appear in next month's edition, whilst Parliament is in recess.

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

Case law in association with lawtel from Sweet & Maxwell

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Complying with the Age Discrimination Regulations

On 1 October 2006 the Employment Equality (Age) Regulations 2006 come into force. The Regulations apply to all employers, including the police, and will impact on the whole of the employment relationship, covering recruitment, training, promotion, pay, redundancy and retirement. Many organisations still maintain discriminatory practices such as compulsory retirement ages, promotion based on length of service and selecting candidates for redundancy based on their age. Although some practices may be justifiable under the Regulations, all employers should endeavour to make sure procedures comply with them before 1 October. There have been several guidelines published on how to comply with the Regulations and this is a brief synopsis of their main points.

The Regulations apply to employment and vocational training. They prohibit unjustified direct and indirect age discrimination, and all harassment and victimisation on grounds of age. The Regulations also:

- Remove the upper age limit for unfair dismissal and redundancy rights (previously 65).
- Allow pay and non-pay benefits to continue which recognise and reward loyalty and experience (but only with reference to a maximum period of five years). For periods of service longer than five years, the employer will have to show they believe there is an advantage from rewarding loyalty, encouraging motivation or recognising experience.
- Remove the age limits for Statutory Sick Pay, Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay.
- Provide exemptions for many age-based rules that exist in occupational pension schemes.

The Regulations apply to:

- Employees (permanent and temporary).
- Job applicants.
- Contract workers.
- Agency workers.
- Overseas workers.
- Paid or unpaid vocational trainees.
- Company directors.
- Partners.

Discrimination, harassment or victimisation can also occur after the employment relationship ends, e.g. when writing references. Employers can be held vicariously liable for the actions of employees (in addition to the employee being held responsible).

Definitions

The Regulations cover the same forms of discrimination that employers will already be familiar with in the context of other areas of discrimination, such as race and sex.

Direct discrimination

On grounds of B's age, A treats B less favourably than he treats or would treat other persons.

Indirect discrimination

A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same age group as B, but—

(i) which puts or would put persons of the same age group as B at a particular disadvantage when compared with other persons, and

(ii) which puts B at that disadvantage,

and A cannot show the treatment or, as the case may be, provision, criterion or practice to be a proportionate means of achieving a legitimate aim.

Harassment

A subjects B to harassment where, on grounds of age, A engages in unwanted conduct which has the purpose or effect of—

(a) violating B's dignity; or

(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

This could include intentional bullying, but can be more subtle than that. Examples might include nicknames, teasing and name calling, which may not be intended to be malicious but could be upsetting to the individual being targeted. It can also include general behaviour not targeted at an individual, for example a culture that tolerates the telling of ageist jokes.

Victimisation

For the purposes of these Regulations, A discriminates against B if he treats B less favourably than he treats or would treat other persons in the same circumstances, and does so by reason that B has—

(a) brought proceedings against A or any other person under or by virtue of these Regulations;

(b) given evidence or information in connection with proceedings brought by any person against A or any other person under or by virtue of these Regulations;

(c) otherwise done anything under or by reference to these Regulations in relation to A or any other person; or

(d) alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of these Regulations,

or by reason that A knows that B intends to do any of those things, or suspects that B has done or intends to do any of them.

This might involve being 'sent to Coventry' by fellow employees, or denying them promotion or training.

Lawful discrimination

There are certain circumstances where people can be treated differently because of their age. For example:

- Where there is an objective justification. Unusually, objective justification is available as a defence to direct discrimination on age grounds, whereas it is not for race, sex or disability. To establish this as a defence the employer will have to show that the discriminatory treatment or practice is a 'proportionate means of achieving a legitimate aim'.
- If a person is older than, or within six months of, the organisation's retirement age, or 65 if there isn't one, there is a specific exemption allowing employers to refuse to recruit that person.
- There are other statutory exemptions, e.g. there is no obligation to pay someone more than their entitlement under the National Minimum Wage legislation.
- There may be a genuine occupational requirement that the employee must be a certain age, but this is likely to apply in very few cases.

Recruitment

- To avoid any form of discrimination, all recruitment decisions should be based on the skills required to do the job.
- Consideration should be given to where recruitment adverts are placed – ads only placed in magazines targeted at young people could be construed as discriminatory because older people are less likely to see it and apply.
- Language that implies a preference for someone of a certain age, for example 'mature', 'young' or 'energetic', should not be used.
- Hidden messages may exist in accompanying promotional literature, particularly pictures.
- Any qualifications specified should not disadvantage people at different ages, and should state that equivalents are acceptable if possible. For example, requiring candidates to have GCSE English would exclude all those who left school before GCSEs were introduced.
- Care should be taken when advertising for graduates. Many people take this term to mean people in their early twenties and this could also rule out older people who did not go to university but have the necessary skills or experience for the job.
- Age/date of birth should be taken out of application forms. This information could be included on an equal opportunities monitoring form instead.
- References to age in the job description or person specification should be avoided. Asking for 'x many years' experience could rule out younger people with the necessary skills.
- When sifting through applications, it is important to focus on skills, abilities and potential, not age.
- If using work-related tests, these must not discriminate against people of certain ages, for example by only asking older candidates to carry out physical tests.
- Employees of different ages should be involved in carrying out the recruitment process: this would help to minimise the effect of any individual prejudices.
- If using a recruitment agency, it is important to make sure that the agency acts appropriately and in accordance with the organisation's own equal opportunities

Training

- Training opportunities should be made available and communicated to all employees, regardless of their age.
- There should be no barriers to any particular age group participating in training, and it should be suitable for all ages and all employees should be encouraged to participate.

Promotion

- Any performance appraisal system should be fair and unbiased. Performance should be assessed on actual performance, unaffected by any preconceptions about an employee's age.
- Promotion opportunities must be available to all staff. People may not take up career development opportunities if it is implied that they are 'too young' or 'too old'.

Redundancy

- When selecting candidates for redundancy, procedures must be free of age discrimination. Practices such as 'last in first out' and using length of service are likely to be age discriminatory.
- Incentives for voluntary redundancy must not be age-biased – this should be offered to staff of all ages.
- The government's statutory redundancy payment scheme (SRPS) remains in force, and includes payments determined by age. Any organisation that operates an enhanced scheme must exactly mirror the SRPS for it to be lawful.

Retirement

- The Regulations set a default retirement age of 65, which means that an employer can retire employees or set retirement ages at or above 65. Retirement ages below 65 will need to satisfy the test of objective justification.
- Employees must be informed in writing of their intended retirement date and their right to request to work beyond retirement age at least six months in advance (but no more than 12 months).
- Employees will have the right to request to work beyond their retirement date and employers have a duty to consider such requests. If an employer receives such a request, they should consider ideas such as reducing the employee's hours or duties so that they are able to continue working. An employer is under no obligation to actually agree to a request.
- Any request to continue working must be submitted at least three months before the intended retirement date.
- If an employer receives a request, they must meet the employee to discuss it within a reasonable period of receiving it and inform them in writing of their decision as soon as reasonably practicable.

Positive action

- Employers are legally allowed to take positive action to prevent or compensate for disadvantages linked to age. For example, this could include giving people of a particular age access to training or encouraging people of a particular age to take up employment opportunities.

Enforcement

Enforcement is the same as that of the other major discrimination legislation. An employee will have to follow the statutory grievance procedure before bringing a claim at an employment tribunal. Claims must generally be made within three months from the date of the act complained of, although a tribunal may consider claims outside this period if it considers it just and equitable to do so. The questionnaire procedure currently used in sex and race discrimination cases will also apply.

Employers found to have committed age discrimination may have to pay financial compensation, including damages, to the claimant. As with other forms of discrimination, there is no limit to the amount of compensation. The tribunal may also recommend that the employer takes steps to prevent or reduce the adverse effect of discrimination on the complainant.

If an employer fails to follow the proper retirement procedure, they could be liable for both a claim of unfair dismissal and age discrimination. If they fail to give an employee the necessary six months' notice of their retirement they could be fined up to eight weeks' pay.

The Employers Forum on Age provides detailed guidance on how to comply with the Regulations, entitled 'The Insider Guide to Age Laws'. This can be accessed at **http://www.efa.org.uk/publications/downloads/insider_guide/EFA-Insider-Guide-to-Age-Laws-2006.pdf**

Acas also provides useful guidance at **http://www.acas.org.uk/media/pdf/s/3/Age_and_the_Workplace.pdf**

Age Discrimination Legislation Issues Specific to Police Forces

ACPO has issued a guidance letter which stresses the need for forces, as a matter of urgency, to review their policies and procedures to ensure they are age neutral.

An ACPO working group has identified certain specific issues to which forces are advised to pay particular attention, these are:

- Length of service restrictions in job applications, including secondments.
- Recruitment policies.
- Special Constables.

Length of service restrictions in job applications, including secondments

In discussions on force policies, it has been noted that many forces when advertising posts, particularly to specialist units, require that officers need to have a certain length of service to apply. Under the age discrimination legislation these restrictions will have to be removed.

At present, some forces' secondment policies impose a length of service restriction on individuals who wish to apply to be seconded abroad; again under the age regulations this practice will be discriminatory as it directly impacts on an individual because of their age.

Recruitment policies

Based on the fact that the new recruitment age for police officers will be 18 years of age and that the average national length of time between application and commencement is 18 months to 2 years, ACPO has suggested that, to enable forces to show that they are doing what they can to ensure individuals can actually enter the police service at 18 years, they should consider starting the recruitment process earlier. For example, they could accept applications from 16 year olds and allow them to commence the recruitment process, so that when the candidate turns 18 years of age they can actually start employment with the force.

Special Constables

The Department for Trade and Industry has clarified that, for the purposes of the age discrimination legislation, special constables are covered by the Employment Equality (Age) Regulations 2006, specifically Regulation 13, even though they are not paid, and therefore they should not be treated differently from regular officers on the grounds of age.

CRE Report into Local Authorities' Race and Community Relations Work Around Sites for Gypsies and Irish Travellers

The findings of the Commission for Racial Equality's inquiry into local authorities' race and community relations work around sites for Gypsies and Irish Travellers have been published. Entitled, 'Common ground: equality, good race relations and sites for Gypsies and Irish Travellers', the report contains a total of 86 recommendations for a variety of agencies. Six of these recommendations are aimed specifically to the police and state that police forces should:

- Include Gypsies and Irish Travellers in mainstream neighbourhood policing strategies, to promote race equality and good race relations.
- Target individual Gypsies and Irish Travellers suspected of anti-social behaviour and crime on public, private and unauthorised sites, and not whole communities, and work with people from these groups and local authorities to develop preventive measures.
- Treat Gypsies and Irish Travellers, both when they are victims and suspects, as members of the local community, and in ways that strengthen their trust and confidence in the force.
- Provide training for all relevant officers on Gypsies' and Irish Travellers' service needs, so that officers are able to do their jobs more effectively, and promote good relations between all groups in the community they serve.
- Review formal and informal procedures for policing unauthorised encampments, to identify and eliminate potentially discriminatory practices, and ensure that the procedures promote race equality and good race relations. (See also recommendations in chapter 4.)
- Review the way policy is put into practice, to make sure organisations and individuals take a consistent approach, resources are used effectively and strategically, all procedures are formalised, and training needs are identified.

A full copy of the report can be found at
http://www.cre.gov.uk/publs/cat_gandt.html

2005 Citizenship Survey

The Department for Communities and Local Government (DCLG) has published its 2005 Citizenship Survey, a biennial survey of adults in England and Wales, covering a range of community-based issues including views about the local area, racial and religious prejudice and discrimination, involvement in the community, civil renewal, volunteering and charitable giving.

Based on findings from the survey, the DCLG has also published three further detailed reports: "Community Cohesion", "Race and Faith" and "Active Communities". Key findings include:

Community cohesion

- 80% of adults feel that they live in a cohesive community, where people from different backgrounds get on well together.
- Asian, Black and Chinese people are more likely than Mixed race and White people to feel that they live in a cohesive community.
- 83% of people who live in areas containing people from different ethnic groups felt that in their area people respected ethnic differences (an increase from 79% in 2003).

Race and faith

- People who live in multi-ethnic areas and those with friends from different ethnic groups to themselves tend to have the most positive views about racial prejudice in Britain.
- 31% of those who live in areas with the highest density of minority ethnic households feel there is more racial prejudice today, compared to 48% overall.
- People from minority ethnic groups are much less likely to feel that racial discrimination has got worse in Britain over the last five years than White people.
- 31% of people from minority ethnic groups felt that there is more racial prejudice now, compared to 50% of White people (48% overall).
- The percentage of people from minority ethnic groups who feel they would be treated worse than people of other races by one or more public service organisation has remained at 37% the same as it was in 2001.
- There has been a decrease in the percentage of people from ethnic minorities who feel that they would be treated worse than other races by the police, from 27% in 2001 to 24% in 2005.
- There has also been an improvement for the prison service (21% down to 17%), the Courts (14% down to 12%) and the Crown Prosecution Service (14% down to 11%).
- Among people from minority ethnic groups who said they had been treated unfairly at work regarding promotion or progression, 50% felt it was for reasons of race.
- Among people from minority ethnic groups who had been refused a job in the last five years, 22% said if was because of their race.
- 24% of people feel there is 'a lot' of religious prejudice in Britain, with 52% feeling levels of religious prejudice have increased over the last five years.

- Among people who feel that racial prejudice has increased, there was a marked increase in the proportion citing Muslims as a group experiencing more prejudice (37% in 2005, compared to 17% in 2003).

Active Communities

- 20.4 million adults in England (50%) volunteered regularly in the 12 months before interview. This was an increase on the 18.4 million adults who had volunteered in 2001.
- 47% of people in England had participated in a civil renewal activity in the last year. This covers a spectrum of activity, from signing a petition or taking part in a public demonstration, through to involvement in decision-making about local services.

The reports are available at
http://www.communities.gov.uk/index.asp?id=1500941 or
http://www.statistics.gov.uk.

ACPO HIV Policy – Managers Guidelines Framework

ACPO has produced a 'Manager's Guidelines' framework document, in order to provide forces nationally with a means by which they can asses their HIV policies. The guidelines have been independently examined by the National Aids Trust, the Terrence Higgins Trust and the Ensuring Positive Futures Partnership and deemed good practice.

The guidelines remind managers of staff that employees are not required to disclose their HIV status, but that if they are notified by a member of staff that he/she is affected by the virus that it is their responsibility as a manager to:

- First and foremost assure the individual that their disclosure of their illness will be treated in the strictest confidence and that any information given will not be disclosed to anyone, including members of a Senior Management Team or Occupational Health, unless the individual consents.
- Inform the individual of what the organisation can provide them in terms of advice and support, for example counselling and work adjustments.
- If the individual agrees, refer them to an occupational health professional.
- Be aware of the legal requirements and impact of the Disability Discrimination Act 1995.

ACPO has forwarded the framework document to all forces for their attention.

HIV and the Workplace

The TUC and the National AIDS Trust (NAT) have published a new workplace leaflet on HIV and AIDS. The leaflet gives advice and basic information to union reps and officers and can be downloaded free for reproduction or overprinting with local information from **http://www.tuc.org.uk/equality/tuc-12059-f0.cfm**

Connecting British Hindus

An independent report on the identity and public engagement of British Hindus, which was commissioned by the Hindu Forum of Britain, researched by the Runnymede Trust and sponsored by the Cohesion and Faith Unit of the Department of Communities and Local Government, has been published.

The report, 'Connecting British Hindus', found that British Hindus do not want to be called 'Asians' but would rather be called Indian or Hindu. It also identified that some Hindus feel 'excluded' in the race dialogue and urges Government, media and public service providers to ensure that Hindus are included in any work undertaken to tackle racism in communities.

It also suggests that Hindu community organisations need to find sensitive ways of responding to fears and misinformation in order to reduce tensions, and to work with other faith communities, especially Muslim communities, to build dialogue and understanding.

The full text of the Connecting British Hindus report can be found at **http://www.hfb.org.uk/Default.aspx?lID=0**

Work and Families Act 2006

The Work and Families Bill (covered in the November 2005 *Digest*) received Royal Assent on 21 June 2006. It is now the Work and Families Act 2006. See SI 1682/2006 for introduction dates of provisions of the Act. The main provisions of the Act, which affect all employers, including the police, are identified below.

Extension of maternity pay period and adoption pay period

The current maximum period for payment of statutory maternity pay and statutory adoption pay is 26 weeks. Sections 1 and 2 of the Act extend the maximum period that may be prescribed in regulations to 52 weeks. It is the intention of the Government to initially prescribe in regulations, a maximum period of 39 weeks for women expecting babies on or after 1 April 2007, or where placement for adoption begins on or after 1 April 2007. This will be a step towards the Government's goal of one year's maternity and adoption pay.

Additional paternity leave and pay

Section 3 makes provision for the introduction of a new statutory right to additional paternity leave for employees following the birth of a child. It inserts a new Section 80AA into the Employment Rights Act 1996. Section 3(1) confers powers on the Secretary of State to make regulations entitling employees to be absent from work on leave for the purpose of caring for the child, if they satisfy conditions relating to their relationship with the child and the child's mother, and the duration of their employment. These conditions will be specified in future regulations. The maximum length of additional paternity leave will be 26 weeks. Section 3(5) deals with when leave may be taken. It provides that the regulations must ensure that it cannot be taken before a specified period after the child's birth but must be taken before the end of the period of 12 months beginning with the birth.

Section 4 of the Act makes similar provisions to enable additional paternity leave to be taken in the case of an adoption, inserting Section 80BB into the Employment Rights Act 1996.

Section 5 amends Section 80C of the Employment Rights Act 1996 to ensure that an employee's terms and conditions of employment continue to apply while he or she is taking additional paternity leave.

Sections 6 and 7 amend the Social Security Contributions and Benefits Act 1992, allowing the Secretary of State to make regulations entitling employees who satisfy certain conditions to additional statutory paternity pay. The conditions relate to the relationship to the child, child's mother or adopter, the employee's employment status and earnings, and the entitlement of the child's mother/adopter to statutory maternity/adoption pay or maternity allowance. The conditions include a requirement that the child's mother/adopter must have taken action that is treated as returning to work, and additional statutory paternity pay will only be payable if part of her maternity/adoption pay period remains unexpired.

Section 9 makes provisions concerning the liability of employers to pay additional statutory paternity pay. The rate and period of pay will be prescribed in regulations.

Leave and pay related to birth or adoption

Section 11 introduces Schedule 1, which contains amendments to a range of Acts dealing with statutory leave and pay.

Schedule 1 contains several amendments intended to make changes to statutory maternity pay, statutory adoption pay and statutory paternity pay to ease administration for employers and to assist the returning employee's re-integration into the workforce.

The Employment Rights Act 1996 is amended to provide powers to make regulations which will enable a woman/adopter to undertake a few days' training or work for her employer without ending their ordinary or additional maternity/adoption leave.

Employment rights

Section 12 amends Section 80F of the Employment Rights Act 1996 concerning flexible working. The right to request flexible working is currently available to employees who have children aged under six. This Section widens the scope of the existing law to allow applications to be made by employees who have caring responsibilities for adults. The person making the application must have some relationship with the person receiving the care. Further details of these provisions will be dealt with in regulations.

Section 13 relates to annual leave. Employees are currently entitled to four weeks' paid annual leave under the Working Time Regulations 1998. This Section provides the Secretary of State with a new free-standing power to make provision about entitlement to annual leave. Any regulations made will have to comply with the EC Working Time Directive, so would probably entail making provision for leave that is more generous than that already provided for.

Regulations dealing with the detail of the new leave and pay measures and the right to request flexible working are expected to be published shortly.

The Act can be viewed at **http://www.opsi.gov.uk/acts/acts2006/20060018.htm**

Police and Criminal Evidence Act 1984 (Code of Practice C and Code of Practice H) Order 2006

Parliament has approved the commencement of a new PACE Code of Practice (Code H) which relates to for the detention of terrorism suspects with effect from midnight on 24 July 2006. (See SI 1938/2006).

PACE Code H sets out the requirements for the detention, treatment and questioning of suspects held in police custody under Section 41 and Schedule 8 of the Terrorism Act 2000.

PACE Code C has been amended to remove reference to terrorism.

The draft PACE Code H can be found at
http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/Code_H_-_laid_draft.pdf

The draft PACE Code C can be found at
http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/Code_C_-_Laid_Draft.pdf

The final versions of both Codes will appear at
http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/

See also following article in relation to the introduction of Sections 23, 24, 25 of the Terrorism Act 2006.

Introduction of Sections 23, 24, 25 of the Terrorism Act 2006

Sections 23, 24, 25 of the Terrorism Act 2006 which introduce the extension of the maximum detention of terrorism suspects to 28 days were brought into force on 25 July 2006 by SI 1936/2006. An article on these provisions appeared in the April edition of the *Digest*. See also article in this edition on Commons Home Affairs Committee report.

The Terrorism Act can be found in full at **http://www.opsi.gov.uk/acts/acts2006a.htm**

New Measures to Tackle Blue Badge Parking Scheme Abuse

New measures to tackle blue badge parking scheme abuse will come into force on 29 September 2006 (see SI 1736/2006). This SI brings into force Section 94 of the Traffic Management Act 2004.

The provisions in Section 94 are aimed at strengthening existing powers to make it easier to identify the people who are abusing the blue badge scheme. It amends Section 21 of the Chronically Sick and Disabled Persons Act 1970 which established the disabled persons' parking badge scheme (the Blue Badge Scheme). The effect of the provisions introduced by Section 94 is that police, traffic wardens, local authority parking attendants

and civil enforcement officers will have the power to require blue badges issued under the scheme to be produced for inspection.

Apart from the police, these officials only have this power when carrying out their other parking enforcement functions.

Section 94 requires anyone in the vehicle, or anyone who appears to the enforcement officer to have been, or to be about to get into a vehicle displaying a disabled person's parking badge, to produce it for inspection. It creates an offence of failing without reasonable excuse to produce a badge when required to do so by any of the authorised persons.

On conviction the offence is punishable by a fine not exceeding level 3 (£1,000) on the standard scale.

HOC 16/2006 Proceeds of Crime Act 2002: Reduction of Cash Seizure Threshold to £1,000

This Circular supplements HO Circulars 71/2002 and 32/2005. It highlights the change in the cash seizure minimum amount threshold under the Proceeds of Crime Act 2002, from £5,000 to £1,000, which comes into force on 31 July 2006.

Chapter 3 of Part 5 of the Proceeds of Crime Act 2002 permits the search for, and seizure, detention and forfeiture of, cash derived from, or intended for use in, unlawful conduct. These powers are limited to cash which amounts to at least the minimum amount. The Proceeds of Crime Act 2002 (Recovery of Cash in Summary Proceedings: Minimum Amount) Order 2006 (see SI 1699/2006) specifies the minimum amount as £1,000. That amount was previously £5,000.

The Circular lists the applicable law and the background to the power to seize cash under the Act.

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

Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006

These Regulations which were featured in the March 2006 *Digest* will come into force on 18 September by virtue of SI 1892/2006.

They change the current legislation on seat belt wearing in motor vehicles by:

- Prohibiting the use of rear facing child restraints where there is an active frontal air bag (unless the bag is designed not to cause injury to a child in a rear facing seat if it inflates).
- Allowing all children aged 12 or more to wear an adult belt in the rear of a motor vehicle and allowing children under 12 to do so if they are 135 cm or more in height.
- Requiring children between 3 and 11 years of age but less than 135 cm in height to be secured with a child restraint appropriate for their height and weight in the rear of motor vehicles provided there is an adult belt in place to secure the child restraint. (See exemptions below)

- Prohibiting children under 3 being carried in the rear of a motor vehicle altogether unless they are in an appropriate child restraint. (The only exemption to this is that a child under 3 can travel in a taxi or an emergency vehicle if an appropriate child restraint is not available. There is no requirement for them to wear an adult belt as it is not considered to be a safe alternative for a child under 3).

The exemptions referred to above include:

- Children riding in licensed taxis or hire cars if an appropriate child restraint is not available, and in police or security or emergency service vehicles. (N.B. a child aged 3 and over will be required to use an adult belt in a taxi in these circumstances).
- Where a child aged 3 and over, who, because of an 'unexpected necessity', is travelling over a short distance in a passenger car or light goods vehicle where there is no appropriate child restraint. (N.B. in these circumstances a child aged 3 and over will be required to use an adult belt).
- Where a child aged 3 or more is riding in the rear of a vehicle with two other children in child restraints and where there is not room for a third child restraint. (N.B. in these circumstances a child aged 3 and over will be required to use an adult belt).
- Where a disabled child who needs to use a disabled seat belt but there isn't one is available.
- Children under 14 travelling in large buses or coaches and for the under 3s also in relation to small buses.
- Children aged 3 and over but under 14 travelling in the rear of a small bus if there is no child restraint available; they must then wear an adult belt if there is one available.

An 'unexpected necessity' exemption is designed to deal with those cases where someone has unexpectedly to carry a child for a short distance where no child restraint is available and where the only alternative would be to leave a child at risk simply because a child restraint was unavailable. It is not intended to cover regular 'school runs' and the like.

The term 'short distance' has not been specifically defined in relation to the exemption, but will be left for the court to decide by taking into account the circumstances of a particular case.

The Regulations also

- Remove an existing exemption for children under 1 travelling in an ordinary carry cot.
- Retain the existing exemption for children who cannot use a seat belt or child restraint for medical reasons.
- Extend the requirement in relation to adults and children aged 14 and over to wear available front and rear seat belts to all categories of vehicles. This will mean e.g. wearing seat belts in rear seats of buses and goods vehicles.
- Require operators of buses to ensure that passengers are made aware of the requirement to wear a seat belt by means of an announcement, an audio-visual presentation or signing.

The requirements referred to in respect of buses will not apply to buses either:

- Providing a local service in a built-up area.

Or

- Where standing is permitted and the bus is designed for this.

A service provided in a 'built-up' means one where the entire route consists of roads with street lights no more than 200 yards apart in England and Wales or 175 metres apart in Scotland.

Private Members' Bills Update

This article provides an update on various private members' bills which are currently going through the Parliamentary process. An update is given on the progress of those Bills which have been reported in earlier editions of the *Digest*, as well as information on new Bills which have been introduced in this Parliamentary session. It must be noted that this report only comments on the provisions of the Bills as they existed at the time of writing this article.

The Bills which have been published can be viewed in full at
http://www.publications.parliament.uk/pa/pabills.htm

Assisted Dying for the Terminally Ill Bill

This Private Member's Bill was previously reported in the August 04 *Digest*. It started in the House of Lords and was carried over from Session 2004-2005. The Bill enables an adult who has capacity and who is suffering unbearably as a result of a terminal illness to receive medical assistance to die at his own considered and persistent request. It received its First Reading in the House of Lords on 9 November 2005. However, in the Lords Second Reading debate on 12 May 2006, peers backed an amendment to delay the Bill by 6 months.

Care of Older and Incapacitated People (Human Rights) Bill

The Care of Older and Incapacitated People (Human Rights) Bill was introduced into the House of Commons on 11 January 2006 by MP Paul Burstow. Its Second Reading has been deferred until 20 October 2006. The Bill includes proposals to:

- Amend the Human Rights Act 1998 to extend the definition of public authority to include any body that is regulated under the Care Standards Act.
- Provide for clear nutritional standards to apply in all establishments providing care for older people.
- Place certain duties on the Food Standards Agency.
- To make provision in relation to mentally incapacitated persons.
- Confer new functions on local authorities in relation to persons in need of care or protection.

Criminal Law (Amendment) (Protection of Property) Bill

The December 05 *Digest* featured a report on the Criminal Law (Amendment)(Protection of Property) Bill, which proposes to amend Section 3 of the Criminal Law Act 1967 and Section 3 of the Criminal Law Act (Northern Ireland) 1967 in relation to the use of force in the prevention of crime or in the defence of persons or property. Its Second Reading has been adjourned on numerous occasions and is now scheduled to take place on 20 October 2006.

Emergency Workers (Obstruction) Bill

A detailed analysis of this Bill was written in the February 06 *Digest*. However, as noted in the May 06 edition, the name of this Bill changed from the Emergency Workers (Protection) Bill to the Emergency Workers (Obstruction) Bill, following amendments made by the Standing Committee. The Committee also made numerous other changes to the Bill, which now contains the following provisions.

Clause 1 makes it an offence to obstruct or hinder, without reasonable excuse, certain emergency workers who are responding to emergency circumstances. The person responding must fall into one of the following capacities

- Employed by a fire and rescue authority.
- A person whose duties as an employee or as a servant of the Crown involve extinguishing fires or protecting life and property in the event of a fire.
- Employed by a relevant NHS body in the provision of ambulance services (including air ambulance services).
- A person providing services for the transport of organs, blood, equipment or personnel pursuant to arrangements made by a relevant NHS body.
- A member of Her Majesty's Coastguard.
- A member of the crew of a vessel operated by the Royal National Lifeboat Institution or any other person or organisation operating a vessel for the purpose of providing a rescue service or a person who musters the crew of such a vessel or attends to its launch or recovery.

A person is said to be responding to emergency circumstances if they are going anywhere for the purpose of dealing with emergency circumstances occurring there or is dealing with emergency circumstances or preparing to do so.

Circumstances are an 'emergency' if they are present or imminent and are causing or are likely to cause serious injury to or the serious illness (including mental illness) of a person; serious harm to the environment (including the life and health of plants and animals); serious harm to any building or other property; or a worsening of any such injury, illness or harm or are likely to cause the death of a person.

Clause 2 creates the offences of obstructing or hindering persons assisting emergency workers

Clause 3 states that a person may be convicted of either of these offences notwithstanding that it is effected by means other than physical means or is effected by action directed only at any vehicle, vessel, apparatus, equipment or other thing or any animal used or to be used by a person referred to in either clause. Clause 3 also states that circumstances are to be taken to be emergency circumstances if the person believes and has reasonable grounds for believing that they are or may be emergency circumstances.

If a person is guilty of an offence under this Bill they will be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Under Clause 5, the Secretary of State has the power to modify, by order, the Bill in order to add or remove a person from the list of prescribed capacities. However, a person cannot be added to the list unless they are likely, in the course of carrying out their functions, to have to deal with emergency circumstances.

Clause 6 of the Bill deals with repeals. It states that subsections 44(3) and (4) of the Fire and Rescue Services Act 2004 shall cease to have effect.

This version of the Bill passed un-amended at Report Stage and passed its Third Reading in the Commons on 14July 2006.

Fireworks (Amendment) Bill

This Bill was introduced to the House of Commons by MP David Amess on 20 December 2005. It proposes to amend the Fireworks Act 2003. The Bill provides that fireworks producing a maximum sound pressure exceeding 97 dBAI (that is, the A-weighted impulsive sound pressure level), measured at a horizontal distance of 15 metres from the device, will no longer be available to members of the public. The proposed date for the Second Reading is 20 October 2006.

Honours (Prevention of Corruption) Bill

This Bill was introduced into the House of Commons by SNP MP Angus MacNeil on 13 June 2006. The Bill aims to:

- Regulate the award of life peerages to donors to political parties.
- Create an Honours and Appointments Commission with responsibilities relating to the awarding of certain honours and life peerages to donors to political parties.
- Create a quarantine period between the award of an honour and a donation to a political party.
- Regulate donations to political parties from individuals or organisations who benefit from government contracts or sponsor government programmes.

The proposed date for the Bill's Second Reading is 20 October 2006.

Interception of Communication (Admissibility of Evidence) Bill

This Bill was previously covered in the 0ctober 05 *Digest*. It aims to permit the introduction of intercept evidence and evidence of communications data in certain criminal proceedings. It received its Second Reading in the Lords on 18 November 2005; however no progress has been made since then.

Lighter Evenings (Experiment) Bill

This Private Member's Bill was reported in the May 06 edition of the *Digest*. At that point the Bill was at its Committee stage in the Lords, where it was amended in relation to its commencement. Previously, the Scottish Parliament and the Northern Ireland Assembly were tasked with deciding if and when the Bill would come into force in Scotland and Northern Ireland respectively. However, the amended Bill removes references to Scotland and Northern Ireland in relation to commencement. The effect of this is to make the Bill applicable only to England and Wales, leaving Scotland and Northern Ireland to make whatever arrangements, if any, they deem appropriate in light of the Bill. This amended Bill has passed through the Lords and received its First Reading in the Commons on 23 May 2006. Its Second Reading is due to take place on 20 October 2006.

Protection of Runaway and Missing Children Bill

This Bill was introduced into the House of Commons by MP Helen Southwell on 15 November 2005. It aims to:

- Make provision for a national system to safeguard runaway and missing children.
- Provide for the collection and reporting of information about runaway and missing children.
- Make provision for co-ordination between local authorities and other bodies.

The Bill defines 'runaway and missing children' as a child or young person under the age of 18 who has run away or is staying away from the person who is responsible for them; has left home due to rejection by the person who is responsible for them; has been unlawfully taken away or is being unlawfully kept away from the person responsible for them; or is missing.

The Bill places a duty on the Secretary of State under Clause 2 to 'promote the establishment of a national strategy and system to safeguard runaway and missing children' and 'to make such provision as the Secretary of State considers appropriate for the collection and reporting of information about runaway and missing children.'

Under Clause 3, chief officers of police and police authorities must have regard to any national guidance about runaway and missing children which may be issued by the Secretary of State.

The Second Reading for this Bill is scheduled for the 20 October 2006.

Sexually Explicit Material (Regulation of Sale and Display) Bill

This Bill was introduced into the Commons on 27 June by Claire Curtis MP. It establishes an Office for the Regulation of the Sale and Display of Explicit Material and requires the Office to regulate the sale and display of such material.

Caravan Sites (Security of Tenure) Bill

Julie Morgan MP presented the this Bill into the Commons on 4 July 2006. The Bill makes provision for security of tenure for gypsies and travellers on local authority caravan sites; and for connected purposes. It is due to be read for the second time on 20 October 2006.

This follows concerns over the European Court of Human Rights ruling in 2004, in the case of Connors v UK, that the Government needed to address the issue of security of tenure.

Samurai Swords Bill

A Bill to forbid the sale, manufacture, hire, loan or importation of sharpened samurai swords and for connected purposes has been introduced into the House of Commons by MP James Brokenshire.

The Bill, which will contain exemptions for museums, heritage bodies, martial arts groups and theatre and drama companies, is made in response to the recent knife amnesty in which nearly 90,000 knives and bladed weapons were handed into the police. It aims to limit the availability and supply of such weapons after a campaign in Devon and Cornwall, which called on shops to stop selling samurai swords, greatly reduced the number of violent incidents.

The Bills Second Reading has been scheduled for 20 October 2006. It has however, not yet been printed.

In addition to the progress made by the above Bills through the Parliamentary process, a number of Private Members' Bills have also been dropped/lost/withdrawn. These include:

- **Age of Sale of Tobacco Bill** – This Bill proposed rising the minimum age of sale of tobacco and tobacco products from 16 years to 18 years. Its Parliamentary progress was halted after it failed to receive its Second Reading and no alternative date was proposed. However see article on page 34.
- **Crime Prevention and the Built Environment Bill** – The *Digest* previously reported on this Bill in the March 06 edition. The Bill was supposed to have its Second Reading on 17 March 2006 but this never occurred. Consequently it was dropped and will make no further progress.

- **Computer Misuse Bill** – This Bill was introduced into the House of Commons on 12 July 2005 to amend the Computer Misuse Act 1990. However it has been withdrawn before publication and will make no further progress.
- **Criminal Justice Act 1988 (Amendment) Bill** – The purpose of this Bill was to establish a right of appeal in relation to the amount of compensation payable under section 133 of the Criminal Justice Act 1988 (compensation for miscarriages of justice) and to make provision about the procedure for the assessment of such amounts. However, its Second Reading, which was scheduled for the 17 March 2006, did not take place and the Bill has been dropped.
- **Control of Internet Access (Child Pornography) Bill** – This Bill was reported in the May 06 edition of the *Digest*. Its Second Reading, which was due to take place on 12 May 2006, did not occur and consequently the Bill was dropped.
- **Licensing Act 2003 (Amendment) Bill** – This Bill proposed to amend the Licensing Act 2003 in relation to touring circuses. However, the Bill lapsed on 16 June 2006.
- **Motor Vehicles (Anti-Social Use) Bill** – This Bill proposed to prohibit the anti-social use of motor vehicles and to make provision for the seizure of motor vehicles used in an anti-social manner. However, the Bill's order for Second Reading has lapsed without an alternative date being proposed, therefore the Bill will not make any further progress.
- **Neighbourhood Policing Bill** – This Bill was covered in the May 06 *Digest*. The Second Reading was due to take place on 16 June 2006. However, this did not occur and the Bill has now lapsed.
- **Prohibition of Abortion (England and Wales) Bill** – This Bill proposed to prohibit the aborting of foetuses in England and Wales unless the mother's life was at risk or where conception has been caused by rape, and to make it an imprisonable offence for anyone to carry out an abortion other than in those circumstances. However, the Bill has been dropped and will make no further progress.
- **Road Safety and Parking Bill** – The *Digest* reported on this Bill in the July 05 edition. It has now been dropped.
- **Road Traffic Regulation (Location Filming Bill)** – This Bill, introduced in November 2005, provided for orders to be made under section 16A of the Road Traffic Regulation Act 1984 in connection with location filming. It has now been withdrawn and will make no further progress.
- **Road Traffic Signs (Enforcement Cameras) Bill** – An article in the January 06 edition of the *Digest* covered this Bill. It has made no progress since that article was written. The Second Reading was expected to take place on 14 July 2006. However, the Second Reading has now lapsed.
- **Trade in Endangered Animals on the Internet Bill** – Mark Pritchard MP introduced this Bill into the House of Commons on 31 January 2006 to end the trade in endangered animals on the internet. The Bill's order for Second Reading has lapsed without an alternative date being proposed and therefore the Bill will make no further progress.
- **Trespass with a Vehicle (Offences) Bill** – This Bill was covered in the May 06 *Digest*. It proposed to create an offence of criminal trespass with a vehicle. However, its Second Reading did not occur and the Bill has been dropped.
- **Vehicle Registration Marks Bill** – This Bill, which proposed to make provision about the retention of vehicle registration marks pending transfer, has been dropped.

HOC 20/2006
Series of Amendments to the Misuse of Drugs Regulations 2001

This Circular gives guidance on the Misuse of Drugs (Amendment No.2) Regulations 2006, which were featured in the June 06 edition of the *Digest* and which came into force on 7 July 2006 (except Regulations 7(1) and 10 which come into force on 1 January 2007 and Regulations 5 and 6(5) which come into force in Wales on 1 January 2007). The Regulations, which have been made under Sections 7,10, 22 and 31 of the Misuse of Drugs Act 1971, amend the Misuse of Drugs Regulations 2001. The changes will apply to England, Wales and Scotland. Northern Ireland will amend its own Misuse of Drugs Regulations separately.

The amendments are part of the Safer Management of Controlled Drugs programme which aims to improve and strengthen the management arrangements for controlled drugs in order to minimise the risks to patient safety caused by their inappropriate use. They also aim to balance this against the fact that controlled drugs are used for a wide variety of clinical reasons and patients require access to medicines.

The Circular summarises the amendments as follows:

Maximum validity period of a prescription form for Schedule 1, 2, 3 and 4 controlled drugs set at 28 days

The 2001 Regulations are being amended to restrict the maximum validity period of a prescription form for a Schedule 1, 2, 3 and 4 controlled drug so that the prescription is dispensed within 28 days from the date on which it was signed by the appropriate practitioner or the date indicated by him as being the date before which it shall not be dispensed. This is to reduce the likelihood of controlled drugs being dispensed beyond their clinical needs and stored or diverted inappropriately. These requirements apply only to prescriptions issued on or after 7 July 2006.

Non Medical prescribing, supply and administration

The amendments will allow occupational therapists, orthotists and prosthetists to supply or administer controlled drugs in Schedule 4 and 5 (except anabolic steroids and drugs injected for treating a person who is addicted to a drug) under a patient group direction. This addition will provide easier and greater access to medicines needed by patients, whilst keeping it within the patient groups direction mechanism for the supply and administration of medicines.

Private Prescribing

The amendments extend the arrangements that are already in place to facilitate monitoring of prescriptions for human use of Schedule 1, 2 and 3 controlled drugs issued under the National Health Service to private prescriptions. The Regulations now require any person who prescribes Schedule 1, 2 and 3 controlled drugs on a private basis to use a standard prescription form provided by the Primary Care Trust. The form must include the prescribers identification number issued for their private prescribing activity. The amendments also require the original or a copy of every prescription for a Schedule 1, 2 or 3 controlled drug, other than a health prescription, to be submitted to the NHS Business Services Authority or relevant agency in the devolved administrations.

Identification requirements on collection of Schedule 2 controlled drugs

The amendments require any person who is asked to supply a Schedule 2 controlled dug on prescription to establish whether the person collecting is the patient, the patient's representative or a healthcare professional acting in their professional capacity on behalf of the patient and, from 1 January 2007, to record this information in the Controlled Drugs Register. This aims to improve the system under which controlled drugs are dispensed in the community and to provide a deterrent to wrongful collection.

Where a person supplies a Schedule 2 controlled drug to a healthcare professional acting in their professional capacity on behalf of the patient they must obtain and, from 1 January 2007, record in the Controlled Drugs Register the name and address of that healthcare professional and request proof of identity and, from 1 January 2007, record in the Controlled Drugs Register whether evidence of identity was provided. However, the supplier may supply the drug even if he is not satisfied as to the identity of the person.

The amendments also enable a person supplying a Schedule 2 controlled drug to a patient or patients representative to request evidence of that persons identity and refuse to supply the drug where he is not satisfied as to the identity of the person and to require that supplier to record in the Controlled Drugs Register whether evidence of identity was requested and provided.

Record Keeping and the Controlled Drug Register

The 2001 Regulations are amended to allow additional entries to be made in the Controlled Drugs Register beyond that required by the Misuse of Drugs Regulations 2001 so long as they are for a purpose related to those Regulations, for example a running balance of controlled drugs held.

Technical errors on the prescription

The amendments allow pharmacists to correct minor typographical errors and spelling mistakes on a prescription form for a Schedule 1,2 or 3 controlled drug (except temazepam) where they are reasonably satisfied that the prescription is genuine and that the correction accords with the intention of the prescriber. They also allow pharmacists to supply Schedule 1,2 or 3 controlled drugs (except temazepam) on a prescription even though the prescription does not fully comply with the provisions of Regulation 15 because it specified the total quantity of the controlled drug or preparation or the number of dosage units in either words or figures, but not both, where they are reasonably satisfied that the prescription is genuine and that the correction accords with the intention of the prescriber and where they correct the prescription accordingly. In addition, they allow pharmacists to supply a Schedule 1, 2 or 3 drug on prescription (other than a health prescription) in a hospital even though the prescription does not fully comply with the provisions of Regulation 15 because it is not written on a prescription form provided by a Primary Care Trust or equivalent body for the purposes of private prescribing or because it does not specify the prescriber identification number of the person issuing it.

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

Proposed Government Reforms to the Criminal Justice System

The Government has published a review in which it sets out its plans to reform the criminal justice system in line with its policy of rebalancing it in favour of the victim and the law-abiding majority. The document contains numerous proposals for reform some of which are simple, others that are more complex and will be the subject of public consultations; some will also require legislative changes or introduction. Some of the main proposals are outlined below.

Initiatives for victims and witnesses

The review sets out the Governments intention to expand on recently introduced initiatives for victims and witnesses by:

- Ensuring that all members of parole boards making decisions on a serious violent or sexual offender have direct or indirect experience of being a victim or can demonstrate a strong appreciation of victim issues.
- Introducing a Victim's Voice in the most serious cases heard by the parole board.
- Requiring all prosecutors to follow a new pledge to take into account and protect the interests of victims.
- Increasing the compensation that offenders pay, requiring violent offenders to meet the medical expenses of victims, and new powers to allow the court to reopen cases beyond current limitation periods, allowing victims to sue, for example if the offender later received a windfall.

Human Rights

The opinion of the Government is that repealing or amending the Human Rights Act 1998 will not assist in rebalancing the system. The review identified several examples of individuals or organisations being overcautious in their interpretation of competing rights and in order to address states it will:

- Challenge judgments (especially the Chahal judgment) that stop us from properly balancing individual rights against protecting the public.
- Clarify that all relevant criminal justice agencies have a duty to protect the public underlined, if necessary, by legislation.
- Restrict the ability of the plainly guilty to have their convictions quashed because of a procedural irregularity, and will consult how this is best achieved in practice.
- Issue robust, practical, myth-busting advice to practitioners on how rights should be balanced between offenders and the wider community.
- Set up an advice service for front-line staff e.g. the police, to get clear advice on the application of human rights.

Sentencing

A consultation on a range of sentencing and related issues will be brought forward. Prior to this the Government in consultation with the Sentencing Guidelines Council and others, intends to act to:

- Give judges discretion to end the automatic one-third discount on sentence length given for an early guilty plea.
- Stop offenders who are re-sentenced after an appeal against lenient sentences being given a sentence discount simply for the distress of being sentenced again.
- Change the way the Sentencing Guidelines Council works so that the Home Secretary and criminal justice Ministers are the last to advise on guidelines.
- End the requirement that, in setting the earliest release date, judges should for unlimited sentences automatically halve the term.

Dealing effectively with those who flout the rules

The Government intends to:

- Introduce an integrated enforcement service nationally by 2007/08.
- Consult on new targets for swifter return of those who breach bail to court, and use police–court live television links to make it easier.
- Begin phased national implementation of new powers to ensure that courts operate to a new presumption that offenders who breach bail and offend while on bail will be remanded in custody. This will initially start with those who commit more serious offences.
- Consult on how to speed the return to court of bailed defendants who fail to appear by restricting the use of 'warrants with bail'.
- Speed the return to custody of offenders who breach their licence conditions, including a tough new target for serious offenders.
- Consult on giving probation staff the power to vary the punishment an offender serves depending on their behaviour, without having to go back to the court.

Police Service

To pursue its vision of a more localised Police Service that delivers the highest professional standards the Government is proposing to:

- Provide a dedicated neighbourhood policing team in every area by April 2008.
- Put in place improved service standards in all forces by November 2006.
- Introduce a community call for action, to trigger a response from police (or other agencies) where communities feel that their concerns are not being addressed.
- Consult with forces on increasing cross-force working and exploiting major opportunities for greater efficiency such as sharing back office functions and modernising the workforce.
- Look at what greater freedoms and flexibilities it can give to high-performing forces.
- Increase the number of Police Community Support Officers to 16,000 by 2007 in order to help provide this visibility and reassurance at a local level.

Dealing with serious crime

The Government proposes to:

- Build an additional 8,000 prison places and keep under close review whether more are needed.
- Increase the maximum penalty for carrying a knife without good reason to four years.
- Introduce Violent Offender Orders to provide the courts with tough new powers to manage dangerous violent offenders beyond the period of their sentence with penalties of up to five years for breach of conditions.
- Change the rules for parole decisions, so that any decision to release an offender into the community must be made unanimously.
- Implement new measures to prevent criminals from continuing their illegal activities in prison.
- Consult on an ambitious new target for seizing the assets of criminals and increase the involvement of the private sector in asset seizure.

Police and Criminal Evidence Act 1984

In summer 2006 a consultation paper is to be launched seeking views on whether there is a need to amend the Police and Criminal Evidence Act 1984 (PACE) to maintain the necessary safeguards but cut bureaucracy. The consultation will cover areas such as:

- Questioning after charge.
- Changes to the police detention clock to allow greater use to be made of detention for investigation and questioning.
- Enabling the Codes of Practice to be more reflective of operational good practice.

In addition to proposed consultation on PACE the document also lists a further range of issues on which it is proposing to hold consultations.

The document also includes a table setting out the actions it intends to take, what will be done by when; and how it will measure its success.

In order to get a full picture of the proposed changes the review report should be also read in conjunction with the 'Delivering Simple, Speedy, Summary Justice' report and the proposed changes to the Home Office both of which are covered in this edition of the *Digest*.

The review can be found in full at
http://www.homeoffice.gov.uk/documents/CJS-review.pdf

Action Plan to Reform the Home Office

The Home Secretary John Reid has published a Reform Action Plan entitled, 'From Improvement to Transformation', which sets out his plans to make fundamental changes to the Home Office.

Proposals include:

- Establishing a new top team with a reshaped Home Office Board.
- Developing a new 'contract' between Ministers and officials, clarifying respective roles and expectations in relation to policy, operational delivery and management.
- Reshaping the structure of the Home Office, with a major shift in responsibility and resource to the front line.
- Establishing clear performance frameworks for the operational services of the Home Office – the Immigration and Nationality Directorate (IND), the National Offender Management Service (NOMS), and the Identity and Passport Service – and holding the heads of those services accountable for performance.
- Establish the IND as an executive agency of the Home Office with a shadow agency being put into place by April 2007.
- Reducing the bureaucratic burden on the police and other partners in tackling crime, by implementing simpler performance arrangements for policing, crime and drugs.
- Devolving responsibility for supporting police modernisation and improvement to the National Policing Improvement Agency which will be in place by April 2007.

The Action plan can be found at
http://www.homeoffice.gov.uk/about-us/news/reforming-home-office

Commons Home Affairs Committee Report on Terrorism Detention Powers

The Commons Home Affairs Committee has published its report into terrorism detention powers.

The report states that the Committee found the case for extending the maximum detention period to 28 days was convincing, but did not find the arguments for the 90 day period compelling.

It is particularly critical of the way in which the police prepared and presented the case for a 90 day detention period to the Prime Minister and Home Secretary, stating that the police argument, which relied on 'professional judgement', should have been better developed and should have included evidence that demonstrated that it had critically challenged its own case.

The report concludes that none of the evidence it reviewed would justify a maximum detention period longer than 28 days, but that there is a probability that in future cases the 28 day limit may well prove inadequate.

The report recognises that the police do encounter practical difficulties in detaining and interviewing terrorist suspects, and accepts that these issues contribute to the case for extended detention, but believes that they are not sufficient to justify a change on their

own. The Committee's view is that it is the cumulative effect on investigations of practical difficulties such as computer decryption, mobile phones and forensics that are central to the case for an extension of maximum pre-charge detention.

The report also stresses the importance of taking into account the effect of a longer period of detention on the Muslim community, without whose confidence and trust the authorities would find it even more difficult to combat terrorism.

The report suggests:

- The creation of a committee, independent of Government, to keep the maximum detention period under annual review and to recommend the introduction of new legislation as necessary.
- That any new legislation on terrorism should be extensively examined in draft, either by the Commons Home Affairs Committee or by a joint committee of both Houses.
- That any new legislation should recognise the important new purpose of pre-charge detention.

The Committee also voices its support for Lord Carlile's proposal of a strengthened system of judicial oversight once a suspect has been arrested, but suggests this should be extended to:

- Provide for a continual reassessment of whether alternative methods, such as tagging and control orders, would be appropriate.
- Ensure appropriate judicial oversight when arrests are made under the Terrorism Act, to enable proper independent consideration to be given where an arrest is to be made for its disruptive and preventative value rather than primarily for its investigative purpose.

The report also comments on some of the alternatives to longer detention. It states that the use of intercept evidence has universal support outside Government, and assumes it will now be recommended. It goes on to say that, in the opinion of the Committee, control orders, tagging and bail should be considered at every stage of the process of judicial oversight of arrest and detention, to disrupt terrorist conspiracies and protect the public.

The report can be found in full at
http://www.parliament.uk/parliamentary_committees/home_affairs_committee.cfm

Counter-Terrorism Strategy

The Government has published a document, 'Countering InternationalTerrorism: The United Kingdom's Strategy', which describes its counter-terrorism strategy and explains what organisations and individuals can do to help in its implementation. It stresses that public awareness of the threat, understanding of the measures needed to combat it, and active support and cooperation with the police, are critical to the success of the strategy.

The strategy is divided into four principal strands: prevent, pursue, protect and prepare.

The 'prevent' strand is concerned with tackling the radicalisation of individuals. The Government has set out a number of areas of action to address this issue:

- Address structural problems in the UK and overseas that may contribute to radicalisation, such as inequalities and discrimination.
- Deter those who facilitate terrorism and those who encourage others to become terrorists, by changing the environment in which the extremists and those radicalising others can operate.

- Challenge the ideologies that extremists believe can justify the use of violence, primarily by helping Muslims who wish to dispute these ideas to do so.

The 'pursue' strand is concerned with reducing the terrorist threat to the UK and to UK interests overseas by disrupting terrorists and their operations. Areas identified to achieve this include:

- Gathering intelligence, thereby improving the ability to identify and understand the terrorist threat.
- Disrupting terrorist activity by taking action to frustrate terrorist attacks and to bring terrorists to justice through prosecution and other means, including strengthening the legal framework against terrorism.
- International co-operation with partners and allies overseas to strengthen the intelligence effort and achieve disruption of terrorists outside the UK.

The 'protect' strand is concerned with reducing the vulnerability of the UK and UK interests overseas. This covers a range of issues including:

- Strengthening border security.
- Protecting key utilities.
- Reducing the risk and impact of attacks on transport by the use of security measures that utilise technological advances.
- Crowded places, protecting people going about their daily lives.

The 'prepare' strand is concerned with ensuring that the UK is as ready as it can be for the consequences of a terrorist attack. The key elements are:

- Identifying the potential risks the UK faces from terrorism and assessing their impact.
- Building the necessary capabilities to respond to any attacks.
- Continually evaluating and testing our preparedness, e.g. by frequently exercising to improve our response to incidents and learning lessons from incidents that do take place.

The document can be found in full at
http://security.homeoffice.gov.uk/news-and-publications1/publication-search/general/Contest-Strategy

New Terrorist Threat Level System

The Government has introduced a new system for alerting the public to security threats. The new system has replaced the old seven-point threat-level system with a five-level system. These levels are:

- Low (an attack is unlikely).
- Moderate (an attack is possible but not likely).
- Substantial (an attack is a strong possibility).
- Severe (an attack is likely).
- Critical (an attack is expected imminently).

In introducing the new system, the Government has for the first time made public in a document the way in which this system works. The document, 'Threat Levels: The System to Assess the Threat from International Terrorism', explains that assessments of the level and nature of the threat from international terrorism are made by the Joint Terrorism Analysis Centre (JTAC), while the threat from Irish and other domestic terrorism is assessed by the Security Service (MI5). The assessments include a threat level, which in brief describes the overall threat, either for the UK as a whole or for a number of specific sectors, such as the Government estate or military facilities.

Threat levels take into account several factors including:

- Available intelligence.
- Terrorist capability.
- Terrorist intentions.
- Timescale.

Information on the current national threat level will be available on the MI5 and Home Office websites from 1 August.

The full document can be found at
http://security.homeoffice.gov.uk/news-and-publications1/publication-search/general/Threat-Levels

Consultation on Proposed New Powers to Tackle Organised and Financial Crime

The Home Office has published a consultation paper, 'New Powers for Organised and Financial Crime', which seeks views on the Government's proposals for new powers against those committing organised and financial crime.

The consultation is aimed at those with an interest in criminal justice and data-sharing issues in the UK and covers four particular areas: data sharing, the criminal law, organised crime prevention orders, proceeds of crime.

Proposals include:

- Improved data-sharing between the public and private sector on suspected fraudsters.

- Introducing new offences of encouraging or assisting a criminal act, to strengthen the current law and make it easier to bring to justice those involved in the margins of organised crime.
- The introduction of a 'serious crime prevention order' (SCPO), to prevent organised criminal activity by individuals or organisations by imposing conditions on their movements and transactions.
- Merging the confiscation and enforcement hearings so that findings of fact as to assets that the defendant owns can be made, thereby removing the sometimes lengthy litigation on this point that follows a confiscation hearing.
- Provisions to enable the enforcement of confiscation orders to be contracted out.
- Statutory cancellation of old orders that are deemed unenforceable or very difficult to enforce.
- Extending powers that are currently limited to the police and HM Revenue and Customs officers to all financial investigators, including: executing search and seizure warrants; seizing property subject to a restraint order to prevent its removal from the UK; and searching for and seizing cash suspected of being criminally tainted.

Home Office Minister Vernon Coaker has stated that SCPOs are intended to target organised crime bosses who consider themselves 'untouchable'. They will act in a similar way to anti-social behaviour orders, with anyone receiving a SCPO being banned from certain activities or facing a possible maximum of five years in jail.

Activities that are considered being restricted or banned under an SCPO include:

- Restrictions on travel arrangements and telephone calls.
- Bans on the use of certain credit cards or bank accounts.
- Limits on the amount of money allowed to be carried.

The Home Office has suggested that examples of where a SCPO might be useful include where there is evidence of crimes committed overseas which cannot be prosecuted in the UK, or as an extra option in the run-up to a criminal prosecution aimed at restricting the amount of harm a suspect could inflict while a case is being prepared.

The closing date for comments is 17 October 2006. The paper can be found in full at **http://www.homeoffice.gov.uk/documents/new-powers-paper.pdf**

New National 'Respect Squad'

The Home Secretary, John Reid, has announced the creation of a new national 'Respect Squad'. The ten-strong squad is made up from experienced frontline staff from the police and local authorities. Their role will be to assist local authorities, Crime and Disorder Reduction Partnerships, police chiefs, councillors and MPs who make a referral for assistance to deal with challenging problems where other channels of action appear to have been exhausted. Referrals will be submitted to the squad by the use of an online form.

The sort of cases that will be considered by the squad will be incidences where communities are experiencing high anti-social behaviour and where there may not be strong coordination of agencies to drive an effective response and bring relief to communities. The squad will only look at cases of anti-social behaviour, not criminal cases. They will not consider complaints that are within the Local Government Ombudsman system, child protection cases or cases already within the civil or criminal justice process.

Upon a case being accepted by the squad, it will assemble a mission squad, made up of squad members with experience appropriate to that case. The mission squad will be assigned to make contact with those on the receiving end of the anti-social behaviour and with the local agencies that have a role in finding solutions. They will make an assessment, based on the facts of the case as can be established, of the strengths and weaknesses of the action being taken and any planned future interventions by local agencies, and make recommendations back to the Chair of the local Crime and Disorder Reduction Partnership. The results of the case will be published on the Respect website.

The squad will also intervene where evidence demonstrates insufficient action has been taken by agencies to deal with specific problems.

Full details of the work of the squad as well as profiles of the ten members can be found at **http://www.respect.gov.uk/whats-being-done/squad/index.html**

Asylum Qualification Directive Consultation

The Home Office has published a consultation paper on the Government's proposed implementation of Council Directive 2004/83/EC (The Asylum Qualification Directive) of 29 April 2004, which lays down minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

The Asylum Qualification Directive is a key element of a package of measures envisaged at the Treaty of Amsterdam (1997) to commit member states to establish minimum standards for asylum procedures and policies across the European Union as a first step towards a Common European Asylum System.

The consultation document which also includes a draft set of immigration rules can be found at **http://www.homeoffice.gov.uk/documents/cons-2006-asylum-qual-directive/**

The closing date for responses is 28 August 2006.

Consultation on Under-Age Sale of Tobacco

The Department of Health has published a consultation paper seeking views on how to tackle the problem of under-age smoking. The proposals include prohibition orders banning repeat offenders from selling tobacco and increasing the legal age for buying tobacco.

The 'Smoking, Drinking and Drug Use Among Young People in England Survey 2004' showed that 9% of 11-15 year olds smoke and that 70% of them buy their cigarettes from small shops such as newsagents and corner shops. Currently, prosecution rates for under-age sale of tobacco tend to be low and although the maximum fine is £3,500, fines are usually relatively small.

Powers already exist in the Health Bill allowing legislative action to amend the age of legal sale. The consultation contains three options and suggests advantages and disadvantages of each:

- Option 1: continuing with an age limit of 16.
- Option 2: increase the age limit to 17.
- Option 3: increase the age limit to 18, in line with alcohol.

Option 3 is the Government's preferred policy. Option 1 would not require any change while options 2 or 3 would require secondary legislation to change the age limit.

The White Paper 'Choosing Health' indicated the Government's intention to bring forward new legislation to ban retailers from selling tobacco if they repeatedly flout the law. The consultation contains two options for this:

- Option 1: positive licensing. Under this approach, prospective tobacco retailers would be required to apply for a local authority licence before they could sell tobacco products. Retailers found to be persistently breaking the law on under-age sales would risk temporary or permanent suspension of their licence to sell tobacco products.
- Option 2: negative licensing. This would involve prohibiting a retailer from selling tobacco products by court order, if they are found to have sold tobacco repeatedly to under-age buyers. The period of suspension would be at the court's discretion, with the Government recommending a maximum period of one year.

The Government's preferred option is that a negative licensing system be introduced.

The Government is inviting views from the public, the retail industry local authorities and stakeholders on these proposals.

Details of the consultation, for which the closing date for comments is 9 October 2006, can be found at **http://www.dh.gov.uk/assetRoot/04/13/67/33/04136733.pdf**

Report on Child Abuse linked to Witchcraft

The Department for Education and Skills (DfES) has published a report, entitled 'Child Abuse Linked to Accusations of Possession and Witchcraft'. It provides a review of cases already known to the relevant authorities and looks at the extent of the problem. The report suggests that beliefs in possession and witchcraft have been a hidden problem in some parts of UK society. The report states that the number of cases of child abuse linked to accusations of possession or witchcraft is small compared to the total number of children abused each year, but that the nature of these cases is disturbing. Up to 31 March 2005, 30,700 children were placed on the child protection register, while 74 cases of abuse clearly linked to witchcraft or possession have been reported since January 2000.

This type of abuse occurs when an attempt is made to 'exorcise' the child. The abuse consists of severe beatings and other types of pre-meditated cruelty such as starving, burning and isolating the child. The perpetrators are usually carers, often not the natural parents, and the abuse usually occurs in the household where the child lives.

The report recommends that:

- Information on these types of cases should be collated centrally by DfES or the police, providing a national picture of the scale and extent of the problem.
- Contact details of professionals dealing with these types of cases should be held centrally so that they could provide support to police officers, social workers, teachers and other professionals less familiar with handling this type of case.
- DfES, social care, police, schools and immigration should combine in preparing good practice guidelines for handling these cases.
- Better information about children moving in and out of the UK is required. This could be achieved by closer working relationships between the immigration service and public sector agencies.
- Local authorities should develop links with non-governmental organisations with a view to offering support, training and funding.

- Places of worship need child protection procedures in place together with information about good practice.
- Local Safeguarding Children Boards should identify places of worship within their area and build links with them in order to monitor effective child protection measures.

The report can be viewed at
http://www.dfes.gov.uk/research/data/uploadfiles/RR750.pdf

The Government has published a response to the recommendations, stating that certain measures have already been put into place including:

- A cross-agency strategy to speed up the identification of cases by local agencies to deal with the perpetrators, as well as prevent cases from happening.
- The use of specialist police investigators.
- Arrangements at ports to help identify and look after vulnerable children travelling into the country.
- Instructions from the Department for Education and Skills (DfES) spelling out to local agencies how to better identify cases and providing advice on what they should do to ensure that children are safeguarded.
- Introduction of Local Safeguarding Children Boards to champion the welfare of children.

The Governments response can be found in full at
http://www.dfes.gov.uk/research/data/uploadfiles/RR750GR.pdf

Consultation on Draft Guidance and Proposals for the Permitted Levels of Noise under the Noise Act 1996

The Department for Food, Environment and Rural Affairs (Defra) has published a consultation paper seeking views on the Draft Guidance for local authorities on the Noise Act 1996 and proposals for the permitted levels of noise at night for the purposes of that Act.

At present provisions in the Noise Act 1996 can only be used to deal with night-time noise from dwellings. Provisions in Section 84 and the un-commenced parts of Schedule 1 of the Clean Neighbourhoods and Environment Act 2005 amend the Noise Act to give local authorities a further power to deal with noise from licensed premises between 11pm and 7am.

This provision is expected to be brought into force in October 2006. It is intended to be used in situations where an outbreak of noise from dwellings or licensed premises occurs between 11pm and 7am and exceeds the permitted level, as measured from the dwelling of the complainant, following service of a warning notice. The permitted level of noise for licensed premises will be contained in Directions issued by the Secretary of State. Proposals regarding the permitted level are included in the consultation and views sought on them.

Details of the consultation, for which the closing date for comments is 15 September 2006, can be found at
http://www.defra.gov.uk/corporate/consult/noiseact-guidance/consultation.pdf

2005 Race and Criminal Justice Statistics

The Home Office has published the 2005 race and criminal justice statistics. The statistics were temporarily withdrawn from the public domain following the emergence of inaccuracies relating to the racist incidents data. The Home Office and the Association of Chief Police Officers (ACPO) have now completed the checking of the statistics and made the necessary amendments in relation to the racist incidents and stop and search data.

Main findings in the report include:

- The latest British Crime Survey estimates that there were around 179,000 racially motivated incidents in 2004/05. This compares with a total of 206,000 incidents reported by the 2003/04 and 2002/03 BCSs.
- During 2004/5, 57,902 racist incidents were recorded by the police, a rise of 7% over 2003/04. Set against the estimated total from the British Crime Survey, this tends to indicate that the majority of racial incidents are not reported to the police.
- There were 37,028 racially or religiously aggravated offences in 2004/5, a 6% increase from the previous year. 61% of these were offences of harassment.
- The clear-up rate for racially or religiously aggravated offences has remained fairly stable at around 34% to 36% in the last three years.
- 11% of homicides in 2004/5 were of Black people, 6% Asian and 3% 'Other' minority ethnic groups.
- Over the last three years, of the 2,653 homicides recorded, 23 were recorded as being racially motivated.
- The police recorded 839,977 stop and searches under Section 1 of the Police and Criminal Evidence Act 1984 and other legislation in 2004/5.
- Of the searches carried out in 2004/5, 14% were of Black people, 7% of Asian people and 1.5% of 'Other' ethnic origin.
- Relative to the general population, Black people were six times more likely to be stopped and searched under these powers than White people.
- Asian people were twice more likely to be stopped and searched than White people.
- The main reason for conducting a stop and search under these powers across all ethnic groups was for drugs.
- In 2004/5 an estimated 1.3 million arrests for notifiable offences took place. Of these, 9% were recorded as being of Black people, 5% Asian and 1.5% 'Other' ethnic origin.
- Relative to the general population, Black people were three times more likely to be arrested than White people.
- The police cautioned 237,337 persons for notifiable offences in 2004. Of these, 6.4% were recorded as Black people, 4.4% Asian and 1.2% of 'Other' ethnic origin. There was a lower use of cautioning for suspected Black offenders relative to arrests compared with White offenders.
- In 2004/05 there were 287,013 offences involving young offenders. 84.7% of offenders identified themselves as White, 6% as Black, 3% as Asian, 2.3% as Mixed and 0.6% as Chinese or other.

- The police recorded 23,494 complainants in 2004/5; 7% of complainants made against the police were from Black people, 5% from Asian people and 1% from 'Other' minority ethnic groups.
- In 2004/5, ten of the 106 deaths recorded after contact with the police involved people from BME groups.

The statistical report can be found in full at **http://www.homeoffice.gov.uk/rds/**

HOC 21/2006

This Circular replaces HOC 19/2006, which announced the proposed commencement date for Section 53 of the Immigration, Asylum and Nationality Act 2006 as 31 July 2006. HOC 21 states that the commencement of Section 53, which relates to arrest pending deportation, has now been delayed and that a further revised Circular will be issued once a new date has been confirmed.

When in force, Section 53 will amend paragraph 2(4) of Schedule 3 to the Immigration Act 1971, in order to clarify the circumstances in which the powers of arrest under paragraph 17 of Schedule 2 to the 1971 Act arise in deportation cases. The amendment makes clear that the powers of arrest (with and without warrant) under paragraph 17 may be exercised in deportation cases when the notice of intention to deport is ready but has not yet been given to the prospective deportee. In particular, it ensures that immigration officers and constables can continue to seek a warrant in such circumstances under paragraph 17(2) to enter named premises in order to give the notice of intention to deport to the prospective deportee and arrest him.

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

Consultation on Proposed Regulations in Relation to Smoke-Free Premises and Vehicles

The Department of Health has published a consultation document on the proposed regulations to be made under Chapter 1 of Part 1 of the Health Bill in respect of smoke-free premises and vehicles.

The Health Bill that is currently before Parliament includes legislative provisions to make virtually all enclosed public places and workplaces smoke-free. If approved by Parliament, the Government plans to implement smoke-free legislation in summer 2007.

There are three sets of proposed regulations included in the consultation.

The Smoke-free (General Provisions) Regulations

These set out the following aspects of smoke-free legislation:

- Definitions of 'enclosed' and 'substantially enclosed'.
- Signage requirements for smoke-free premises and vehicles.
- Duties to comply with signage requirements for smoke-free vehicles.
- Duties to prevent smoking in smoke-free vehicles.
- Enforcement.
- The form of penalty notices.

The definition of 'enclosed' and 'substantially enclosed' premises set out in the proposed regulations is the same as that contained in the Scottish smoke-free regulations which are already in force.

Premises will be considered to be enclosed if they have a ceiling or roof and, except for doors, windows or passageways, are wholly enclosed, whether on a permanent or temporary basis.

Premises will be considered to be substantially enclosed if they have a ceiling or roof, but there are openings in the walls which are less than half of the total area of walls, including other structures that serve the purpose of walls and constitute the perimeter of the premises. When determining the area of an opening, no account can be taken of openings in which doors, windows or other fittings can be opened or shut.

'Roof' means any fixed or moveable structure or device which is capable of covering all or part of premises as a roof. This would include retractable canvas awnings.

The proposal is that for the purpose of the smoke-free legislation, the following local authorities will be enforcement authorities:

- County councils.
- District councils which are the sole principal councils for their areas.
- London borough councils.
- The Common Council of the City of London.
- The Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple.
- The Council of the Isles of Scilly.

The proposed regulations require the operator, any driver or any person on the vehicle who is responsible for public order or safety (such as the driver/conductor, guard or ticket inspector) to have duties to prevent smoking in a smoke-free vehicle. There is a defence clause in the Health Bill to the offence of failing to prevent smoking in a smoke-free place, this could be applicable e.g. in the case of a driver who is located in a separate compartment on the train.

The Smoke-free (Exemptions and Vehicles) Regulations

These set out in detail specific arrangements in respect of the types of properties and vehicles that will be exempt from the regulations.

The Smoke-free (Penalties and Discounted Amounts) Regulations

These specify the penalties and discounted amounts for the offences created by the Health Bill.

The deadline for responses to this consultation is 9 October 2006. The consultation paper can be found in full via **http://www.dh.gov.uk/Consultations/LiveConsultations/fs/en**

HOC 17/2006
Use of Interpreters within the Criminal Justice System

The Circular provides information to all parties involved in criminal investigations regarding the selection and treatment of interpreters. It seeks to remind parties to use the guidance contained in the National Agreement on Arrangements for the Attendance of Interpreters in Investigations and Proceedings within the Criminal Justice System (2002). The Circular also clarifies certain issues and gives new guidance on the use of telephone interpreting and on outsourcing the provision of interpreters.

The Circular is being issued as an interim measure because of concerns about compliance with the guidance contained in the current national agreement. The National Agreement is currently being reviewed and it is expected that new revised guidance will be issued following the review and re-launch of the National Agreement in early 2007.

Until that time, the existing guidance supplemented by the Circular should be followed, as these set out what is considered necessary to avoid cases being lost because of violations of PACE or fundamental legal rights to interpretation.

The points clarified in the Circular are:

- If, in an individual case, it is not possible, as set out in the current National Agreement to select an interpreter from the National Register of Public Service Interpreters (NRPSI) or the register of the Council for the Advancement of Communication with Deaf People, checks should be carried out with those bodies to ensure that the interpreter selected meets standards at least equal to those required for registration to those registers in terms of academic qualifications and proven experience of interpreting within the criminal justice system and professional accountability.
- That an interpreter's identity should be checked on arrival for the assignment, both to ensure that the person arriving for the assignment is the person who has been contracted for that assignment, and therefore has the skills and experience to carry out the task, and also to assist in confirming that relevant checks have been conducted on that person. (NRPSI- and CACDP-registered interpreters are issued with photo-identity cards and should be in possession of them).
- Interpreters from either of the recommended registers will often have a standard or enhanced CRB disclosure certificate; and agencies are strongly recommended to ask any interpreters they employ whether they have a CRB disclosure certificate, and if they do, to ask to see it.
- In cases where interpreters who are not registered with either of the recommended registers are to be used by agencies, consideration should be given to the security clearance issue.
- In cases where high standards of security clearance are required, agencies are recommended to undertake their own additional checks.
- In cases where the attendance of an interpreter is requested at a place other than a public building, additional factors should be taken into account and implemented by those responsible for requesting the attendance of an interpreter. This includes: making arrangements for ensuring that the interpreter can check the bona fides of any request to attend a place that is not a public building, for example by providing them with a number at the police station to call back and confirm their assignment; carrying

out a risk assessment in relation to the interpreter's attendance, considering whether, for example, the interpreter should be met at a suitable place such as a police station or train station before proceeding to the property where the assignment is to take place; and ensuring the interpreter is properly briefed on the situation and that their safety is considered whilst they carry out the assignment.

New guidance on the use of telephone interpreting

- Telephone interpreting is suitable only for brief and straightforward communications, e.g. arranging appointments or handling front-desk enquiries at police stations. It is not appropriate for use in evidential procedures.
- It may be used in cases, e.g. for procedures under the Road Traffic Act 1988, where it is not possible to secure the attendance of a face-to-face interpreter within a reasonable amount of time, and the matter is time-critical (i.e. there is the risk that evidence will degrade). If telephone interpreting is used, the interpreter should be UK-based and drawn from the NRPSI.
- In cases where there is no alternative to using a non-UK based telephone interpreter, care should be taken to ensure that they are suitably qualified and subject to codes of conduct and good practice.
- In all cases where telephone interpreting is used, audio-recordings of both ends of the conversation should be made via, for example, a speakerphone.

New guidance on outsourcing the provision of interpreters

- Police forces who have outsourced the provision of interpreters, or are contemplating doing so, should take steps to ensure that these are not achieved at the expense of quality; and contractual arrangements should specify clearly that interpreters should be drawn from the recommended lists wherever possible.
- Those negotiating contracts should satisfy themselves that the successful bidder is capable of delivering on this to a measurable target.
- Contracts should also require regular monitoring of the usage of NRPSI/CACDP registered interpreters to ensure compliance on this issue.

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

Proposal to Revise Rules about Witness Summonses and Orders

The Criminal Procedure Rule Committee is seeking views on its proposals to revise and simplify the rules in Part 28 of the Criminal Procedure Rules, which relate to witness summonses and orders.

The new rules will replace the present rules and will affect, in particular, all those who hold documents, the production of which in evidence may be sought by a party in criminal proceedings.

The new Part 28 rules will apply in magistrates' courts and in the Crown Court where a party applies for a witness summons, warrant or order under the following:

- Section 97 of the Magistrates' Courts Act 1980.
- Section 2 of the Criminal Procedure (Attendance of Witnesses) Act 1965.
- Section 7 of the Bankers' Books Evidence Act 1879.

The rules will also apply where the court issues such a summons, warrant or order on its own initiative.

Applications must be in writing and in the form of, or be accompanied by, an affidavit declaring that the maker believes the statements made in the application to be true. They must be made as soon as reasonably practicable after:

- The defendant pleads not guilty in a magistrates' court.

Or in the Crown Court after either:

- The service of copies of the documents containing the evidence on which the charge or charges are based, where the defendant is sent for trial.
- A High Court judge gives permission to serve a draft indictment.
- The Court of Appeal orders a retrial.
- The committal or transfer of the defendant for trial.

An application must be served on the court officer and also the proposed witness, unless it is an application for a warrant.

Applications will have to:

- Explain what evidence the proposed witness can give, or what document or thing he can produce.
- Explain why it is likely to be material evidence, and why the applicant does not expect the person subject to the application to give or produce it without a summons, order or warrant as appropriate.
- State at what place and time the applicant wants the proposed witness to produce any document or thing under section 2A of the Criminal Procedure (Attendance of Witnesses) Act 1965 before it is produced in evidence.
- Explain for the benefit of the proposed witness that he may make representations to the court about the application.
- List those on whom it is served.

A court must not issue a witness summons or order that requires the production of a document or thing unless the proposed witness has had at least 7 days within which to make representations and the court is satisfied that it has been able to take adequate account of the rights of any person to whom the document or thing relates. This rule will not apply if the document to be produced is a copy of an entry in a banker's book.

In cases where a proposed witness objects to producing a document or thing on the ground that it is not likely to be material evidence, the court will consider the objection and give an impartial opinion on the likely materiality of that document or thing. The proposed witness will be required to make that document or thing available to the court. The court may require also the presence of the proposed witness or any representative of the proposed witness or a party's representative to help it in its consideration of the objection.

Hearings conducted under there rules must be in private unless the court directs otherwise.

The proposed rules also contain details on:

- Court's power to vary requirements made under Part 28.
- Application to revoke a summons, warrant or order.
- Method of service.

Comments on the proposed rules are requested by 22 September 2006. The proposed rules and detailed explanatory notes can be found at **http://www.dca.gov.uk/procedurerules/criminalpr_background.htm**

Measures to Improve Criminal Justice System

As part of the Criminal Justice Review, recently announced by the Home Office the Constitutional Affairs Secretary and Lord Chancellor Lord Falconer has published a report of its review of the criminal justice system, 'Delivering Simple, Speedy, Summary Justice' which was reported on in the April *Digest*.

The paper focuses on practical measures to improve the effectiveness and efficiency of courts-based delivery of criminal justice. Measures include:

- Extending the community justice programme with more courts responding to the local community on quality of life offences.
- Streamlining case management procedures in magistrates' courts in four areas to reduce the overall time between arrest and conclusion.
- Testing the concept of 'next day' justice through pilots to be launched in autumn in magistrates' courts. These will aim to bring specific categories of offenders before the courts within 24-72 hours. It is expected that around 500 offences will be dealt with in this way in the first year.
- Piloting courts on the move in three locations in autumn. These courts will see justice delivered directly in the local community, for example in town halls, without necessarily the full paraphernalia of the current courts.
- Implementing national best practice in Crown court in autumn for more effective preliminary hearings, eliminating unnecessary pre-trial hearings and dealing more effectively with early guilty pleas.
- Implementing live links in London between the police station and the court for guilty pleas to be dealt with at charge in low-level offences (subject to legislation).

The report can be found at **http://www.dca.gov.uk/majrepfr.htm#cjr-dss**

Development of Positive Practice Guidelines for Working with Offenders with Learning Disabilities

The Department of Health is developing some positive practice guidelines intended for use by the police, courts, prisons and probation who work with people with learning disabilities who offend.

The work is being conducted in collaboration with the Health Offender Partnerships, National Offender Management Service, the Home Office, the two Care Services Improvement Partnership (CSIP) initiatives, the Health and Social Care in Criminal Justice Programme and the Valuing People Support Team.

The Department of Health is presently seeking:

- Suggestions from criminal justice staff/forensic learning disability professionals regarding features they would wish to see included in such guidelines, for example, a guide to identifying people with learning disabilities, lists of useful contacts, guidance on verbal and written communication.

- Examples of any innovative or useful 'positive practice' procedures which are used when people with learning disabilities come into contact with service, plus any relevant existing guidance.
- Any challenges or other issues you may have regarding managing people with learning disabilities in the criminal justice system.

It is anticipated that the guidelines will be launched in October 2006. All examples, suggestions and comments should be forwarded to by e-mail to **barbara.zammit@dh.gsi.gov.uk**

Police Force Mergers Scrapped

The Government has announced that its programme of forced police mergers has been scrapped. Instead, the 43 forces in England and Wales are to be encouraged to enter into new forms of collaboration, including possibly voluntary mergers, to strengthen the police response to terrorism, organised crime and major incidents.

National Policing Board

The Home Secretary, John Reid, has announced that a National Policing Board is to be created.

The main functions of the Board will be to:

- Agree the Home Secretary's annual national strategic priorities for policing.
- Set key priorities for the National Policing Improvement Agency.
- Set agreed priorities for the police reform programme.
- Enable Ministers, the leaders of the police service and police authorities to monitor progress in implementing the reform programme and identify and overcome barriers to delivery.
- Provide a regular forum for joint debate and three way communication on the opportunities and challenges facing policing.

The Board will be chaired by the Home Secretary and will include:

- Representatives of the Home Office (including Tony McNulty, the Minister for Policing, Security and Community Safety, and senior officials).
- Representatives of the Association of Chief Police Officers (including the President of the Association and the Metropolitan Police Commissioner).
- The Association of Police Authorities (represented by the Chair and Vice-Chair of the Association).
- HM Chief Inspector of Constabulary.
- The Chair and Chief Executive of the National Policing Improvement Agency.

A separate Policing Reference Group will enable other key stakeholders, including the police staff associations, unions and other bodies representing groups in the police service, to have a significant input into the work of the National Policing Board.

It is intended that summaries of the key decisions and discussions of each meeting of the National Policing Board and Policing Reference Group will be posted on the Home Office police reform website **http://police.homeoffice.gov.uk/police-reform/**

Skills for Justice Policing Committee

The Skills for Justice Policing Committee is to be replaced by two new groups, which are intended to enable it to provide policing and law enforcement agencies with a more streamlined and efficient service.

The new Programme Management Group will meet every eight weeks, and their remit will be to oversee and steer the day-to-day running of police and law enforcement projects within Skills for Justice.

The Policing Forum will have a wider membership and will meet bi-annually to share information and best practice and to also ensure Skills for Justice and the Programme Management Group are meeting the needs of all stakeholders.

Report on Recording of Crime Data by Police Forces and Authorities in England and Wales

The Audit Commission has published the results of reviews of crime recording undertaken at police authorities in England and Wales by auditors appointed by the Audit Commission and the Auditor General, sponsored by the Home Office through the Police and Crime Standards Directorate.

Police forces and authorities were reviewed against the National Crime Recording Standard (NCRS) and Home Office Counting Rules. The way in which forces and authorities managed the process to ensure compliance with the standards was also reviewed.

The report finds that:

- 35 police forces and authorities met the minimum crime recording requirement of 90% compliance with the standards, thereby achieving a 'good' or 'excellent' rating. This figure has improved from 24 (56%) in 2004 and 12 (28%) in the first year of reviews.
- 29 forces (67%) were assessed as 'good' or 'excellent' for management arrangements in 2005 compared with 8 (19%) in 2004 and 4 (9%) in 2003. There were two forces rated as 'poor', compared with seven in 2003 and 2004.

However, albeit there have been improvements, the report also voices concerns that:

- A small number have deteriorated or failed to improve since the last review.
- Only one force was judged as 'excellent' for both data quality and management arrangements.
- 5 forces were found to be relying on expensive and time consuming data checking techniques rather than getting the crime recorded right first time.

The report can be found in full via **http://www.audit-commission.gov.uk/index.asp**

HOC 18/2006
Guidance on Police Unsatisfactory Performance, Complaints and Misconduct Procedures

The Circular highlights the fact that the Police (Complaints and Misconduct) Regulations 2004 have been amended by the Police (Complaints and Misconduct) (Amendment) Regulations 2006 (SI 1406/2006). The amendments came into force on 22 June and further details can be found in the June *Digest*.

Guidance on the Regulations can be found in the 'Home Office Guidance on Police Unsatisfactory Performance, Complaints and Misconduct Procedures' (HO Circulars 8/2005 and 51/2005) and 'Making the new police complaints system work better' by the Independent Police Complaints Commission.

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

Section 25 of the Police Act 1996

During a recent parliamentary debate on 'Charitable and Community Events', the issue of the way in which local police authorities invoke Section 25 of the Police Act 1996 arose.

Section 25 of the Police Act 1996 states that the chief officer of police of a police force may provide, at the request of any person, special police services at any premises or in any locality in the police area for which the force is maintained, subject to the payment to the police authority of charges on such scales as may be determined by that authority.

The power to levy charges under Section 25 of the 1996 Act is discretionary not mandatory. Special police services are not defined in the 1996 Act or elsewhere.

The issue was raised by Mr. Anthony Steen, the MP for Totnes. His concern was that, until recently, police had not exercised the power under Section 25 in relation to charitable and community events, but that many were now choosing to do so and as a consequence many events were not able to go ahead because such charges were pricing events out of existence. He also commented that the varying attitudes of police authorities throughout the country had created an unequal and unfair playing field, giving an example that the annual Notting Hill Carnival, whose policing costs runs into hundreds of thousands of pounds, escapes because the Metropolitan Police does not charge for such community events, but the organisers of other small charitable events in other police areas were charged.

Furthering his argument that charitable and community events should not be charged for policing costs, Mr Steen referred to a written ministerial answer given on 29 November 2000 by then Home Office minister Mr. Charles, which stated that whilst police services are not defined in the 1996 Act or elsewhere, he would expect them to be services that meet some or all of the following criteria:

- They are not part of the general duty of the police to keep the peace and protect life and property.
- The service to be provided is on private land.
- The service to be provided is for a commercially organised event.

In response, the Parliamentary Under-Secretary of State for the Home Department, Mr. Vernon Coaker, stated that in April 2005 the Association of Chief Police Officers (ACPO) had issued guidance that sets out an approach to calculating the full economic cost of services provided and that ACPO had recommended that forces should seek to harmonise their methodologies with the guidance within the three years following its publication. The guidance can be found in full at **http://www.acpo.police.uk/policies.asp**

National Problem Oriented Partnership Conference

The Annual UK Problem Oriented Partnership (POP) Conference is being held on Tuesday 5 to Thursday 7 September 2006 at the Hilton Metropol Hotel, NEC, Birmingham.

The theme of this year's conference is neighbourhood policing. The programme includes speakers and workshops built around good practice and innovative problem solving principles that can be applied to a broad range of problems.

Further details can be obtained at **http://www.ukpopconference.co.uk/**

Removal of Retiring Police Officers Records from the National DNA Database

In answer to a Parliamentary question on what arrangements are in place for removing the records of retiring police officers from the National DNA Database, Tony McNulty, the Minister for Police and Security in the Home Office replied that individual police forces are responsible for notifying the custodian of the Police Elimination Database (PED) when officers retire or leave the police service in order that their DNA profiles may be removed from the database.

Police personnel who have provided a sample for the PED on a voluntary basis can request removal of their profiles from the PED at any time without giving any reason.

Since 1 August 2002, police Regulations have required all new police recruits to provide a DNA sample for the Police Elimination Database (PED). This is in order to identify and eliminate any DNA profiles found at a crime scene which may have been inadvertently deposited there by an investigating police officer. Police officers who were in service prior to that date were asked to provide a sample on a voluntary basis.

RAC Report on Motoring

Following the publication of the RAC Report on Motoring 2006, ACPO has endorsed its value for those working on transport policy and road safety. The report was compiled following interviews with 1,000 regular drivers during January and February this year. The report shows that there is strong backing by the motorist of some of the Government's proposals for reducing congestion and improving the environment, although compromises will have to be made. The main findings were as follows:

- 68% of respondents believe that much tougher measures are needed to resolve the problems of congestion and 40% are in favour of congestion charging.
- 67% are prepared to accept road pricing if it comes alongside a reduction in road tax or fuel duty.
- 63% would back road pricing if all the money raised was spent on improving roads.
- 69% want to see visible improvements in public transport provision if they are to accept road pricing.
- There is strong support for the Government to take action to encourage employers to do more to reduce congestion by putting better workplace travel options in place. 90% would like to see employers introduce measures such as showers, secure bike parks, season ticket loans, more home working and car share schemes.
- Respondents may be more receptive to road pricing if additional features were added to the telematics technology that would be needed for road pricing to work. Telematics enable the number of miles driven to be accurately measured and additional benefits could be added in. 87% of respondents said anti-theft vehicle tracking would be desirable, 80% liked technology capable of guiding drivers around traffic hold-ups and 86% of female drivers said they liked the idea of an in-car panic button.
- 84% of respondents consider themselves to be safe, law-abiding drivers. However, this does not reconcile with other statistics which show that 48% of respondents admit to speeding, 19% drink-drive occasionally and 28% say that they generally ignore the rules of the road if they can get away with it.
- The two biggest road safety concerns for respondents were drink driving (89%) and drug driving (55%). 81% supported the introduction of compulsory dashboard alcolocks and 89% said that drivers should also be able to be tested for drugs using breathalyser-type devices.
- 69% view punitive speed cameras as more of a tax on motorists than a road safety tool; however 49% back the introduction of in-car speed limiters.

The full report can be viewed at
http://www.racnews.co.uk/files/pdf/report_on_motoring_140606.pdf

Case Law

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

Police Need Reasonable Grounds to Believe the Public would be Harassed, Alarmed, Intimidated or Distressed before Issuing a Dispersal Direction

MARK BUCKNELL v DIRECTOR OF PUBLIC PROSECUTIONS (2006)

DC (May LJ, Aikens J) 10/7/2006

CRIMINAL LAW

Anti Social Behaviour: Causing Harassment Alarm Or Distress: Dispersal: Presence: Reasonable Belief: Contravention Of A Direction To Disperse: Reasonable Belief That Public At Risk Of Harassment, Alarm, Intimidation Or Distress: Dispersal Directions: S.30 Anti-Social Behaviour Act 2003: S.32 Anti-Social Behaviour Act 2003: S.30(4) Anti-Social Behaviour Act 2003

Before issuing a dispersal direction under the Anti-social Behaviour Act 2003 s.30, a police officer had to have reasonable grounds for believing that the public would be harassed, alarmed, intimidated or distressed, and such a belief had normally to depend in part at least on some behaviour by a group, rather than their mere presence.

The appellant (B) appealed by way of case stated against the decision of a magistrates' court to convict him of contravening a direction under the Anti-social Behaviour Act 2003 s.30, contrary to s.32 of the Act. B, aged 17, had been on his way home from school and stopped to talk with a group of friends in a designated dispersal area. Two groups totalling about 15 to 20 black and Asian young people had assembled. Although no member of the public had approached him or complained about the presence of the schoolboys, the local beat constable (N) took the view that the presence of the groups was likely to cause intimidation, alarm, harassment or distress to members of the public, and he issued a direction to them to disperse. B did not leave and was arrested. The magistrates found B guilty. The question subsequently posed for the opinion of the High Court was whether the magistrates were entitled, on the evidence they heard, to convict B of the offence of knowingly contravening a direction given by a constable under s.30(4) of the Act requiring him, as a person whose place of residence was not within the relevant locality, to leave the relevant locality or any part of the relevant locality immediately. B contended that the mere presence of two well-behaved groups of youths could not give rise to reasonable grounds for believing that a member of the public was likely to be harassed, alarmed, intimidated or distressed.

HELD

Unless there were exceptional circumstances, not present in the instant case, a real belief for the purposes of s.30 of the Act had normally to depend in part at least on some behaviour by the group indicating harassment, alarm, intimidation or distress. If that were

not so, it would amount to an illegitimate interference in the rights of people to go where they pleased in public. In the circumstances, it had not been a proportionate response for N to act as he had, because the apparent characterisation of those groups alone was not capable objectively of giving rise to the necessary reasonable belief. Accordingly, the magistrates had not been entitled to convict B on the evidence before them.

APPEAL ALLOWED

Circumstances in which Prior Notice under the Public Order Act 1986 S.11 Not Required to be Given to the Police

KAY v COMMISSIONER OF POLICE OF THE METROPOLIS (2006)

[2006] EWHC 1536 (Admin)

QBD (Admin) (Sedley LJ, Gray J) 27/6/2006

CRIMINAL LAW - ROAD TRAFFIC

Bicycles: Notice: Processions: Public Order: Public Order Offences: Requirement To Give Notice: Exemption Of Commonly Or Customarily Held Processions: Monthly Bicycle Ride In London: No Requirement To Give Police Notice Of Future Rides: S.11 Public Order Act 1986: S.11(1) Public Order Act 1986: S.11(2) Public Order Act 1986

As the monthly Critical Mass bicycle ride in the Metropolitan Police area was one that was commonly or customarily held, prior notice under the Public Order Act 1986 s.11 was not required to be given to the police.

Proceedings were issued to determine whether the monthly "Critical Mass" cycle ride (the event) through central London was a public procession of which the organisers were required to give the police prior notice under the Public Order Act 1986 s.11. Critical Mass was not an organisation but the name given to a recurrent event. For over 12 years, cyclists had gathered at a set time and place in London on the evening of the last Friday of each month for a mass ride through the streets. The route was not fixed; whoever happened to be at the front decided which direction to take next. The approximate number of cyclists involved ranged from 100 to 400. At one event, the cyclists were handed a letter from the respondent commissioner notifying them that organisers of public processions were required by law to notify the to the police at least six days before the event occurred the date, time, proposed route and name and address of an organiser, and that failure to do so made the procession unlawful. The claimant (K), who had been involved in the event since its early days, but who was otherwise a nominal party, issued proceedings to clarify whether notice of future rides was required. K contended that s.11 of the Act had no application to the event as

(1) it had none of the intentions specified in s.11(1) of the Act; and

(2) it was a commonly or customarily held procession to which the exemption in s.11(2) of the Act applied. The commissioner submitted the event was intended "to demonstrate support for or opposition to the views or actions of any person or body of persons [or to] publicise a cause or campaign within s.11(1) in that their overt and perfectly legitimate purpose was to support the cause of self-propelled mobility in cities

dominated and polluted by cars and lorries, to campaign to make the streets safer and more welcoming for bicycles and their riders, and to demonstrate opposition to the motor vehicle lobby. The commissioner further contended that the rides had begun at a time when the Act required notice to be given; yet none apparently ever was, and that reliance could not now be placed on an accumulation of unlawful processions in order to establish the common or customary character that escaped the requirement of notice.

HELD

(1) In the circumstances, the court declined to hold that the event had no objective intention that brought it within s.11(1) of the Act, beyond holding that it did not necessarily fall outside that section. The denial of a collective intention falling within s.11(1) of the Act might not easily be reconciled with the continuity of qualifying intention needed to attract the protection of s.11(2) of the Act: either would afford a defence, but it was hard to see how both could.

(2) The event in the respondent's police area was one that was commonly or customarily held and of which notice was not, therefore, required under s.11 of the Act. That was because an unbroken succession of over 140 collective cycle rides, setting out from a fixed location on a fixed day on the month and at a fixed time of day, and travelling, albeit by different routes, through the Metropolitan Police area, could not by now sensibly be called anything but common or customary. The absence of a planned route for the event had no legal consequences if notice of the procession was not required, and the event itself was not prevented from having acquired a common or customary character by the unproven possibility that one or more individuals had failed to give notice under s.11 of the first such rides some 12 years ago.

JUDGMENT ACCORDINGLY

Meaning of the Word 'breath' within both the Road Traffic Act 1988 s.5 and the Road Traffic Offenders Act 1988 s.15

ROBERT WOOLFE v DIRECTOR OF PUBLIC PROSECUTIONS (2006)

[2006] EWHC 1497 (Admin)

QBD (Maurice Kay LJ, Mitting J) 23/6/2006

CRIMINAL EVIDENCE - ROAD TRAFFIC - SENTENCING

Breath Samples: Breath Tests: Diseases And Disorders: Driving While Over The Limit: Pre Existing Condition: Special Reasons: Meaning Of Breath: Inclusion Of Stomach Alcohol Refluxed Though Oesophagus: Pre-Existing Medical Condition: Oesophageal Reflux: Stomach Alcohol: S.5 Road Traffic Act 1988: S.15 Road Traffic Offenders Act 1988

The meaning of the word 'breath' within both the Road Traffic Act 1988 s.5 and the Road Traffic Offenders Act 1988 s.15 included breath expelled that had been infused with alcohol contents of a defendant's stomach by way of oesophageal reflux so as to give a reading that did not reflect the blood alcohol level.

The appellant (W) appealed by way of case stated against the decision of a magistrates' court to convict him of driving over the limit. W had been stopped by the police by the road side and provided a positive specimen of breath. W was arrested and taken to a police station where he provided two further specimens of breath, which were then analysed by means of an intoximeter. Both readings on the intoximeter disclosed an alcohol level significantly in excess of the legal limit. W was charged with an offence under the Road Traffic Act 1988 s.5. The magistrates' court accepted that W suffered from a medical condition of regurgitation of stomach content into the oesophagus. The court also accepted that W had consumed a pint and a bottle of beer. The experts agreed that the quantity of alcohol in M's breath should have been 10mcg of alcohol per 100ml of breath after consuming the amount of alcohol accepted by the court. The court also accepted that repeated reflux could give the readings recorded. The court held that it was bound to follow authority, Zafar v DPP (2004) EWHC 2468 (QB) , (2005) RTR 18, and that that authority had indicated that there was no differentiation between deep lung breath, which would represent blood alcohol, and breath contaminated by alcoholic mouth content, such as regurgitated alcohol from the stomach. W was found guilty and the court concluded that W's medical condition did not amount to special reasons so as not to disqualify W because the special reasons did not amount to a defence. The questions posed for the opinion of the High Court were whether

(1) the meaning of the word 'breath' within both the Road Traffic Act 1988 s.5 and the Road Traffic Offenders Act 1988 s.15 included breath expelled that had been infused with alcohol contents of a defendant's stomach by way of oesophageal reflux so as to give a reading that did not reflect the blood alcohol level;

(2) the magistrates' court was wrong to conclude that W's medical condition could not amount to special reasons because the condition did not amount to a defence.

HELD

(1) The meaning of the word 'breath' within both the Road Traffic Act 1988 s.5 and the Road Traffic Offenders Act 1988 s.15 included breath expelled that had been infused with alcohol contents of a defendant's stomach by way of oesophageal reflux so as to

give a reading that did not reflect the blood alcohol level. The analysis and conclusions relating to word 'breath' contained in Zafar as it pertained to both the 1988 Acts was settled law, Zafar applied and O'Sullivan v DPP (2005) EWHC 564 (Admin) approved. (Obiter. Whilst Zafar might appear harsh it had to be seen in context. Breath specimens did not provide a precise calculation of how much alcohol a person had consumed. Parliament had prescribed a universal pragmatic test that fell well short of a total prohibition on driving with alcohol in the body. It has done so in the knowledge that different people would be able to consume the same quantities of alcohol with different physical and legal effects. For regurgitation or reflux to prejudice a defendant it had to have occurred on both occasions before a specimen of breath was taken and with substantially similar results. Moreover the present prescribed procedure required a suspect to be asked both before and after an evidential breath test procedure whether he had brought anything up from his stomach. The scope for real injustice was extremely slight and where it arose there remained the further possibility of mitigating the penalty.

(2) It was settled law that there were four requirements before special reasons could be found. A special reason: (a) had to be a mitigating or extenuating circumstance; (b) had not to amount in law to a defence; (c) had to be directly connected with the commission of the offence; (d) had to be a matter which the court ought properly to take into account when considering sentence. In the instant case, the court had erred in excluding special reasons on the basis that Zafar precluded a defence, so it precluded a finding of special reasons. It was plain from the requirements for establishing special reasons that that was incorrect, R v Wickens (1958) 42 Cr App R 236 applied.

The court should have considered whether W had discharged the burden of establishing special reasons on the balance of probabilities. As such it should have had regard to whether: (a) the amount of alcohol that W had consumed was insufficient, without more, to exceed the prescribed limit; (b) on each occasion when W provided specimens of breath for the intoximeter, he had regurgitated alcohol from his stomach into his mouth; (c) it was regurgitated alcohol that caused the readings to exceed the prescribed limit. Accordingly the case was remitted for reconsideration of special reasons.

APPEAL DISMISSED

The Road Traffic Act 1988 S.145(4)(A) Did Not Cover The "Quasi-Employment" Of A Police Constable

GUY MILLER v (1) RICKY HALES (2) QBE INTERNATIONAL INSURANCE LTD (T/A ENSIGN MOTOR POLICIES AT LLOYDS) (3) MOTOR INSURERS BUREAU (2006)

[2006] EWHC 1529 (QB)

QBD (Jack J) 6/7/2006

ROAD TRAFFIC - INSURANCE - POLICE

Insurance Claims: Insurance Companies: Insurance Policies: Motor Insurance: Police: Police Officers: Road Traffic Accidents: Exclusion Of Acts In Course Of Employment: Quasi-Employment Status: Being Carried As A Passenger: S.151 Road Traffic Act 1988: S.144(2)(B) Road Traffic Act 1988: S.143 Road Traffic Act 1988: S.145 Road Traffic Act 1988: S.145(4)(A) Road Traffic Act 1988: S.145(4a) Road Traffic Act 1988

On its proper construction, the Road Traffic Act 1988 s.145(4)(a) did not cover the "quasi-employment" of a police constable, and s.145(4A) of the Act was directed to the action of being carried in the normal way and as a passenger.

The claimant police constable (M) applied for a declaration that the second defendant insurers (Q) were liable pursuant to the Road Traffic Act 1988 s.151 to pay him whatever the first defendant motorcyclist (H) was liable to pay under the judgment entered against H.

M had been involved in the high-speed pursuit of a motorcycle driven by H. M caught H, who then escaped and ran back to M's police car, which had been left with the keys in it and the engine running. H got into the car and locked the doors. As M tried to enter the vehicle via the tailgate, H reversed the car violently. M fell beneath it and was dragged some distance before he became free, suffering very serious injuries. By s.144(2)(b) of the Act, the requirement for road users under s.143 of the Act to hold a policy of insurance did not apply to vehicles owned by a police authority and driven for police purposes. However, M's constabulary had a motor vehicle policy with Q. The driving by H that caused M's injuries was not covered by that policy because H was not permitted to drive the vehicle. As s.151 of the Act provided for a judgment to be honoured by the insurer as if the policy insured all persons, M would be entitled against Q to the benefit of his judgment against H provided that, on the basis that H was an insured driver, cover was required to meet the requirements of the 1988 Act. That turned upon the application of s.145 of the Act to the facts of the instant case. It fell to be determined

(1) whether s.145(4)(a) of the Act had the effect that no cover was required, and therefore was not provided, because M was to be treated as acting in the course of employment when he was insured;

(2) that if he was to be so treated, whether he could avoid the effect of that by bringing himself within s.145(4A) of the Act as a person who had entered into or been carried in or upon a vehicle.

HELD

(1) A police constable was not an employee and had no contract of employment; he was an office holder. Section 144(2)(b) of the Act showed that the draftsman of the 1988 Act had had in mind that a constable was not an employee. In those circumstances, and construing the statute as it stood, employment should not be construed as

covering the "quasi-employment" of a constable. Accordingly, s.145(4)(a) did not assist Q and, if, as s.151 of the Act required, H was to be treated as an insured, Q was liable under the policy.

(2) On its proper construction, s.145(4A) of the Act was directed to being carried in the normal way and as a passenger. In the instant case, in no sense could what had happened to M be described as entering or attempting to enter the vehicle, or being carried by it. Had M's claim, therefore, fallen within s.145(4)(a), he could not have relied on s.145(4A) of the Act. M's injuries were, accordingly, required to be covered by insurance pursuant to s.145, and Q was obliged to pay whatever H was bound to pay under the judgment entered against him.

DECLARATION GRANTED IN FAVOUR OF CLAIMANT

For related proceedings see Miller v Hales (2006) EWHC 1717 (QB)

The Reaction of Reasonable Person is the Test for an Offence under the Communications Act 2003

DIRECTOR OF PUBLIC PROSECUTIONS v LESLIE GEORGE COLLINS (2006)

[2006] UKHL 40

HL (Lord Bingham of Cornhill, Lord Nicholls of Birkenhead, Baroness Hale of Richmond, Lord Carswell, Lord Brown of Eaton-under-Heywood) 19/7/2006

CRIMINAL LAW - TELECOMMUNICATIONS

Communications Offences: Improper Use Of Telecommunications: Mens Rea: Offensive Behaviour: Proof: Voice Telephony: Grossly Offensive Messages: Reaction Of Reasonable Persons: Use Of Public Electronic Communications: Purpose Of Offence: Essential Ingredients: Culpable State Of Mind: Standards Of An Open And Just Multi-Racial Society: S.127(1)(A) Communications Act 2003

The offence under the Communications Act 2003 s.127(1)(a) required proof that a person, who had sent a message by means of a public electronic communications service, intended his words to be offensive to those to whom they related or be aware that they might be taken to be so, but a culpable state of mind would ordinarily be found where a message was couched in terms liable to cause gross offence to those to whom it related. It made no difference to criminal liability whether a message was ever actually received or whether the persons who received it were offended by it. What mattered was whether reasonable persons would find the message grossly offensive, judged by the standards of an open and just multiracial society.

The appellant DPP appealed against the decision ((2005) EWHC 1308 (Admin)) upholding a decision of the magistrates' court that the respondent (C) did not make grossly offensive telephone calls and leave grossly offensive telephone messages contrary to the Communications Act 2003 s.127(1)(a). C had made racially offensive telephone calls to the offices of his Member of Parliament and had left racially offensive telephone messages. The High Court held that it was for the magistrates to determine as a question of fact whether a message was grossly offensive, that in making that determination the magistrates' had to apply the standards of an open and just multiracial society, and that the words had to be judged taking account of their context and all relevant circumstances. The DPP submitted that a defendant had to intend his words to be grossly offensive to those to whom they related, or be aware that they might be taken to be so.

HELD

(1) The object of s.127(1)(a) was not to protect people against receipt of unsolicited messages that they might find seriously objectionable, but to prohibit the use of a public service for the transmission of communications that contravened the basic standards of society. It was plain from the terms of s.127(1)(a) that the proscribed act, the actus reus of the offence, was the sending of a message of the proscribed character by the defined means. The offence was complete when the message was sent. Therefore, it made no difference that the message was never received, and the criminality of a defendant's conduct did not depend on whether a message was received by a person who for any reason was deeply offended, or by a person who was not.

(2) The High Court was entitled to rule that it was a question of fact whether a message was grossly offensive, and that what was grossly offensive had to be judged by considering the reaction of reasonable persons and the standards of an open and just multiracial society, and that the words had to be judged taking account of their context and all relevant circumstances. There could be no yardstick of gross offensiveness otherwise than by the application of reasonably enlightened contemporary standards to the particular message sent in its particular context. The test was whether a message was couched in terms liable to cause gross offence to those to whom it related. Section 127(a) provided no explicit guidance on the state of mind that had to be proved against a defendant to establish an offence under the subsection. Parliament could not have intended to criminalise the conduct of a person using language that was, for reasons unknown to him, grossly offensive to those to whom it related, Sweet v Parsley (1970) AC 132 considered. However, a culpable state of mind would ordinarily be found where a message was couched in terms showing an intention to insult those to whom the message related or giving rise to the inference that a risk of doing so had been recognised by the sender. The same would be true where facts known to the sender of a message about an intended recipient render the message offensive to that recipient, or likely to be so, whether or not the message in fact reached the recipient.

(3) At least some of the language used by C was language that could only have been chosen because of its highly abusive and offensive character. There was nothing in the content or tenor of those messages to soften or mitigate the effect of that language in any way. In the circumstances, C's messages were grossly offensive and would be found by a reasonable person to be so, and since they were sent by C by means of a public electronic communications network, C should have been convicted under s.127.

APPEAL ALLOWED

Awarding of Aggravated Damages

MANLEY v COMMISSIONER OF POLICE FOR THE METROPOLIS (2006)

[2006] EWCA Civ 879

CA (Civ Div) (Waller LJ, Moses LJ, Wilson LJ) 28/6/2006

DAMAGES

Aggravated Damages: Basic Awards: Malicious Prosecution: Police: Assessment Of Damages: Appropriate Award: Quantum: Consideration Of Bad Character: Adequacy Of Direction To Jury

An award of basic damages for malicious prosecution below the range recommended by the judge and the failure to award aggravated damages were decisions that no reasonable jury could have come to in the circumstances.

The appellant (M) appealed against a basic award of damages for malicious prosecution and a decision not to award him aggravated damages following his substantial success in his claim alleging, inter alia, malicious prosecution by police officers for whom the respondent police commissioner was responsible. The jury's findings had involved a number of police officers having told lies at a criminal trial to support fabricated allegations on which M had originally been charged, and having continued to tell those lies in order to

try and defeat M's claim in the civil proceedings. After the jury had brought in its verdicts on liability in M's claim, the judge provided guidance on basic damages by reference to a range of figures, and further directed the jury as to the approach it should take to the question whether there should be an award of aggravated damages, and if so the quantum of such an award. However, no guidance was given as to how the jury should view M's bad character. The jury awarded M, inter alia, £1,500 for malicious prosecution. It awarded no aggravated damages. M submitted that (1) the award for malicious prosecution, which was £2,500 below the lowest figure in the judge's range, was an award which no reasonable jury could consider sufficient; (2) the failure to award aggravated damages was a decision to which no reasonable jury could come.

HELD

(1) It had been established that compensation for malicious prosecution had three aspects: firstly, damage to a person's reputation; secondly, the damage suffered by being put in danger of losing one's liberty or of losing property; and thirdly, pecuniary loss caused by the cost of defending the charge. Guidance to juries dealing with malicious prosecution should spell out those elements for which compensation was given, and also, in a case of a claimant of bad character, spell out that, even though his reputation might not be seriously damaged, there was a greater risk of being convicted and of receiving greater punishment. In the instant case, the judge's direction had given the jury very little guidance as to what they were compensating M for, particularly so far as malicious prosecution was concerned. It gave no guidance as to how the jury should view M's bad character. If the matter had been more fully explained to the jury, no reasonable jury could have awarded a sum below £4,000, that being the bottom of the judge's bracket. Accordingly, the jury's award of basic damages for malicious prosecution was increased from £1,500 to £4,000. Clark v Chief Constable of Cleveland Times, May 13, 1999 applied.

(2) M should be compensated for the fact that not only were lies told as a foundation to the prosecution, and at the criminal trial, but were again told at the civil trial. The basic award was not sufficient to compensate M for the way he was treated. Any reasonable jury should have appreciated that a failure to award something other than a substantial sum for aggravated damages would send out an entirely wrong message to the police commissioner. In the circumstances, no jury could have awarded less than £10,000 as aggravated damages. Accordingly, M was awarded £10,000. Commissioner of Police for the Metropolis v Thompson (1998) QB 498 applied.

APPEAL ALLOWED

Secondary Disclosure of Material not Limited to a Defence Statement Being Served on the Prosecution within 14 Days

MURPHY v DIRECTOR OF PUBLIC PROSECUTIONS (2006)

DC (Maurice Kay LJ, Mitting J) 20/6/2006

CRIMINAL EVIDENCE - CRIMINAL LAW - ROAD TRAFFIC

Driving While Over The Limit: Duty Of Disclosure: Secondary Disclosure: Prosecution Duty To Disclose: Effect Of Failure To Serve Defence Statement Within Time Limit On Prosecution Duty To Disclose: S.5(5) Criminal Procedure And Investigations Act 1996: S.12 Criminal Procedure And Investigations Act 1996: S.15(2) Road Traffic Offenders Act 1988: Criminal Procedure And Investigations Act 1996

Pursuant to the Criminal Procedure and Investigations Act 1996, the entitlement of a defendant in criminal proceedings to secondary disclosure of material by the prosecution was not limited to a pre-condition that a defence statement was served on the prosecution within 14 days of the service on him of primary disclosure by the prosecution.

The appellant M appealed by way of case stated against the decision of a judge to convict him of driving over the limit. M had been stopped by the police by the road side and provided a positive specimen of breath. M was arrested and taken to a police station where he provided two further specimens of breath which were then analysed by means of an intoximeter. The lowest reading on the intoximeter disclosed an alcohol level significantly in excess of the legal limit. Thereafter there were 44 preliminary hearings in the magistrates' court. The prosecution was ordered to make secondary disclosure. A defence case statement was served 18 months after primary disclosure had been made by the prosecution. An amended defence case statement limited the defence to two arguments:

(i) that the intoximeter's software had been changed so as to take it outside a type approved by the secretary of state;

(ii) that the amount of alcohol that M consumed could not have given the reading disclosed on the intoximeter.

At trial, more than four years after his arrest, M contended that the proceedings should be stayed on the basis of delay and that the prosecution was in contempt of court by failing to comply with the disclosure orders. M alleged that the prosecution had failed to produce the figurative analysis readings taken by the roadside breath test device that had been stored in its memory at the time but that were was no longer available. The district judge refused to stay the proceedings and found that pursuant to the Criminal Procedure and Investigations Act 1996 s.5(5) and s.12 , as M's defence statement was served on the prosecution more than 14 days after the prosecution served primary disclosure on him, he was not entitled to secondary disclosure under the 1996 Act. In addition he found that the prosecution was not in contempt of court. On appeal issues arose as to whether the judge was right to hold

(1) that M 's right to secondary disclosure was limited in the manner that he did;

(2) that the intoximeter in question had the approved software and gas delivery system in place absent any evidence on the matter;

(3) that the Road Traffic Offenders Act 1988 s.15(2) did not compel the prosecution to adduce the result in figures of the analysis carried out by the roadside breath test device;

(4) that the proceedings should not be stayed.

HELD

(1) The judge erred in finding that M's right to secondary disclosure was limited in the manner that he did. It could not have been Parliament's intention that a defendant would be deprived of his right to discovery, or the right to apply for discovery, of material in the possession of the prosecution that might assist his case by reason of what might be a short delay in serving the defence statement on the prosecution, R v Soneji (2005) UKHL 49 , (2006) 1 AC 340 and DPP v Wood (2005) EWHC 2986 (QB), Times, February 8, 2006 applied.

(2) The judge was entitled to assume, absent any evidence on the matter, that the intoximeter in question had the approved software and gas delivery system in place, Skinner v DPP (2004) EWHC 2914 (Admin) , (2005) RTR 17 applied.

(3) The judge was correct to hold that s.15(2) of the 1988 Act did not compel the prosecution to adduce the result in figures of the analysis carried out by the roadside breath test device. Under s.15(2) evidence of the proportion of alcohol in a specimen meant evidence actually placed before the court. As such, if evidence was available, having been obtained from the manufacturer of the intoximeter, it was admissible. If that evidence had not been obtained it was not admissible, Badkin v DPP (1988) RTR 401 distinguished.

(4) The judge was right to refuse to stay the proceedings. M's amended defence case statement relied on the credibility of M and technical evidence. There was no challenge to police evidence or the evidence of witnesses and M's defence was not affected by the passage of time.

APPEAL DISMISSED

Conduct by an Individual Employee or a Group of Employees is Required to Establish Primary Liability

FIONA JANE DANIELS v COMMISSIONER OF POLICE OF THE METROPOLIS (2006)

[2006] EWHC 1622 (QB)

QBD (Mackay J) 5/7/2006

EMPLOYMENT - NEGLIGENCE - PERSONAL INJURY - POLICE

Duty Of Care: Employers Liabilities: Foreseeability: Harassment: Occupational Stress: Police: Psychiatric Harm: Victimisation: Protection From Harassment Act 1977: Need For Proof Of Course Of Conduct: Foreseeable Harm To Health: Psychiatric Illness: Depression: Workplace: Stress-Induced: Impending Harm: Protection From Harassment Act 1997

In cases of harassment under the Protection from Harassment Act 1997 the claimant had to prove a course of conduct by either an individual employee or a group of employees in order to establish the primary liability for which the employer would be vicariously liable.

The claimant former police officer (F) claimed damages for harassment under the Protection from Harassment Act 1997 and brought a claim in negligence against the defendant police (P). F had entered into a compromise agreement with P regarding undisputed claims of sexual harassment and victimisation. She then had a mentor allocated to her and found that the arrangement worked well. However, F became destabilised when she heard that a colleague who had harassed her was to rejoin F's unit. After an informal meeting, F went off sick with a stress-related illness before seeking and being given a transfer to another unit, but after several months F said that she had been subjected to further incidents of harassment and victimisation that caused her psychiatric injury in the form of depression. She was referred to a different unit, but after a few months was advised that the team preferred not to work with her. P had offered F counselling, which she declined. F suffered a breakdown of her health and was medically retired. P submitted that in a case of vicarious liability for harassment by an employee or employees, the claimant had to prove either a course of conduct by a particular employee or by a group of employees acting with a common purpose in a joint venture.

HELD

(1) In cases of vicarious liability for harassment under the Act, there had to be an established case of harassment against at least an individual employee who had been shown on at least two occasions to have pursued a course of conduct amounting to harassment, or by more than one employee, each acting on different occasions in furtherance of some joint design. Therefore, F had to prove a course of conduct by either an individual employee or by a group of employees so as to establish the primary liability for which P would be vicariously liable.

(2) There was no substance in F's harassment claim based on the Act. Some of F's allegations were out of time, others were misconceived and F's accounts of certain events were to be rejected.

(3) In relation to F's negligence claim, there had been no indication of impending harm to her health that P ought reasonably to have foreseen, Garrett v Camden London Borough Council (2001) EWCA Civ 395 applied. F had only been off work on one occasion with a stress-related illness and there was no psychiatric reason for her

problems. F had left because she realised that she was not liked by or popular with the majority of those she worked with, and she had not fully appreciated that fact until she had been informed of it in a sensitive way. There was no breach of duty that had caused the harm, nor any occupational stress, Sutherland v Hatton (2002) EWCA Civ 76 , (2002) PIQR P241 and Barber v Somerset CC (2004) UKHL 13 , (2004) 2 All ER 385 applied.

JUDGMENT FOR DEFENDANT

SI 1548/2006 The Immigration (Leave to Remain) (Prescribed Forms and Procedures) (Amendment) Regulations 2006

In force **22 June**. The Regulations amend the Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2006, which prescribe the forms to be used for applications to remain in the UK and the procedures to be followed. The amendment Regulations substitute a number of forms contained in the Schedules to the original Regulations, that contained errors.

SI 1659/2006 The Human Tissue Act 2004 (Persons who Lack Capacity to Consent and Transplants) Regulations 2006

In force **1 September**. The Regulations make provision regarding the circumstances in which certain activities may be carried out in relation to material from the body of a person who lacks the capacity to consent for the purposes of certain provisions of the Human Tissue Act 2004. Provision is also made concerning the restrictions on transplants involving a live donor in Section 33 of the Act. This covers the definition of transplantable material to which those restrictions apply and the circumstances in which live donor transplants are permitted.

Regulations 3, 4 and 8 make provision as to the circumstances in which an adult who lacks capacity is deemed to consent to the storage and use of relevant material for the purposes in Part 1 of Schedule 1 to the Act.

Regulations 5 to 7 prescribe the excepted purposes for which the results of DNA analysis may be used, where the analysis is of DNA that has been manufactured by the body of an adult who lacks capacity to consent. DNA can be used in these circumstances when:

- The use is in the best interests of the person who lacks capacity.
- The use is for the purpose of an authorised clinical trial.
- The use is for the purpose of certain approved research.

Regulations 9 and 10 provide definitions of 'transplantable material'. Regulations 11 specifies the circumstances in which transplants of such material from the body of a live donor may be carried out without contravening the restrictions set out in Section 33 of the Act.

Regulation 12 provides that a panel of at least three members of the Human Tissue Authority must make the decision on transplants from live donors in any case of organ donation where a child is involved, where the donor is an adult who lacks the capacity to consent or where the donor is an adult who has capacity to consent but where there are paired donations, pooled donations or altruistic donation.

Regulations 13 and 14 concern the right of reconsideration of the Authority's decision.

SI 1682/2006 The Work and Families Act 2006 (Commencement No 1) Order 2006

In force **27 June**, **1 October 2006** and **6 April 2007**. The Order brings into force certain provisions of the Work and Families Act 2006.

The following come into force on 27 June:

- Section 1 (Maternity pay period).
- Section 2 (Adoption pay period).
- Section 11 (Leave and pay related to birth or adoption) in so far as it relates to the provisions in Schedule 1 of the Act which are brought into force by Article 2 of these Regulations.
- Schedule 1 (Leave and pay related to birth or adoption – amendments) – amendments to the Social Security Contributions and Benefits Act 1992 and Employment Rights Act 1996.

The following come into force on 1 October:

- Section 11 (Leave and pay related to birth or adoption) in so far as it relates to the provisions in Schedule 1 of the Act which are brought into force by Article 3 of these Regulations.
- Schedule 1 (Leave and pay related to birth or adoption – amendments) – amendments to the Social Security Contributions and Benefits Act 1992.
- Section 13 (Annual leave).
- Section 14 (Increase of maximum amount of a week's pay for certain purposes).
- Section 15 (Repeals) in so far as it relates to the provisions in Schedule 2 of the Act which are brought into force by these Regulations.
- Schedule 2 (Repeals) – repeal of definition of 'week' contained in Section 171(1) of the Social Security Contributions and Benefits Act 1992, and Section 18 of the Employment Act 2002 (Maternity pay period).

The following come into force on 6 April 2007:

- Section 12 (Flexible working).
- Schedule 2 (Repeals) – repeal of section 80F(3), (6) and (7) of the Employment Rights Act 1996, concerning the statutory right to request contract variation.

The following sections of the Act came into force on Royal Assent, which was granted on 21 June:

- Section 16 (Interpretation).
- Section 17 (Corresponding provision for Northern Ireland)
- Section 18 (Financial provisions)
- Section 19 (Commencement)
- Section 20 (Short title and extent)

Further information on the Work and Families Act 2006 can be found in this edition of the *Digest*.

SI 1699/2006 The Proceeds of Crime Act 2002 (Recovery of Cash in Summary Proceedings: Minimum Amount) Order 2006

In force **31 July**. Chapter 3 of Part 5 of the Proceeds of Crime Act 2002 permits the search for, and seizure, detention and forfeiture of, cash derived from, or intended for use in, unlawful conduct. These powers are limited to cash which amounts to at least the minimum amount. This Order specifies the minimum amount to be £1,000, reducing it from the previous minimum of £5,000.

HO Circular 16/2006 provides further details on this, and is covered in this edition of the *Digest*.

SI 1736/2006 The Traffic Management Act 2004 (Commencement No 1) (England) Order 2006

In force **29 September**. The Order brings Section 94 of the Traffic Management Act 2004 into force as respects England. Section 94 deals with the power to inspect blue badges, these being badges for display on motor vehicles used by disabled persons.

Further information on blue badges can be found in this edition of the *Digest*.

SI 1737/2006 The Collection of Fines (Final Scheme) Order 2006

In force **3 July**. The provisions of Schedule 5 of the Courts Act 2003 (Collection of fines) have been piloted in various areas since February 2004. This Order gives effect to the final version of Schedule 5 in all local justice areas and indefinitely. It also amends other legislation in connection with the operation of the final scheme.

SI 1743/2006 The Immigration (Provision of Physical Data) Regulations 2006

In force **4 July**. The Regulations are made under s.126 of the Nationality, Immigration and Asylum Act 2002 (Physical data: compulsory provision).

Under Regulation 3, an 'authorised person' (immigration officer and certain officers of the Secretary of State) may require a person who makes an application for entry clearance, or leave to enter, to provide a record of his fingerprints and a photograph of his face. The Regulations set out the actions an authorised person can take in order to obtain this data, including circumstances where the applicant is aged under 16.

Where an individual makes an application for entry clearance, but does not comply with a requirement imposed by these Regulations, his application may be treated as invalid. Where an individual makes an application for leave to enter to which these Regulations apply, but does not comply with a requirement imposed by these Regulations, his application may be refused.

The Regulations require that any record of fingerprints, photograph or copies held by the Secretary of State pursuant to these Regulations must be destroyed within ten years, or as soon as is reasonably practicable if the person proves he is a British citizen or Commonwealth citizen with a right of abode under Section 2(1)(b) of the Immigration Act 1971.

SI 1756/2006 The Road Vehicles (Construction and Use) (Amendment) Regulations 2006

In force **1 August**. The Regulations further amend the Road Vehicles (Construction and Use) Regulations 1986.

Regulation 2 amends the definition of 'the emissions publication' in Schedule 7B of the 1986 Regulations, to refer to the most recent (twelfth) edition of the publication entitled 'In Service Exhaust Emission Standards for Road Vehicles'. This publication contains in-use emissions limits that petrol-engined cars and light vans are required to meet at MOT and roadside emissions tests. The publication updates new models of petrol-engined passenger cars and light commercial vehicles, which have come onto the market since the last amending regulations came into effect on 1 August 2005.

SI 1758/2006 The Gambling Act 2005 (Transitional Provisions) (No 2) Order 2006

In force **1 August**. The Order makes transitional provisions in connection with the commencement of the Gambling Act 2005, and in particular makes provision about the grant or renewal of certain licences and permits issued under enactments to be repealed by that Act during the period before their repeal. Licenses covered by the transitional arrangements include:

- Track betting licences.
- Licences authorising the provision of gaming in casinos and bingo clubs.
- Permits for gaming machines in amusement machine premises, premises licensed to sell alcohol and other non-gambling premises.
- Permits for amusements with prizes where those amusements constitute a lottery or gaming.

SI 1786/2006 The Courts-Martial (Prosecution Appeals) Order 2006

In force **5 July**. The Order makes provision regarding trials by court-martial, equivalent to the new prosecution right of appeal under Part 9 of the Criminal Justice Act 2003. The Order introduces for service courts a power for the prosecuting authorities to appeal to the Courts-Martial Appeal Court against a judicial ruling which would otherwise have had the affect of terminating proceedings.

SI 1788/2006 The Courts-Martial (Prosecution Appeals) (Supplementary Provisions) Order 2006

In force **1 August**. This Order makes provisions supplementary to those contained in the Courts-Martial (Prosecution Appeals) Order 2006 (see above). The provisions are the equivalent in relation to service courts to those provisions in Part 66 of the Criminal Procedure Rules 2005 (SI 2005/384), which provide for the practice and procedure to be followed by the civilian courts when the prosecution exercises a right of appeal in respect of a terminating ruling.

SI 1804/2006 The Private Security Industry Act 2001 (Designated Activities)(Amendment No 2) Order 2006

In force **11 July**. This Order removes the amendments made to the designation Order by the Private Security Industry Act 2001 (Designated Activities) (Amendment) Order 2006 and revokes it as it is no longer required because all the groups it covers are also covered by the Private Security Industry Act 2001 (Amendments to Schedule 2) Order 2006 which comes into force on the same day as this Order (see below).

SI 1831/2006 The Private Security Industry Act 2001 (Amendments to Schedule 2) Order 2006

In force **11 July**. This Order amends Part 1 of Schedule 2 to the Private Security Industry Act 2001 to add or remove activities from activities liable to control under the Act as follows:

- The activities of several groups of persons who work for the prison service, immigration service, the police, the British Transport Police, the Civil Nuclear Constabulary and harbour authorities are removed from the scope of the manned guarding provisions and, in certain cases, from the vehicle immobilisation and removal activities.
- The activities of certain bailiffs and of persons who remove abandoned vehicles on behalf of the police and local authorities are removed from the scope of vehicle removal activities and, in certain cases, from the vehicle immobilisation activities.
- The activities of removing a clamp from a vehicle, returning a vehicle which has been removed or restricted and charging for either of those activities are added to the scope of the vehicle immobilisation and removal activities where they are carried out in connection with the clamping or removal of that vehicle in circumstances where a charge is going to be imposed.

The Order also amends Part 2 of Schedule 2 to the 2001 Act to provide that:

- Manned guarding activities on certain licensed premises are only subject to 'additional controls' (essentially the licensing of in-house staff as well as contractors) when undertaken at a time when alcohol is being supplied or when entertainment is being provided.
- Activities involving only the use of CCTV are not subject to additional controls.

SI 1835/2006 The Criminal Justice Act 2003 (Commencement No 13 and Transitional Provision) Order 2006

This Order brings into force on **24 July** the following provisions of the Criminal Justice Act 2003:

- **Section 33(1)** - Defence disclosure in so far as it inserts subsection (5C) of Section 5 of the Criminal Procedure and Investigations Act 1996. However, this only has effect in relation to alleged offences in relation to which a criminal investigation began in Engalnd and Wales on or after 4 April 2005 or in Northern Ireland on or after 15 July 2005 and the duty to give a defence statement in accordance with Section 5(5) arises on or after 24 July 2006.
- **Section 44** – The prosecution may apply for a trial to be conducted without a jury where there is a danger of jury tampering. This applies where one or more defendants are to be tried on indictment for one or more offences. The Judge may order such a trial if he is satisfied that there is evidence of a real and present danger

that jury tampering would take place and notwithstanding any steps (police protection) to prevent tampering, the likelihood that it would take place would be so substantial as to make it necessary in the interests of justice for the trial to be conducted without a jury.

- **Section 45** – This lays down the procedure for applying for a trial without a jury due to jury tampering. The application must be determined at a preparatory hearing.
- **Section 46** – This section deals with the discharge of a jury because of jury tampering. If a judge is minded during a trial on indictment to discharge the jury due to jury tampering he must first inform the parties of his intended actions; the reasons why and he must allow the parties to make representations. Following this, if the judge is satisfied that jury tampering has taken place and that to continue the trial without a jury would be fair to the defendant(s), he may make an order that the trial is to continue without the jury. Furthermore, if the judge considers that it is necessary in the interests of justice for the trial to be terminated, he must do so and may make an order that any new trial must be conducted without a jury if the conditions in section 44 are fulfilled.
- **Section 47** – Appeals can be brought before the Court of Appeal against the orders mentioned above.
- **Section 48** – Supplementary provisions about trials without a jury.
- **Section 331** – Minor and consequential amendments.
- **Part 4 of Schedule 36** – Minor and consequential amendments in so far as it relates to England and Wales.

SI 1838/2006 The Inquiries Rules 2006

In force **1 August**. These Rules, made under Section 41(1) of the Inquiries Act 2005, will act as a statutory guide for the chairman and provide assistance in managing and conducting the proceedings of an inquiry held under the Inquiries Act 2005. In particular, the Rules set out procedures for applying for publicly funded legal representation, requiring rates and the extent of work to be agreed in advance. The Rules also assist the chairman in controlling oral proceedings and prevent extensive and costly cross-examination procedures. They also deal with matters of evidence and procedure in relation to inquiries, the return or keeping, after the end of an inquiry, of documents given to or created by the inquiry and awards made by the chairman under section 40 of the Act.

SI 1871/2006 The Serious Organised Crime and Police Act 2005 (Commencement) (No 7) Order 2006

This Order brings into force certain sections of the Serious Organised Crime and Police Act 2005.

Section 144 and Schedule 10 of the Act will come into force on **20 July** in the counties of Hampshire, Hertfordshire, Nottinghamshire, Worcestershire, the cities of Leicester and York, the metropolitan boroughs of Gateshead and South Tyneside and the London boroughs of Southwark and Wandsworth. Section 144 and Schedule 10 of the Act insert section 13A to 13E into the Crime and Disorder Act 1998 and make further minor consequential amendments which make provision about parental compensation orders.

SI 1874/2006 The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2006

In force **26 July**. This Order adds the Gangmasters Licensing Authority and the Commission for Healthcare Audit and Inspection to Part I of Schedule 1 to RIPA enabling them to conduct directed surveillance and use covert human intelligence sources within the regulatory framework.

It also removes any National Health Service trust established under Section 5 of the National Health Service and Community Care Act 1990, and Local Health Boards in Wales established under Section 6 of the National Health Service Reform and Health Care Professions Act 2002 from Part II of Schedule 1 to RIPA disabling them from conducting directed surveillance within the regulatory framework.

It also provides for the withdrawal of powers from public authorities or from officials in public officials that no longer have such requirements.

SI 1878/2006 The Regulation of Investigatory Powers (Communications Data) (Additional Functions and Amendment) Order 2006

In force **26 July**. This Order provides powers for new public authorities; consistent with powers and functions they already have (in the case of the Gambling Commission) or will have (in the case of the Rail Accident Investigation Branch). It also ensures that long established authorities with functions of public nature (as in the case of the Royal Mail) can undertake their functions in a way that is consistent with the regulatory framework.

It amends Part I of Schedule 2 of the 2003 Order and has the effect of enabling the following public authorities to acquire all types of communications data within the regulatory framework:

- The Gangmasters Licensing Authority
- The Home Office (specifically the Immigration Service and the Prison Service).
- The Department of Transport (specifically the Air Accident Investigation Branch, the Marine Accident Investigation Branch and the Rail Accident Investigation Branch).
- The Gambling Commission.
- The Information Commissioner
- The Serious Fraud Office.
- The Criminal Cases Review Commission.
- The Scottish Criminal Cases Review Commission.
- The Royal Mail Group plc.

SI 1892/2006 The Motor Vehicles (Wearing of Seat Belts) (Amendment) Regulations 2006

In force **18 September**. These Regulations make provision relating to the wearing of seat belts and other restraints by children and adults in motor vehicles. See article in this edition of the *Digest*.

SI 1919/2006 The Proscribed Organisations (Name Changes) Order 2006

In force **14 August**. This Order specifies alternative names for the Kurdistan Workers' Party (Partiya Karkeren Kurdistan) (PKK), which was proscribed in 2001 under Section 3 of the Terrorism Act 2000, these being:

- Kongra Gele Kurdistan.
- KADEK

SI 1936/2006 The Terrorism Act 2006 (Commencement No 2) Order 2006

In force **25 July**. This Order brings into force the remaining provisions of the Terrorism Act 2006 which are not already in force These provisions are:

- Sections 23 to 25. Extension of maximum detention to 28 days.
- Section 37(5) to the extent that it has not already been brought into force.
- The entries in Schedule 3 relating to paragraph 36(1) of Schedule 8 to the Terrorism Act 2000 and Section 306(2) and (3) of the Criminal Justice Act 2003.

SI 1938/2006 The Police and Criminal Evidence Act 1984 (Code of Practice C and Code of Practice H) Order 2006

In force **25 July**. This statutory instrument brings into force a Code of Practice (Code H) in connection with the detention, treatment and questioning by police officers of persons under Section 41 of, and Schedule 8 to, the Terrorism Act 2000. It also brings into force a revised version of the Code of Practice (Code C) in connection with the detention, treatment and questioning of persons by police officers. These Codes replace the existing Code C, which has been in force since 1 January 2006. See article in this edition of the *Digest*.

Notes

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